

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

Petition No.: 45-036-06-1-5-00001
Petitioner: Mirko Blesich
Respondent: Lake County Assessor
Parcel No.: 45-11-34-201-011.000-035
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 Petitioner initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated February 22, 2008.
2. The PTABOA issued a notice of its decision on January 28, 2010.
3. The Petitioner filed a Form 131 petition with the Board on March 9, 2010. 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: Mirko Blesich, Property owner

For Respondent: Hank Adams, St. John Township Assessor
Melody Kikkert, Real Estate Deputy, St. John Township.

Facts

7. The subject property is a house located at 9338 Mallard Lane, St. John, in Lake County.
8. The ALJ did not conduct an on-site visit of the property.

9. For 2006, the PTABOA determined the assessed value of the subject property to be \$42,000 for the land and \$258,000 for the improvements, for a total assessed value of \$300,000.¹
10. The Petitioner requested an assessment of \$38,000 for the land and \$238,000 for the improvements, for a total assessed value of \$276,000.

Issues

11. Summary of the Petitioner's contentions in support of an error in his assessment:
 - a. The Petitioner contends that his property is over-assessed compared to the assessment of similar properties in his neighborhood. *Blesich testimony*. In support of this contention, Mr. Blesich presented a list of the assessed values for his property and ten other properties. *Petitioner Exhibits 1-4 and 2-A*. According to Mr. Blesich, three-bedroom homes in his neighborhood were assessed at an average of \$104 per square foot and four-bedroom homes were assessed at an average of \$111 per square foot. *Id.* Thus, the Petitioner concludes his property should not be assessed for more than \$280,674, or \$111 per square foot. *Blesich testimony*.
 - b. The Petitioner further contends that the insurance replacement cost of his home supports a lower assessed value. *Blesich testimony*. In support of this contention, the Petitioner submitted a copy of his insurance policy declaration showing a replacement value of \$238,500 for the house. *Petitioner Exhibit 2-B*. Mr. Blesich testified that, as a builder, he has knowledge of construction costs and, he argues, the insurance value is in line with the cost to rebuild his home. *Blesich testimony*. According to Mr. Blesich, adding the replacement value of the house to the assessed value of the lot results in a total valuation of \$285,000. *Id.*
 - c. In addition, the Petitioner argues that the Respondent's appraisal lacks credibility and should be given little weight. *Blesich testimony*. According to Mr. Blesich the appraisal is incorrect because his home has only three bedrooms, rather than four. *Blesich testimony*. Moreover, Mr. Blesich contends that two of the comparable sales used in the appraisal are six months to one year after the valuation date. *Id.* Similarly, Mr. Blesich argues, the appraisal was done in July 2008 – three years after the valuation date. *Id.* If the Respondent believed its appraisal was credible, Mr. Blesich argues, then

¹ The Respondent's representative, Mr. Adams, argues that the original assessment of \$321,800 should be the value at issue, rather than the value determined by the PTABOA. Mr. Adams, however, is incorrect. Pursuant to Indiana Code § 6-1.1-15-3(a) and (c), it is the determination of the county property tax assessment board of appeals that may be appealed to the Board, not the assessment of the property by an assessing official.

he would have assessed all the homes in his neighborhood at the same value per square foot. *Id.*

- d. Finally, the Petitioner argues that the entire appeal process has been contentious. *Blesich testimony*. According to Mr. Blesich, he requested an opportunity to see the Respondent's appraisal at the preliminary hearing and prior to the PTABOA hearing, but the assessor refused to provide a copy of the appraisal on both occasions. *Id.* In that same vein, the Petitioner contends his 2009 assessment increased to \$342,000, which he argues is unconscionable, inappropriate, and vindictive. *Id.*; *Petitioner Exhibit 2-F*.
12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent's witness contends that the market value-in-use of the property is \$305,000. *Kikkert testimony*. In support of this contention, the Respondent presented an appraisal prepared by a licensed Indiana residential appraiser in accordance with the Uniform Standards of Professional Appraisal Practice. *Respondent Exhibit 4*. According to the appraisal report, the appraiser estimated the value of the Petitioner's property to be \$305,000 as of January 1, 2005. *Id.* Similarly, Ms. Kikkert contends, the Petitioner submitted a 2002 appraisal that valued the property at \$280,000 for his 2002 assessment. *Kikkert testimony*; *Respondent Exhibit 14*. According to Ms. Kikkert, trending the 2002 appraised value by 3% per year similarly results in a value of \$305,200 for the 2006 assessment. *Id.*
 - b. The Respondent's witness further contends that sales of comparable properties support the assessed value. *Kikkert testimony*. In support of this contention, Ms. Kikkert presented a sales comparison valuation using five sales in the Petitioner's neighborhood. *Respondent Exhibit 5*. Ms. Kikkert testified that she time adjusted the sales 3% per year, which was the average appreciation for homes in the area according to the assessor's sales analysis. *Id.* From those adjusted sales, Ms. Kikkert testified, she calculated the average square foot price of comparable homes to be \$119.36, resulting in a value of \$302,581 for the Petitioner's house. *Id.*
 - c. In response to the Petitioner's argument, Ms. Kikkert contends that the Petitioner's homeowner's insurance value is not relevant because comparable sales are more indicative of market value. *Kikkert testimony*. In support of this contention, Ms. Kikkert submitted several articles that addressed insurance coverage and replacement cost. *Respondent Exhibit 16*. Further, Ms. Kikkert argues, the Petitioner's assessment analysis was incorrect. *Kikkert testimony*. According to Ms. Kikkert, the Petitioner's exhibit shows the 2006 assessment of 9302 Mallard to be \$263,800, or \$96.35 per square foot; whereas the correct 2006 assessment for that property is \$297,300, or \$108 per square foot. *Kikkert testimony*. Finally, in response to the Petitioner's claim that his house has three bedrooms rather than four, the

Respondent's witness contends that a property's assessed value is based on the overall living area, amenities, and exterior features and not the number of rooms in a house. *Kikkert testimony*. According to Ms. Kikkert, the Petitioner's home has six-panel doors, hardwood floors, crown molding and upgraded carpeting and trim which makes it more valuable than houses without such amenities. *Id.*; *Respondent Exhibit 2*.

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 45-036-06-1-5-00001 Mirko Blesich
 - c. Exhibits:²
 - Petitioner Exhibit 1 – Petitioner's response to the Respondent's evidence,
 - Petitioner Exhibit 1-1 – Form 115,
 - Petitioner Exhibit 1-2 – August 8, 2008, letter from the St. John Township Assessor,
 - Petitioner Exhibit 1-3 – June 19, 2008, letter from the St. John Township Assessor,
 - Petitioner Exhibit 1-4 – Comparison of assessed values of neighboring properties,
 - Petitioner Exhibit 1-5 – Property information for 8640 92nd Lane,
 - Petitioner Exhibit 2 – Petitioner's explanation of value determination,
 - Petitioner Exhibit 2-A – Appeal presentation to the PTABOA,
 - Petitioner Exhibit 2-B – Homeowner's insurance policy,
 - Petitioner Exhibit 2-C – Letter to the PTABOA,
 - Petitioner Exhibit 2-D – Letter to the St. John Township Assessor requesting a copy of the appraisal,
 - Petitioner Exhibit 2-E – PTABOA recommendation,
 - Petitioner Exhibit 2-F – Property tax bill for the Petitioner's property,
 - Petitioner Exhibit 2-G – Letter to the St. John Township Assessor regarding the status of the Petitioner's appeal,

 - Respondent Exhibit 1 – Assessed value and tax information for 2006,
 - Respondent Exhibit 2 – Property record card,

² Mr. Adams objected to the evidence presented by the Petitioner because Mr. Blesich failed to provide the Respondent with copies of his evidence. According to Mr. Adams, however, he requested the exhibits on August 10, 2010 – only two days prior to hearing. Pursuant to 50 IAC 3-1-5(d), if requested, a party must provide copies of: (a) any documentary evidence intended to be presented; and (b) the names and addresses of all witnesses to the opposing party at least five (5) business days before the hearing date. Because Mr. Adams failed to request the information within a reasonable amount of time to allow the Petitioner to comply with the Board's rules, the Respondent's objection is over-ruled.

Respondent Exhibit 3 – Photograph of the Petitioner’s property,
 Respondent Exhibit 4 – Appraisal of the Petitioner’s property,
 Respondent Exhibit 5 – Sales comparison approach valuing the
 Petitioner’s property,
 Respondent Exhibit 6 – Property record card and photograph of 8640 92nd
 Lane,
 Respondent Exhibit 7 – Property record card and photograph of 8629 92nd
 lane,
 Respondent Exhibit 8 – Property record card, listing summary and
 photograph of 9130 Drake Drive,
 Respondent Exhibit 9 – Property record card listing summary and
 photograph of 8610 92nd Lane,
 Respondent Exhibit 10 – Property record card, listing summary and
 photograph of 9191 Mallard Lane,
 Respondent Exhibit 11 – Map of the Petitioner’s neighborhood,
 Respondent Exhibit 12 – Neighborhood sales and trending,
 Respondent Exhibit 13 – Notice of representation,
 Respondent Exhibit 14 – 2002 Indiana Board of Tax Review decision
 regarding the subject property,
 Respondent Exhibit 15 – Form 131 petition to the Indiana Board of Tax
 Review,
 Respondent Exhibit 16 – Articles about insurance and replacement cost,
 Respondent Exhibit 17 – Property record card for 9502 W. 89th Avenue,
 Respondent Exhibit 18 – Real Property Maintenance Report for 8640 92nd
 Lane,
 Respondent Exhibit 19 – Real Property Maintenance Report for 8629 92nd
 Lane,
 Respondent Exhibit 20 – Sales from the Multiple Listing Service (MLS),
 Respondent Exhibit 21 – Spreadsheet with assessed values,
 Respondent Exhibit 22 – Packet of property record cards,
 Respondent Exhibit 23 – List of sales in the Petitioner’s neighborhood,
 Respondent Exhibit 24 – Packet of property record cards and sales
 disclosures,

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, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.

- d. The Petitioner first argues that his property is over-valued based on the assessed values of other properties in his neighborhood. *Blesich testimony*. However, this argument 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.*
- e. To the extent that the Petitioner's evidence could be considered some evidence of his property's market value, his claim similarly fails. In comparing his property's value to the sales prices and assessed values of other properties, Mr. Blesich essentially relies on a sales comparison approach to establish his property's market value-in-use. See MANUAL at 13. 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 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, the Petitioner merely compared the living area of the houses, the number of bedrooms and the size of the lots and garages in the most general terms. *Petitioner Exhibit 1-4 and 2-A*. Even if Mr. Blesich had sufficiently shown that his property was comparable to the neighboring properties, he failed to value the differences between them. Thus, the Petitioner failed to raise a prima facie case that his assessment was in error by presenting evidence of the assessed values and sales prices of neighboring properties.
- f. The Petitioner also contends the property is over-assessed compared to the replacement cost shown on his homeowner's insurance policy. *Blesich testimony*. While replacement cost can provide some evidence of a property's

market value-in-use, the Petitioner did not establish that AMCO Insurance employed an expert qualified to appraise or otherwise offer an opinion on the value of the property. Further, the declarations page does not explain how the insurance company arrived at its values for the improvements in any manner. Without explanation, the insurance policy declarations page is insufficient to establish a prima facie case regarding the market value of the property. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998) (statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination). Moreover, while Mr. Blesich contends that in his opinion as a home builder the insurance value is in line with the replacement value, he only used the replacement cost of the house in his calculation. Adding the \$23,850 value of "other structures" brings the total replacement cost of improvements to \$262,350 which, when added to the land value of \$42,000, would total \$304,350. The Petitioner, therefore, failed to raise a prima facie case that the assessed value of his property was too high.³

- g. 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). Despite this, the Board notes that the Respondent presented an appraisal valuing the property as of January 1, 2005, and trended the Petitioner's 2002 appraisal to the valuation date. Both of these documents support the assessed value of the property. Thus, to the extent the Petitioner's evidence could be seen as raising a prima facie case, the Board holds that the Respondent sufficiently rebutted that evidence.⁴

Conclusion

- 16. The Petitioner failed to establish 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 that the assessment should not be changed.

³ The Petitioner also contends the Assessor erred in assessing the number of rooms in his house. However, as shown by the Petitioner's property record card, houses are assessed by living area and no value is assigned to the number of rooms in a home. *Respondent Exhibit 2*.

⁴ The Petitioner contends the entire appeal process was contentious and that the township assessor and the PTABOA denied him the opportunity to view the Respondent's appraisal. While the Petitioner ultimately obtained a copy of that appraisal, the Board cautions the Assessor that taxpayers have the right to request and obtain a copy of any document that is not somehow excluded from the state's public records laws. *See Ind. Code §5-14 et. seq.*

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>.