

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

Petition No.: 06-019-07-1-5-00406
Petitioners: James P. and Candace C. David
Respondent: Boone County Assessor
Parcel No.: 019-16131-01
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 (PTABOA) by written document dated October 10, 2008.
2. The PTABOA issued its decision on November 17, 2008.
3. The Petitioners filed a Form 131 petition with the Board on December 19, 2008. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 12, 2009.
5. The Board held an administrative hearing on July 16, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: James P. and Candace C. David, Petitioners
 - b) For Respondent: Lisa Garaffolo, Boone County Assessor
Cliff Hardy, county vendor and witness

Facts

7. The property is a single family residence located at 1450 Richmond Drive, in the city of Zionsville, Eagle Township in Boone County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

9. For 2007, the PTABOA determined the assessed value of subject property to be \$27,600 for the land and \$160,300 for the improvements, for a total assessed value of \$187,900.
10. The Petitioners request a total assessed value of \$158,566.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a) The Petitioners contend that the assessed value of their property is excessive, based on sales and asking prices of other properties in the neighborhood. *J. David testimony*. Mr. David testified that he computed the assessed value per square foot of the Petitioners' home based on its 2008 pay 2009 assessment, and the price per square foot of four other properties in the neighborhood based on either their sales price or their asking price. *Id.*; *Petitioners Exhibit 1-5*. According to Mr. David, the assessed value per square foot of their home is \$92.61, while the price per square foot of the other four properties averaged \$73.99. *Petitioners Exhibit 5*.
 - b) The Petitioners further argue that their property's assessment is over-stated based on its market value. *J. David testimony*. Mr. David testified that the Petitioners bought their home in late 2006 for \$174,900. *J. David testimony*. Since that time, only two other properties in the neighborhood have sold, and those properties were on the market for approximately a year to two years. *Id.* Mr. David argues that, in the time since the Petitioners bought their property, property values have gone down. *Id.*; *Petitioners Exhibits 1-5*. According to Mr. David, if he tried to sell his home today, he would only be able to sell it for about \$160,000. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a) The Respondent argues that the Petitioners' evidence is not probative of the property's value. *Garaffolo testimony*. Ms. Garaffolo contends that for 2007, assessed values are based on 2005 and 2006 sales data under the State's assessment rules. *Garaffolo testimony*. According to Ms. Garaffolo, the data Mr. David used for his analysis is from 2008 and 2009, which is too recent to apply to a March 1, 2007, assessment. *Id.*
 - b) Further, the Respondent argues that the price per square foot of homes varies due to the different exemptions various taxpayers have. *Garaffolo testimony*. According to Ms. Garaffolo, there is no set price per square foot used to assess properties. *Id.*
 - c) Finally, the Respondent contends the Petitioners' property is properly assessed based on the property's market value. *Garaffolo testimony*. According to Ms. Garaffolo, the Respondent prepared a Comparative Market Analysis using 2005

and 2006 sales data for comparable properties. *Id.*; *Respondent Exhibit 5*. Ms. Garaffolo argues that her sales analysis resulted in an average price per square foot of \$107. *Id.* At \$107, the subject property would have a value of \$214,214, which is higher than the property's actual 2007 assessed value of \$187,900. *Id.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
 - b. The digital recording of the hearing.
 - c. Exhibits:

Petitioners Exhibit 1: Sales listing sheet for the subject property,
Petitioners Exhibit 2: Sales listing sheet for 1446 Richmond Drive,
Petitioners Exhibit 3: Sales flyer and sales listing sheet for 1508
Richmond Drive,
Petitioners Exhibit 4: Sales flyer for 1509 Richmond Drive,
Petitioners Exhibit 5: Petitioners' price per square foot analysis,

Respondent Exhibit 1: County appeal worksheet,
Respondent Exhibit 2: Subject property's Property Record Card,
Respondent Exhibit 3: Photograph of the subject property,
Respondent Exhibit 4: Sales listing sheet for subject property,
Respondent Exhibit 5: Comparative Market Analysis for the subject
property,
Respondent Exhibit 6: Form 115,
Respondent Exhibit 7: Form 131 Petition,
Respondent Exhibit 8: Board's Notice of Hearing,

Board Exhibit A: Form 131 Petition,
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 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).

- 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 Twp. 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 value. 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). The appraisal profession traditionally has 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 value 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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 2006). But a taxpayer may rebut that presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, that valuation date is January 1, 2006. 50 IAC 21-3-3.

- d) The Petitioners argue that their property’s assessed value is excessive, based on sales and asking prices of other properties in the neighborhood. *J. David testimony, Petitioners Exhibits 1-5*. In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value-in-use of their property. See MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, 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 two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e) Here, the Petitioners made no effort to compare the properties which they claimed were “comparable” to their own property. Mr. David did not identify the common features of the properties nor did he value the differences between the properties. Moreover, the Petitioners presented sales and listing prices for properties currently on the market in 2009 or for sales in 2008 and 2009. *J. David testimony; Petitioners Exhibits 1-5*. The year under appeal is 2007, and as mentioned above, for tax year 2007, the assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. If a petitioner submits information from a different time period, he or she must somehow demonstrate how that information relates to the actual valuation date – in this case January 1, 2006. *Long*, 821 N.E.2d at 471. Because the Petitioners made no effort to relate their 2008 and 2009 data to the 2006 valuation date, the Petitioners failed to raise a prima facie case that their property is over-valued based on the sales of other properties.
- f) Nevertheless, Mr. David testified that the Petitioners purchased the property in December of 2006 for \$174,900. The Respondent’s evidence supports this testimony. While the Petitioners did not trend their December 2006 sale to the January 1, 2006, valuation date, the Board finds the purchase 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 assessors use to determine the March 1, 2007, assessments, the Board finds that the Petitioners presented a prima facie case that the subject property is over-assessed.

- g) 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 Respondents did not challenge the sale information for the subject property. Instead she offered a comparative market analysis which identified the price per square foot for six sales (including the Petitioners' purchase of the subject property). Like the Petitioners' sales analysis, however, the Respondent made no effort to compare the properties which she claimed were "comparable" to the subject property. Ms. Garaffolo did not identify the common features of the properties. Nor did she value the differences between the properties. This is insufficient to rebut the actual purchase of the property.

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 \$174,900 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 assessment should be changed to reflect the property's purchase price of \$174,900.

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 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>.