

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

Petition: 84-002-06-1-5-00442
Petitioner: Mike Bickers
Respondent: Vigo County Assessor
Parcel: 84-06-15-126-027.000-002
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 Vigo County Property Tax Assessment Board of Appeals (PTABOA) by letter dated February 14, 2007.
2. The PTABOA issued notice of its decision on October 30, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on November 16, 2007, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 8, 2008.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on February 11, 2008.
6. Mike Bickers represented himself at the hearing. Edward Bisch, Jr., a certified tax representative and a member of the PTABOA, represented the Vigo County Assessor.

Facts

7. This is a case about a residential property located at 2012 N. 12th Street in Terre Haute.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The assessed value determined by the PTABOA is \$7,100 for land and \$32,100 for improvements (total \$39,200).
10. The assessed value requested by the Petitioner is \$4,000 for land and \$7,000 for improvements (total \$11,000).

Contentions

11. The Petitioner presented the following evidence:
 - a. The subject property's assessed value is greater than its fair market value. The Petitioner purchased the property for \$11,000 on November 9, 2006. *Bickers testimony; Pet'r Ex. 1*. A realtor listed the property on the market for several months at \$15,000 and did not receive an offer of even \$10,000. Then the Petitioner's offer of \$11,000 was accepted. This sale is a good indicator of the property's market value. *Bickers testimony*.¹
 - b. The presence of an adult bookstore next to the Petitioner's property has caused surrounding properties to lose value. *Bickers testimony*.
 - c. The sales presented by the Respondent do not identify street addresses. Furthermore, the Respondent was never inside those homes to determine their condition. *Bickers testimony*.

12. The Respondent presented the following evidence:
 - a. The Petitioner purchased the property from Fifth Third Mortgage Company. *Bisch testimony; Resp't Ex. 1*. Sales involving financial institutions generally are foreclosure sales, which are not valid indicators of market value. *Bisch testimony*.
 - b. The subject property's current assessed value is equal to its fair market value. Several neighborhood properties located on North 12th Street sold in 2005 and 2006. A review of these sales establishes a price range of \$16,000 to \$59,900. *Bisch testimony; Resp't Ex. 2*. This range supports the conclusion the Petitioner's purchase price was the result of a distressed sale and does not reflect the market value of the property. *Bisch testimony*.
 - c. The Respondent did not enter the homes identified on its sales support data sheet, but is familiar with the neighborhood. *Bisch testimony*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,

¹ At the hearing, the Petitioner stated he intended to introduce the realtor's listing agreement as Exhibit 2. That document was not left with the Administrative Law Judge at the close of the hearing. Consequently, it is not part of the record. Nevertheless, the Petitioner's testimony concerning the details of the listing is undisputed.

- c. Petitioner Exhibit 1 - Settlement statement for the sale of the subject property,²
 Petitioner Exhibit 1a - Corporate limited warranty deed,
 Petitioner Exhibit 1b - First American Title Insurance Company Notice of
 Availability of Survey,
 Petitioner Exhibit 1c - Closing agreement,
 Petitioner Exhibit 1d - Privacy policy,
 Petitioner Exhibit 1e - Sales disclosure form for the subject property,
 Respondent Exhibit 1 - Property record card of the subject property,
 Respondent Exhibit 2 - Vigo County support data sheet, showing sales of
 neighborhood properties,
 Respondent Exhibit 3 - Authorization for Mr. Bisch to appear on behalf of the
 Vigo County Assessor,
 Board Exhibit A - Form 131 Petition for Review of Assessment,
 Board Exhibit B - Notice of Hearing on Petition,
 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, 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”).
 - 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 make a case for any assessment change. This conclusion was arrived at because:

² Petitioner Exhibits 1a through 1e were attached to the settlement statement, Petitioner Exhibit 1. For clarity of the record, these documents are identified separately.

- 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). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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. A 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner purchased the property for \$11,000 in November 2006, but he provided no explanation to relate his purchase price to the January 1, 2005, valuation date. Therefore, the purchase price has no probative value for this case—it does not help to prove what the assessment should be. The Petitioner failed to make a prima facie case.
- c. 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. *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

- 16. The Petitioner 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 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>