

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

Petition Nos.: 77-003-06-1-5-00001
77-003-06-1-5-00002
Petitioners: David L. and Cheryl L. Unger
Respondent: Sullivan County Assessor
Parcel Nos.: 77-02-02-113-001.000-004
77-02-02-113-001.000-007
Assessment Year: 2006

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Sullivan County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 29, 2006.
2. The Petitioners received notice of the decision of the PTABOA via a Form 115 Notification of Final Assessment Determination dated August 29, 2007.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 dated September 28, 2007. The Petitioners elected to have this case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 24, 2008.
5. The Board held an administrative hearing on June 19, 2008, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioners: David L. Unger, Petitioner
 - b. For Respondent: Vicki Talpas, Sullivan County Assessor

Facts

7. The properties under appeal are two improved residential parcels located at the corner of Cyrus Street and Fifth Avenue in Farmersburg Township, Farmersburg, Sullivan County. Parcel No. 77-02-02-113-001.000-004 (Parcel 004) is located at 422 E. Cyrus Street, and

Parcel No. 77-02-02-113-001.007 (Parcel 007) is located at 212 N. Fifth Avenue.¹ The improvements consist of a duplex on each parcel.

8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject properties to be \$11,800 for land and \$144,300 for the improvements, for a total assessed value of \$156,100 for Parcel 004 and Parcel 007 together.
10. The Petitioner requested an assessed value of \$8,000 for land and \$85,000 for the improvements, for a total of \$93,000 for Parcel 004 and Parcel 007 together.

Issues

11. Summary of the Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend the 2006 assessed values of the two appealed parcels are over-stated compared to the April 22, 2006, purchase price of the properties. *Unger testimony*. In support of this contention the Petitioners entered into evidence a copy of the purchase agreements wherein they purchased each of the properties for \$44,000. *Unger testimony, Petitioner Exhibits 2 and 3*. According to the Petitioners, the properties were on the market off and on for approximately two and a half years without an offer. *Id.* Mr. Unger testified that both properties were offered for sale together during that time period for \$99,000 or less. *Id.*
 - b. The Petitioners further argue that a June 23, 2006, appraisal of the properties by Stephen G. Junker and Howard H. Junker Jr., of Junker Realty, supports their value. *Unger testimony; Petitioner Exhibit 1*. According to the Petitioners, the appraisal was prepared for financing purposes at the time of the properties' purchase. *Unger testimony*. Mr. Unger testified that the properties were appraised together for a value of \$94,000 using the Cost Approach, Income Approach and Sales Comparison Approach to Value on each of the appealed parcels. *Id.*
12. The Respondent argues that the PTABOA considered the appeal and decided the properties had been assessed fairly. *Talpas testimony*. According to the Respondent, Mr. Unger's testimony that the listing price of the two parcels at \$99,000 had been negotiated to the \$88,000 selling price shows that the market value was diluted. *Id.*

¹ The assessor's office identifies the two adjoining parcels by a single parcel number - Parcel No. 004-002-02-113-0001.000. Further, the PTABOA elected to issue its Form 115 with a combined value for the land and improvements on both parcels. Likewise, the appraisal entered into evidence by the Petitioners as *Petitioner Exhibit 1* identifies the two parcels together using Parcel No. 004-002-02-113-0001.000. Some references in the record, however, identify Parcel No. 77-02-02-113-001.000-004 as the duplex located at 422 E. Cyrus Street, and Parcel No. 77-02-02-113-001.007 as the duplex at 212 N. Fifth Avenue.

Record

13. The official record for this matter is made up of the following:
- a. The Petition and related attachments,
 - b. The digital recording of the hearing labeled 77-003-06-1-5-00001-00002Unger,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Appraisal of the subject properties dated June 1, 2006,
 - Petitioner Exhibit 2 – Purchase agreement for \$44,000,
 - Petitioner Exhibit 3 – Purchase agreement for \$44,000,
 - Petitioner Exhibit 4 – Copies of filed forms and property record cards,

 - Respondent Exhibits – None presented,

 - Board Exhibit A – Form 131 petition and related attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
 - d. These Findings and Conclusions.

Analysis

14. 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”).
 - c. 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.
15. The Petitioners provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

- a. Real property is assessed based on its “true tax value.” True tax value 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, for the property.” Ind. Code c 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as actual cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
- b. Regardless of the approach used to prove the market value-in-use of a property, a 2006 assessment is required to reflect the value of the property as of January 1, 2005. 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 of how it demonstrates or is relevant to, the value of the property as of that required valuation date. *See Long v. Wayne Township Assessor*, 821 at N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c. Here the Petitioners presented uncontested evidence that they purchased both properties together for \$88,000 on April 22, 2006. *Unger testimony, Petitioner Exhibit 2 and 2*. The Petitioners further presented an appraisal valuing the appealed parcels at \$94,000 as of June 1, 2006. *Petitioner Exhibit 1*. While the sale and appraisal are approximately sixteen months past the January 1, 2005, valuation date, the Petitioner testified that the properties had been on the market for two and a half years for \$99,000 with no offers. The Board finds this testimony to be some evidence that the market value of the property had not significantly changed during that two and a half year period. Thus, the Board finds that the Petitioners raised a prima facie case that the properties are over-valued and the correct market value-in-use of the properties is their April 22, 2006, sale price of \$88,000.
- d. Once a 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). Here, the Respondent did not rebut or impeach any of the Petitioners’ evidence. The Respondent merely alleged, without submitting probative evidence or citing to legal authority, that the assessment was “fair.” This falls far short of the burden the Respondent faces to rebut a petitioner’s market evidence that its property is overvalued. The Respondent, therefore, failed to rebut the Petitioners’ prima facie case.

Conclusion

16. The Petitioners raised a prima facie case that the properties are over-valued. The Respondent failed to rebut or impeach the Petitioners' evidence. The Board finds in favor of the Petitioners and holds that the value of Parcel 004 and Parcel 007 together is \$88,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessment should be changed.

ISSUED: _____

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>.