

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

Petition No.: 45-032-08-1-5-00001
Petitioner: David B. Catt
Respondent: Lake County Assessor
Parcel No.: 45-16-06-251-009-000-041
Assessment Year: 2008

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 October 14, 2009.
2. The PTABOA failed to hold a hearing on the Petitioner's appeal within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")
3. The Petitioner filed an appeal to the Board by filing a Form 131 on May 19, 2010. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.") The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 6, 2010.
5. The Board held an administrative hearing on August 12, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: David B. Catt, Property owner

For Respondent: Kristie L. Dressel, Center Township Assessor.

Facts

7. The subject property is a house located at 3700 West 104th Place, Crown Point, in Lake County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2008, the Center Township Assessor determined the assessed value of the property to be \$24,400 for the land and \$145,300 for the improvements, for a total assessed value of \$169,700.
10. The Petitioner requested an assessment of \$24,400 for the land and \$120,000 for the improvements, for a total assessed value of \$144,400.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
 - a. The Petitioner contends the assessed value of his property increased by more than 17%. *Catt testimony*. According to Mr. Catt, when he filed his appeal, the assessor told him that he would need to provide Multiple Listing Service listings of comparable homes or a certified appraisal. *Id.* Mr. Catt testified that he did not submit any information to the assessor because, he argues, the burden of proof is on the assessor if the assessment increased by more than 5%. *Id.*
 - b. The Petitioner further contends that his property is over-assessed compared to similar properties in his neighborhood. *Catt testimony*. In support of this contention, Mr. Catt presented photographs and assessed values for his property and three other properties in his neighborhood. *Petitioner Exhibits 6-8*. Mr. Catt testified that the house at 10402 Jennings is the same size as his house and also has a detached garage, but it does not have an unfinished basement. *Catt testimony; Petitioner Exhibit 6*. According to Mr. Catt, it is assessed for \$36,000 less than his property. *Id.* Similarly, the house at 3503 West 104th Place is larger, has a 2-car attached garage and an unfinished basement and is situated on a larger lot, but it is assessed \$2,200 less than his property. *Catt testimony; Petitioner Exhibit 7*. In addition, Mr. Catt contends, the property at 3510 West 104th Place is smaller, but it has a 2-car attached garage and an unfinished basement. *Catt testimony; Petitioner Exhibit 8*. According to Mr. Catt, it is assessed \$74,000 less than his property. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent's representative contends that, prior to 2009, the burden of proof was on the Petitioner to show that his property was over-assessed.

Dressel testimony. According to Ms. Dressel, her office sent the Petitioner two letters requesting information regarding the value of Mr. Catt's home, but he did not respond or submit any information. *Id.*

- b. Ms. Dressel further contends the Petitioner's assessment is fair based on comparable properties in his neighborhood. *Dressel testimony.* In support of this contention, Ms. Dressel presented property record cards for two properties. *Respondent Exhibits A and B.* According to Ms. Dressel, the Petitioner's property is a 1-story frame dwelling with 1,120 square feet and basement and is assessed at \$169,700. *Dressel testimony.* The first comparable property is also a 1-story dwelling with 1,120 square feet but with a crawl space. *Dressel testimony; Respondent Exhibit A.* It is assessed for \$153,100. *Id.* The other comparable property, assessed at \$137,300, is a 1-story with 960 square feet, a crawl space, and a detached garage. *Dressel testimony; Respondent Exhibit B.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 45-032-08-1-5-00001 David B. Catt,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Form 131 Petition,
 - Petitioner Exhibit 2 – Statement of David B. Catt,
 - Petitioner Exhibit 3 – Letter from Center Township Assessor dated April 16, 2010,
 - Petitioner Exhibit 4 – Letter from Center Township Assessor dated May 18, 2010,
 - Petitioner Exhibit 5 – Assessed value of the Petitioner's property,
 - Petitioner Exhibit 6 – Assessed value of 10402 Jennings,
 - Petitioner Exhibit 7 – Assessed value of 3503 West 104th Place,
 - Petitioner Exhibit 8 – Assessed value of 3410 West 104th Place,

 - Respondent Exhibit A – Property record card for 10403 Jennings Place,
 - Respondent Exhibit B – Property record card for 10401 Jennings Place,

 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of Hearing, dated July 6, 2010,
 - 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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish an error in his 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 approach, the sales comparison approach and the income approach to value. *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); *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 actual construction

costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. 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 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, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
- d. Here, the Petitioner first argues that the assessor has the burden of proof because the assessed value of his property increased by more than five percent over the preceding assessment date. *Catt testimony*. Mr. Catt appears to be referring to Indiana Code § 6-1.1-15-1, which governs the review of certain actions by the county property tax assessment board of appeals. The specific provision, Indiana Code § 6-1.1-15-1(p), states, "This subsection applies if the assessment for which a notice of review is filed increased the assessed value by more than five percent (5%) over the assessed value finally determined for the immediately preceding assessment date. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct." The amendment to Indiana Code § 6-1.1-15-1 adding subsection p was effective July 1, 2009.
- e. Although the Petitioner never cites to Indiana Code § 6-1.1-15-1(p), Mr. Catt appears to argue that subsection p applies to his 2008 assessment. The Respondent, on the other hand, argues that subsection p applies to assessments determined after the passage of the statute. There is nothing in the legislation to indicate that the statute was intended to be applied retroactively. Nor did the Petitioner offer any evidence or legal support for his argument that it should apply to his March 1, 2008, assessment year. Therefore, the Board holds that the burden of proof remains on the Petitioner in this matter.¹
- f. The Petitioner also argues that his property is over-valued based on the assessed values of other properties in his neighborhood. *Catt 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

¹ Given the lack of legal argument on the meaning and interpretation of subsection p, the Board limits its ruling to the facts and arguments raised in the case at bar.

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. To the extent the assessed values of the Petitioner's neighboring properties can be seen as some evidence of his property's market value-in-use, the Board finds that the Petitioner failed to raise a prima facie case his assessment was in error. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, Mr. Catt merely presented assessment information for three properties and made vague statements about the size of the houses and lots and the presence of a basement. This falls far short of the burden to prove the properties' comparability in order to be evidence of the subject property's market value-in-use.
- h. The Petitioner failed to establish a prima facie case that his property's assessment was in error. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to raise a prima facie case that his property's 2008 assessment was in error. The Board therefore finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

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>.