

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

Petition: 84-004-06-1-5-00032
Petitioners: Shafaat M. and Suraiya S. Dalal
Respondent: Vigo County Assessor
Parcel: 84-09-13-177-012.000-004
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 Petitioners initiated an assessment appeal by filing a Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130) dated March 22, 2007.
2. The Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its decision on August 5, 2008.
3. The Petitioners appealed to the Board on August 13, 2008. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 14, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on June 17, 2009. He did not inspect the property.
6. Petitioner Shafaat M. Dalal and certified tax representative Jennifer Becker, representing the Vigo County Assessor, were sworn as witnesses.

Facts

7. The property is a single family residence at 5509 RYANNE MARIE LANE in Terre Haute.
8. The PTABOA determined the assessed value is \$32,300 for land and \$202,600 for improvements (total \$234,900).
9. The Petitioners claim the assessed value should be \$32,300 for land and \$168,850 for improvements (total \$201,150).

Contentions

10. Summary of the Petitioners' case¹:

- a. The Petitioners purchased the property for \$214,500 on August 15, 2001. *Dalal testimony; Pet'rs Ex. 1.*
- b. The Petitioners collected sales and assessment data for several homes in the same development (Idle Creek) as their home and compared the assessed values as of March 1, 2006, to the sales prices. This analysis showed assessments ranging from -21.70% to +13.99% of the sales prices. The percentages were generally negative (assessments lower than sale prices), but the Petitioners' assessment was 9.51% more than the sale price. *Dalal testimony; Pet'rs Ex. 1.*
- c. The supply of available homes exceeds the demand. In the Petitioners' zip code (47802), sale prices have been declining. The assessed value of a property should not increase when market values are decreasing. *Dalal testimony; Pet'rs Ex. 2.*

11. Summary of the Respondent's case:

- a. The Petitioners calculated the percentage increases (*Pet'rs Ex. 1*) after application of the trending factor. The Petitioners' graph (*Pet'rs Ex. 2*) includes sales from almost the entire Vigo County area, rather than collecting sales information from the Petitioners' neighborhood. None of their data supports their proposed assessed value. *Becker testimony.*
- b. The Vigo County Neighborhood Report supports the current assessment. It illustrates how the trending factor for the March 1, 2006, assessment was determined. *Becker testimony; Resp't Ex. 5.*
- c. The 2006 assessment was based on sales from 2004 and 2005. An assessor must use properties that sold in a neighborhood to determine the market trends, and then apply those trends to all homes in the neighborhood. In this case, assessing officials reviewed data from twenty-nine sales in the Petitioners' neighborhood that occurred during the relevant time frame. *Becker testimony.*
- d. The sales prices of these twenty-nine homes were compared to their tentative 2006 assessed values. Only two of these homes were assessed for more than their sale price. The remaining twenty-seven homes were assessed for less than their selling prices. This fact establishes the neighborhood had been generally under assessed. Accordingly, a trending factor of 1.20 was applied to bring the assessments in line with actual selling prices. *Becker testimony; Resp't Exs. 2, 5.*

¹ The Form 131 Petition claimed the assessment improperly included two fireplaces when there is only one. The Respondent explained that although the property record card says there are two fireplaces, it used the value for only one. Therefore, the Petitioners withdrew that claim.

Record

12. The official record for this matter is made up of the following:
- a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Sales data,
Petitioner Exhibit 2 – Graph showing number of home sales per quarter and median prices for zip code 47802,
Respondent Exhibit 1 – Exhibit cover sheet,
Respondent Exhibit 2 – Summary of Respondent’s case,
Respondent Exhibit 3 – Power of Attorney,
Respondent Exhibit 3a – Certification for the Power of Attorney,
Respondent Exhibit 4 – Property record card and an aerial photograph,
Respondent Exhibit 5 – Neighborhood Trending Report,
Respondent Exhibit 6 – Respondent Signature and Attestation Sheet,
Board Exhibit A – Form 131,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Analysis

13. 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.

14. The Petitioners did not make a case for any assessment change. This conclusion was arrived at because:
- a. The Petitioners failed to establish how their evidence supports their claim for \$201,150 or any other specific market value-in-use.
 - b. 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.
 - c. 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).
 - d. The Petitioners bought the property for \$214,500 on August 15, 2001.² As noted above, sales information regarding the subject property can be good evidence of market value-in-use, but in this case the Petitioners failed to relate their \$214,500 price to the required valuation date, January 1, 2005. The relevant interval is between August 15, 2001, and January 1, 2005. Petitioners' Exhibit 2 graphically shows a substantial decline in the median price for home sales from the first quarter of 2006 through the first quarter of 2009. It also shows that there were only a tiny number of homes sold in that area during 2006, but then the number of sales went up substantially during 2007 and 2008. Even if this market information is accurate, it is not relevant. The 2001 purchase price and the evidence about market changes from 2006 to 2009 do not help to prove the market value-in-use as of January 1, 2005.

² The Respondent attempted to impeach Mr. Dalal's testimony about when he bought the property by pointing out that the property record card indicates the property was transferred to him in August 2004. The entry on the property record card has very little weight in comparison to Mr. Dalal's direct testimony about when he bought the property. Of course, either party could have introduced something such as the deed, closing documents, or the sales disclosure form to better prove the date of purchase, but nobody did. To the extent that the evidence conflicts about the date of purchase, the Board concludes that the more credible evidence establishes the Petitioners bought the subject property on August 15, 2001.

- e. The Petitioners computed the percentage of change between the sale prices of twelve properties³ and the assessments on those properties as of March 1, 2006. If the information on Petitioners' Exhibit 1 is accurate, the 2006 assessments ranged from approximately 80% to approximately 114% of the selling prices for those properties. Based on that comparison, the assessment of the subject property is at the high end of that range because it is almost 110% of what the Petitioners paid for it. The Petitioners' major point appears to be that most other homes are assessed for less than their selling prices, while the subject property is assessed for more than what the Petitioners paid.
- f. In essence, the Petitioners' issue is uniformity and equality of assessment. The evidence, however, does not support such a claim. Their analysis is based on sales from 2001 through 2006 and measures the percentage differences to January 1, 2005 (the valuation date for 2006 assessments). The intervals that were measured are substantially different. Therefore, the fact that the percentages of difference vary is meaningless.
- g. Furthermore, only three of the sales in the Petitioners' analysis are from the 2004-2005 period that is relevant for trending values to the January 1, 2005 valuation date. *See* Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. The percentages for those three sales are -21.70%, -8.71%, and 4.75%. The Petitioners failed to establish that this very limited information is enough to support any kind of legitimate conclusion about the uniformity or equality of assessments.
- h. More importantly, the Petitioners failed to explain how this information helps to establish the market value-in-use of their property.
- i. The Petitioners failed to make a prima facie case of error in the assessment. And when a taxpayer fails to offer probative evidence 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*, 704 N.E.2d at 1119.

Conclusion

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

³ These properties included the subject property and eleven others in the Idle Creek development.

Final Determination

In accordance with the above findings and conclusions, there will be no change in the assessment.

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>>