

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

Petition: 43-032-06-1-5-00149
Petitioner: Beer Family Revocable Living Trust
Respondent: Kosciusko County Assessor
Parcel: 43-11-05-100-008.000-032
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 19, 2007.
2. The PTABOA mailed notice of its decision on October 2, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on October 16, 2007, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 19, 2007.
5. Administrative Law Judge Patti Kindler held the administrative hearing for this appeal in Warsaw on January 9, 2008.
6. The following persons were present and sworn as witnesses at the hearing:
For the Petitioner – Max Beer, Trustee,
For the Respondent – Kristy Mayer, Township Assessor,
Lori Shortz, Deputy Township Assessor,
Laurie Renier, County Assessor,
Gerald Bitner, PTABOA member,
Susan Myrick, PTABOA member,
Richard Shipley, PTABOA member,
Brock Ostrom, PTABOA member.

Facts

7. The subject property (Lot 54) is vacant residential land located on Bluewater Drive in Warsaw, Indiana.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The assessed value of the land is \$59,900.¹
10. The Petitioner claims the assessed value should be \$50,000.

Issue

11. Summary of the Petitioner's contentions:
 - a) The assessment should be changed to \$50,000, which was the purchase price of the subject parcel on November 2, 2006. The HUD settlement statement shows the amount the trust paid for the property and establishes the appropriate market value. *Beer testimony; Pet'r Ex. 1 at 4.*
 - b) The comparables the assessor presented support the price paid for the vacant lot and the requested assessment. *Beer testimony.*
12. Summary of the Respondent's contentions:
 - a) On March 1, 2006, Lots 53, 54, and 55 were part of a single parcel, 43-11-05-100-074.000-032 (Tax ID 04-723031-12). *Mayer testimony; Resp't Ex. 1.* This is the parcel/key number identified on both the Form 131 and the Form 115. *Pet'r Ex. 1.* After March 1, 2006, they were divided into separate parcels. Then Lot 54, the parcel under appeal, got a new parcel number, 43-11-05-100-008.000-032 (Tax ID 04-726011-68). *Mayer testimony; Resp't Ex. 2.*
 - b) Before the previous owner died, he sold Lot 53 for \$55,000 on March 30, 2006. *Mayer testimony; Resp't Ex. 7.* The remaining two lots sold after he died. Lot 54 sold for \$50,000 on November 2, 2006. *Mayer testimony; Resp't Exs. 2, 3.* Lot 55 sold for \$43,000 on November 20, 2006. *Mayer testimony; Resp't Ex. 3.* These lots possibly sold for less than their market value because the sale was part of the settlement of an estate. Because prices are commonly deflated when an estate is involved, only trending adjustments were made to the sales prices of these lots. *Mayer testimony.*

¹ The Notification of Final Assessment Determination (Form 115) issued by the PTABOA indicates a land value of \$59,300. *Pet'r Ex. 1, Form 115.* At the hearing, the parties agreed that number is a typographical error and the current assessed value is \$59,900.

- c) The subject property was only on the market for 33 days. It sold quickly, which leads one to believe the Petitioner purchased it for a good price. *Mayer testimony; Resp't Ex. 4.*
- d) In addition to lots 53 and 54, the area's plat map shows three parcels that sold in the subject property's neighborhood in 2003. Lots 37 and 38 sold as one parcel for \$75,000 on December 29, 2003, and were listed on the market for 153 days. Lot 48 sold for \$30,000 on October 17, 2003, and was listed on the market for 51 days. Lot 21 sold for \$40,000 on June 17, 2003, after being listed on the market for just 11 days. The lots that were on the market for the least amount of time appear to be worth more than their sale price reflects. *Mayer testimony; Resp't Exs. 5-10.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Form 131 Petition with attachments, which include the property record card, settlement statement, Form 115, and tax statement,
 Respondent Exhibit 1 – 2006 property record card before the land split,
 Respondent Exhibit 2 – 2006 property record card for lot 54 after the land split,
 Respondent Exhibit 3 – 2005 aerial map showing the original undivided parcel,
 Respondent Exhibit 4 – MLS report and geographic information system (GIS) elevation map for the subject lot,
 Respondent Exhibit 5 – 2005 aerial map for the subject lot and five comparables,
 Respondent Exhibit 6 – Property record card, GIS and MLS data for lot 55,
 Respondent Exhibit 7 – Property record card and GIS data for lot 53,
 Respondent Exhibit 8 – Property record card, GIS and MLS data for lots 37 and 38,
 Respondent Exhibit 9 – Property record card, GIS and MLS data for lot 48,
 Respondent Exhibit 10 – Property record card, GIS and MLS data for lot 21,
 Respondent Exhibit 11 – Authorization for the Wayne Township Assessor to represent the Kosciusko County Assessor at the hearing,
 Board Exhibit A – Form 131 Petition with attachments,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Hearing Sign-In Sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a) 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).
 - b) In making its case, a party 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”).
 - c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) Real property is assessed on the basis of 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. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). 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) The relevant assessment date for this case is March 1, 2006. Ind. Code § 6-1.1-1-2. At that time, the subject property consisted of approximately $\frac{1}{3}$ of a much larger, lake-front parcel. Although the evidence clearly establishes that the

original parcel was split later that year, and it shows the sale price for each of those smaller lots, the Petitioner failed to establish how those individual selling prices might relate to the value-in-use of the original, larger parcel as it was on March 1, 2006. Under the unusual circumstances that occurred after the assessment date (death of owner, split and sale of 3 lots from original parcel), the Petitioner failed to establish that its purchase price is probative evidence of value-in-use on the assessment date.

- c) Furthermore, the purchase price of the subject property was \$50,000 on November 2, 2006, but the 2006 assessment is to reflect the valuation date of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Consequently, a party who presents evidence of value relating to a different date must provide an explanation about how it demonstrates, or is relevant to, the subject property's value as of January 1, 2005. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner did not establish how the November 2006 purchase price relates to the subject property's value as of January 1, 2005.
- d) When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *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

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

The Indiana Board of Tax Review determines that the assessment should not be changed.

ISSUED: _____

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>>