

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

Petition No.: 15-013-11-1-5-00181
Petitioner: Thomas N. Taylor
Respondent: Dearborn County Assessor
Parcel No.: 15-07-15-302-009.008-013
Assessment Year: 2011

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

Procedural History

1. The Petitioner, Mr. Taylor, appealed his 2011 assessment to the Dearborn County Property Tax Assessment Board of Appeals (“PTABOA”). On November 29, 2011, the PTABOA issued a determination denying relief.
2. Mr. Taylor timely filed a Form 131 petition with the Board. He elected to have the appeal heard under the Board’s small claims procedures.
3. On September 6, 2012, the Board held a hearing on the petition through its designated Administrative Law Judge, Jennifer Bippus. Neither the Board nor the Administrative Law Judge inspected the subject property.
4. Thomas N. Taylor, County Assessor Gary Hensley, and Jim Davis of Tyler Technologies were sworn and testified at that hearing. Attorney Andrew Baudendistel represented the Respondent, Assessor Hensley.

Facts

5. The subject property is a condominium located at 101 Riverscape Court in Lawrenceburg. There is no land assessment.
6. The PTABOA determined the 2011 assessment is \$195,000.
7. Mr. Taylor requested \$175,000.

Contentions

8. Summary of the Petitioner's case:

- a) The Assessor does not have any statistical data to support the assessment of \$195,000. *Taylor testimony.*
- b) The condo was purchased for \$179,900 in 2007. The whole market completely tanked about a year later. *Taylor testimony.*
- c) The National Association of Realtors, FHA, and Freddie Mac statistics do not support an increase in value. A neighbor purchased the same style condo as the subject property for \$153,000 in 2010. The neighbor is also being assessed for \$195,000 in spite of that purchase price. The market has not gone up that much. In the same building, there is another condo assessed at \$155,000. Same condo with the only difference being a one-car garage versus a two-car garage. A one-car garage would not make a \$40,000 difference. *Taylor testimony.*
- d) A condo with the same floor space, same amenities, and the same two-car garage as the subject property sold for \$172,210. *Taylor testimony; Pet'r Ex. 7.*
- e) An appraisal by a licensed appraiser values the condo at \$165,000 as of January 9, 2012. The PTABOA said to get this appraisal. *Taylor testimony; Pet'r Exs. 8, 9.*

9. Summary of the Respondent's case:

- a) The property record card ("PRC") shows the assessed value was \$195,000 for 2010 and 2011. The assessed value was reduced to \$173,600 for 2012. *Hensley testimony; Resp't Ex. 1.*
- b) The county contracts with Tyler Technologies to supply trending and reassessment data. The trending data is based on sales from prior years. The ability to work in real time is lacking. *Hensley testimony.*
- c) The condo at 106 Riverscape Court is beside the subject condo. The PRC shows it also was assessed at \$195,000 for 2010 and 2011. Similarly, its assessed value was reduced to \$173,600 for 2012. *Hensley testimony; Resp't Ex. 2.*
- d) The Collins appraisal as of January 9, 2012, is not relevant for the 2011 assessment because it values the property after March 1, 2011. Nevertheless, it would be relevant for the 2012 assessment. *Hensley testimony.*
- e) The different configurations of condos are identified and grouped together. Sales for those groupings were analyzed independently and values were developed. Sales from March 2, 2010, to March 1, 2011, were used to determine the 2011 assessment values. If those sales had been insufficient, then other sales from March 1, 2009, to

March 1, 2010, could have been considered. But no sales after March 1, 2011, were considered in determining the 2011 assessment. *Davis testimony.*

- f) Value conclusions cannot be drawn from the broad real estate market. Even in a national meltdown, some areas increase in value, some areas have stable value, and some areas decrease in value. *Davis testimony.*
- g) A page from the land order shows the various values for the condos in the Riviera neighborhood. The breakdown shows values by building, level/unit, and garages. The subject condo is in building 1, unit 304 showing a value of \$195,000. *Hensley testimony; Resp't Ex. 3.*
- h) The Neighborhood Ratio Report shows the sales used in the valuation of the condos. The sales closest to Mr. Taylor are circled. *Hensley testimony; Resp't Ex. 4.*

Record

- 10. The official record contains the following:
 - a) The Form 131 petition,
 - b) Digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Notice of Assessment Form 11,
Petitioner Exhibit 2 – Form 134,
Petitioner Exhibit 3 – Form 130,
Petitioner Exhibit 4 – Form 114,
Petitioner Exhibit 5 – Form 115,
Petitioner Exhibit 6 – Form 131,
Petitioner Exhibit 7 – Fischer Homes Purchase Agreement for 601 Riverscape Court,
Raymond and Kathleen White, buyers,
Petitioner Exhibit 8 – Appraisal of the subject property by Robert Collins as of
January 9, 2012,
Petitioner Exhibit 9 – Appraiser License,

Respondent Exhibit 1 – PRC for the subject property,
Respondent Exhibit 2 – PRC for 106 Riverscape Court,
Respondent Exhibit 3 – Page from land order summary,
Respondent Exhibit 4 – Page from Neighborhood Ratio Report,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Hearing Notice dated July 31, 2012,
Board Exhibit C – Hearing Sign-In Sheet,
 - d) These Findings and Conclusions.

Objections

11. The Respondent objected to Petitioner Exhibits 7, 8, and 9, claiming they are not relevant to determining the market value-in-use of the subject property as of March 1, 2011. We disagree and conclude the Respondent's view of relevance to this case is much too narrow.
12. Exhibit 7, which appears to be page 1 of 8 for a Construction and Purchase Agreement for a home at 601 Riverscape Court, could be relevant based on the testimony that this property is another condo being built in the same Riviera subdivision with the same size, the same two-car garage, and the same amenities as the subject property. It shows a purchase price of \$172,210 and could have some relevance to Mr. Taylor's claim for an assessment of \$175,000 on his own property, depending on the balance of the evidence and arguments.
13. Exhibit 8 is an appraisal of the subject property by Robert Collins. Even though its valuation opinion was as of January 9, 2012, it could have some relevance to Mr. Taylor's claim, again, depending on the balance of the evidence and arguments.
14. Exhibit 9 documents Mr. Collins' qualification as a Certified Residential Appraiser. Although there appears to be no dispute about his professional status, that fact is clearly relevant to his qualifications and directly related to the credibility of his appraisal of the subject property.
15. Any purported relevance problems with these exhibits go more to weight than to admissibility. Consequently, the Respondent's relevancy objections are denied.
16. The Respondent also objected because Petitioner Exhibits 7, 8, and 9 are hearsay.
17. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid.801(c)). The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

18. The Respondent correctly pointed out one of the biggest problems related to hearsay evidence. That problem is the lack of opportunity to conduct meaningful cross-examination. The lack of opportunity to ask Mr. White, Mrs. White, or anybody from Fischer Homes about their Construction and Purchase Agreement has a serious negative impact on the credibility and probative value of that document as they relate to determining an accurate valuation for the subject property. Similarly, the lack of opportunity to ask Mr. Collins questions about his qualifications and his appraisal also has a serious negative impact on the credibility and weight of his opinion that the value of the subject property was only \$165,000.
19. All three exhibits clearly are hearsay. Nonetheless, Petitioner Exhibits 7, 8, and 9 are admitted. Our determination, however, may not be based solely on hearsay evidence.

Analysis

20. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect 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).
21. In making a case, one 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 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis”).
22. Mr. Taylor failed to make a prima facie case for lowering his assessment.
 - a) Indiana assesses real property based on its true tax value, which 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Evidence offered in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b) A party must explain how its evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For this case the assessment date and the valuation date are both March 1, 2011.

- c) The appraisal values the condo as of January 9, 2012, approximately nine months after the valuation date. Nothing in the record establishes how the appraised value relates to the valuation date. Furthermore, because the hearsay objection was made, the appraisal alone is not a sufficient basis for lowering the assessment.
- d) The evidence about the purchase price for the condo at 601 Riverscape Court has similar problems. Most significantly, nothing in the record establishes the date of that purchase or how that price might relate to a value as of March 1, 2011. Perhaps the date of purchase would have been disclosed if the entire Construction and Purchase Agreement had been presented, but only page 1 of 8 was offered. And again, all the evidence related to the price for this other condo is hearsay. With all these problems, the purchase price for the 601 Riverscape Court condo simply does not help to prove what a more accurate assessed value for the subject property might be.
- e) Mr. Thomas testified about the sale prices and assessments of purportedly comparable properties. But to effectively use any kind of comparison approach to value a property, one must establish that properties truly are comparable. Conclusory statements that properties are “similar” or “comparable” are not sufficient. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005) (explaining that one who relies on comparables is responsible for providing the data about comparables and walking the board through every step of the comparability analysis). Mr. Taylor failed to provide the kind of detailed, fact-based analysis that would be required for any legitimate conclusion based on his comparables.
- f) A property’s purchase price can provide some of the best evidence of its market value-in-use. Mr. Taylor purchased his condo for \$179,900 in 2007, but he needed to relate that price to the required valuation date, March 1, 2011. His general statements about the market downturn since 2007 failed to establish how his purchase price relates to a specific valuation as of March 1, 2011.
- g) When a taxpayer fails to make a prima facie case, 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 Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

23. Mr. Taylor did not make a prima facie case for lowering his assessment. Therefore, the Board finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: January 29, 2013

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, 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>>.