

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

Petition: 47-013-06-1-5-00006
Petitioners: Phil & Amy Thorne
Respondent: Lawrence County Assessor
Parcel: 47-13-04-300-004.000-013
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 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 subject property is a mobile/manufactured home and land located at 125 Beaver Creek Road in Mitchell. Unlike several of the Petitioners' other appeals that were heard along with this one, it is assessed as real property.
8. The PTABOA determined the assessed value is \$71,600 (\$7,200 for land and \$64,400 for improvements).
9. The Petitioners requested an assessed value of \$12,800.

Contentions

10. Summary of the Petitioners' case:

- a. 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.*
- b. This property was purchased for \$10,000 in June 2006 from Greentree Servicing. This purchase was only three months after the assessment date. It had been on the market for some time. The current assessment of \$7,200 for land and \$64,400 for the home is drastically inflated in comparison to the actual purchase price. *Thorne testimony; Pet'r Ex. 2.*
- c. When the Petitioners bought it, the property had many serious problems. It had been vacant for quite some time and by March 2006 it had been essentially "stripped." Most of the fixtures, including the furnace and toilets had been taken out of it. *Thorne testimony.*
- d. When the Petitioners bought it, part of the home was actually located on a neighboring property. To resolve that problem, the Petitioners bought a very small piece of land from the neighbor for \$2,800. *Thorne testimony.*
- e. Distressed sales are the norm for the mobile home market in this area. 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.*
- f. The correct assessed value should be the total that the Petitioners paid for the property, which was only \$12,800. *Thorne testimony.*

11. Summary of the Respondent's case:

- a. 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.*
- b. 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.*

- c. 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.*
- d. The Petitioners failed to address the relationship between their June 2006 purchase price and the required valuation date, which was January 1, 2005. *Reller testimony.*

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 – Not offered,
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 (the subject property in this case),
- 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 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). 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. The parties must walk the Board through every element of their analysis, explaining how each piece of evidence is relevant to their claim. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
17. According to 50 IAC 3.3-3-1 and 50 IAC 3.3-2-4, under certain circumstances a mobile home is assessed as real property. Nobody disputed the fact that this property is assessed as real property.¹ Consequently, the REAL PROPERTY ASSESSMENT MANUAL and the REAL PROPERTY ASSESSMENT GUIDELINES apply. This fact also means the provision in Ind. Code § 6-1.1-31-7(b)(6) allowing personal property mobile homes to get the benefit of the lowest value indicated by the National Automobile Dealers Association Guide, by the purchase price, or by sales data for comparable mobile homes, does not apply. In addition, although Ind. Code § 6-1.1-4-39(b) states that the gross rent multiplier method is preferred for valuing mobile homes, there is no evidence that the Petitioners used the subject property for rental income and neither party presented *any* evidence that could be used to determine an assessed value for the subject property based on a gross rent multiplier.

¹ Mr. Thorne testified that the appeal for 125 Beaver Creek Road involved real property and the property record card indicates that it was assessed as real property.

18. Real property is assessed 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). There are three generally accepted techniques to calculate that value: 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 promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may 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.
19. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice can be the best way to more accurately prove what an assessment should be. *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6. But such an appraisal is not a requirement and no appraisal was presented in this case.
20. Instead, the Petitioners relied primarily² on their purchase price, which can be another legitimate way to prove what a more accurate assessed valuation would be. Where two parties negotiate at arm's length and other prerequisites to a market-value transaction are present, a property's actual sale price often can be the most compelling evidence of its market value-in-use. Rather than approximating how buyers and sellers would act, a property's sale price shows how a buyer and seller actually acted.
21. Nevertheless, the Respondent argued that the purchase price should not be used for this assessment because the Petitioners bought the subject property from Greentree after it had been repossessed. The Respondent simply characterized the transaction as a "distressed sale" with a low price that was not indicative of the real market value of the property. Sales occurring as a result of a lender's repossession or foreclosure, however, should not be categorically rejected as invalid evidence of value. As explained in the DLGF/IBTR Memorandum dated August 24, 2007, in certain circumstances these types of sales may become the norm and define the market. *See Pet'r Ex. 3.*

² In addition to the purchase price, there was undisputed testimony about how the property had been vacant and stripped of fixtures such as toilets and the furnace. Furthermore, Mr. Thorne testified that when they bought it, part of the home was actually on a neighbor's land. These circumstances undoubtedly mean that the market value-in-use of the subject property was less than it would have been without such problems. But other than in the context of their purchase price, the Petitioners failed to quantify the impact of these circumstances on the value of the subject property.

22. The evidence established that the Petitioners bought several repossessed properties (including this one) from Greentree. Although there was some conclusory testimony that such sales had become the norm, the Petitioners failed to sufficiently support that conclusion with probative facts related to this particular property. For example, the record does not establish how long Greentree had the property on the market or what efforts might have been made to market it. Therefore, in this case it is impossible to make any legitimate conclusion about whether or not the Petitioners' purchase price actually satisfies the requirements to be a reliable indication of market value.
23. Even assuming, *arguendo*, the Petitioners' purchase price satisfied the requirements for being a valid indication of the market value-in-use when they bought it in June 2006, that evidence would not prove what the assessment should be unless it is somehow related to the required valuation date for a 2006 real property assessment—and that required valuation date was January 1, 2005. 50 IAC 21-3-3; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Respondent correctly pointed out that the Petitioners failed to establish the relationship between their purchase price and the required valuation date. Therefore, the evidence that the Petitioners presented does not prove that the assessment must be changed.

Conclusion

24. The Petitioners failed to prove that the current assessment is too high or that their purchase price would be a more accurate valuation for the 2006 assessment.

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>>