

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

Petition: 47-006-07-1-6-00006
Petitioners: Phil & Amy Thorne
Respondent: Lawrence County Assessor
Parcel: 405-07129-00
Assessment Year: 2007

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 Lawrence County Property Tax Assessment Board of Appeals (PTABOA) by written notice dated July 9, 2007.
2. The PTABOA mailed notice of its decision on March 13, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 on April 28, 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 February 23, 2010.
5. Administrative Law Judge Kay Schwade held the Board's administrative hearing on March 31, 2010. She did not inspect the property.
6. The following persons were present and sworn as witnesses:
For the Petitioners – Phillip Thorne,
For the Respondent – Kirk Reller,
Delores Watterson,
County Assessor April Collins.

Facts

7. The property is a personal property mobile home located at 169 Sasser Drive in Bedford. The property record card indicates it is a 1996 Dutch that is 28 feet wide and 66 feet long.
8. The PTABOA determined the personal property assessed value is \$35,500.
9. The Petitioners requested a personal property assessed value of \$10,500.

Contentions

10. Summary of the Petitioners' case:
 - a. The subject property should not be assessed by using the gross rent multiplier method because the mobile home park has more than 4 rental units. *Thorne testimony.*
 - b. A memorandum issued by the Department of Local Government Finance (DLGF) in December 2006, says the assessed value of an annually assessed mobile home is the lesser of the value determined using the National Automobile Dealers Association (NADA) Guide, the purchase price, or sales data for generally comparable mobile homes. *Thorne testimony; Pet'r Ex. 5.*
 - c. This home was purchased for \$10,500 on December 12, 2006, from Greentree Servicing. At the time of the assessment, the Petitioner spent no additional money to make the property habitable. *Thorne testimony; Pet'r Ex. 2.*
 - d. Rather than looking at the entire county as the market area, the mobile home park should be considered its own market area because a mobile home located on private property is more desirable than a mobile home in a mobile home park. *Thorne testimony.*
 - e. Distressed sales are the norm for the mobile home market in this area. The majority of sales in the mobile home park are repossessions. That fact is not evident from looking at title transfers because it is common for a lending institution to wait to transfer the title of a repossessed mobile home only after it has been resold. *Thorne testimony.*

11. Summary of the Respondent's case:
 - a. A joint memorandum issued by the DLGF and the Indiana Board of Tax Review and Ind. Code § 6-1.1-4-39(b) state that the gross rent multiplier method is the preferred method for valuing mobile homes assessed under Ind. Code § 6-1.1-7. Nevertheless, it is difficult to come up with a gross rent multiplier for mobile homes. The gross rent multiplier method was not used in this case. *Reller testimony; Pet'r Ex. 3.*
 - b. Another DLGF memorandum and Ind. Code § 6-1.1-31-7(b)(6) state that the assessed value for annually assessed mobile homes is the least of the values determined by the NADA Guide, the actual purchase price, or sales of comparable mobile homes. The assessor used NADA values because of time constraints. The sales comparison approach was not used because there was not sufficient market data. *Reller testimony; Pet'r Ex. 5; Resp't Ex. 2 through 17.*

- c. The NADA Guide states that the value for the subject property is \$33,877. *Resp't Ex.2.*
- d. Information derived from distressed sales may be acceptable evidence in an appeal if the party shows that distressed sales are the norm for the market area. All the sales offered by the Petitioners (including their purchase of the subject property) are distressed sales. *Reller testimony; Pet'r Ex. 3.*
- e. But distressed sales are not the norm. Advertisements show there are plenty of mobile homes in the area offered for sale that are not foreclosures or repossessions. For the years 2006, 2007, and 2008, the number of distressed mobile home sales was less than 20% of all the mobile home sales in Lawrence County. They are not a preponderance of the sales and do not establish the norm for the market. *Reller testimony; Collins testimony; Resp't Ex. 1, 21 through 27.*
- f. The Petitioners bought the subject property after it had been repossessed. Those circumstances constitute a distressed sale. Consequently, the price the Petitioners paid should not be used as the assessed value. *Reller testimony.*
- g. The evidence shows a large variance in prices the Petitioners paid for several properties. For example, 722 Glendale and 927 Ridgedale are similar in size and age, but there is a 50% variance in purchase price. Likewise, 722 Glendale and 733 Glendale are similar, but have a 114% variance in purchase price. Such large variance means these sales are not good comparables. Additionally, they were distressed sales. The Petitioners' comparables should not be given much weight. *Reller testimony.*
- h. The 2008 advertisement for 733 Glendale shows it is being marketed for \$18,300. That home is a 2000 16' x 76' Redman. *Reller testimony.*
- i. Gilbert Mordoh & Co., Inc. performed an income stream analysis for mobile homes in the Bedford, Lawrence County market. It used rental data compiled from other PTABOA proceedings. Its 33% expense ratio and 12% to 15% rate of return are estimates based on information in Mordoh's files. Based on discounted cash flow analysis, Mordoh concluded that the net present value of single wide units ranged from \$15,022 to \$17,927 and double wide units ranged from \$20,789 to \$25,224. Admittedly, Mordoh's analysis is not a valuation of any specific mobile home and it is not an appraisal. It simply provides a value range indicating what an investor would be willing to pay for mobile homes to be used as rental property. *Reller testimony; Resp't Ex. 43.*

Record

- 12. The official record for this matter is made up of the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,

- b. Notice of Hearing,
- c. Hearing Sign-In Sheet,
- d. Digital recording of the hearing,
- e. Petitioner Exhibit 1 – Notice of Assessment of Land and Structures for the subject property,
 Petitioner Exhibit 2 – Purchase agreement for the subject property,
 Petitioner Exhibit 3 – DLGF/IBTR Memorandum dated August 24, 2007,
 Petitioner Exhibit 4 – Notice of Final Assessment Determination, Form 115,
 Petitioner Exhibit 5 – DLGF Memorandum dated December 2006,
 Respondent Exhibit 1 – Spreadsheet comparing the number of title transfers based on repossessions to the number of title transfers based on normal sales,
 Respondent Exhibit 2 – Property Record Card (PRC) for 169 Sasser Drive with NADA Price Sheet,
 Respondent Exhibit 3 – PRC for 741 Glendale Way with NADA Price Sheet,
 Respondent Exhibit 4 – PRC for 733 Glendale Way with NADA Price Sheet,
 Respondent Exhibit 5 – PRC for 803 Patriot Lane with NADA Price Sheet,
 Respondent Exhibit 6 – PRC for 922 Ridgedale Drive with NADA Price Sheet,
 Respondent Exhibit 7 – PRC for 722 Glendale Way with NADA Price Sheet,
 Respondent Exhibit 8 – PRC for 927 Ridgedale Drive with NADA Price Sheet,
 Respondent Exhibit 9 – PRC for 730 Glendale Way with NADA Price Sheet,
 Respondent Exhibit 10 – PRC for 703 Glendale Way with NADA Price Sheet,
 Respondent Exhibit 11 – PRC for 923 Ridgedale Drive with NADA Price Sheet,
 Respondent Exhibit 12 – PRC for 926 Ridgedale Drive with NADA Price Sheet,
 Respondent Exhibit 13 – PRC for 920 Ridgedale Drive with NADA Price Sheet,
 Respondent Exhibit 14 – PRC for 740 Glendale Way with NADA Price Sheet,
 Respondent Exhibit 15 – PRC for 735 Glendale Way with NADA Price Sheet,
 Respondent Exhibit 16 – PRC for 427 Victorian with NADA Price Sheet,
 Respondent Exhibit 17 – PRC for 209 Redman with NADA Price Sheet,
 Respondent Exhibit 18 – PRC for Parcel 47-13-04-300-044.000-013,
 Respondent Exhibit 19 – Spreadsheet listing assessed value, purchase price, purchase date, manufacture year, size, and other information for each of the subject properties,
 Respondent Exhibit 20 – Advertisements for manufactured homes that were offered for sale in the Times-Mail on March 29, 2008,
 Respondent Exhibit 21 – Realtor’s listing offering a 2000 Ridgedale manufactured home for \$25,900,
 Respondent Exhibit 22 – Advertisements for manufactured homes that were offered for sale in the Times-Mail on April 26, 2008,
 Respondent Exhibit 23 – Advertisements for manufactured homes offered for sale in the Times-Mail on September 29, 2007,

- Respondent Exhibit 24 – Advertisements for manufactured homes offered for sale in the Times-Mail on April 12, 2008,
- Respondent Exhibit 25 – Advertisements for manufactured homes offered for sale in the Times-Mail on March 27, 2008,
- Respondent Exhibit 26 – Realtor’s listing sheet offering a 1969 mobile home located at 2149 Tripleton Pike for \$5,000,
- Respondent Exhibit 27 – Purchase data pertaining to repossessions,
- Respondent Exhibit 28 – CD containing photographs (same as Exhibits 29 through 41),
- Respondent Exhibit 29 – Photograph of 209 Redman,
- Respondent Exhibit 30 – Photograph of 703 Glendale Way,
- Respondent Exhibit 31 – Photograph of 722 Glendale Way,
- Respondent Exhibit 32 – Photograph of 730 Glendale Way,
- Respondent Exhibit 33 – Photograph of 733 Glendale Way,
- Respondent Exhibit 34 – Photograph of 740 Glendale Way,
- Respondent Exhibit 35 – Photograph of 741 Glendale Way,
- Respondent Exhibit 36 – Photograph of 803 Patriot,
- Respondent Exhibit 37 – Photograph of 920 Ridgedale Drive,
- Respondent Exhibit 38 – Photograph of 922 Ridgedale Drive,
- Respondent Exhibit 39 – Photographs of 923 Ridgedale Drive,
- Respondent Exhibit 40 – Photograph of 926 Ridgedale Drive,
- Respondent Exhibit 41 – Photograph of 927 Ridgedale Drive,
- Respondent Exhibit 42 – DLGF Memorandum dated January 9, 2008, regarding assessment of mobile homes/ manufactured homes,
- Respondent Exhibit 43 – “Income Stream Analysis for mobile homes...” dated March 30, 2010, and prepared by Gilbert S. Mordoh & Co., Inc.,
- Respondent Exhibit 44 – Advertisement offering to sell a 2000 Redman mobile home at 743 Glendale Way for \$18,900,

f. These Findings and Conclusions.

Objections

13. The Petitioners objected to Respondent’s Exhibits 20, 22, and 24, claiming they are not relevant because they pertain to the year 2008. They also point out that those exhibits are merely advertisements with asking prices, not actual sales, and consequently they do not show market value. The Respondent explained that the advertisements are offered only to prove an abundance of mobile homes are available in the open market and distressed sales are not the norm. The Respondent admitted these exhibits are not comparable sales.
14. The Petitioners objected that Respondent Exhibit 42 is not relevant because it is a 2008 memorandum. The Respondent argued that Exhibit 42 is offered because it is the memorandum referred to in Petitioners’ Exhibit 5.

15. The Petitioners' objections go more to the weight of the evidence rather than its admissibility. Therefore, the objections to Respondent's Exhibits 20, 22, 24, and 42 are overruled.

Analysis

16. 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 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). 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.
17. Nobody disputed the fact that this mobile home is assessed as personal property. Consequently, the 2002 REAL PROPERTY ASSESSMENT MANUAL and the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 do not apply. Specifically, the broad, general authority that the Guidelines are only a starting point and that other information compiled in accordance with generally accepted appraisal principles can be used to prove a more accurate valuation for assessment purposes does not apply here. *See MANUAL* at 5.
18. According to Ind. Code § 6-1.1-4-39(b) "[t]he gross rent multiplier method is the preferred method of valuing: *** (2) mobile homes assessed under IC 6-1.1-7." Nevertheless, both parties claimed the gross rent multiplier method is not the correct way to value the subject property. The Petitioners argued that the gross rent multipliers method does not apply because the mobile home park has more than 4 rental units. The Respondent asserted that the gross rent multiplier method was not used because it is too difficult to determine what the multiplier should be. Neither reason appears to have any merit, but we will reserve that question for another day. Most significantly, neither party presented *any* evidence that could be used to determine an assessed value based on a gross rent multiplier.
19. The parties presented this case in such a manner that the only alternative is determining the assessment based on the options in Ind. Code § 6-1.1-31-7(b)(6) and 50 IAC 3.3-5-1, which both give a taxpayer the benefit of the lowest valuation from 3 alternative sources.
20. Indiana Code § 6-1.1-31-7(b)(6) provides:

(b) With respect to the assessment of personal property, the rules of the department of local government finance shall include instructions for determining:

(6) the true tax value of mobile homes assessed under IC 6-1.1-7 (other than mobile homes subject to the preferred

valuation method under IC 6-1.1-4-39(b)) as the least of the values determined using the following:

(A) The National Automobile Dealers Association Guide.

(B) The purchase price of a mobile home if:
(i) the sale is of a commercial enterprise nature; and
(ii) the buyer and seller are not related by blood or marriage.

(C) Sales data for generally comparable mobile homes....

21. The corresponding regulation, 50 IAC 3.3-5-1, contains very similar language:

(b) All annually assessed mobile homes assessed after January 14, 2007, shall have a true tax value set at the least of the values determined using the following:

(1) the National Automobile Dealers Association Guide;

(2) the purchase price of the mobile home if the:

(A) sale is of a commercial enterprise nature;

(B) buyer and seller are not related by blood or marriage; and

(C) the sale date is within one (1) year prior to or subsequent to the January 15 valuation date; or

(3) sales data for generally comparable mobile homes.

22. Therefore, this case is not one where there is broad discretion in determining the assessment in a manner that will most accurately reflect market value-in-use. Similarly, the question is not which of the alternatives give the most accurate market-value-in-use.

23. The undisputed evidence established that the NADA value for the subject property would be approximately \$33,900, which is higher than the current assessment of \$33,500. That point is not decisive, however, if one of the other alternatives establishes a lower value.

24. The undisputed evidence establishes that the Petitioners bought the subject property on December 12, 2006 from Greentree for \$10,500. According to Ind. Code 6-1.1-31-7(b)(6), this lower price establishes what the assessment should be if the sale was “of a commercial enterprise nature” and if the buyer and seller are not related by blood or marriage. In addition, 50 IAC 3.3-5-1 requires that the purchase date was within 1 year before or after the January 15 valuation date.

25. Rather than addressing the conditions imposed by the statute and regulation, the Respondent contended that the purchase price should not be used for the assessment because the Petitioners bought the subject property from Greentree after it had been repossessed. The Respondent characterized the transaction as a “distressed sale” with a low price that was not indicative of a real market value of the property. The Respondent

offered evidence that many other mobile homes in the area are offered for sale without them being foreclosures or repossessions.

- 26. If this were a case where generally accepted appraisal principles controlled how the assessment is to be determined, the Respondent would have a point. But it is not. The Respondent's point is irrelevant to the specific conditions imposed by Ind. Code 6-1.1-31-7(b)(6) and 50 IAC 3.3-5-1. Moreover, the fact that the Petitioners bought the subject property after it had been repossessed actually seems to indicate that the transaction was in the nature of commercial enterprise, which is exactly the thing that is required.
- 27. Given the specific statutory alternatives and the Respondent's failure to establish any legitimate reason for not using it, the Petitioners purchase price of \$10,500 dictates the assessed value for the subject property.

Conclusion

- 28. The evidence proves that the current assessment is wrong and that the assessment should be changed to the purchase price that the Petitioners paid for it.

Final Determination

In accordance with the above findings and conclusions the assessment must be changed to \$10,500.

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>>