

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

Petition: 06-023-08-1-4-00266
Petitioners: Stuart and Amy Morton
Respondent: Boone County Assessor
Parcel: 003-28871-83
Assessment Year: 2008

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Property Tax Assessment Board of Appeals (PTABOA) by filing a Boone County Appeal Worksheet on July 20, 2009.
2. The PTABOA mailed notice of its decision, Form 115, on September 25, 2009.
3. The Petitioners appealed to the Board by filing a Form 131 Petition for Review of Assessment. They filed the Form 131 with the county assessor on October 19, 2009. The Board will consider it to be timely. The Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on December 30, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on February 8, 2011. He did not inspect the property.
6. Stuart Morton appeared *pro se*. Attorney Lawrence Giddings represented the Respondent. Stuart Morton, County Assessor Lisa Garoffolo and Peggy Lewis were sworn as witnesses, but Ms. Lewis did not testify.

Facts

7. The property is a single family residence located at 3214 Wildlife Trail in Zionsville.
8. The PTABOA determined the assessed value is \$235,600 for land and \$545,000 for improvements (total \$780,600).
9. The Petitioner claimed the total assessment should be \$673,312.

Record

10. The official record for this matter contains the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Notice of Hearing,
 - c. Hearing Sign-in Sheet,
 - d. Digital recording of the hearing,
 - e. Petitioner Exhibit 1 – Residential Construction Contract, page 1
Petitioner Exhibit 2 – Appraisal as of November 7, 2007, cover sheet and page 6,
Petitioner Exhibit 3 – Appraisal, page 2,
Petitioner Exhibit 4 – Form 115,
Petitioner Exhibit 5 – 2008 pay 2009 tax calculation worksheet,
Respondent Exhibit 1 – Boone County Appeal worksheet,
Respondent Exhibit 2 – Property record card,
Respondent Exhibit 3 – Inspection Report,
Respondent Exhibit 4 – Comparative market analysis,
Respondent Exhibit 5 – Aerial photograph of the property,
Respondent Exhibit 6 – Notice of Hearing, Form 114,
Respondent Exhibit 7 – Notice of Final Assessment Determination, Form 115,
Respondent Exhibit 8 – 2008 pay 2009 tax calculation worksheet,
Respondent Exhibit 9 – Form 131 Petition,
Respondent Exhibit 10 – Appraisal as of November 14, 2008,¹
 - f. These Findings and Conclusions.

¹ The Petitioners objected to this appraisal, arguing it is not relevant to the required valuation date. The fact that it provides an opinion of value as of November 14, 2008, is problematic, but does not necessarily make it irrelevant. Evidence that relates to a time other than the required valuation date also needs some basis for how it demonstrates, or is relevant to, the required valuation date—otherwise such evidence is irrelevant and lacks probative value. That basis could be provided through something other than the appraisal itself. Therefore, the Petitioners’ objection is overruled and this appraisal is admitted as evidence. Further considerations about the relevance and probative value of this appraisal will be discussed later.

Contentions

11. Summary of the Petitioners' case:

- a. The Petitioners purchased the subject property for \$673,312 on November 15, 2007. *Morton testimony; Pet'rs Ex. 1.*
- b. Based on sales of comparable properties, an appraiser determined the value of the property was \$675,000 as of November 7, 2007. *Morton testimony; Pet'rs Ex. 2, 3.*
- c. The assessed value of the subject property should be the purchase price of \$673,312, which is supported by the 2007 appraisal valuation of \$675,000. *Morton testimony; Pet'rs Ex. 1, 2, 3.*
- d. The Petitioners got a second appraisal of the property when their builder went out of business. It concluded the property was worth \$800,000 as of November 14, 2008. This appraisal should be given no weight because 2008 assessments were determined by using sales from 2006 and 2007. *Morton testimony; Resp't Ex. 10.*

12. Summary of the Respondent's case:

- a. Fair market value does not mean the purchase price for the property. Such an assessment would constitute sales chasing. *Garoffolo testimony.*
- b. The Petitioners' purchase price is not an accurate indication of value. Comparable sales in the Petitioners' neighborhood should be given more weight than their actual purchase price. Sales of comparable vacant lots in 2006 and 2007 were used to determine the land adjustment the PTABOA made to the assessment. *Garoffolo testimony; Resp't Ex. 4.*
- c. The 2007 appraisal provided by the Petitioners was prepared before completion of the home. *Garoffolo testimony; Pet'rs Ex. 2, 3.*
- d. This home was only 75% complete as of March 1, 2008. *Resp't Ex. 3, 7.*
- e. The appraised value was \$800,000 as of November 14, 2008. *Garoffolo testimony; Resp't Ex. 10.* This appraisal says, "the subject sold on 12/4/2007 for a sales price of \$673,312. Per the homeowner this was for the builders "spec" model and did not reflect any of the upgrades selected by the homeowner. Additionally, the homeowner stated the builder terminated the contract when the home was approximately 80% finished and the homeowner had a contractor complete the home." *Resp't Ex. 10 at 3.*

Analysis

13. A Petitioner seeking review of an assessing official's determination 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. 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.
16. The Petitioners did not provide sufficient evidence to support their claim for any assessment change.
 - a. Real property is assessed on its "true tax value," which 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials 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. A 2008 assessment must reflect the value of the property as of January 1, 2007. 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).

- c. But the assessment must be based on the property as it physically existed on March 1, 2008.² This point is particularly important because nobody disputed that the subject property was approximately 75% completed on March 1, 2008. It may be more difficult to determine market value-in-use under such circumstances. Nevertheless, to receive any reduction from the existing assessment, the Petitioners were required to offer substantial, probative evidence of what a more accurate value is.
- d. The totality of the evidence does not satisfy that burden.
- e. Sales information regarding the subject property can be the most persuasive evidence to prove a case. There appears to be no question that on or about November 15, 2007, the Petitioners purchased the subject property for \$673,312. At that time the home was under construction. The Petitioners provided, however, only the first page of the purchase contract rather than the entire document. The situation leaves the contract with little or no probative value to this case. Other evidence indicates this price was for the builders 'spec' home and did not reflect the upgrades selected over the base model. Furthermore, the evidence indicates the builder went out of business before the home was finished. The Petitioners failed to address these circumstances in any meaningful way and left several important, unresolved questions about what was included, who finished the home, when it was finished, and how much more was paid to finish it. The Petitioners failed to establish what the price of \$673,312 really represents. Therefore, it does not make a prima facie case for any change to the assessment.
- f. The Petitioners also presented part of an appraisal. It valued the property as of November 7, 2007. The home was still under construction at this time. If the appraiser explained how this fact was considered in her work and if certain assumptions about completion of construction were made, that part of the appraisal was not presented. Furthermore, nothing in the record establishes how the physical features of the property in November 2007 compared to those actually present on March 1, 2008.³ The Board will give no weight to an appraisal when several pages, including a description of the basis for the conclusion of value, are omitted. This evidence has no probative value and similarly fails to help make a prima facie case for a more accurate assessment.
- g. When a taxpayer fails to provide probative evidence supporting the 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.*

² The assessment date for any given year is March 1. Ind. Code § 6-1.1-1-2. "Except as otherwise provided by law, all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year." Ind. Code § 6-1.1-2-1.

³ The appraisal that the Respondent offered has a similar problem. It gives a valuation of \$800,000 as of November 14, 2008. At that time construction apparently had been completed, but nothing explains how that valuation might relate to the partially built home as it existed on March 1, 2008. Therefore, this appraisal's estimate of value does nothing to help prove what a more accurate assessment would be in this case.

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 for a change in assessed value. 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>>