

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

Petition Nos.: 76-011-06-1-5-00125
76-011-06-1-5-00125A
Petitioners: James E. and Laura Corya
Respondent: Steuben County Assessor
Parcel Nos.: 760605110227000011
760605110226000011
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Coryas appealed their assessments to the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its determinations on January 2, 2009.
2. The Coryas timely filed their Form 131 petitions with the Board. The Petitioners elected to have their appeals heard pursuant to the Board’s small claims procedures.
3. On August 4, 2009, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) For the Coryas: James Corya, *pro se*
 - b) For the Assessor: Jennifer Becker, County Representative

Facts

5. The subject property consists of two contiguous lakefront parcels located at 340 Lane 101 Jimmerson Lake in Angola, Indiana. The parcels are used as a single homesite with the improvements sitting on both parcels. The Coryas are appealing only the assessed value of their land.
6. Neither the Board nor the ALJ inspected the property.

7. The PTABOA valued the subject property as follows:

Parcel No.	Land	Improvements	Total
760605110227000011	\$113,900	\$ 500	\$114,400
760605110226000011	\$141,800	\$84,800	\$226,600

8. On the Form 131 petitions, the Coryas requested the following values:

Parcel No.	Land	Improvements	Total
760605110227000011	\$75,000	\$ 500	\$ 75,500
760605110226000011	\$95,000	\$84,800	\$179,800

Contentions

9. The Coryas offered the following evidence and arguments in support of their position:

- a) The Coryas contend that their land is overvalued based on an appraisal completed on September 20, 2008. *Corya testimony*. In support of their argument, Mr. Corya submitted a “Summary Reporting of a Real Property Appraisal” for the subject property prepared by William F. Schnepf, Jr. and Pamela A. Selman. *Pet’rs Ex. 1*. The appraisal is a retrospective opinion of value which analyzed the Petitioners’ two parcels as a single homesite. *Id.* The appraisers certified that their appraisal was prepared in compliance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Id at 1*. According to the appraisal report, the appraisers determined that the assessed values of the improvements were reasonable. *Id.* They determined, however, that the value of the land exceeds the market value-in-use determined by their analysis. *Id at 2*.
- b) In their appraisal report, the appraisers valued the Petitioners’ land using graphic analysis, which the appraisers claim is superior to direct sales comparison analysis in determining the value of Steuben County lakefront properties because of the limited number of recent sales and the inconsistencies in shoreline. *Pet’rs Ex. 1 at 16*. According to the appraisers, they used 23 sales from Jimmerson Lake and adjusted each sale for the time of the sale and changes in market conditions. *Pet’rs Ex. 1 at 16, 17*. The appraisers graphed the sales price per front foot which indicated a land value of \$168,750 and sales price per square foot which indicated a land value of \$173,600. *Pet’rs Ex. 1 at 18, 19*. The appraisers reconciled their two estimates to a value of \$170,000 for the land as of January 1, 2005. *Pet’rs Ex. 1 at 18 - 20*.
- c) In his rebuttal argument, Mr. Corya contends that he cannot sell his property for what he is being assessed. *Corya argument*. According to Mr. Corya, the house next door to the Petitioners’ property has been on the market for two years and has not sold. *Id.* Further, he argues that the difference in values of the Respondent’s comparable properties appears to be based on the lots’ locations on the lake. *Corya argument*. Mr. Corya testified that their property sits on the channel rather than the lake and looks across at Bledsoe’s Trailers. *Corya testimony*.

10. The Assessor offered the following evidence and arguments in support of the assessment:

- a) The Assessor's representative argues that the methods of valuing land as mandated by the Department of Local Government Finance ("DLGF") when applied correctly will result in fair assessments representative of the market value-in-use of the property. *Becker argument*. Here, she contends that the properties were properly assessed. *Id.* According to Ms. Becker, the base rate of the lots started at \$4,100 per front foot, but was adjusted downward by 25% to account for excess front footage. *Id.* As a result, the subject land was valued with a front foot rate of \$2,483. *Becker testimony*. In support of this argument, the Respondent presented property record cards for both parcels. *Resp't Ex. 4*.
- b) The Respondent's representative further argues that the Board should give little weight to the Petitioners' appraisal. *Becker argument*. According to Ms. Becker, the appraisers used a statistical analysis that assumed the more frontage a property has on the lake, the less the property will sell for per front foot. *Becker testimony*. To the contrary, Ms. Becker argues, she listed all of the sales from 2004 and 2005 and identified five properties which had similar improvements and 50 feet of lake frontage. *Id.*; *Resp't Ex. 6*. After subtracting the improvement value, Ms. Becker determined that the sales ranged from \$124,500 to \$260,000 for the land or from \$2,490 to \$5,200 per front foot. *Id.* Thus, she concludes, the amount of frontage does not correlate to the sale price in terms of front footage alone. *Id.*
- c) Finally, Ms. Becker argues that the appraisal improperly used sales from 2001 to 2007 to value the Petitioners' property. *Becker argument*. In response, Ms. Becker created a list of all of the 2004 and 2005 sales – which are the sales used to establish property values for the 2006 assessment year. *Id.*; *Resp't Ex. 6*. She determined that the median front foot value of those sales was \$2,870; whereas the Petitioners' land is valued at \$2,843 per front foot. *Id.* Similarly, Ms. Becker testified, Respondent's Exhibit 7 is a comparison of sales on the same street as the subject property. *Becker testimony*; *Resp't Ex. 7*. According to Ms. Becker, the Petitioners' property has the lowest front foot rate for land of all the sales on the same street. *Id.* Thus, she argues, the appraisers' land sales actually support the front foot rate applied to the Petitioners' property by the county. *Becker argument*.

Record

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

- a) The Form 131 petitions,
- b) The digital recording of the hearing,
- c) Exhibits:

Petitioners' Exhibit 1: Summary Reporting of a Real Property Appraisal prepared by William F. Schnepf, Jr. and Pamela A. Selman,

Respondent's Exhibit 1: Respondent Exhibit Coversheet,
Respondent's Exhibit 2: Steuben County Assessor Summary of Testimony,
Respondent's Exhibit 3: Power of Attorney for County Representation,
Respondent's Exhibit 3a: Power of Attorney Certification,
Respondent's Exhibit 4: Subject Properties' 2006 Property Record Cards ("PRC"),
Respondent's Exhibit 5: Aerial Map Showing the Subject Properties,
Respondent's Exhibit 6: Spreadsheet of Sales used in Appraisal in Terms of Front Feet,
Respondent's Exhibit 7: Analysis of Sales from the Petitioners' Street,
Respondent's Exhibit 8: PRCs for 80 and 160 Lane 101 Jimmerson Lake,
Respondent's Exhibit 9: Respondent Signature and Attestation Sheet,

Board Exhibit A: Form 131 petitions,
Board Exhibit B: Notices of Hearing,
Board Exhibit C: Hearing sign-in sheet,

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and specifically what the correct assessment should 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).
13. In making its case, the petitioner must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
14. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Discussion

15. The Coryas raised a prima facie case to rebut the presumption that their land was accurately assessed. The Board reached this conclusion for the following reasons:
- a) In Indiana, real property is assessed based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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 use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b) A property’s assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *PA 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. *Id.* A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 506 n. 1. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
 - c) Here, the Coryas presented an appraisal prepared by William F. Schnepf, Jr. and Pamela A. Selman. *Pet’rs Ex. 1*. The appraisal was prepared in accordance with Uniform Standards of Professional Appraisal Practices (“USPAP”). *Id.* The appraisers determined that the improvements on the properties were reasonably valued. *Id.* They determined that the land was over-valued, however, and estimated the market value-in-use of both parcels together to be \$170,000 as of January 1, 2005.¹ An appraisal performed in accordance with generally accepted appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioners raised a prima facie case that the subject properties are over-valued.
 - d) 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 Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner’s case, the Respondent has the same burden to present probative evidence that the

¹ The 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3.

Petitioner faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

- e) Here the Respondent's representative defended the county's assessment by contending that the land was properly assessed according to DLGF requirements. However, in order to carry its burden, the assessor must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. 1998) (mere recitation of expertise is insufficient to rebut prima facie case).
- f) The assessor's representative also contends the Board should reject the Petitioners' appraisal evidence. Ms. Becker first argues that the appraisers improperly used a statistical analysis based on the assumption that the more frontage a property has on the lake, the less the property will sell for per front foot. Ms. Becker, however, misconstrues the appraisers' findings. The appraisers used statistical analysis to determine that the price of a property is statistically correlated with the property's size. While the correlation between frontage and price per front foot was slightly below the level of statistical significance, the area of a property was found to be significantly related to its sales price per square foot. More importantly, the Respondent failed to show that the appraisers' method of valuing the Petitioners' property was not a proper method of valuing property under USPAP. The mere allegation it was somehow improper, falls far short of the burden the Respondent has to rebut the Petitioners' prima facie case.
- g) Further, Ms. Becker argues that the appraisal used sales from 2001 to 2007. To the extent Ms. Becker disputes the Petitioners' appraisers' choice of comparable sales, the Board finds this argument unpersuasive. It is well within an appraiser's expertise to choose the sales he or she deems most comparable to the subject property and apply adjustments to those comparable properties to value the differences between them. Absent evidence to the contrary, the comparable properties chosen by the appraiser or the adjustments made by the appraiser in a USPAP-compliant appraisal will be deemed reasonable. The Petitioners' appraisers valued the property as of the statutory valuation date. The Respondent's representative failed to show how using sales from six years ago to arrive at that opinion of value was incorrect or somehow flawed. "Open-ended questions" and "conclusory statements" are not sufficient to rebut the Petitioners' case. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) ("In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Rassel's calculations. Rather, he merely asked open-ended questions or made conclusory statements").
- h) Ms. Becker also argues that, if only select sales are used, the appraisal's comparable sales support the assessed value. While the Respondent could have presented its own sales comparable analysis, merely choosing some sales from the Petitioners' appraisal and arguing that those sales values support the assessed value of the Petitioners' property is insufficient to rebut the Petitioners' USPAP appraisal.

- i) Finally, Ms. Becker presented six sales of properties on the Petitioners' street to show that the Petitioners' property is assessed lower than any of those sales. The Respondent, however, did nothing to show that those properties were comparable to the Petitioners' property. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted).

Conclusion

14. The Petitioners raised a prima facie case that the land values on both of the parcels at issue in this hearing are over-valued. The Respondent failed to rebut or impeach the Petitioners' evidence. The Board finds in favor of the Petitioners and holds that the market value-in-use of the land on Parcel No. 760605110227000011 and Parcel No. 760605110226000011 together is \$170,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Chairman, 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>