

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

Petition No.: 43-014-08-1-5-00001
Petitioner: Georgia S. Krichbaum
Respondent: Kosciusko County Assessor
Parcel No.: 43-18-06-200-447.000-014
Assessment Year: 2008

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

Procedural History

1. Georgia S. Krichbaum filed a Form 130 petition contesting the subject property’s March 1, 2008 assessment. On November 9, 2009, the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying Ms. Krichbaum the relief she had requested.
2. Mrs. Krichbaum then timely filed a Form 131 petition with the Board. She elected to have her appeal heard under the Board’s small claims procedures.
3. On October 17, 2010, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. Marilyn Meighen appeared as counsel for the Assessor. The following people were sworn in and testified:
 - a) Georgia S. Krichbaum, owner
Norman R. Krichbaum, witness
 - b) Laurie Renier, Kosciusko County Assessor
Christy A. Doty, Deputy Assessor

Facts

5. The subject property contains a single-family home on a one-acre lot located at 10950 South Neer Drive, Silver Lake, Indiana.
6. Neither the Board nor the ALJ inspected the property.

7. The PTABOA determined the following values for the subject property:
Land: \$16,800 Improvements: \$78,600 Total: \$95,400.
8. On her Form 131 petition, Ms. Krichbaum requested the following assessment:
Land: \$10,300 Improvements: \$59,600 Total: \$69,900.

Parties' Contentions

9. Mrs. Krichbaum offered the following evidence and arguments:
 - a) The subject property is assessed for more than its market value. *N. Krichbaum argument*. The Krichbaums bought the property from U.S. Bank for \$69,900 on May 21, 2008.¹ *N. Krichbaum testimony*. The bank had acquired the property after it was offered at sheriff's sale. The bank listed the property for sale at \$79,900, but the Krichbaums offered \$10,000 less and the bank did not hesitate to accept. *Id.* In light of the property's condition, it is worth no more than what the Krichbaums paid for it.
 - b) And that condition is deplorable. *N. Krichbaum testimony*. The house consists of a 20-year-old manufactured home with a stick-built addition. *Id.* The manufactured home area still has original fixtures and flooring. *Id.* And the addition was built with mobile-home-grade materials. In fact, a lot of the material was used instead of new. *Id.* Norman Krichbaum characterized the addition's construction as "do-it-yourself," and "third-world." *Id.* The addition lacks a concrete foundation or support beam under it; instead, the addition rests on concrete blocks on clay soil. *Id.* As a result, the addition has settled at least four inches over the past 10 years. Part of the floor has actually collapsed where the support beam should be. *Id.*; *Pet'r Ex. 4B*. The Krichbaums inspected the property before they bought it, but they did not go underneath the home to see where the big problems were. *N. Krichbaum testimony*.
 - c) The Assessor assigned the addition a "C" grade, but she gave the manufactured-home portion only a "D+2." *N. Krichbaum testimony*. The Assessor should not have graded the addition higher than the original structure because the two are inseparable and both were built with the materials of the same quality. *N. Krichbaum argument*.
 - d) The Krichbaums' detached garage has the same low-quality materials and workmanship as the home's addition. *N. Krichbaum testimony*; *Pet'r Ex. 4C*. The concrete pad outside the garage is higher than the garage's floor, so water runs through the garage when it rains. *Id.*
 - e) But the improvements are not the property's only problem. The site has a large gully and it is covered with rocks. *G. Krichbaum testimony*; *Pet'r Ex. 4D*. The site needs fill dirt and top dirt, but Ms. Krichbaum cannot afford that. *Id.* The neighboring farmland, which is overgrown with weeds, also detracts from the subject property's value. *N. Krichbaum testimony*; *Pet'r Ex. 4E*.

¹ Although the Form 131 petition lists Georgia Krichbaum as the sole owner, her husband, Norman. Krichbaum, referred to the property as belonging to both of them. *N. Krichbaum testimony*.

- f) The Krichbaums only bought the subject property to rent to their son, who had lost his job and home. *N. Krichbaum testimony*. The taxes, however, are so high that the Krichbaums cannot collect enough rent to make any improvements to the home. *Id.; Pet'r Ex. 3*.
- g) Although the Assessor pointed to a previous owner's \$131,400 mortgage, that mortgage does not reflect the subject property's value. *N. Krichbaum argument*. The previous owner used a lot of that money for his tree-trimming business. *N. Krichbaum testimony*. Also, banks were pushing home ownership at the time, and they did not accurately evaluate properties. *Id.*
- h) Finally, the PTABOA hearing was unsatisfactory; the PTABOA members were arrogant and inattentive, and they hurried through Ms. Krichbaum's issues. *N. Krichbaum testimony*. Similarly, the Assessor merely looked at the home's size; she did not account for the fact that there is "nothing holding up the square footage." *Id.*

10. The Assessor offered the following evidence and arguments:

- a) The Assessor pointed to three things to support the subject property's assessment: (1) a recorded mortgage securing a loan to the property's former owner; (2) a 2008 sales-ratio study for the subject property's assessment neighborhood; and (3) information about the sale of a comparable property.
- b) The mortgage secured a debt of \$131,400. *Doty testimony; Resp't Ex. C at 2*. Argent Mortgage Company originated the mortgage loan and then assigned it to U.S. Bank. *Id.* According to Christie Doty, a residential appraiser that the Assessor hired to help with trending, the mortgage supports the subject property's assessment because a bank would not loan money without proof that the property was worth at least the amount of the loan. *Doty testimony*. Mr. Krichbaum did not offer anything to support his speculation that the former owner might have used part of the loan for business purposes. Regardless, the loan was secured by the subject property, and a bank would not have loaned the money if the property did not offer sufficiently valuable security. *Meighen argument*.
- c) The sales-ratio study included sales that occurred between January 1, 2006 and December 31, 2007. *Doty testimony; Resp't Ex. D*. There were six arm's-length sales in that period and only one sale that occurred after a foreclosure. *Id.* Thus, bank sales do not appear to have represented the neighborhood's market. *Id.* That is important, because the Krichbaums bought the subject property out of foreclosure. U.S. Bank foreclosed on the former owners for \$89,250 on March 17, 2008. *Id.* The Krichbaums then bought the property for \$69,900 on May 28, 2008. *Doty testimony; Resp't Ex. A*.
- d) The comparable sale involved a 1.96-acre site with a one-story manufactured home built in 1997. *Doty testimony; Resp't Ex. F*. That property sold for \$119,000 on

March 3, 2006. *Id.* There are some differences between that property and the subject property. For example, the comparable home is smaller than the subject home. And unlike the subject home, it sits on a basement. *Doty testimony; Resp't Exs. A & F.* But there are also similarities—both properties contain manufactured homes in a similar location on similar sites. *Id.* Thus, the comparable property's sale price supports the subject property's assessment. *Doty testimony.*

- e) Contrary to Mr. Krichbaum's testimony, both the subject home's addition and the garage have "D" grades, meaning that they are assessed as being below average. *Doty testimony.* Similarly, at least as viewed from the outside, the subject home appears to be in average condition. *Doty testimony; Resp't Ex. B.*
- f) Although Ms. Krichbaum offered an exhibit to show the amount for which she had been taxed, the Assessor noted that the Board lacks jurisdiction to review the Krichbaum's taxes. Instead, the Board must address the subject property's assessment. *Meighen argument.* Similarly, although the Assessor did not object to photographs of the subject property being admitted into evidence, she argued that those photographs were irrelevant because they were taken in 2010, well after the assessment date under appeal. *Id.*

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:
 - Petitioner Exhibit 1: "Owner's Statement"
 - Petitioner Exhibit 2: Form 131 petition
 - Petitioner Exhibit 3: Statement of taxes and assessments on Treasurer Form TS-1A and Form 11 Notice of Land and Structures
 - Petitioner Exhibit 4A: Photograph of the subject home's roofline
 - Petitioner Exhibit 4B: Photograph of the subject home's floor
 - Petitioner Exhibit 4C: Photograph of concrete between the garage and home
 - Petitioner Exhibit 4D: Photograph of a field that borders the subject property
 - Petitioner Exhibit 4E: Photograph of the subject lot
 - Petitioner Exhibit 5: Copy of one page of the subject property's property record card ("PRC") with green highlighter and handwritten notes
 - Petitioner Exhibit 6: Form 115 determination
 - Petitioner Exhibit 7: Form 130 petition.

 - Respondent Exhibit A: 2008 PRC for the subject property
 - Respondent Exhibit B: Copies of five photographs of the subject property

Respondent Exhibit C: March 26, 2006, Mortgage and Assignment of Mortgage
Respondent Exhibit D: Neighborhood 1807000 Parcel Characteristics Report²
Respondent Exhibit F: Sales disclosure form and PRC for comparable property
located at 11706 S – 200 W, Silver Lake³

Board Exhibit A: Form 131 petition
Board Exhibit B: Hearing notice
Board Exhibit C: Hearing sign-in sheet
Board Exhibit D: Notice of Appearance by Marilyn Meighen

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and 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 taxpayer 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) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer’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. Mrs. Krichbaum did not make a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion for the following reasons:
 - a) Indiana assesses real property 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 value: the cost, sales-comparison, and income approaches. *Id.*

² Ms. Meighen offered and then withdrew a document labeled as Respondent’s Exhibit E.

³ Ms. Krichbaum objected to the admission of Respondent’s Exhibit F on grounds that it dealt with a property that was not comparable to the subject property. That, however, goes to the exhibit’s weight rather than to its admissibility. The Board therefore overrules Ms. Krichbaum’s objection.

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 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. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption 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 USPAP often will suffice. *See id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5. The gross rent multiplier is the preferred method of valuing properties with between one and four rental units. Ind. Code § 6-1.1-4-39(b)(1).
- c) Regardless of the method used to rebut an assessment’s presumed 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. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *See id.* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.”)(emphasis added). For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3(2006).
- d) Ms. Krichbaum relies most heavily on the fact that the Krichbaums bought the subject property for only \$69,900. But that sale occurred nearly 18 months after the relevant January 1, 2007 valuation date. Ms. Krichbaum therefore needed to explain how that sale price related to the subject property’s market value-in-use as of January 1, 2007. Because Ms. Krichbaum offered no such explanation, the property’s sale price lacks probative value. The Assessor also sought to impeach the subject property’s sale price on grounds that the seller was a bank that had acquired the property out of a foreclosure action. Given Ms. Krichbaum’s failure to relate the property’s sale price to the relevant valuation date, the Board need not consider the extent, if any, to which those circumstances might otherwise have affected the sale price’s probative weight.
- e) Ms. Krichbaum also points to various problems with the subject property’s land and improvements. But Ms. Krichbaum failed to offer any probative evidence to quantify the extent to which those problems detracted from the property’s value or to explain how those problems translated to a likely range of values for the property. Thus, while the property’s condition is relevant, the problems that the Krichbaums described do not suffice to make a prima facie case that the property was inaccurately assessed.

- f) In a similar vein, Ms. Krichbaum claims that the quality grade assigned to the subject home's addition should be reduced from "C" to "D+2" to match the grade for the original manufactured home. The property's record card, however, reflects a grade of "D" for the addition. *See Resp't Ex. 1*. Even if the addition had been graded higher than the original manufactured home, that fact would not have sufficed to rebut the presumption that the subject property was accurately assessed. As the Tax Court has explained, strictly applying the Guidelines is not enough to rebut the presumption that a property's assessment accurately reflects its market value-in-use. Instead, a taxpayer should offer the types of market value-in-use evidence described in the Manual. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
- g) Finally, Mrs. Krichbaum claims that PTABOA members were inattentive and arrogant, and that they rushed through the hearing below. Those claims, however, are largely irrelevant. The Board's proceedings are *de novo*; the Board therefore does not review the PTABOA's reasoning or lack thereof in deciding a taxpayer's appeal. Instead, Ms. Krichbaum needed to offer probative evidence showing that the subject property's assessment did not accurately reflect its market value-in-use. As already explained, Ms. Krichbaum failed to meet her burden.

Conclusion

16. For the reasons set forth above, Mrs. Krichbaum did not make a prima facie case for reducing the subject property's 2008 assessment. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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>.