

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

Petition No.: 37-033-07-1-5-00001
Petitioner: Richard J. Cook, Jr.
Respondent: Jasper County Assessor
Parcel No.: 014-00767-00
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 Petitioner initiated an assessment appeal with the Jasper County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 16, 2008.
2. The Petitioner received notice of the decision of the PTABOA on December 15, 2008.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the Board on January 26, 2009. 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 April 30, 2009.
5. The Board held an administrative hearing on June 25, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The following people were present and were sworn in at the hearing:

For Petitioner: Richard J. Cook, Jr., Petitioner

For Respondent: Richard Potts, Jasper County Assessor
Earl Walton, PTABOA Chairman.¹

¹ Sandra Lackey and Donna Wiseman from the assessor's office were also present.

Facts

7. The subject property is a residential property located at 4700 West 1100 North, Wheatfield, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$34,000 for the land and \$311,700 for the improvements, for a total assessed value of \$345,700.
10. The Petitioner requested an assessment of \$34,000 for the land and \$276,700 for the improvements, for a total assessed value of \$310,700.²

Issues

11. Summary of the Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends his property's assessment is over-stated because his house is assessed with a basement but the foundation is actually a crawl space. *Cook testimony*. According to the Petitioner, if the property record card is changed from a basement to a crawl space, the value of the improvements would be reduced from \$310,700 to \$276,700. *Id.* In support of this contention, the Petitioner presented two photographs of the property being built. *Petitioner Exhibit 10*. The Petitioner further presented a property record card with his revised calculation. *Petitioner Exhibit 10*.
 - b. In response to the Respondent's case, the Petitioner contends that he overpaid for the property and that the appraisal was done for financing purposes. *Cook testimony*. Mr. Cook testified that he believes that the mass appraisal system used by the county is the correct method by which to obtain his property's value. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent contends the Petitioner requested a value of \$325,000 on his initial petition and presented an appraisal that valued the property at \$325,000 at the PTABOA hearing. *Potts testimony; Respondent Exhibit A-1 and A-2*.
 - b. The Respondent further contends that the current assessment system in Indiana is based on value determined by sales and not on the physical characteristics of the property. *Potts testimony*.

² On his Form 131 petition, the Petitioner requested \$34,000 for the land and \$291,000 for the improvements, for a total assessed value of \$325,000.

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 37-033-07-1-5-00001 Richard Cook,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Form 131,
 - Petitioner Exhibit 2 – Form 130,
 - Petitioner Exhibit 3 – PTABOA Findings, Form 115,
 - Petitioner Exhibit 4 – Form 115, attachment,
 - Petitioner Exhibit 5 – Evidence request and certified mail receipt,
 - Petitioner Exhibit 6 – Photographs of the property,
 - Petitioner Exhibit 7 – Form 133,
 - Petitioner Exhibit 8 – Property record card printed June 19, 2009,
 - Petitioner Exhibit 9 – Property record card printed December 2, 2008,
 - Petitioner Exhibit 10 – Property record card with the Petitioner’s revised property valuation,

 - Respondent Exhibit A-1 – Appeal form,
 - Respondent Exhibit A-2 – Petitioner’s appraisal valuing the property at \$325,000,
 - Respondent Exhibit A-3 – Sales disclosure showing the property was purchased for \$325,000,
 - Respondent Exhibit B – Respondent’s conclusion,³

 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of Hearing dated April 30, 2009,
 - Board Exhibit C – Hearing sign-in sheet,
 - d. These Findings and Conclusions.

³ The Petitioner objected to all of the Respondent’s exhibits because the Petitioner requested the evidence prior to the hearing in accordance with the Board’s procedural rules. The Respondent admitted that he failed to exchange the exhibits as required. The Board, however, may waive its procedural deadlines for any materials that had been: (1) submitted; or (2) made part of the record: at a PTABOA hearing, a department hearing, or other proceeding from which the appeal arises. 52 IAC 2-7-1(d). Mr. Potts testified that the Petitioner presented the appraisal at the PTABOA hearing and the Form 115 supports Mr. Potts’ testimony. The Board, therefore, will consider Respondent Exhibits A-1 and A-2. There is no indication that Respondent Exhibit A-3, the sales disclosure, was a part of the record at the PTABOA hearing and no consideration is given to that evidence or Respondent Exhibit B.

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 evidence. *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, sales comparison and income approaches. *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) *reh’g den. sub. nom.*; *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer, however, 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 id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also

offer sales information regarding the subject property or comparable properties. MANUAL at 5.

- c. Here the Petitioner submitted evidence showing that the assessor valued the property with a basement instead of a crawl space. The Petitioner presented no evidence of the market value of his property. Thus, Mr. Cook relies solely on the methodology used to assess his improvements rather than upon evidence probative of the subject property's true tax value. The Tax Court has repeatedly stated that even if an assessment does not fully comply with the Guidelines, a taxpayer must show that the assessment is not a reasonable measure of a property's market value-in-use in order to prevail. *See* 50 IAC 2.3-1-1(d) (stating that a failure to comply with the Guidelines does not in itself show the assessment is not a reasonable measure of value); *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (explaining that Indiana overhauled its property tax system and the new system shifts the focus from examining how the regulations were applied to examining whether a property's assessed value actually is the market value-in-use); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006) (explaining that a taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana's new assessment system). The Board therefore finds that, while the Petitioner's property record card should be changed to reflect the fact that the house has a crawl space rather than a basement, the Petitioner failed to prove that the assessment was not a reasonable estimate of the property's value and should be changed.

- d. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Despite having no duty to do so, however, the Respondent presented an appraisal of the subject property that the Petitioner offered at the PTABOA hearing below. The appraisal was prepared by an Indiana certified residential appraiser who valued the property at \$325,000 as of January 9, 2006. According to Mr. Potts, the appraisal shows the value of the property to be \$325,000. We commend the Respondent for his candor and accept \$325,000 as a proper value for the subject property.⁴

⁴ The Petitioner argued that he over-paid for the property and that the appraisal was for financing purposes only. The fact that an appraisal is done for financing, however, is not evidence that its value is incorrect. In fact, the appraiser certifies that "[a]fter adjustments, these sales provide a reliable indication of the subject's market value." More importantly, if the Board rejects the Petitioner's appraisal offered by the Respondent, the assessed value of \$345,700 would stand.

Conclusion

16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Respondent, however, offered an appraisal that the Petitioner presented at the PTABOA hearing below. The Board accepts the appraised value and orders the assessed value to be lowered to \$325,000.

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 \$325,000.

ISSUED: September 15, 2009

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>>