

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

Petition: 71-026-10-1-5-01651
Petitioner: John Roxy
Respondent: St. Joseph County Assessor
Parcel: 71-08-12-307-014.000-026
Assessment Year: 2010

The Indiana Board of Tax Review (“the Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes:

Introduction

1. The parties agreed that the Petitioner, John Roxy, had the burden of proof. While he offered raw sales data for other properties in South Bend, he did not explain how those properties compared to the subject property, or how many of the sales related to the subject property’s value as of the relevant valuation date. He therefore failed to meet his burden.

Procedural History

2. On May 27, 2011, Mr. Roxy filed a Form 130 petition with the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) contesting the subject property’s assessment.
3. On February 21, 2012, the PTABOA mailed its determination upholding the original assessment. Mr. Roxy then timely filed a Form 131 petition with the Board, electing to have his petition heard under the Board’s small claims procedures.
4. On April 16, 2014, the Board’s designated Administrative Law Judge, Tom Martindale (“ALJ”), held a hearing on Mr. Roxy’s petition. Neither the Board nor the ALJ inspected the property.
5. Mr. Roxy and Rosemary Mandrici, the St. Joseph County Assessor, testified under oath.
6. Mr. Roxy offered the following exhibit:
Petitioner’s Ex. 1: Realtor listing sheets for ten properties from South Bend.¹

¹ The Assessor objected to Petitioner’s Ex. 1 as irrelevant because it contains information for sales outside what she described as the valuation period for March 1, 2010 assessments. That objection goes to the exhibit’s weight rather than its admissibility. The Board therefore overrules the objection.

7. The Assessor offered the following exhibit:
Respondent's Ex. 1: Property record card for the subject property.²
8. The following additional items are part of the record:
Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet.
9. The subject property is a multi-family dwelling at 519 S. St. Joseph St. in South Bend.
10. The PTABOA made no change to the original assessment which was:
Land: \$3,600 Improvements: \$63,700 Total: \$67,300
11. Mr. Roxy requested an assessment of \$15,000.

Parties' Contentions

A. Summary of Mr. Roxy's case

12. Mr. Roxy offered sales information, which he said was prepared by a realtor, for ten South Bend properties. The properties sold between June 11, 2010, and September 4, 2012, for prices ranging from \$8,000 to \$17,300. According to Mr. Roxy, those sales show that the subject property has always been assessed too high. *Roxy testimony; Pet'r Ex. 1*
13. Mr. Roxy lives at the property. He has also rented out two of the property's four apartments, although he did not say when. He charged \$300 per month, including utilities, which he agreed was fair market rent for those apartments. *Roxy testimony.*
14. Finally, Mr. Roxy testified that taxpayers in Osceola, with better houses in a better neighborhood, pay lower taxes than he does. *Roxy testimony.*

B. Summary of the Assessor's case

15. Mr. Roxy's sales data is irrelevant, because the sales all fell outside the valuation period (January 1, 2009 to March 1, 2010) that applies to 2010 assessments. Mr. Roxy therefore failed to meet his burden of proof. *Agostino argument.*
16. The Assessor used the cost approach to assess the subject property. The property record card shows no errors in applying that approach. *Mandrici Testimony.*

²Mr. Roxy objected to Respondent's Ex. 1 on grounds that it did not accurately reflect the property's value. The ALJ overruled the objection. The Board adopts the ruling that; the objection goes to the exhibit's weight rather than to its admissibility.

Analysis

17. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is wrong and what the correct assessment should 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). The taxpayer must explain how each piece of evidence relates to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1108, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board...through every element of the analysis”). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
18. Indiana Code § 6-1.1-15-17.2, as amended,³ creates an exception to that general rule and shifts the burden of proof to the assessor in two circumstances. First, the assessor must prove that the assessment under appeal is correct where it represents an increase of more than 5% over the prior year’s assessment for the same property. I.C. § 6-1.1-15-17.2(b). Second, the Assessor also has the burden where a property’s gross assessment was reduced in an appeal, and the assessment for the following assessment date represents an increase over “the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase” *See* I.C. § 6-1.1-15-17.2(d).⁴ Neither of those circumstances applies here—the property was assessed for the same amount both in the year currently under appeal and in the previous year. *See Resp’t Ex. 1*. Mr. Roxy therefore has the burden of proof.
19. The Board must decide whether Mr. Roxy met his burden. That analysis necessarily begins with the basic rules governing assessments and appeals. Real property is assessed based on its true tax value, which for most property types 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, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in a tax appeal must be consistent with that standard. A market-value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5; I.C. § 6-1.1-15-18.⁵

³ The amendments to Ind. Code § 6-1.1-15-17.2 became effective with the Governor’s signature on March 25, 2014. *See* P.L. 97-2014. The statute, as amended, applies to “all appeals or reviews pending on the effective date of the amendments” *Id.*; I.C. § 6-1.1-15-17.2(e) (2014).

⁴ Indiana Code § 6-1.1-15-17.2(d) “does not apply for an assessment date if the real property was valued using the income capitalization approach in the appeal.”

⁵ For rental properties, like the subject property, with fewer than five units, the gross rent multiplier is the preferred valuation method. I.C. § 6-1.1-4-39(b). Neither party, however, offered any evidence analyzing the subject property’s value using a gross rent multiplier.

20. Regardless, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2010 assessments, including the assessment under appeal in this case, the valuation date was March 1, 2010. I.C. § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).
21. Mr. Roxy relied on sales data for ten South Bend properties. Eight of those properties, however, sold more than a year after the March 1, 2010 valuation date. And Mr. Roxy failed to explain how those sale prices related to the subject property's value as of that date.
22. Even had Mr. Roxy related his sales data to the valuation date, it still would have lacked probative value. As the Tax Court explained, a party relying on sales data must "explain[]...the characteristics of [its] own property, how those characteristics compare[] to those of the purportedly comparable properties, and how any differences affect[] the relevant market value-in-use of the properties." *Long*, 821 N.E.2d at 471. Mr. Roxy did none of that. At most, he conclusorily described the properties as "comps" and said that an unidentified realtor had compiled the listing sheets. While those sheets arguably contain information from which one might make a few basic comparisons, Mr. Roxy needed to walk the Board through those comparisons. *See id.* ("It was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable—that duty rested with the [taxpayers]"). Mr. Roxy similarly failed to explain how relevant differences affected the values.

Conclusion

23. Mr. Roxy, who had the burden of proof, failed to make a prima facie case for reducing the assessment. The Board finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the subject property's March 1, 2010 assessment.

ISSUED: July 15, 2014

Chairman, 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.