

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

Petition No.: 02-074-04-1-5-00708
Petitioner: Ulman Properties, LLC
Respondent: Allen County Assessor
Parcel No.: 02-13-07-408-004.000-074
Assessment Year: 2004

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

Procedural History

1. Ulman Properties, LLC filed an appeal contesting the subject property’s March 1, 2004 assessment. On November 16, 2006, the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying Ulman Properties relief.
2. On December 12, 2006, Ulman Properties filed a Form 131 petition with the Board listing subject property and several other properties as the subjects of its appeal. In response to a notice of defect, Ulman properties filed a separate Form 131 petition for the subject property.
3. On February 16, 2011, the Board held an administrative hearing through its designated administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:

Ronald Ulman

Tammy Smith, Real Estate Appraisal Deputy, Allen County Assessor

Facts

5. The subject property contains a single-family home located at 2107 Roy Street in Fort Wayne.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for the subject property:
Land: \$4,100 Improvements: \$14,000 Total: \$18,100
8. On its Form 131 petition, Ulman Properties requested the following values:
Land: \$4,100 Improvements: \$7,900 Total: \$12,000

Parties' Contentions

9. Ulman Properties offered the following evidence and arguments:
- a) The subject property is assessed for more than its market value. *Ulman testimony*. On January 6, 2005, Ulman Properties listed the property for sale with an asking price of \$22,900. *Ulman testimony; Pet'r Ex. 1*. On February 2, 2005, Ulman Properties dropped the price to \$15,900. *Id.* On March 6, 2006, Ulman Properties again dropped the price to \$14,900. *Id.* The property ultimately sold for \$12,000 on April 28, 2006. *Id.*
 - b) The subject property's assessment has fluctuated over time. In 2004, the assessment year under appeal, the property was assessed for \$18,100. In 2006, it was assessed for only \$9,000. The assessment went up to \$14,800 in 2007, but then decreased each year—to \$11,000 in 2008, to \$8,200 in 2009, and all the way down to \$6,800 in 2010. *Ulman testimony; Pet'rs Ex. 2*. According to Mr. Ulman, rental-home values in southeast Fort Wayne do not fluctuate; the rental income stays the same. *Ulman testimony*. Thus, the subject property has been worth the same amount the entire time, and that is not the amount reflected in its 2004 assessment. Little two-bedroom ranches like the subject property do not sell for \$18,000 in that area of town. *Id.*
 - c) Mr. Ulman questioned whether one of the sales that the assessor's witness, Tammy Smith, used in her sales comparison analysis (3303 Rogers) was a valid sale. According to Mr. Ulman, the buyer ran a lot of things through his own mortgage company when money was flowing freely. *Ulman testimony*.
10. The Assessor offered the following evidence and arguments:
- a) Tammy Smith, the Assessor's witness, did a sales-comparison analysis using price per square foot as her unit of comparison. *Smith testimony; Resp't Ex. 2*. She used the sales-comparison approach rather than the income approach because she did not have any income information for the subject property. *Smith testimony*. Ms. Smith chose her comparable sales from the Assessor's sales ratio study. *Id.; Resp't Ex. 3*. The sales all occurred in 2003. *Id.* Ms. Smith picked sales with homes that were the closest to the subject home's size, although she excluded one sale because it was an outlier. *Smith testimony*. Using the median price per square foot, Ms. Smith came up with a value of \$18,568. *Id.; Resp't Ex. 2*.
 - b) In response to Mr. Ulman's questions on cross-examination, Ms. Smith explained that assessors do not consider "foreclosure sales" in assessing properties unless they are dealing with a "foreclosure neighborhood," which Ms. Smith defined as a neighborhood where more than 50% of the sales are foreclosures. *Smith testimony*. According to Ms. Smith, the subject property's neighborhood was not a foreclosure neighborhood. *Id.*

Record

11. The official record for this matter is made up of the following:
 - a) The Form 131 petition,
 - b) A digital recording of the hearing,
 - c) Exhibits:
 - Petitioner Exhibit 1: Real estate listing history for the subject property,
 - Petitioner Exhibit 2: Property record card (“PRC”) for the subject property,

 - Respondent Exhibit 1: Subject Property PRC,
 - Respondent Exhibit 2: Tammy Smith’s sales-comparison analysis,
 - Respondent Exhibit 3: Sales Ratio Study, PRCs, and auditor’s exemption pages for sales included in Ms. Smith’s sales comparison analysis,

 - Board Exhibit A: Form 131 petition,
 - Board Exhibit B: Hearing notice dated January 11, 2011,
 - Board Exhibit C: Hearing notice dated October 16, 2007,
 - Board Exhibit D: Request for continuance from Ulman Properties,
 - Board Exhibit E: Letter from the Board granting continuance,
 - Board Exhibit F: Hearing sign-in sheet,
 - d) These Findings and Conclusions.

Analysis

Burden of Proof

12. 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach 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.

Discussion

15. Ulman Properties did not make a prima facie case for reducing the subject property's assessment. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as "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). Appraisers traditionally have used three methods to determine a property's value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b) A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also 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.
 - c) Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the 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). Otherwise, the evidence lacks probative value. *See id.* ("[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.")(emphasis added). For March 1, 2004 assessments, the valuation date was January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4, 8.
 - d) Ulman Properties offered sale and listing information for the subject property. But the property was not listed until 2005—more than six years after the January 1, 1999 valuation date at issue in this appeal. Ulman properties did not offer any probative evidence to explain how the listing and sale prices related to the property's value as of January 1, 1999. At most, Mr. Ulman conclusorily testified that values for rental homes in southeast Fort Wayne have not changed over time. The evidence about the subject property's listing and sale prices therefore lacks probative value.
 - e) Finally, Mr. Ulman testified that, based on his knowledge of rental properties in southeast Fort Wayne, the subject property was not worth \$18,100. Once again, Mr.

Ulman's testimony on that point is entirely conclusory and therefore carries no probative weight.

Conclusion

16. Ulman Properties failed to make a prima facie case for reducing the subject property's assessment. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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>.