

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

Petition: 06-019-06-1-5-00803
Petitioners: Frederick & Marjorie Breisch
Respondent: Boone County Assessor
Parcel: 019-10340-06
Assessment Year: 2006

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 Boone County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The PTABOA issued notice of its decision on March 13, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 on March 31, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated December 5, 2008.
5. Administrative Law Judge Paul Stultz held the hearing on January 8, 2009. He did not conduct an on-site inspection of the subject property.
6. Property owner Marjorie Breisch, County Assessor Lisa Garoffolo, and PTABOA member Charles Ewing were present at the hearing and sworn as witnesses.

Facts

7. The subject property is a residence located at 4539 Winterspring Crescent in Zionsville.
8. The assessed value determined by the PTABOA is \$116,800 for land and \$943,200 for improvements (total \$1,060,000).
9. The assessed value requested by the Petitioners is \$116,800 for land and \$883,100 for improvements (total \$999,900).

Contentions

10. Summary of the Petitioners' case:
 - a. The subject property is currently assessed at its fair market value, but other homes in the same neighborhood, Austin Oaks, are assessed below fair market value. The Petitioner purchased the subject property in June 2006 for \$1,060,000. The sale was an arm's-length transaction and is a good indicator of its fair market value. *Breisch testimony; Pet'r Ex. 3.*
 - b. In Austin Oaks, seven properties sold in 2006 and three properties sold in 2007. The assessments of all those properties are lower than their sale prices. They support the requested assessment for the subject property. *Breisch testimony; Pet'r Ex. 1, 7.*
 - c. The subject property was built in 1998. The average assessment to sale price ratio for five properties in Austin Oaks built in 1998 is 86.36%. The average assessment to sale price ratio for the two immediate neighbors of the subject property is 97.065%. Using the average ratio of 86.36%, the subject property's assessment would be \$915,000. Using the average ratio of 97.065%, the subject property's assessment would be \$1,029,000. A fair assessment for the subject property would be 94.34% of its purchase price, or \$1,000,000, which would place the assessment at a midpoint between \$915,000 and \$1,029,000. *Breisch testimony; Pet'r Ex. 1 at 3.*
 - d. The assessor used sales data for 2004 and 2005 to compute their Comparative Market Analysis, but the 2006 sale price of the subject property is a better indicator of its value. *Breisch testimony; Pet'r Ex. 5.*
11. Summary of the Respondent's case:
 - a. After the PTABOA hearing, the subject property's assessment was reduced to reflect its actual sale price of \$1,060,000. *Garoffolo testimony.*
 - b. "You can't get any better" evidence than the actual sale price. *Garoffolo testimony.*

Record

12. The official record for this matter is made up of the following:
 - a. The Petition with attachments,
 - b. Digital recording of the hearing,

- c. Petitioner Exhibit 1 – Sale price to assessed value comparisons for properties in Austin Oaks,
 Petitioner Exhibit 2 – Form 115 Notification of Final Assessment Determination,
 Petitioner Exhibit 3 – Settlement statement for the subject property,
 Petitioner Exhibit 4 – Data sheet for the subject property with interior and exterior photographs,
 Petitioner Exhibit 5 – Comparative Market Analysis,
 Petitioner Exhibit 6 – Property record card (PRC) for the subject property,
 Petitioner Exhibit 7 – Copies of tax bills and data sheets for properties used in sale price to assessment comparison (Exhibit 1),
 Petitioner Exhibit 8 – Notice of Hearing,
 Respondent Exhibit 1 – Boone County Appeal Worksheet with attachments,
 Respondent Exhibit 2 – Data sheet for the subject property with interior and exterior photographs,
 Respondent Exhibit 3 – Exterior photograph of the subject property,
 Respondent Exhibit 4 – Subject PRC,
 Respondent Exhibit 5 – Form 115 Notification of Final Assessment Determination,
 Respondent Exhibit 6 – Comparative Market Analysis,
 Respondent Exhibit 7 – Notice of Hearing,
 Respondent Exhibit 8 – Petitioner’s request for continuance,
 Respondent Exhibit 9 – Approval for continuance,
 Respondent Exhibit 10 – Notice of Re-scheduled Hearing,
 Board Exhibit A – Form 131 Petition for Review of Assessment,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Hearing Sign In Sheet,
- d. These Findings and Conclusions.

Analysis

- 13. 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.
14. The Petitioners did not make a prima facie case for an assessment change. This conclusion was arrived at because:
- a. Real property is assessed based on 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). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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.
 - b. A 2006 assessment must 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 about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. The subject property's assessment is 100% of its 2006 sale price, while other properties are assessed between 86% and 97% of their 2006 or 2007 sale prices. The Petitioners' evidence entirely relates to values in 2006 and 2007. They failed to explain how or why it demonstrates or is relevant to the valuation date of January 1, 2005. Therefore, the evidence is not probative and fails to make a case for any assessment change.
 - d. Even if the Petitioners had provided some explanation for how the 2006 and 2007 sales data was relevant to the valuation date, their case still would fail. Their calculation relied on the sales of allegedly comparable properties, but the Petitioners did not establish comparability between the subject property and the alleged comparables.¹ When using comparisons to make a case, the proponent

¹ The purportedly comparable properties are all in Austin Oaks. But beyond that basic fact, all the homes are custom built and have many differences. The Petitioners did not provide the kind of detailed facts and analysis to support any kind of reasonable conclusion based on the sale prices and assessments of those other homes.

must establish that the alleged comparables are truly comparable by sufficiently explaining the characteristics of the alleged comparables, explaining how they compare to the subject property and explaining how any differences affect the value. *See Long*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).

- e. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, 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, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

- 15. The Petitioner 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, there will be no change to the assessment.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

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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>>