

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

Petition No.: 06-003-07-1-5-00190
Petitioners: Jere V. and Rebecca Horwitz
Respondent: Boone County Assessor
Parcel No.: 003-05811-05
Assessment Year: 2007

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 Petitioners initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 10, 2008.
2. The PTABOA issued notice of its decision on February 18, 2009.
3. The Petitioners filed a Form 131 petition with the Board on March 6, 2009. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated October 14, 2009.
5. The Board held an administrative hearing on December 3, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Jere V. Horwitz, Property owner
 - b. For Respondent: Lisa C. Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA Member

Facts

7. The subject property consists of a single-family residence with a swimming pool and bathhouse located at 7395 Hunt Country Lane, Zionsville, Eagle Township, in Boone County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. The PTABOA determined the assessed value to be \$160,200 for land and \$594,500 for the improvements, for a total assessed value of \$754,700.
10. The Petitioners requested an assessed value of \$160,000 for the land and \$467,800 for the improvements, for a total assessed value of \$627,800.

Issue

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a. The Petitioners contend the subject property is over-assessed because the assessor made several errors on their property's 2007 property record card. *Petitioner Exhibits 1, 2A, 2B and 3; Horwitz testimony.* First, Mr. Horwitz argues, the assessor recorded the measurements of the house incorrectly. *Horwitz testimony.* According to Mr. Horwitz, the property record card shows 3,369 sq. ft. of living area on the first floor and 1,920 on the second floor for a total area of 5,289 sq. ft.. *Petitioners Exhibit 2A and 2B.* The appraisal, however, shows their home only has 4,698 sq. ft. of living area (3,608 sq. ft. on the first floor and 1,090 on the second floor). *Petitioners Exhibit 1 and 3; Horwitz testimony.* In addition, Mr. Horwitz argues, the house is wood frame and concrete block construction; rather than frame, stucco and stone. *Id.* Further, their home has ten rooms and four bedrooms, not thirteen rooms and five bedrooms. *Id.* Finally, the Petitioners contend the year of construction listed on the property record card is incorrect. *Horwitz testimony.* According to Mr. Horwitz, the house was originally constructed in 1972 and was added onto in the late 1990's and a recreational area, swimming pool and pool house were added in approximately 2001 and 2002. *Id.*
 - b. The Petitioners further argue the market value of their property is diminished by two bisecting petroleum pipelines on their property. *Petitioner Exhibit 4; Horwitz testimony.* According to Mr. Horwitz, the location of the two pipelines causes any building on the property to be severely restricted. *Horwitz testimony.*
 - c. The Petitioners also contend the value of the property under appeal is overstated compared to properties in the surrounding area. *Horwitz testimony.* In support of their position, the Petitioners submitted multiple listing sheets (MLS) and

property record cards for two properties in the neighborhood. *Petitioner Exhibit 5a-1 – 5b-2*. Mr. Horwitz testified the property located at 7355 Hunt Country Lane was built thirty years after their property, it was constructed with stone and brick, and it is not affected by the petroleum pipelines. *Petitioner Exhibits 5a-1 and 5a-2; Horwitz testimony*. According to Mr. Horwitz, that property is listed for sale at \$1,500,000, but is assessed for only \$725,600 in 2007. *Id.* Similarly, the property located at 7350 Hunt Country Lane is newer and has more square footage and acreage than the Petitioners' property. *Petitioner Exhibits 5b-1 and 5b-2*. According to Mr. Horwitz, it is listed for sale at \$1,775,000, but in 2007 is assessed for only \$1,018,200. *Id.* The Petitioners argue that this shows the assessor is assessing the comparable properties for considerably less than their listing prices. *Horwitz testimony*.

- d. Finally, in response to the Respondent's questioning, Mr. Horwitz testified that the Petitioners purchased their home on June 24, 2005, for \$739,000. *Petitioner Exhibits 1 and 2A; Horwitz testimony*.

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends the property's assessment is fair based on the property's market value. *Garoffolo testimony*. According to the Respondent, the Petitioners purchased the property under appeal on June 24, 2005, for \$739,000. *Garoffolo testimony*. Ms. Garoffolo argues that, because the sale was approximately 5 ½ months prior to the valuation date of January 1, 2006, the current assessment of \$754,700 is fair for the March 1, 2007, assessment. *Id.*
- b. The Respondent further argues the Petitioners' appraisal suffers from major flaws and should be given no weight. *Lewis testimony*. According to the Respondent's witness, the Petitioners only provided one page of the appraisal. *Id.* Ms. Lewis contends that the Petitioners failed to provide the portion of the appraisal that would have shown the dimensions of the rooms, the value of the property as established by the appraiser, and the date of the appraisal. *Id.*
- c. Finally, the Respondent argues that, while the Petitioners argued that the living area of the second floor of the house should be reduced from 1,920 to 1,090 sq. ft., they failed to point out that the appraisal shows that the first floor of the house has 3,608 sq. ft., rather than the 3,369 sq. ft. reported on the property record card. *Lewis testimony*. Further, the Respondent contends, the Petitioners have not shown how any errors on the property record card have affected the marketability of the property under appeal. *Id.*

Record

13. The official record for this matter is made up of the following:

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Excerpt from the Residential Appraisal Report prepared by Brian W. Ferling,

Petitioner Exhibit 2A-B – Property record card for Parcel No. 003-05811-05, located at 7395 Hunt Country Lane, Zionsville,

Petitioner Exhibit 3 – Petitioners' property data worksheet,

Petitioner Exhibit 4 – Plat map of the subject property,

Petitioner Exhibit 5a-1 – Multiple listing sheet for 7355 Hunt Country Lane, Zionsville,

Petitioner Exhibit 5a-2 – Property record card for Parcel No. 003-05811-07, located at 7355 Hunt Country Lane, Zionsville,

Petitioner Exhibit 5b-1 – Multiple listing sheet for 7350 Hunt Country Lane, Zionsville,

Petitioner Exhibit 5b-2 – Property record card for Parcel No. 003-05811-09, located at 7350 Hunt Country Lane, Zionsville,

Petitioner Exhibit 6 – Notification of Final Assessment Determination – Form 115, dated February 18, 2009,

Respondent Exhibit 1 – Boone County appeal worksheet,

Respondent Exhibit 2 – Petitioners' property data worksheet, property record card for Parcel No. 003-05811-02, located at 7960 Hunt Country Place, Zionsville, property record card for Parcel No. 003-05811-01, located at 7975 Hunt Country Place, Zionsville and the property record card for Parcel No. 003-05811-03, located at 7920 Hunt Country Place, Zionsville and an excerpt of the Residential Appraisal Report prepared by Brian W. Ferling,

Respondent Exhibit 3 – Property record card for Parcel No. 003-05811-05, located at 7395 Hunt Country Lane, Zionsville,

- Respondent Exhibit 4 – Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) – Form 114, dated September 18, 2008,
- Respondent Exhibit 5 – Notification of Final Assessment Determination – Form 115, dated February 18, 2009,
- Respondent Exhibit 6 – Letter from Mr. Jere Horwitz to Ms. Lisa Garoffolo, dated March 6, 2009, and Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated March 10, 2009,
- Respondent Exhibit 7 – Indiana Board of Tax Review Notice of Hearing on Petition, dated October 14, 2009,
- 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.

Analysis

14. 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 Bd. of Tax Comm'rs*, 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.

15. The Petitioners provided sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. 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 approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. In 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). 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 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 used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
 - d. Here, the Petitioners first contend that the assessor erred in its measurements of their house’s living area. *Horwitz testimony*. According to the Petitioners, their home only has 3,608 sq. ft. on the first floor and 1,090 sq. ft. on the second floor, for a total living area of 4,698 sq. ft. *Id.*; *Petitioner Exhibits 1 and 3*. In support of this contention, Mr. Horwitz presented a partial appraisal report showing the area of each floor of the house. *Id.* The property record card, on the other hand, shows 3,369 sq. ft. of living area on the first floor and 1,920 on the second floor, for a total area of 5,289 sq. ft. The Respondent, however, failed to present any evidence in support of its measurements. Thus, the Board finds the property-specific appraisal more credible than the mass appraisal property record card. Therefore the Board holds that the property record card should be corrected to reflect the proper living area of the

Petitioners' home.¹ However, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”). Thus, showing an error in the property record card alone is insufficient to raise a prima facie case that the assessed value of their property was incorrect.

- e. The Petitioners also argue that the property is over-assessed because there are two bisecting petroleum pipelines located on their land. *Petitioner Exhibit 4; Horwitz testimony*. This argument is similarly insufficient to support a change in the property’s assessed value. Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier “that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel.” GUIDELINES, glossary at 10. A Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). While the alleged use limitations on the property caused by the pipelines may be relevant to the issue of whether a negative influence factor should apply here, the Petitioners failed to show how this condition would impact the market value of the subject property. *See Talesnick*, 756 N.E.2d at 1108. Merely contending the pipelines “affect the value and resale ability of the home” falls far short of the Petitioners’ burden to prove the value of their property.

¹ The Petitioners also contend that the assessor incorrectly identified the house as being constructed in 1982. According to Mr. Horwitz, the house was built in 1972. However, this is contradicted by the Petitioners’ own appraisal which identifies the house as 23 years old as of 2005. Similarly, the Petitioners argue that there is no stone on their home. The property record card, however, does not indicate the house was assessed as having a stone façade. Finally, the Petitioners contend that the property record card improperly records the house as having thirteen rooms; whereas their appraisal only indicates the house has ten rooms. The Petitioners’ appraisal, however, specifically identifies “finished area *above grade*.” (emphasis added). Three additional rooms exist below grade (a recreation room, a bathroom and a utility room). Thus, the Petitioners failed to show any further errors in their property record card.

- f. Finally, the Petitioners contend that their property is over-valued based on the assessed value of comparable properties. *Petitioner Exhibits 5a-1 – 5a-2*. In support of this contention, the Petitioners submitted multiple listing sheets and property record cards for two neighboring properties. *Id.* According to Mr. Horwitz, the assessor is assessing comparable properties for less than their listing prices. *Horwitz testimony*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer’s lack of uniformity and equality claim where the taxpayer showed neither its own property’s market value-in-use nor the market values-in use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property’s market value-in-use. *Id.*
- g. Moreover, the Petitioners failed to show the comparability of those neighboring parcels. By comparing their assessed value to the assessed value of other properties, the Petitioners essentially rely on a “sales comparison” method of establishing the market value of the property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, the Petitioners merely contend one “comparable” property is similar in location, but it is newer, constructed of brick and stone and not bisected by petroleum pipelines and the other “comparable” property is superior in land size, house square footage and newer construction. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).
- h. Nevertheless, Mr. Horwitz testified that the Petitioners purchased the property under appeal on June 24, 2005, for \$739,000. *Horwitz testimony*. The Petitioners’ property record card and appraisal support this evidence. *Petitioner Exhibits 1 and 2A-B*. While the Petitioners did not trend their June 24, 2005, purchase price to the January 1, 2006, valuation date, the Board finds their purchase of the property is sufficiently timely to be some evidence of the property’s market value-in-use. *See* 50 IAC 21-3-3(a) (“For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date.”) Because the Petitioners purchased their

property within the time period that assessors used to determine the March 1, 2007, assessments, the Board finds that the Petitioners raised a prima facie case that the subject property is over-assessed.

- i. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise a prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Here, the Respondent did not challenge the purchase price of the property under appeal. She merely argued that, because the purchase date was 5 ½ months prior to the valuation date, the \$754,700 assessed value was correct. The Respondent, however, presented no evidence to support the contention that property values increased during that 5 ½ month period. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). Thus, the Respondent failed to rebut the Petitioners' purchase price in light of the rules requiring assessors to use sales from January 1, 2005, to December 31, 2006, to value properties for the March 1, 2007, assessment date.²

Conclusion

16. The Petitioners established a prima facie case. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of the Petitioners and holds that the property's value is \$739,000 based on the Petitioners' purchase of the property.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the Petitioners' assessment should be changed to reflect the property's purchase price of \$739,000. Further, their property record card should be corrected to reflect the proper living area.

² The Respondent also argued the Petitioners' incomplete appraisal should be given no weight. *Lewis and Garoffolo testimony*. The Board, however, is relying on the Petitioners' purchase of the property rather than their appraisal to value the subject property.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html>.