

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

Petition No.: 45-001-08-1-5-00001
Petitioner: Lake County Trust #5202 FBO Bruce Parisi
Respondent: Lake County Assessor
Parcel No.: 45-08-29-105-011.000-003
Assessment Year: 2008

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 March 10, 2010.
2. The PTABOA failed to hold a hearing on the Petitioner's appeal within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")
3. The Petitioner filed an appeal to the Board by filing a Form 131 on September 23, 2010. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.") The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 12, 2011.
5. The Board held an administrative hearing on February 22, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Bruce Parisi, Petitioner's representative,

For Respondent: Robert W. Metz, Lake County Assessor's representative,
Danny Cruz, Residential Supervisor, Calumet Township.

Facts

7. The subject property is a residential property located at 3708 Marshall Street, Gary.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2008, the Calumet Township Assessor determined the assessed value of the subject property to be \$11,000 for the land and \$87,300 for the improvements, for a total assessed value of \$98,300.
10. The Petitioner requested an assessment of \$11,000 for the land and \$54,000 for the improvements, for a total assessed value of \$65,000.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in its property's assessment:
 - a. The Petitioner's representative contends that the property is over-assessed based on its appraised value. *Parisi testimony*. In support of this contention, Mr. Parisi presented an appraisal report prepared by a certified Indiana appraiser, Michael R. Falcone, in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Petitioner Exhibit 3*. In Mr. Falcone's report, he estimated the value of the Petitioner's property to be \$65,000 as of March 1, 2008. *Id.* Mr. Parisi contends he specifically instructed the appraiser to value the property as of the correct assessment date. *Parisi testimony*.
 - b. Mr. Parisi testified that an appraisal had also been prepared for an appeal of the property's 2006 assessment. *Parisi testimony*. According to Mr. Parisi, the appraisal for the property's 2006 appeal was prepared by John Falcone from the same appraisal firm that prepared the 2008 appraisal. *Id.* In the appraisal for the 2006 appeal, the appraiser estimated the value of the property to be \$83,000 as of August 1, 2007. *Petitioner Exhibit 5*. Mr. Parisi contends the Calumet Township Assessor accepted the appraised value for the 2006 appeal and reduced the property's assessment to the appraised value. *Parisi testimony; Petitioner Exhibit 4*.
 - c. The Petitioner's representative further contends that he purchased the property in 1998 for \$81,000. *Parisi testimony*. According to Mr. Parisi, the purchase price included the subject property and two other parcels. *Id.* One parcel has since been combined with the subject property. *Id.* The other parcel is a half-acre lot which is not contiguous to the subject property. *Id.* Mr. Parisi contends the 2008 appraisal includes both the subject property and the contiguous parcel. *Id.*
 - d. Finally, Mr. Parisi argues that the Assessor erred in trending the property's value for the 2008 assessment. *Parisi testimony*. According to Mr. Parisi, in 2006, the

assessed value of the improvements increased from \$62,900 to \$103,100. *Id.* Although the Calumet Township adjusted the property's value to \$83,000 based on an appraisal, Mr. Parisi argues, he increased the value to \$98,300 for March 1, 2008. *Id.* Mr. Parisi contends that properties in Gary depreciated, rather than increased in value between 2006 and 2008. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent's representative, Mr. Metz, contends that the Petitioner's 2007 appraisal should be given little weight by the Board. *Metz testimony.* According to Mr. Metz, the appraiser did not include any sales dates for the comparable properties and the adjustments he made for the property's location in Calumet Township were not made in the 2008 appraisal. *Metz testimony.*
 - b. Mr. Metz similarly contends the Board should give little weight to the Petitioner's 2008 appraisal. *Metz testimony.* According to Mr. Metz, the appraisal only identifies one parcel number and therefore, he argues, the appraisal did not include both lots. *Id.*
 - c. Finally, Mr. Cruz argues that both appraisals lack credibility because the appraiser valued the same property \$20,000 less in just one year. *Cruz testimony.*

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 45-001-08-1-5-00001Lake County Trust #5202,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Form 131 dated September 21, 2010, and cover letter to the Indiana Board of Tax Review,
 - Petitioner Exhibit 2 – Form 130 dated February 26, 2010, and cover letter to Calumet Township Assessor,
 - Petitioner Exhibit 3 – Appraisal valuing the property as of March 1, 2008,
 - Petitioner Exhibit 4 – Form 130 dated August 8, 2007,
 - Petitioner Exhibit 5 – Appraisal valuing the property as of August 1, 2007,
 - Petitioner Exhibit 6 – Form 11R/A for the March 1, 2006, assessment,
 - Petitioner Exhibit 7 – Form 113 for the March 1, 2007, March 1, 2008, and March 1, 2009, assessment dates.

The Respondent did not submit any exhibits.¹

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated January 12, 2011,
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 478.
15. The Petitioner raised a prima facie case that its property was over-valued for the March 1, 2008, 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 have traditionally 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.

¹ Mr. Cruz argued that he was not notified of the hearing and requested an opportunity to submit evidence of comparable properties at a later date. The Board notes that Mr. Cruz is a representative of Calumet Township and pursuant to Indiana Code § 6-1.1-15-3(b), the county assessor is the party to the review. The county assessor was properly notified of the hearing. Therefore no post-hearing submissions will be accepted.

- 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. Taxpayers 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, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
- d. Here, the Petitioner offered an appraisal signed by Michael R. Falcone that estimated the value of the Petitioner's property to be \$83,000 as of August 1, 2007. *Petitioner Exhibit 5*. Mr. Falcone is an Indiana certified appraiser who attested that he prepared the Petitioner's appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. *Id.* The report shows that the appraiser applied both the sales comparison approach and the cost approach in estimating the property's value. *Id.* While generally the 2008 assessment is to reflect the value of a property as of January 1, 2007, pursuant to 50 IAC 21-3-3(a), "For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date." Because the 2007 appraisal valued the property within the period of time that assessors use to value property for the March 1, 2008, assessment, the Board finds that the Petitioner's August 1, 2007, appraisal must therefore have some probative value. Thus, the Board finds that the Petitioner raised a prima facie case that its property was over-valued for the March 1, 2008, assessment.²
- e. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' 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

² The Petitioner also submitted an appraisal report prepared by Michael R. Falcone that estimated the value of the Petitioner's property to be \$65,000 as of March 1, 2008. *Petitioner Exhibit 3*. However, this appraisal is fifteen months beyond the valuation date and outside the window of time that assessors use to value property for that assessment year. Therefore the Board finds that the March 1, 2008, appraisal fails to show that the Petitioner's property should be valued at \$65,000 for the March 1, 2008, assessment.

case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005). Here the Respondent argued that there were no dates identified for the comparable sales. However, the appraiser stated that he valued the property as of August 1, 2007, and the appraiser certified that he prepared the appraisal according to USPAP. Thus, the Board can infer that the sales were reasonably related to the appraisal's valuation date. Further, the Respondent argues that the appraiser made an adjustment for the property's location that was not included in the 2008 appraisal. However, it is well within an appraiser's expertise to choose the sales he deems most comparable to the subject property and apply adjustments to those comparable properties to account for the differences between them. Without any probative evidence to the contrary, the appraiser's comparables and the adjustments appear to be reasonable.

- f. The Board therefore finds that the Respondent failed to impeach the Petitioner's evidence. Further, the Respondent presented no market value-in-use evidence to rebut the Petitioner's case.

Conclusion

- 16. The Petitioner raised a prima facie case that its property was over-valued. The Respondent failed to rebut or impeach the Petitioner's evidence. The Board finds in favor of the Petitioner and holds that the assessed value of the Petitioner's property is \$83,000 for the March 1, 2008, assessment date.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property should be changed.

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>>