

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

Petition Nos.: 77-011-06-1-5-00001
77-011-06-1-5-00002
Petitioners: David L. and Cheryl L. Unger
Respondent: Sullivan County Assessor
Parcel Nos.: 77-07-22-332-037.000-011
77-07-22-332-036.000-011
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 November 21, 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 on September 28, 2007. The Petitioners elected to have this case heard pursuant 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 71 and 73 East Northwood Drive in Hamilton Township, Sullivan, Sullivan County. The parcels

adjoin and the improvements consist of a single duplex home, each side having a separate parcel identification and assessment.

8. The ALJ did not conduct an on-site visit of the properties.
9. The PTABOA determined the assessed value of the subject property to be \$2,400 for the land and \$56,100 for the improvements on each of the parcels, for a total assessed value of \$58,500 per parcel or \$117,000 in total.
10. The Petitioners requested an assessed value of \$1,200 for each parcel of land and \$40,000 for each part of the improvements, for a total assessed value of \$41,200 per parcel or \$82,400 in total.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in assessment:
 - a. The Petitioners contend the parcels and improvements at issue in their appeals should be assessed for \$82,400 based on their purchase of the properties. *Unger testimony, Petitioner Exhibits 3 and 4.* Mr. Unger testified that they purchased the duplex on Parcel No. 77-07-22-332-037.000-011 (Parcel No. 037) and Parcel No. 77-07-22-332-036.000-011 (Parcel No. 036), the two parcels at issue, together with a third parcel identified as Parcel No. 011-007-22-332-003.00 (Parcel No. 003) on July 11, 2005, for \$90,000. *Id.* Mr. Unger argues that Parcel No. 003 is worth \$10,000 and, therefore, \$10,000 should be deducted from the purchase price. *Id.*
 - b. The Petitioners further argue that a June 29, 2005, appraisal of the properties by Indiana licensed appraiser Danny G. Morin, prepared pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP), supports the value of Parcel No. 037 and Parcel No. 036. *Unger testimony, Petitioner Exhibit 1.* According to Mr. Under, the 2005 appraisal which was prepared for financing purposes at the time of the purchase of the properties valued the appealed properties together with Parcel No. 003 at \$99,000. *Id.*
 - c. Finally, the Petitioners presented an April 10, 2004, appraisal prepared by Mr. Morin estimating the fair market value of the duplex at \$90,000. *Unger testimony, Petitioner Exhibit 2.* Mr. Unger testified that the 2004 appraisal does not include Parcel No. 003. *Id.*
12. The Respondent argues that the PTABOA considered the appeal and decided that it had a fair assessment based on the fact the properties are rental properties. *Talpas testimony.* Ms. Talpas admitted, however, that the PTABOA had no evidence of the amount of rent the Petitioners receive for the properties. *Id.*

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 77-011-06-1-5-00001-00002 Unger,
 - c. Exhibits:

Petitioner Exhibit 1 – Appraisal of Parcel Nos. 037, 036 and 003 dated June 29, 2005,

Petitioner Exhibit 2 – Appraisal of Parcel Nos. 037 and 036 dated April 12, 2004,

Petitioner Exhibit 3 – Title insurance document for the Petitioners’ purchase of Parcel Nos. 037, 036 and 003,

Petitioner Exhibit 4 – Settlement statement for the Petitioners’ 2005 purchase of Parcel Nos. 037, 036 and 003,

The Respondent presented no exhibits,

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 the subject properties and an additional parcel for \$90,000 on July 11, 2005. *Unger testimony, Petitioner Exhibit 3 and 4*. In addition, the Petitioners submitted a USPAP-standard prepared appraisal, dated June 29, 2005, valuing the appealed parcels and the adjacent lot at \$99,000. *Petitioner Exhibit 2*. The sale occurred and the appraised value was estimated less than six months after the January 1, 2005, statutory valuation date for the March 1, 2006, assessment. Pursuant to 50 IAC 21-3-3, “The local assessing official shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date.” 50 IAC 21-3-3(a). Accordingly, a sale or appraisal of the subject properties during that same period must, therefore, have some evidentiary value.
 - d. In order to show the value of the appealed parcels, Parcel 037 and 036, the Petitioners reduced the sale value of \$90,000 by \$10,000 for the value of the unappealed parcel. The Petitioners, however, presented no evidence of Parcel 003’s market value-in-use. Thus, the Petitioners’ valuation of the adjoining parcel is an unsupported conclusory statement that has no weight in establishing the market value of the subject properties alone. *Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - e. The Board finds that the Petitioners raised a prima facie case that the subject properties together are worth no more than the \$90,000 for which the Petitioners purchased the properties and the adjoining parcel in 2005. The Board, however,

declines to further reduce this value for the unappealed parcel because the Petitioners failed to provide sufficient evidence of the value of Parcel No. 003. This finding is supported by the Petitioners' April 10, 2004, appraisal, which estimated a value of \$90,000 for the appealed parcels but did not consider the adjoining parcel. *Petitioner Exhibit 3*

- f. 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 subject properties were over-valued in the 2006 assessment. The Respondent failed to rebut or impeach the Petitioners' evidence. The Board finds in favor of the Petitioners and holds that Parcel No. 037 and Parcel No. 036 together should be valued at no more than \$90,000.

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>.