

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

Petition No.: 06-019-06-1-5-00371
Petitioners: Rene R. Lewin and Renne D. Williams
Respondent: Boone County Assessor
Parcel No.: 0194992100
Assessment Year: 2006

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 Boone County Property Tax Assessment Board of Appeals (PTABOA) by written document dated November 26, 2007.
2. The PTABOA issued its decision on January 3, 2008.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the County Assessor on February 12, 2008. The Petitioners elected to have this case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 2, 2008.
5. The Board held an administrative hearing on August 26, 2008, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: John L. Johantges, Petitioners' representative
Rene R. Lewin, Petitioner
 - b) For Respondent: Jeffrey B. Wolfe, Boone County Assessor's Office
Charles T. Ewing, witness

Facts

7. The property is a single-family residence located at 4301 Brittany Drive, Zionsville, in Boone County.

8. The Administrative Law Judge (ALJ) did not inspect the property.
9. The PTABOA determined the assessed value of subject property to be \$52,700 for the land and \$227,300 for the improvements, for a total assessed value of \$280,000.
10. The Petitioners request an assessed value of \$238,900.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners contend that their property is overvalued, based on three factors: the purchase price of the home, the sale prices of comparable homes in the same subdivision, and the negative effect on values of a well-publicized mold problem in homes in the subdivision. *Johantges testimony; Pet. Ex. 1A*. The Petitioners requested an assessed value of \$238,900. *Johantges testimony*.
 - b) Mr. Johantges, the Petitioners' representative, testified that the Petitioners bought their home in April of 2007 for \$251,500. *Johantges testimony; Pet. Ex. 1*. Mr. Johantges argues that the sale price should be reduced by 3 percent per year to relate the purchase price to the 2005 valuation date. *Id.* According to the Petitioners, they bought the home from General Motors, which had purchased the home from an employee who had relocated. *Id.* Mr. Johantges admitted that General Motors bought the home for more than the \$280,000 assessed value, but argued that it is common practice in corporate buyouts of employees' homes to protect the employee's equity in the home. *Id.*
 - c) The Petitioners further argue that their home is over-valued based on the sales of other properties in the subdivision. *Johantges testimony*. In support of this argument, the Petitioners presented sales and listing information on several homes in the neighborhood. *Id.* According to Mr. Johantges, the homes at 4320 and 4321 Brittany Drive are similar in size and have similar features to the Petitioners' home, and both sold in 2005 for less than their assessed values. *Id.; Pet. Exs. 3 & 4*. Further, the home at 4330 Brittany Drive sold for \$250,000 on June 28, 2007, and the home at 4320 Brittany Drive, which is "virtually the same" as the Petitioners' home with the exception of a smaller garage, sold for \$240,000 on May 28, 2008. *Johantges testimony; Pet. Ex. 6*. Finally, Mr. Johantges argues, the home at 4250 Field Master is similarly sized, and it is currently listed for sale at \$229,900. *Id.; Pet. Ex. 7*. Mr. Lewin admitted, however, that home values are coming down, particularly in the Brittany Chase subdivision. *Id.*
 - d) Mr. Lewin also testified that the subdivision contains both custom homes, built by various builders, and "production" homes, built by Trinity Homes. *Lewin testimony*. While there are some custom homes in the subdivision that have values in excess of \$280,000, Mr. Lewin argues, no "production" home like the

Petitioners' home has ever sold for over \$280,000 except where Trinity Homes was required by legal settlement to buy back the properties. *Id.*

- e) Finally, the Petitioners argue that the property is over-valued due to the “well-documented” mold problem in some of the homes in the Brittany Chase subdivision. *Lewin testimony.* According to Mr. Lewin, Trinity Homes was involved in a \$25 million settlement with over 2000 homeowners due to mold in the homes. *Id.; Pet. Ex. 8.* Mr. Lewin argues that this has “tainted the reputation of the subdivision.” *Id.*
12. Summary of Respondent’s contentions in support of the assessment:
- a) The Respondent testified that the PTABOA reviewed the assessments of the entire Brittany Chase subdivision, and found the properties to be “erratically assessed.” *Wolfe testimony.* Therefore, the PTABOA reviewed improvement grades to make them consistent for various factors such as size and design. *Id.; Resp. Exs. 4 and 9.* After the grades were reviewed, the PTABOA examined sales data for the community and compared the sales date to the assessed values. *Wolfe testimony.* Although many sales involved Trinity Homes, Mr. Wolfe testified, ultimately only non-Trinity sales were used in the sales analysis because the Trinity-involved sales often had inflated prices. *Id.* Further, the PTABOA used only sales data from 2004 and 2005 and distinguished between custom and production homes in their analysis. *Id.*
 - b) According to Mr. Wolfe, there were two recent sales of the Petitioners’ home. *Wolfe testimony.* The property was purchased by General Motors in 2006 for \$295,750. *Id.* Because it was a purchase by the company for the purpose of relocating an employee, however, the PTABOA did not consider the purchase an arms-length transaction. *Id.* The property was then purchased by the Petitioners in 2007 for \$251,000. *Id.* As a result, the PTABOA arrived at a lower assessed value for the subject property based on the average selling price per square foot for other homes in the neighborhood. *Id.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent submissions by either party.
 - b) The digital recording of the hearing.
 - c) Exhibits:

Petitioner Exhibit 1A: Statement of the case

Petitioner Exhibit 1: Settlement statement for the subject property dated April 6, 2007,
Petitioner Exhibit 2: MLS listing sheet for the subject property,
Petitioner Exhibit 3: MLS listing sheet for the property located at 4320 Brittany Drive,
Petitioner Exhibit 4: MLS listing sheet for the property located at 4321 Brittany Drive,
Petitioner Exhibit 5: MLS listing sheet for the property located at 4330 Brittany Drive,
Petitioner Exhibit 6: MLS listing sheet for the property located at 4320 Brittany Drive,
Petitioner Exhibit 7: MLS listing sheet for the property located at 4250 Field Master Drive,
Petitioner Exhibit 8: News release from Beazer Homes dated May 12, 2008,
Petitioner Exhibit 9: Boone County Board of Commissioners' Minutes from October 20, 2003,

Respondent Exhibit 1: Subject Property record Card (PRC) dated November 26, 2007,
Respondent Exhibit 2: County Appeal Worksheet,
Respondent Exhibit 3: PTABOA Notice of Hearing,
Respondent Exhibit 4: Grade worksheet from the County Assessor,
Respondent Exhibit 5: Form 115,
Respondent Exhibit 6: PRC after the February 13, 2008, adjustment,
Respondent Exhibit 7: Form 131 and attachments,
Respondent Exhibit 8: IBTR Notice of Hearing,
Respondent Exhibit 9: Map of the subdivision identifying the improvement grades on each property,

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: Letter of Authorization from Boone County Assessor,

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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to support their contentions. The Board arrived at this conclusion because:
- 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). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales-comparison approach and the income approach to value. MANUAL at 3, 13-15. Indiana assessing officials generally value 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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 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 the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) In addition, the 2006 assessment is to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- d) Here, the Petitioners first argue that the property is over-assessed based on the property's purchase price. *Johantges testimony; Lewin testimony*. In support of this contention, the Petitioners submitted their settlement statement showing the purchase of the property on April 6, 2007, for \$251,500. *Id.*; *Pet. Ex. 1*. The Petitioners' representative, Mr. Johantges, argued that the sale price should be reduced three percent per year to trend the sale to the January 1, 2005, valuation date. *Johantges testimony, Pet. Ex. 1A*. While the Petitioners' representative made some attempt to relate the purchase price to the proper valuation date, Mr. Johantges, presented no evidence to support a three percent per year inflation rate. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). More importantly, Mr. Lewin testified that property values were falling. Thus, the Petitioners' April 6, 2007, purchase price may, in fact, be lower than the property's January 1, 2005, value and therefore is not probative of the property's value as of that valuation date.
- e) The Petitioners further argue that their property is over-assessed based on the sale of comparable properties. *Johantges testimony*. In support of this contention, the Petitioners presented sales information on properties in the same subdivision that are similar in size and features to the Petitioners' home. *Johantges testimony; Lewin testimony; Pet. Exs. 2-7*. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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 explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioners failed to offer anything more than basic information on the homes and conclusory statements that the properties are similar. *Johantges testimony; Lewin testimony; Pet. Exs. 2-6*. This is insufficient to establish the comparability of the neighboring properties. Further, the Petitioners failed to relate the properties' 2007 and 2008 sale prices to the January 1, 2005, valuation date. Therefore, the Petitioners failed to raise a prima facie case that their property was assessed in error.
- f) Finally, the Petitioners argue that a "well-known mold problem" in some homes negatively impacted the value of properties in the neighborhood. *Lewin testimony; Pet. Exs. 1-9*. The Petitioners, however, merely allege the mold problem negatively impacted the sale prices of properties in the subdivision. They failed to quantify that effect. *Lewin testimony; Pet. Exs. 8 and 9*. While common knowledge of a mold problem may negatively impact the value of the property, as the Board found above, the Petitioners failed to sufficiently show that effect on the market value-in-use of the property. It is not enough to show that

the current assessment is incorrect. A Petitioner must specifically show what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 478.

- g) Here the Petitioners failed to raise a prima facie case that their property was assessed in excess of its market value-in-use. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioners failed to raise a prima facie case. The Board finds in favor of 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 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>.