

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

Petition No.: 77-012-06-1-5-00002
Petitioner: Brad Dickerson
Respondent: Sullivan County Assessor
Parcel No.: 77-07-33-112-095.000-012
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Sullivan County Property Tax Assessment Board of Appeals (the PTABOA) by written document.
2. The Petitioner received notice of the decision of the PTABOA through a Form 115 Notification of Final Assessment Determination dated August 30, 2007.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 dated October 11, 2007. The Petitioner elected to have this case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 23, 2008.
5. The Board held an administrative hearing on September 10, 2008, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: Brad Dickerson, Petitioner
 - b. For Respondent: Vicki Talpas, Sullivan County Assessor

Facts

7. The property under appeal is an improved residential parcel located at the 116 North Wolfenberger Street in Hamilton Township, Sullivan, Indiana, in Sullivan County.
8. The ALJ did not conduct an on-site visit of the property.

9. The PTABOA determined the assessed value of the subject properties to be \$10,800 for land and \$28,700 for the improvements, for a total assessed value of \$39,500.
10. The Petitioner requested an assessed value of \$4,500 for land and \$28,700 for the improvements, for a total assessed value of \$33,200.

Issues

11. Summary of the Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends the 2006 assessed value of the appealed parcel is over-stated compared to the property's \$32,000 purchase price. *Dickerson testimony*. Subsequent to his purchase, Mr. Dickerson testified that he made improvements to the property and has about \$34,000 in the property. *Id.*
 - b. Mr. Dickerson testified that he purchased the property about "two and a half years ago" as a bank foreclosure after it had been on the market for "four or five months". *Dickerson testimony*. The Petitioner contends that the property's "days on market" is the key to its value. *Id.* According to Mr. Dickerson, he does not purchase properties that are new to the market. *Id.*
 - c. In support of his contentions, the Petitioner presented a sheet identifying seven properties he owns, six of which are under appeal. *Petitioner Exhibit 1*. The exhibit shows the purchase price of each property, the amount invested in the property subsequent to its purchase, the monthly rent received on each property, the property tax paid for each property, and the percent of the annual income of each property that the property tax represents. *Id.* Here, the Petitioner argues, the property taxes take about 30% of the annual rent of the subject property. *Id.*
 - d. The Petitioner further argues that the property is over-valued based on its condition and the condition of the neighborhood. *Dickerson testimony*. According to the Petitioner, the garage is in bad repair and adds little value to the property. *Id.* In addition, properties are declining in value and the neighborhood has several foreclosures. *Id.*
12. The Respondent contends the PTABOA considered the Petitioners county-level appeal and determined the assessment is appropriate. *Talpas testimony*. In support of this contention the Respondent testified that the PTABOA based its decision on the purchase price and the improvements made by Petitioner. *Id.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition and related attachments,

- b. The digital recording of the hearing labeled 77-012-06-1-5-00002Dickerson,
- c. Exhibits:
 - Petitioner Exhibit A – Data sheet on seven properties owned by Petitioner,
 - Respondent Exhibit – None presented,
 - Board Exhibit A – Form 131 petition and related 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, 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 failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a. Real property is assessed based on its “true tax value.” True tax value is “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, for 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 use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as actual cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant

to the property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.

- b. Regardless of the approach used to prove the market value-in-use of a property, a 2006 assessment is required to 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 of how it demonstrates or is relevant to the value of the property as of that required valuation date. *See Long v. Wayne Township Assessor*, 821 at N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c. Here the Petitioner testified that he purchased the property for \$32,000 approximately two and a half years ago. *Dickerson testimony, Petitioner Exhibit A*. It is not clear, however, whether that sale occurred two and a half years prior to his petition or two and a half years prior to the hearing. Further, Mr. Dickerson failed to offer a sales disclosure form or any document from the closing of the sale in support of this testimony. Similarly, the Petitioner's Exhibit 1 fails to identify the date of any sale. The Board cannot determine the property's value as of the January 1, 2005, valuation date for the purpose of the property's 2006 assessment from unsupported testimony that a sale occurred "two and a half years ago."
- d. The Petitioner further testified that he purchased the property as a foreclosure from a bank. *Dickerson testimony*. The sale of a property often is the best evidence of that property's market value. This general rule, however, presupposes that the circumstances surrounding the sale are indicative of a market value transaction. The Manual provides the following definition of "market value":

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- i. The buyer and seller are typically motivated;
- ii. Both parties are well informed and advised and act in what they consider their best interests;
- iii. A reasonable time is allowed for exposure in the open market;
- iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- v. The price is unaffected by special financing or concessions.

MANUAL at 10. It is apparent from this definition that a property's purchase from a bank out of foreclosure may not reflect a property's market value for reasons such as a

lack of exposure to the open market or the seller acting under some type of compulsion. It is incumbent upon the party relying upon that sale to offer specific evidence to allay these concerns. While a given bank sale may be conducted in such a manner as to render it probative of the property's market value, it requires more than vague testimony that the property was for sale for four or five months for the Board to find that the transaction represented market value for the property.

- e. The Petitioner also contends that the property is over-valued based on the value of the garage and the condition of the neighborhood. *Dickerson testimony*. Mr. Dickerson, however, chose not to present any evidence beyond his unsupported testimony. Conclusory statements that “the garage is not of much value” or “the neighborhood is declining” are not probative of the property's value. *See Lacy Diversified Indus. v. Dep't. Of Local Gov't. Fin.*, 799 N.E.2d, 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f. The subject property may, in fact, be over-valued based on the Petitioner's purchase price. However, “it is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis.” *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). For this Board to determine the property's assessment was in excess of its market value for the March 1, 2006, assessment date, the Petitioner needed to present probative evidence of the property's actual market value as of January 1, 2005. This, the Petitioner failed to do. Where a taxpayer fails to provide 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).

Conclusion

- 16. The Petitioner failed to raise a prima facie case that the property is over-valued. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessment should not be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.