

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

Petition: 48-003-08-1-5-08230
Petitioner: Rafael Nicasio
Respondent: Madison County Assessor
Parcel: 48-11-22-400-025.000-003
Assessment Year: 2008

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Madison County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated November 10, 2009.
2. The PTABOA mailed notice of its decision on May 17, 2010.
3. The Petitioner appealed to the Board by filing a Form 131 on June 18, 2010, and at that time he elected to have this case heard according to small claims procedures.
4. The Board issued notice of hearing to the parties on January 11, 2011.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on March 3, 2011. He did not inspect the property.
6. Petitioner Rafael Nicasio, Renate Eberbach, and County Assessor Larry Davis were sworn as witnesses.

Facts

7. The subject property is located at 2804 West 34th Street in Anderson.
8. The PTABOA determined the assessed value is \$14,500 for land and \$68,100 for improvements (total \$82,600).
9. The Petitioner requested a total assessed value of \$73,000.

Record

10. The official record for this matter contains the following:
 - a. Form 131 Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner's Exhibit 1 – Realtor's listing for 2822 West 34th Street (Comp 1),
Petitioner's Exhibit P-1 – "Special Message to Property Owner" (Form TS-1A)
for the subject property,
Petitioner's Exhibit P-2 – Aerial photograph showing the location of the subject
property and comparable properties,
Petitioner's Exhibit P-3 – Photograph of the subject property,
Petitioner's Exhibit P-4 – Photograph of 34th Street looking east,
Petitioner's Exhibit P-5 – Photograph of 2816 West 34th Street,
Petitioner's Exhibit P-6 – Photograph of 2811 West 34th Street,
Petitioner's Exhibit P-7 – Photograph of 2805 West 34th Street,
Petitioner's Exhibit P-8 – Photograph of 2631 West 34th Street,
Petitioner's Exhibit P-9 – Photograph of 2622 West 34th Street,
Petitioner's Exhibit P-10 – Photograph of 2632 West 34th Street,
Petitioner's Exhibit P-11 – Form TS-1A with photograph attached for 4019 Dr.
MLK Jr. Boulevard (Comp 2),
Petitioner's Exhibit P-12 – Form TS-1A with photograph attached for 3923 Dr.
MLK Jr. Boulevard (Comp 3),
Petitioner's Exhibit P-13 – Form TS-1A for 3613 Forrest Terrace (Comp 4),
Petitioner's Exhibit P-14 – Realtor's listing for Comp 4,
Petitioner's Exhibit P-15 – Form TS-1A for 3413 Forrest Terrace (Comp 5),
Petitioner's Exhibit P-16 – Realtor's listing for Comp 5,
Petitioner's Exhibit P-17 – Form TS-1A for 2327 Walton Street (Comp 6),
Petitioner's Exhibit P-18 – Realtor's listing for Comp 6,
Petitioner's Exhibit P-19 – Form TS-1A for 1117 Woodside Drive (Comp 7),
Petitioner's Exhibit P-20 – Realtor's listing for Comp 7,
Petitioner's Exhibit P-21 – Subject property record card,
Petitioner's Exhibit P-22 – Form 17T for the subject property,
Respondent Exhibit 1 – Form 115 for the subject property,
Respondent Exhibit 2 – Property record card for the subject property,
Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:
 - a. Ms. Eberbach is a retired realtor. *Eberbach testimony.*
 - b. The photographs of the properties on 34th Street give an indication of the appearance of the neighboring homes in the Belleview Addition. *Eberbach testimony; Pet'r Ex. P-4 through P-10.*
 - c. Comp 1 is a very good comparable and is representative of the sales in the area. Comp 1 sold in July 2009 for \$23,500. It is smaller than the subject property with 1,400 square feet compared to the subject property's 1,555 square feet. Comp 1 is most likely a distressed sale, but most sales in this neighborhood are distressed sales. Distressed sales have a negative impact on property value. *Eberbach testimony; Pet'r Ex. 1.*
 - d. The remaining comparable properties have a similar amount of square footage and are located in the same neighborhood as subject property. Comp 2 is assessed at \$54,900. Comp 3 is assessed at \$57,900. Comp 4 is assessed at \$83,900 and sold for \$86,500. Comp 5 is 3 ½ miles from the subject property. Comp 5 is assessed at \$32,600 and sold for \$57,400. Comp 6 is approximately 1 mile north of the subject property. Comp 6 is assessed at \$65,400 and listed for \$75,000. Comp 7 is a superior property located 2 miles northwest of the subject property. Comp 7 is assessed at \$67,000 and listed for \$61,900. *Eberbach testimony; Pet'r Ex. P-11 through P-20.*
 - e. This information shows the subject property should be assessed at \$73,000. That is probably the highest price it would sell for. *Eberbach testimony.*
12. Summary of the Respondent's case:
 - a. The PTABOA reduced the subject property's assessment from \$112,800 to \$82,600 by applying a negative 27% market adjustment. *Davis testimony; Resp't Ex. 1.*
 - b. The difference between the assessed values of the comparable properties and the assessed value of the subject property could be due to items that would require an adjustment such as age. The Petitioner did not make any adjustments to the comparable properties that would demonstrate how the properties are similar or how their differences would relate to market value. *Davis testimony.*

Analysis

13. 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).
14. 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”).
15. The Petitioner did not make a prima facie case for any assessment change.
 - a. Real property is assessed based on its "true tax value," which 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). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (incorporated by reference at 50 IAC 2.3-1-2).
 - b. The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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.
 - c. To be relevant, the record must somehow establish how such evidence relates to market value-in-use as of the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2008 assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3 (2009).
 - d. The Petitioner presented photographs of the subject property and several other properties near it on 34th Street (P-3 through P-10). There was no dispute about the fact that they give a fair indication of the neighborhood where the subject property is located and the subject property itself. The photographs alone tell very little about the value of those homes. At most the photographs show the subject property is located in a neighborhood of modest value homes. This is not an entirely irrelevant point, but it is only a small step toward proving the disputed assessment must be changed.

- e. Most of the evidence that the Petitioner presented purports to be about comparable assessments and comparable sales. 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*, 821 N.E.2d at 470 (explaining that one who relies on comparables is responsible both for providing the data about comparables and for analyzing it—the Board is not responsible for reviewing all the documents presented to determine whether properties are indeed comparable). The Petitioner needed to identify the subject property’s characteristics, explain how those characteristics compare to the purportedly comparable properties with specifics about how they are similar. And he needed to recognize differences between the properties and explain how they affect market value-in-use. *Id.* at 471. The Petitioner provided no such analysis for any of the comparables. Therefore, they do not prove anything meaningful about what the actual market value-in-use of his property really is.
- f. Comp 1 was characterized as a very good comparable. That home at 2822 West 34th Street has about 155 square feet less than the subject property and sold for \$23,500.¹ Comp 4 sold for \$86,500. Comp 5 sold for \$57,400. Comp 6 was listed with an asking price of \$75,000 and Comp 7 was listed with an asking price of \$61,900.² Although the realtor information appears to contain some additional facts about those properties, the Petitioner provided no meaningful comparison analysis. Nothing even begins to explain why those prices lead to the conclusion that the subject property would not sell for more than \$73,000.³ And such unsupported, conclusory statements do not help to prove anything. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- g. The Petitioner presented evidence about the assessed value and tax bills for six properties. Although the Petitioner brought out a few isolated facts about how the subject property and the others compared, the Petitioner failed to provide the kind of detailed facts about the properties or an analysis that might establish how the assessed values should compare. Furthermore, simply comparing assessments or tax bills is problematic for many reasons. It is not enough for the Petitioner to show his property is assessed higher than some other property or pays more taxes. A taxpayer cannot rebut the presumption that his assessment is correct without presenting evidence of market value-in-use. *Eckerling v. Wayne Twp. Assessor*,

¹ The Petitioner also admitted that Comp 1 was probably a distressed sale. In addition, the Comp 1 sale was in July 2009. There was no attempt to relate it to the required valuation date of January 1, 2007. Consequently, it has no probative value. *O’Donnell* 854 N.E.2d at 95; *Long*, 821 N.E.2d at 471.

² Both parties ignored the obvious distinction between a selling price and an asking price.

³ Ms. Eberbach’s conclusion that the subject property would not sell for more than \$73,000 is the heart of the Petitioner’s case. She identified herself as a retired realtor, but otherwise provided nothing about her background or qualifications. There is no evidence that she is an appraiser and there is no evidence that her opinion about the value of the subject property is based on, or is in accordance with generally accepted appraisal principles.

841 N.E.2d 674, 677-678 (Ind. Tax Ct. 2006). *See also Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). He must present probative evidence that the assessed value as determined by the assessor is not an accurate market value-in-use. *Westfield Golf*, 859 N.E.2d at 399; *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (focus is on determining whether the assessed value is actually correct.)

h. The Petitioner needed to prove the assessed value does not accurately reflect the property's market value-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). He did not do so. Therefore, he failed to make a prima facie case for any change.

16. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified*, 799 N.E.2d at 1221-1222; *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

17. The Petitioner failed to make a prima facie case for a change in assessed value. The Board finds in favor of the Respondent.

Final Determination

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

ISSUED: _____

Commissioner, 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>