

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

Petition No.: 45-030-03-1-4-00006
Petitioner: Victor J. Schreiber, Trustee
Respondent: Lake County Assessor
Parcel No.: 008-08-15-0127-0004
Assessment Year: 2003

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 6, 2005.
2. The Petitioner received notice of the decision of the PTABOA on September 5, 2007.
3. The Petitioner filed an appeal by filing a Form 131 with the Board on September 19, 2007. The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 1, 2009.
5. The Board held an administrative hearing on May 6, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Rex D. Hume, Tax representative, Uzelac & Associates

For Respondent: No one appeared for the Respondent.¹

¹ The ALJ verified that the Notice of Hearing was mailed with proof of mailing and was not returned to the Board. The Respondent did not contact the Board or the ALJ to request a continuance.

Facts

7. The subject property is 15.3 acres of vacant land located at approximately 8690 Merrillville Road, Merrillville, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2003, the PTABOA determined the assessed value of the subject property to be \$1,403,100 for the land. There are no improvements on the property.
10. The Petitioner requested an assessment of \$258,600.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends the assessment is over-stated because the property sold as part of a two-parcel sale on January 26, 2005, for \$600,000. *Hume testimony*. According to Mr. Hume, the properties had been offered for sale for \$600,000 since July 2, 2001. *Hume testimony*. In support of this contention, the Petitioner submitted the listing contract and the settlement statement. *Petitioner Exhibit 5, pp. 4-12*. Mr. Hume testified that the listing contract shows that each parcel is considered to be worth \$300,000 because they are nearly identical in size. *Id.; Hume testimony*. Mr. Hume contends that, although the second parcel was improved, the improvements had little or no value. *Id.*
 - b. The Petitioners' representative testified that he adjusted the 2005 allocated sale price of \$300,000 to the January 1, 1999, valuation date using the Consumer Price Index (CPI). *Hume testimony*. Mr. Hume calculated the adjusted value of the subject property to be \$258,600. *Id.* In support of his valuation, Mr. Hume submitted the calculation and a page from the U. S. Department of Labor showing the CPI for years 1996 through 2007. *Id.; Petitioner Exhibit 6*. According to Mr. Hume, he used the CPI to adjust the appraised value because the Board approved the method in its *Gerber Lewis and Kokomo Sanitary Pottery* determinations. *Hume testimony*.
 - c. Finally, the Petitioner's representative contends that the Lake County PTABOA denied the Petitioner's appeal because the zoning on the property changed between the March 1, 2003, assessment date and the January 26, 2005, sale date. *Hume testimony; Petitioner Exhibit 7, pp. 3-4*. Mr. Hume argues, however, that the asking price for the property was the same before and after the rezoning, so there is no evidence to support the assertion that the rezoning affected the property's value. *Hume testimony*.

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 45-030-03-1-4-00006 Victor Schreiber Hearing,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Form 131 petition,
 - Petitioner Exhibit 2 – Power of attorney,
 - Petitioner Exhibit 3 – Request for conference on the property’s 2003 assessment,
 - Petitioner Exhibit 4 – 2003 appeal issues as presented to township assessor
 - Petitioner Exhibit 5 – Issues and exhibits presented to Lake County PTABOA,
 - Petitioner Exhibit 6 – Memo from Rex Hume to Deborah Johnson as requested by the PTABOA,
 - Petitioner Exhibit 7 – Form 115 and attachments,

 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of Hearing dated April 1, 2009,
 - Board Exhibit C – Hearing sign-in sheet,
 - Board Exhibit D – Proof of mailing,
 - 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Petitioner provided sufficient evidence to establish an error in the assessment. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. A property’s market value in use as determined using the Guidelines is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property, VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501,505 (Ind. Tax Ct. 2005) *reh’g den. sub. nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that assumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *See id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
 - c. Regardless of the method, a taxpayer must explain how its evidence relates to the property’s value as of the relevant valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 477 (Ind. Tax Ct. 2005); *see also* MANUAL at 4, 8. For assessment years 2002-2005, that valuation date is January 1, 1999. *Id.*; *see also* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates).
 - d. Here, the Petitioner submitted a January 26, 2005, settlement statement for the sale of two parcels. According to the Petitioner’s representative, the \$600,000 sale of the two parcels was intended to be allocated \$300,000 per parcel. *Hume testimony*. In support of this contention, Mr. Hume offered the listing agreement. *Petitioner Exhibit 5*. The listing agreement states that the “Seller offers the Property for sale at a price of six hundred thousand dollars (\$600,000.00).” *Id.* Above that language is a hand written note that states

“\$300,000 / +/- 15 Ac. Parcel”. *Id.* Mr. Hume trended the allocated sale value to the January 1, 1999, valuation date and determined the property’s value to be \$258,600. *Hume testimony.* Thus, the Petitioner established a prima facie case that the property’s assessed value exceeds its market value-in-use.

- e. Because the Petitioner made a prima facie case, the burden shifted to the Respondent to impeach or rebut the trended sale value. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent failed to appear at the hearing to support the assessment or to rebut the Petitioner’s case.

Conclusion

- 15. The Petitioner raised a prima facie case that the subject property is over-valued on the basis of its trended sale price. The Respondent failed to appear at the hearing. The Board finds in favor of the Petitioner and determines the true tax value of the property is \$258,600.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$258,600.

ISSUED: _____

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, 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>>