

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

Petition No.: 20-015-07-1-5-00012
Petitioners: Marion S. and Margaret F. Carlin
Respondent: Elkhart County Assessor
Parcel No.: 20-11-06-451-016-000-015
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 Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) by written document on September 23, 2008.
2. The PTABOA issued notice of its decision on April 7, 2009.
3. The Petitioners filed a Form 131 petition with the Board on May 18, 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 December 23, 2009.
5. The Board held an administrative hearing on March 9, 2010, 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: Marion S. Carlin, Petitioner
 - b. For Respondent: Cathy Searcy, Elkhart County Assessor

Facts

7. The subject property is a single-family residence and utility shed on 1.543 acres of land located at 2311 Bashor Road, Goshen, in Elkhart 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 \$31,800 for land and \$149,500 for the improvements, for a total assessed value of \$181,300.
10. The Petitioners requested an assessed value of \$23,400 for the land and \$142,100 for the improvements, for a total assessed value of \$165,500.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a. The Petitioners contend the assessed value of their property is overstated because local officials assigned their property to the wrong neighborhood. *Carlin testimony*. Mr. Carlin testified their property is currently assessed as part of the Colonial Farms neighborhood which has houses located on streets with curbs and sidewalks. *Id.* According to Mr. Carlin, the Petitioners' property is located in an area with no curbs or sidewalks and surrounded by low cost homes that average approximately \$130,000 in price. *Id.*
 - b. The Petitioners similarly argue that their property is over-valued based on the proximity of those low-cost homes. *Carlin testimony*. In support of their position, the Petitioners submitted multiple listing sheets (MLS) for seven properties located in the Colonial Manor neighborhood showing listing prices from \$121,700 to \$134,900. *Petitioner Exhibit 4*. Mr. Carlin argues that the listing prices of the neighboring properties affect the market value of the property under appeal. *Carlin testimony*. Therefore, the Petitioners conclude, their 2007 assessed value should be reduced. *Carlin testimony*.
 - c. The Petitioners also contend their property is over-assessed compared to a similar property in the area. *Carlin testimony*. In support of their position, the Petitioners submitted a newspaper advertisement for a comparable home listed for sale in 2008. *Petitioner Exhibit 3; Carlin testimony*. Mr. Carlin testified that the property located at 411 Danbury Drive, which is the same style of home as the Petitioners' but with less living area, sold for \$158,000 in 2008. *Id.* The property, however, was assessed for more than \$180,000 in 2007.¹ *Id.* According to the Petitioners, this shows that the assessor is assessing properties for considerably more than their sales prices. *Carlin testimony*.
 - d. Mr. Carlin further contends their property is over-assessed based on its market value. *Carlin testimony*. According to Mr. Carlin, the Petitioners offered to sell

¹ The Respondent submitted the subject property record card showing the property was assessed for \$181,300 in 2007. *Respondent Exhibit 1*.

their house for \$170,000 to two parties that expressed an interest in the property. *Carlin testimony*. However, Mr. Carlin argued, they received no offers on the property from those two families. *Id.* Thus, the Petitioners conclude, their property is worth less than \$170,000. *Id.*

- e. Finally, the Petitioners argue that the value of their property is diminished by a drainage ditch that runs along their property line. *Carlin Testimony*. According to Mr. Carlin, the drainage ditch is used to catch the water run-off caused by rain and snow from the neighboring subdivision, which in turn causes the use of that portion of the property to be severely restricted. *Id.*

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

- a. The Respondent contends the property under appeal is correctly assessed at \$181,300. *Searcy testimony*. According to Ms. Searcy, the Petitioners are classified in the correct neighborhood with similar type homes. *Id.*
- b. Ms. Searcy also argues that the Petitioners have not presented any probative market value evidence to establish their 2007 assessment is incorrect. *Searcy testimony*. According to Ms. Searcy, local officials calculated the neighborhood factor – or trending factor – using sales from 2005 and 2006 to determine assessed values for the March 1, 2007, assessment. *Respondent Exhibit 6; Searcy testimony*. Because the property located at 411 Danbury Drive sold on June 10, 2008, Ms. Searcy argues, it is not a valid sale for the March 1, 2007, assessment. *Respondent Exhibit 3; Id.*
- c. Finally, the Respondent contends the property's assessment is correct based on the values of two comparable properties in the area. *Searcy testimony*. According to Ms. Searcy, the first property, located at 206 Constitution Avenue, has slightly less living area, a full second story and is older than the property under appeal and is assessed for \$166,000.² *Respondent Exhibits 2 and 4; Searcy testimony*. The Respondent's second property is located at 411 Danbury Drive, has slightly less living area, a partial second floor, a 532 square foot finished attic area and is older than the property under appeal and is assessed for \$179,900. *Respondent Exhibits 3 and 4; Searcy testimony*. Thus, the Respondent concludes, the Petitioners' \$181,300 assessment is fair and accurate for the March 1, 2007, assessment year. *Searcy testimony*.

² Respondent Exhibit 2 shows the property located at 206 Constitution Avenue sold on June 30, 2006, for \$194,900. *Respondent Exhibit 2*.

Record

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

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

Petitioner Exhibit 1 – Notice of Hearing on Petition, dated December 23, 2009,

Petitioner Exhibit 2 – Petition to the Property Tax Assessment Board of Appeal for Review of Assessment – Form 130,

Petitioner Exhibit 3 – Newspaper listing for 411 Danbury Drive,

Petitioner Exhibit 4 – Multiple Listing Sheets for 901 Lantern, 928 Lantern, 841 Eagle, 831 Eagle, 931 Eagle, 923 Eagle, and 908 Eagle, Goshen,

Petitioner Exhibit 5 – Notice of Assessment of Land and Structures – Form 11 R/A, dated January 30, 2008,

Petitioner Exhibit 6 – Notice of Hearing on Petition – Real Property – Form 114, dated August 18, 2008,

Petitioner Exhibit 7 – Letter from Becca Briscoe, Elkhart Township Assessor to Marion and Margaret Carlin, dated February 19, 2008,

Petitioner Exhibit 8 – Analysis of tax appeal for property located at 2311 Bashor Road presented at the PTABOA hearing by the Elkhart County Assessor,

Petitioner Exhibit 9 – Assessor’s Evidence Request Form from the Elkhart County PTABOA to Cathy Searcy, Elkhart County Assessor, dated September 17, 2008, and a printout from the “Appraisers Forum” website,

Petitioner Exhibit 10 – Notice of Final Assessment Determination – Form 115, dated April 7, 2009,

Petitioner Exhibit 11 – Property record card for 2311 Bashor Road, Goshen,

Respondent Exhibit 1 – Property record card for 2311 Bashor Road, Goshen,

Respondent Exhibit 2 – Property record card for 206 Constitution Avenue, Goshen,

Respondent Exhibit 3 – Property record card for 411 Danbury Drive, Goshen,

Respondent Exhibit 4 – Exterior photographs of 2311 Bashor Road, 206
Constitution Avenue and 411 Danbury Drive,
Goshen,

Respondent Exhibit 5 – Aerial Map of 2311 Bashor Road, Goshen,

Respondent Exhibit 6 – 2007 Sales Ratio Study for Neighborhood No.
0722,

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 case. *Id.; Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners failed to provide 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 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 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 value of their property is overstated because local assessing officials assigned their property to the wrong neighborhood. *Carlin testimony*. According to Mr. Carlin, the Petitioners' property is located in an area with no curbs or sidewalks and surrounded by low cost homes that range in price from \$121,700 to \$134,900. *Id.* In support of this argument, the Petitioners submitted MLS sheets for seven properties located in the Colonial Manor neighborhood. *Petitioner Exhibit 4*. Given the proximity of the low cost homes and their property's lack of amenities, the Petitioners argue, they should be classified in the Colonial Manor neighborhood rather than Colonial Farms where homes are located on streets with curbs and sidewalks. *Carlin testimony*.
- e. For assessment purposes, neighborhoods are not determined by geographic proximity alone. Neighborhoods are defined according to: "(1) common development characteristics; (2) the average age of the majority of improvements; (3) the size of lots or tracts; (4) subdivision plats and zoning maps; (5) school and other taxing districts boundaries; (6) distinctive geographic boundaries; (7) any manmade improvements that significantly disrupt the cohesion of adjacent properties; (8) sales statistics; and (9) other characteristics deemed appropriate to assure equitable determinations." GUIDELINES, ch. 2 at 8. Here, Mr. Carlin merely testified that the property under appeal and the surrounding "low cost" homes lack curbs and

- sidewalks and are located in the same geographical area. However, that is insufficient to show that the neighborhood classification was in error. The Petitioners did not present evidence related to the factors used in determining neighborhoods. Nor did they offer any market value evidence showing that the neighborhood factor or land base rates themselves were in error. Thus, the Petitioners failed to raise a prima facie case that their property's assessment is incorrect based on its neighborhood classification.
- f. Even if the assessor had erred in the Petitioners' neighborhood classification or in applying the neighborhood factor, a taxpayer 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, 677 (Ind. Tax Ct. 2006). Instead, the Petitioners must show that the assessment does not accurately reflect the subject property's market value-in-use. *Id.*; see also *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor's technical failure to comply strictly with the Guidelines). Thus, the Petitioners' attempt to show that their neighborhood classification was in error by itself is insufficient to raise a prima facie case that the assessed value of their property was incorrect.
- g. Next, the Petitioners contend their property is over-valued based on the sale of a comparable property. *Petitioner Exhibit 3; Carlin testimony*. By comparing their assessed value to the sale of a comparable property, the Petitioners are essentially relying on a "sales comparison" method of establishing the market value-in-use of their 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 property 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. Here, the Petitioners merely contend the comparable property is similar in the style of home, but has less living area. This falls far short of the burden to prove that the properties are comparable as established by the Indiana Supreme Court. See *Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Moreover, the Petitioners failed to relate the 2008 sale to the January 1, 2006, valuation date for the assessment year under appeal. As stated above, a taxpayer offering evidence of a property's value relating to a different date must provide some explanation relating that evidence to the valuation date in question. *Long*, 821 N.E.2d at 471.

- h. The Petitioners also argue that the property is over-valued because they have been unable to sell their house for \$170,000, which is less than its assessed value. *Carlin testimony*. While a taxpayer's unsuccessful attempts to sell a property may, in fact, be some indication of a property's value, here the Petitioners presented no details of how or when the property was listed for sale. The Petitioners did not present evidence that they listed their home on the MLS or that the availability of the house was widely advertised. Nor did they show that the property was for sale during the relevant valuation date. At best, the Board can infer that the Petitioners recently offered the property to two families who expressed some interest in purchasing the property. This is insufficient to prove that the property is not worth more than the price at which the Petitioners offered the home. Conclusory statements that the property would not sell for as much as its current assessed value are not probative evidence. *Whitley Products v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- i. Finally, the Petitioners argue that the property is over-assessed because there is a drainage ditch that runs along their property line. *Carlin testimony*. 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 surround areas. *See Talesnick v. State Board of Tax Commissioners*, 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 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 Board of Tax Commissioners*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Thus, while the alleged use limitations on the property caused by the drainage ditch 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 property under appeal. *See Talesnick*, 756 N.E.2d at 1108.
- j. Where a taxpayer fails to provide probative evidence that its assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to raise a prima facie case that their property was over-valued. 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.

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>.