

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

Petition: 71-026-03-1-5-00012
Petitioners: Columbus T. & Ethel L. Smith
Respondent: Portage Township Assessor (St. Joseph County)
Parcel: 18-4054-1945
Assessment Year: 2003

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 with the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated November 22, 2004.
2. The PTABOA mailed the notice of its decision to the Petitioners on August 12, 2005.
3. The Petitioners appealed to the Board by filing a Form 131 with the county assessor on September 9, 2005, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 17, 2008.
5. Administrative Law Judge Patti Kindler held the administrative hearing in South Bend on May 8, 2008.
6. Persons present and sworn as witnesses at the hearing:

For the Petitioners – Columbus T. & Ethel L. Smith,
For Respondent – David Wesolowski, County Assessor,
Ross Portolese, PTABOA member,
Ralph Wolfe, PTABOA member,
Rosemary Mandrici, Portage Township Assessor.

7. Frank Agostino, Attorney, represented the Respondent at the hearing.

Facts

8. The subject property is a 720 square foot dwelling on a lot measuring 70 feet by 120 feet located at 2816 Jefferson Street in South Bend, Indiana.

9. The Administrative Law Judge did not conduct an inspection of the property.
10. The PTABOA determined the assessed value is \$800 for land and \$23,200 for improvements (total \$24,000).
11. The Petitioners requested a total assessed value of \$15,000 or \$18,000.

Contentions

12. Summary of the Petitioners' contentions:
 - a) The assessment of the subject property is too high. The value should be no more than \$18,000. The subject property is located on an alley between Liberty and Bendix Streets. After the city closed off Jefferson Street, the only access to the property is through the alley or by using the neighbor's driveway. *C. Smith testimony; Pet'r Ex. 1.*
 - b) The Petitioners used the property as their residence until 1962. Then they rented it. In 2006 the property was vacant and the Petitioners tried to sell it, but only got an offer for \$16,000. At that time, the Petitioners would have sold it for \$18,000. In 2003, they would have sold it for \$15,000. *C. Smith testimony.*
 - c) A real estate broker performed a Comparative Market Analysis for the subject property that suggested a price range of \$15,000 to \$20,000. The comparables used in the analysis were all of low value. No houses in the surrounding neighborhood are valued at or above \$20,000. *C. Smith testimony; Pet'r Ex. 2.*
13. Summary of the Respondent's contentions:
 - a) The subject property's 2002 assessment was \$26,800. In 2003, Mr. Smith filed a petition stating the value was too high, and consequently, the assessment was reduced to \$24,000. *Mandrici testimony; Resp't Exs. 2, 8.*
 - b) The subject property is a rental property with a monthly rental income of \$250. *Resp't Ex. 5.* The assessment utilizes an income approach in valuing the property. A gross rent multiplier of five multiplied by the average rent in the neighborhood resulted in a value of \$24,000 for the subject property. *Mandrici testimony; Resp't Ex. 7.*
 - c) Two comparable properties located in subject property's neighborhood sold in 2003 and 2004. The sales data for these comparables supports the assessment. *Mandrici testimony; Resp't Ex. 9.*

Record

14. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Sketch of the subject property,
Petitioner Exhibit 2 – Comparative Market Analysis,
Respondent Exhibit 1 – Form 131,
Respondent Exhibit 2 – Form 130,
Respondent Exhibit 3 – Form 115 Final Determination,
Respondent Exhibit 4 – Subject property record card,
Respondent Exhibit 5 – Income valuation worksheet,
Respondent Exhibit 6 – Pricing worksheet,
Respondent Exhibit 7 – Hearing officer’s recommendation to PTABOA,
Respondent Exhibit 8 – Notice following the informal meeting with township assessor,
Respondent Exhibit 9 – Sales data for comparable properties,
Respondent Exhibit 10 – Respondent’s Witness List,
Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,
Board Exhibit D – Notice of Appearance of Respondent’s Attorney,
Board Exhibit E – Notice of Appearance of County Assessor as Additional Party,
 - d) These Findings and Conclusions.

Analysis

15. 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”).

16. The Petitioners did not make a prima facie case for any assessment change because:
- a) Real property is assessed on the basis of 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). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). 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. The 2003 assessment must reflect the value of the property as of January 1, 1999. *See, Long v. Wayne Twp. Assessor*, 821 N.E.2d at 466, 471 (Ind. Tax Ct. 2005).
 - b) The Petitioners established that the subject property is accessible only through a public alley or by the use of a neighbor’s driveway. This fact probably does impact its market value-in-use, but the Petitioners failed to provide any probative evidence to measure the amount of that impact for the assessment. Such isolated facts do not prove what the assessment should be.
 - c) The conclusory testimony about an attempt to sell the property, but only being offered \$16,000 in 2006, does not help to prove what the correct assessment should be. *See Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Long*, 821 N.E.2d at 471. Nor does the conclusory testimony that the Petitioners would have sold the property for \$18,000 in 2006 and they would have sold it for \$15,000 in 2003. *Id.*
 - d) The Petitioners provided a Comparative Market Analysis of the subject property prepared by Tom Capers of Anchor Real Estate. *Pet’r Ex. 2*. It purports to be based on three comparable sales and three comparable listings. It concludes the “as is” value is \$12,000 and suggests an “as is” list price should be \$15,000. The document does not indicate that Mr. Capers used generally accepted appraisal methods to arrive at his opinion of value. The two-page document provides a little very basic information about the subject property and comparables: the street address, age, size, number of bedrooms, number of bathrooms, and the presence or absence of a garage. It identifies the condition as “fair” on all of the properties. It also provides either the sale price or the listing price for the comparables. While his conclusions about the value of the subject property, the

sale prices, and the listing prices for the comparables are somewhat similar numbers, the document provides no meaningful explanation for his conclusion about value or suggested list price. Mr. Capers did not testify to explain or answer questions. Furthermore, the analysis is dated September 6, 2005. The evidence does not relate the market analysis to January 1, 1999, which is the required valuation date for a 2003 assessment. Consequently, the market analysis is not probative evidence. *Id.*

- e) Where the Petitioner does not support the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

- 17. The Petitioners 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 now determines that the assessment should 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>>