

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

Petition Nos.: 71-026-08-1-5-03753
71-026-09-1-5-01863
Petitioner: 1030 Land Trust
Respondent: St. Joseph County Assessor
Parcel No.: 71-08-02-184-004.000-026¹
Assessment Years: 2008 and 2009

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. 1030 Land Trust, by its trustee, Steven Kollar, filed Form 130 petitions contesting the subject property’s assessments for 2008 and 2009. On April 18, 2011, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations denying the Trust relief.
2. The Trust then timely filed Form 131 petitions with the Board, electing to have its appeals heard under the Board’s small claims procedures.
3. On September 19, 2013, the Board held a hearing on the Trust’s petitions through its designated administrative law judge, Patti Kindler (“ALJ”).²
4. Frank Agostino appeared as counsel for the St. Joseph County Assessor. Mr. Kollar and Deputy Assessor Patricia St. Clair were sworn as witnesses.

Facts

5. The subject property contains a home with a detached garage located at 1030 Sherman Street in South Bend.
6. Neither the Board nor the ALJ inspected the property.

¹ 1030 Land Trust apparently listed the key number (018-1084-3542) on the Form 131 petitions.

² The ALJ consolidated the hearing with a hearing on a separate property owned by 908 Land Trust. The Board is issuing a separate determination for each property.

7. The PTABOA determined the following assessment for both 2008 and 2009:
- Land: \$1,600 Improvements: \$31,400 Total: \$33,000
8. The Trust requested an assessment of \$15,000 for each year.

Record

9. The record includes the following:
- a) The Form 131 petitions.
 - b) A digital recording of the hearing.
 - c) Exhibits:
 - Petitioner Exhibit 1: 2013 property record card,
 - Respondent Exhibit 1: 2008 Real Property Master tax sheet,
 - Board Exhibit A: Form 131 petitions for 2008 and 2009,
 - Board Exhibit B: Hearing notices,
 - Board Exhibit C: Hearing sign-in sheet,
 - Board Exhibit D: Notice of Appearance for Mr. Agostino.
 - d) These Findings and Conclusions.

Summary of Parties' Contentions

10. The Trust's case:
- a) The subject property should be assessed at \$15,000 for each year. The Petitioner paid \$6,800 for the property in August of 2007, although it was "probably worth approximately \$15,000." *Kollar testimony; Pet'r Ex. 1*. As of the Board's hearing, the property was available for sale at \$15,000. *Id.*
11. The Assessor's case:
- a) The assessments reflect the property's market value-in-use for each year. The land and improvement values were based on tables that were established in 1999, and 2002, respectively. The Assessor also applied depreciation to account for the improvements' age. On October 19, 2005, the property sold to Hillary Ngugi for \$68,000. It then sold to Deutsche Bank National Trust Co. for \$55,800 on July 11, 2007. And it sold on land contract for \$49,500 in 2009. In light of those sales, the assessment of \$33,000 fairly reflects the value for the years under appeal. *St. Clair testimony; Pet'r Ex. 1*.

- b) The Trust offered no probative evidence to show the condition or value as of the assessment dates in question. For example, it did not offer an appraisal, a realtor's market analysis, or a sales-comparison analysis. Although the Trust bought the property for \$6,800 in August 2007, that sale is not probative of the market value-in-use. That sale was through a foreclosure and Mr. Kollar acknowledged that the market was not a "foreclosure market." *Kollar testimony on cross examination*. In fact, the property sold for much higher prices in other transactions both before and after the Trust bought it. *Id*; *Pet'r Ex. 1*; *Agostino argument*.

Objection

12. The Assessor objected to Mr. Kollar's testimony, arguing that Mr. Kollar offered nothing to show that he had any legal interest in the property or that he was authorized to practice before the Board. *Agostino argument*.
13. The Board overrules the objection. While phrased as an objection specifically to Mr. Kollar's testimony, it appears that the Assessor really contests the Trust's right to offer any evidence on grounds that it did not appear at the Board's hearing in person or by an authorized representative. Mr. Kollar, however, testified that he was the trustee for, and beneficiary of, the Trust. Indeed, he signed the Form 131 petitions in his capacity as trustee. Thus, he had both legal title to, and an equitable interest in, the property. *See* I.C. § 30-4-2-6(a) ("The trustee takes title to the trust property"); I.C. § 30-4-2-7(a) ("The beneficiary takes an equitable interest in the trust property."). While the Assessor pointed out that Mr. Kollar did not offer the trust agreement or any other documents to support his testimony, the Assessor offered nothing to contradict that testimony.

Analysis

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and 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). The taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is taxpayer's duty to walk the Indiana Board ... through every element of the analysis"). If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479

Discussion

15. The Petitioner failed to make a prima facie case for reducing the assessments. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). A party’s evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice (“USPAP”) often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Actual construction costs or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles may also be probative. *See* MANUAL at 5; *see also*, I.C. § 6-1.1-15-18 (addressing the use of assessments for purportedly comparable properties to prove the value of a property under appeal).
 - b) For evidence to be relevant, however, the record must establish how it relates to the property’s market value-in-use as of the appropriate 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 the 2008 and 2009 assessment years, those valuation dates were January 1, 2007, and January 1, 2008, respectively. 50 IAC 21-3-3.
 - c) The Trust relies mainly on the fact that it bought the subject property for \$6,800 on August 10, 2007. The Assessor challenged the sale’s validity as an indicator of the property’s market value-in-use on grounds that the Trust bought the property out of foreclosure. It is unclear whether the Trust bought the property at a forced sale, such as a sheriff’s sale ordered through a foreclosure action, or from an entity that acquired the property out of foreclosure and then re-sold it. Unfortunately, neither party offered any details about the sale. That lack of detail is problematic. As the Board has previously held, simply pointing to the fact that a seller acquired a property through foreclosure before re-selling it does not automatically disqualify the resale price as an indicator of the property’s market value-in-use. Instead, the key is what generally accepted appraisal principles require.
 - d) But here, the Assessor did not simply rest on an assertion that foreclosure-related sales can never be used to show market value-in-use; she offered specific evidence to support the inference that the particular transaction at issue was not a market-value sale. As the Assessor pointed out, the property twice sold for significantly higher amounts within the two years leading up to the Trust’s purchase. In fact, the second sale occurred less than a month before the Trust bought the property. Again, the parties offered no details about those sales. Nonetheless, when taken as a whole, the

sales history raises significant questions about the reliability of the August 10, 2007 sale price as a reflection of the property's market value. Indeed, Mr. Kollar admitted that the property was worth more than what the Trust paid for it, albeit still less than the amount for which it was assessed. Under those circumstances, the price that the Trust paid for the property is not probative of its market value-in-use.

- e) The same is true for Mr. Kollar's testimony that the property is available for sale with an asking price \$15,000 at the time of the Board's hearing. Where a property has been marketed in a commercially reasonable manner without selling, the seller's asking price may at least tend to show a ceiling on the property's market value. Mr. Kollar, however, did not say what steps, if any, the Trust had taken to market the property. Mr. Kollar also failed to explain how a listing from 2013 relates to the property's market value-in-use as of the valuation dates that apply to the assessments under appeal (January 1, 2007, and January 1, 2008).

Conclusion

- 16. Because it did not offer probative evidence of the subject property's market value-in-use, the Trust failed to meet its burden of proof. The Board therefore finds for the Assessor.

Final Determination

The Indiana Board of Tax Review sustains the 2008 and 2009 assessments.

ISSUED: December 11, 2013

Chairman, 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 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 after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court Rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.