

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

Petition No.: 82-025-06-1-5-13261
Petitioners: Harold and Lois Bartlett¹
Respondent: Vanderburgh County Assessor
Parcel No.: 10-020-18-028-034
Assessment Year: 2006

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 Vanderburgh County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 7, 2007.
2. The Petitioners received notice of the decision of the PTABOA via a Form 115 Notification of Final Assessment Determination dated October 11, 2007.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 dated November 26, 2007. The Petitioners elected to have this case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 30, 2008.
5. The Board held an administrative hearing on July 29, 2008, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Timothy H. Bartlett, Petitioner
Richard A. Reid, Richard Reid Appraisal Co., Inc.
 - b. For Respondent: Candy Wells, PTABOA Hearing Officer
Tiffany Collins, PTABOA Administrative Asst.

¹ Harold and Lois Bartlett, the taxpayers of record when this appeal was initiated, predeceased the Board's hearing and their heirs and sons, Timothy Bartlett and David Bartlett, pursued the appeals process with Timothy appearing at the Board's hearing. Ownership of the parcel has transferred to Timothy and David Bartlett, dba D & S Properties. See *Petitioner Exhibit 5*.

Facts

7. The property under appeal consists of three residences on a single 75-foot-by-120-foot lot located at 3110-3114 Tieman Avenue, Perry Township, in Vanderburgh County, Evansville, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property is \$22,300 for the land and \$42,300 for the improvements, for a total assessed value of \$64,600.
10. The Petitioner requested an assessed value of \$7,500 for the land and \$20,500 for the improvements, for a total of \$28,000.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend the Respondent assessed the appealed property for more than its market value-in-use. *Bartlett argument*. According to the Petitioners, the property appraised for \$28,000. *Id.* In support of their position, the Petitioners submitted an appraisal report prepared by Richard Reid of Richard Reid Appraisal Co., Inc. *Petitioner Exhibit 1*. Mr. Reid is an Indiana Certified General Appraiser. *Id.* In the September 5, 2007, report Mr. Reid estimated the market value-in-use of the appealed property to be \$28,000 as of August 28, 2007. *Id.* In response to the Respondent's argument that the appraisal valuation is not timely, Mr. Reid testified that market prices have been falling in the area. *Reid testimony*. Thus, Mr. Reid argues, he would apply a negative adjustment to the appraised value if he were to value the property as of January 1, 2005. *Id.*
 - b. The Petitioners further contend that the Vanderburgh County zoning laws require a minimum lot size for residential property zoned R-2 of 50 feet wide, with no fewer than 5,000-square-feet total. *Bartlett argument, Reid testimony, Petitioner Exhibit 3*. Therefore, the Petitioners argue, the parcel cannot be legally separated into three lots with a single residential improvement on each. *Id.* Similarly, Mr. Bartlett contends, Fifth-Third Bank refused to finance the sale of a single home on the parcel because the parcel has three improvements and there are no deeds for the individual homes. *Bartlett argument, Reid testimony, Petitioner Exhibit 4*.
 - c. Finally, the Petitioners contend that their appraiser calculated a Gross Rent Multiplier (GRM) of 25 calculated based on sales and rents of comparable properties. *Bartlett argument, Reid testimony, Petitioner Exhibit 1*. According to the Petitioners, this GRM is more appropriate to use in establishing the value of the property based on rental income, than the 109 GRM used in the assessment by the Perry Township Assessor. *Id.*

12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends that the 2006 assessed value is correct following an adjustment as a result of the county-level hearing. *Wells argument*. In support of this argument, the Respondent entered into evidence a copy of its recommendation from county-level hearing. *Respondent Exhibit 2*.
 - b. The Respondent also contends that the appraisal's valuation date of August 28, 2007, falls outside the time frame mandated by the state for the trending assessment adjustment. *Wells argument*. According to Ms. Wells, the 2006 assessment must reflect the value of the property as of January 1, 2005. *Id.* Properties are valued by examining sales of properties occurring between January 1, 2004, and December 31, 2005, and performing sales ratio studies for the March 1, 2006, assessment date. *Id.*
 - c. Finally, the Respondent argues, the Petitioners' appraisal is flawed. *Wells testimony*. According to Ms. Wells, the adjustments the appraiser used on the three comparable properties' sales values were higher than the 15 percent to 25-percent average adjustment used in "good appraisals." *Id.*, *Respondent Exhibit 2*. Ms. Wells further contends that the GRM used in the appraisal's income approach to value is too low at 25. *Wells testimony*. According to Ms. Wells, the township assessor determined a GRM of 108.06 is standard for the Perry Township market. *Id.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition and related attachments,
 - b. The digital recording of the hearing labeled 82-025-06-5-1-13261 Bartlett,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Appraisal Report prepared by Robert Reid Appraisal Co. Inc.,
 - Petitioner Exhibit 2 – Copy of the Form 131,
 - Petitioner Exhibit 3 – Letter from Joel Wiegand, Area Plan Commission, to Tim Bartlett, dated November 17, 2007,
 - Petitioner Exhibit 4 – Letter from J. Michael Ashworth, Fifth-Third Bank, to Tim Bartlett, dated November 6, 2007,
 - Petitioner Exhibit 5 – Warranty deed on appealed property recorded on January 8, 2008,

 - Respondent Exhibit 1 – Copy of Petitioners' Appraisal Report,
 - Respondent Exhibit 2 – Hearing Officer's Recommendation to Vanderburgh County PTABOA,

Respondent Exhibit 3 – 2006 property record cards for appealed parcel,

Board Exhibit A – Form 131 petition and related 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 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 Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a. Real property is assessed based on its “true tax value.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). True tax value is “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, for the property.” *Id.* A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *Id.*; *Kooshtard Property IV*, 836 N.E.2d at 505, 506 n.1.

- b. In addition, the 2006 assessment is to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c. Here the Petitioners presented an appraisal that estimated the value of the appealed property to be \$28,000 as of April 28, 2007. *Petitioner Exhibit 1; Bartlett testimony; Reid testimony*. The appraiser attested that the appraisal was prepared in accordance with USPAP standards, and includes the cost, the sales comparison, and the income approaches to value. *Id.*
- d. The appraisal, however, suffers from a shortcoming in that it does not value the subject property as of the relevant valuation date. The Petitioners' appraiser, in response to the Respondent's argument that the appraisal's valuation date is out of compliance with the Manual, testified that properties with multiple sales showed that properties in the area had been losing value. *Reid testimony*. As an example, Mr. Reid testified that the property used as Comparable No. 1, which sold for \$16,000 on May 3, 2007, sold previously for \$41,900.² Despite this evidence, Mr. Reid argues that using the valuation date of January 1, 2005, would result in a negative adjustment to the subject property's appraised value. *Id.*
- e. The Petitioners' appraiser's testimony that he would apply a negative adjustment to trend the value to the January 1, 2005, valuation date is some evidence relating the Petitioners' August 28, 2007, appraised value to the January 1, 2005, valuation date. However, this testimony is contradicted by the evidence. Mr. Reid testified that property values are declining. Further, he provided the example of Comparable 1 that had a prior sale at a higher value to show the decline in value of properties in the area. Finally, the assessor trended the property's value downward between 2006 and 2007. The Board finds the evidence that properties are declining in value more persuasive. As such, the Board must conclude that the property's January 1, 2005, value is higher than August 28, 2007, appraised value. Therefore, the Board finds that the value in the appraisal is not probative of the property's market value-in-use as of the valuation date.
- f. The Petitioners also contend the property is over-valued because there are three homes on the same parcel. According to the Petitioners, the houses cannot be sold individually because the houses cannot be deeded separately and financing would not be available. *Petitioner Exhibit 3*. Further, Mr. Reid argues, the Petitioners could be forced to raze one or more houses to bring the property into compliance with the property's current R-2 zoning. *Reid testimony*. While these characteristics may, in fact, negatively impact the value of the property, as the Board found above, the Petitioners failed to show what that value is. It is not enough to show that the current assessment is incorrect. A Petitioner must specifically show what the correct

² The Board notes that the assessor also trended the property's value downward between 2006 and 2007. *See Respondent Exhibit 3*.

assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 478.

- g. The Petitioners failed to raise a prima facie case that their property is over-assessed. 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. v. Dep't of Local Gov't. Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioners failed to raise a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines 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

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>.