

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 18-003-06-1-5-01695
Petitioners: John W. Jr. and Phyllis J. Wray
Respondent: Delaware County Assessor
Parcel: 18-11-09-376-004.000-003
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal regarding the subject property with the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) by written document on August 24, 2007.
2. The PTABOA mailed its decision for the 2006 assessment on July 11, 2008.
3. The Petitioners appealed the decision to the Board by filing a Form 131 petition on August 1, 2008. The Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 15, 2009.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on May 19, 2009. He did not inspect the property.
6. Petitioner John Wray, Petitioner Phyllis Wray, and Deputy Assessor Kelly Hisle were sworn as witnesses at the hearing.

Facts

7. The subject parcel is a single family residence located at 1213 West North Street in Muncie.
8. The PTABOA determined the assessed value is \$11,500 for land and \$96,400 for improvements (total \$107,900).
9. The Petitioners claimed the total assessed value should be \$85,000.

Record

10. The official record for this matter is made up of the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Notice of Hearing,
 - c. Digital recording of the hearing,
 - d. Petitioners Exhibit 1 – Form 131 Petition,
Petitioners Exhibit 2 – Form 130 Petition,
Petitioners Exhibit 3 – Appraisal as of September 5, 2001,
Petitioners Exhibit 4 – Appraisal as of July 8, 2006,
Petitioners Exhibit 5 – Spring and fall tax bills for 2006 payable in 2007,
Respondent Exhibit 1 – None,
Respondent Exhibit 2 – Sales comparison analysis with four comparables,
Respondent Exhibit 3 – List of sales in the neighborhood of the subject property,
Respondent Exhibit 4 – Property record card (“PRC”) for the subject property,
Respondent Exhibit 5(a) – Multiple listing data (“MLS”), PRC, and sales disclosure form for 1018 West University Avenue,
Respondent Exhibit 5(b) – MLS, PRC, and sales disclosure form for 1101 West Beechwood Avenue,
Respondent Exhibit 5(c) – MLS, PRC, and sales disclosure form for 1220 West North Street,
Respondent Exhibit 5(d) – MLS, PRC, and sales disclosure form for 601 North Alameda Drive,
Respondent Exhibit 6 – MLS, PRC, and sales disclosure form for 817 West Ashland Avenue,
Respondent Exhibit 6(a) – MLS, PRC, and sales disclosure form for 409 South College Avenue,
Respondent Exhibit 6(b) – MLS, PRC, and sales disclosure form for 1426 West North Street,
Respondent Exhibit 7 – MLS, PRC, and sales disclosure form for 1312 West Gilbert Street,
Respondent Exhibit 7(a) – MLS, PRC, and sales disclosure form for 1305 West North Street,
 - e. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:
 - a. The assessed value of the subject property is more than its market value-in-use. It should be reduced to \$85,000. *Wray testimony.*
 - b. In this neighborhood, many of the homes are declining in value, but the assessed value of the subject property increased from 2005 to 2006. An appraisal as of July 8, 2006, determined the value of the property actually decreased to \$85,000. Additionally, a previous appraisal as of September 5, 2001, appraised the subject property at \$100,000, which is lower than the current assessment. The two appraisals show that the value of the property is too high and should be reduced. *Wray testimony; Pet'rs Ex. 3, 4.*
 - c. On their Form 131 Petition, the Petitioners raised the issues of grade, depreciation, and functional obsolescence. They did not address these issues at the hearing. Therefore, the Board considers those claims to be waived.

12. Summary of the Respondent's case:
 - a. An assessment for 2006 is based upon four comparable sales in 2004 and 2005 that ranged from \$62,500 to \$157,000. All of the comparable properties are in the Petitioners' neighborhood and are similar in total square footage. *Hisle testimony; Resp't Exs. 2 through 5(c).*
 - b. Price per square foot is another similarity between comparable properties and the subject property. The comparables ranged from \$46.84 to \$70.66 per square foot, but after accounting for differences in the comparables, their price per square foot ranged from \$49.77 to \$62.37. The Petitioners' property is assessed at \$56.20 per square foot, which is within the range of the comparable values. *Hisle testimony; Resp't Exs. 2 through 5(c).*
 - c. The 2006 appraisal used properties outside the Petitioners' neighborhood as purportedly comparable properties even though many comparables sold in the subject's neighborhood. They should have been used. *Hisle testimony; Resp't Ex. 5(a) through 7(a).*

Analysis

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

14. In making a case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
15. A 2006 assessment must have a value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Evidence relating to a different date must have an explanation about how it demonstrates or is relevant to the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
16. The Petitioners did not make a case for any assessment change because:
 - a. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. An appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) is often the most effective method to rebut the presumption that an assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Although the Petitioners presented two appraisals prepared by licensed appraisers, one of them is evidence of value as of September 5, 2001, and the other is evidence of value as of July 8, 2006. The Petitioners did not establish how either of those values might relate to the required valuation date for this case, which is January 1, 2005. The Petitioners merely left the Board to interpolate a proper value, which is something the Board will not do. *Meridian Towers*, 805 N.E.2d at 480. (stating that it is improper for the Board to make a case for a party). The Petitioners did not make a prima facie case because they failed to demonstrate how or why their two appraisals are relevant to the value of the subject property as of January 1, 2005. As a result, none of the evidence proves what a more accurate market value-in-use might be. *Long*, 821 N.E.2d at 471.
 - c. When a taxpayer fails to provide probative evidence supporting a claim that an assessment should be changed, the Respondent’s duty to support the assessment

with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

17. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>