

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

Petition No.: 06-019-08-1-5-00116
Petitioners: Richard E. and Susan J. Lowder
Respondent: Boone County Assessor
Parcel No.: 019-03600-00
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 Petitioners initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 18, 2009.
2. The PTABOA issued notice of its decision on July 20, 2009.
3. The Petitioners filed a Form 131 petition with the Board on August 4, 2009. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated May 7, 2010.
5. The Board held an administrative hearing on July 28, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Richard E. Lowder, Property owner
 - b. For Respondent:¹ Lisa C. Garoffolo, Boone County Assessor
Peggy J. Lewis, PTABOA Member

¹ Lawrence D. Giddings, Giddings, Whitsitt & Williams, P.C. appeared as counsel for the Respondent.

Facts

7. The subject property is a single-family residence located at 840 West Poplar Street, Zionsville, Eagle Township, in Boone County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2008, the PTABOA determined the assessed value of the property to be \$131,100 for the land and \$125,300 for the improvements, for a total assessed value of \$256,400.
10. The Petitioners requested the assessed value of \$80,000 for the land and \$110,000 for the improvements, for a total assessed value of \$190,000.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a. The Petitioners contend the assessed value of the property under appeal is overstated compared to the 2008 sales prices of other properties in the neighborhood. *Lowder testimony*. In support of their position, the Petitioners submitted multiple listing sheets (MLS) for two properties in the Carter Addition. *Petitioner Exhibits 4 and 5*. Mr. Lowder testified that the property located at 165 North 8th Street is a frame house with slightly less living area and a two-car garage, which sold in February of 2008 for \$172,900. *Lowder testimony; Petitioner Exhibit 4*. Similarly, the property located at 135 North 9th Street is a frame home with less living area and two-car garage, which sold in January of 2008 for \$164,700. *Lowder testimony; Petitioner Exhibit 5*. Mr. Lowder contends the property under appeal is a brick home with more living area but with only a one-car garage, so it is slightly superior to the comparables. *Lowder testimony*. However, Mr. Lowder argues, it is inconceivable that such a slight difference in amenities between the comparable properties and the subject property would justify the subject property having an assessed value of \$256,400. *Id.*
 - b. The Petitioners also contend their property is over-valued based on the assessed value of a similar property. *Lowder testimony; Petitioner Exhibit 3*. According to Mr. Lowder, a Bedford stone home with a two-car garage and approximately the same living area as the Petitioners' property had its assessed value reduced by the PTABOA to \$190,000, while their property remains assessed at \$256,400 for 2008. *Id.* Further, Mr. Lowder argues, the PTABOA granted reductions to the properties located at 830 West Poplar, 145 North 9th Street, 170 North 9th Street, 180 North 9th Street, 185 North 9th Street and 195 North 9th Street. *Lowder testimony*. Because the Petitioners' property was not granted a reduction in its assessed value by the PTABOA, Mr. Lowder argues, it is assessed substantially

higher than the neighboring properties, thereby creating an inequity in values in the area. *Id.*

- c. Finally, Mr. Lowder testified that, for the 2009 tax year, the county assessor reduced their property's assessed value to \$170,100. *Lowder testimony.* Mr. Lowder argues that it is inconceivable that the market value of the property under appeal would have dropped from \$256,400 to \$170,100 in one year. *Id.* Thus, the Petitioners argue, this further shows that their 2008 assessment is incorrect. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends the property under appeal is correctly assessed at \$256,400 based on the market value of properties in the Petitioners' neighborhood. *Lewis testimony.* According to the Respondent's witness, the average sales price in the Carter Addition in 2006 was \$158 per square foot of living area. *Lewis testimony; Respondent Exhibit 4.* At \$158 per square foot of living area, Ms. Garoffolo contends, the Petitioners' assessed value would be \$255,644, which is only a few hundred dollars less than the property's 2008 assessed value and well within the 10% the state requires. *Garoffolo testimony.*
- b. Further, Ms. Garoffolo argues, the Petitioners failed to present any probative market value evidence to establish their 2008 assessment is incorrect. *Garoffolo testimony.*

Record

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Notification of Final Assessment Determination – Form 115 for the Petitioners' property, dated July 20, 2009,

Petitioner Exhibit 2 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated September 4, 2009,

Petitioner Exhibit 3 – Notification of Final Assessment Determination – Form 115 for 755 West Pine Street, dated July 20, 2009,

Petitioner Exhibit 4 – Multiple listing sheet for 165 North 8th Street, Zionsville,

Petitioner Exhibit 5 – Multiple listing sheet for 135 North 9th Street, Zionsville,

Respondent Exhibit 1 – Boone County Appeal Worksheet, dated June 18, 2009, and “Special Message to Property Owners,” dated June 5, 2009, for the Petitioners’ property,

Respondent Exhibit 2 – Exterior photograph of the Petitioners’ property,

Respondent Exhibit 3 – Property record card for the Petitioners’ property,

Respondent Exhibit 4 – Comparative Market Analysis, multiple listing sheets and photographs for 160 North 8th Street and 190 North 8th Street, Zionsville,

Respondent Exhibit 5 – Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) – Form 114, dated June 30, 2009,

Respondent Exhibit 6 – Notification of Final Assessment Determination – Form 115, dated July 20, 2009,

Respondent Exhibit 7 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated August 3, 2009,

Respondent Exhibit 8 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated September 8, 2009,

Respondent Exhibit 9 – Indiana Board of Tax Review – Notice of Hearing on Petition, dated May 7, 2010,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. 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.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession has 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. In 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. (the GUIDELINES).
 - 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. A taxpayer may also offer sales information regarding the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. 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. The Petitioners first contend that their property is over-valued based on the sale of two similar properties in their neighborhood. *Lowder testimony*. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. See MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); See also, *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, 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*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e. Here, the Petitioners testified that the neighboring properties are framed homes with two-car garages and less living area. The Petitioners, however, made no attempt to value the differences between the properties, except to conclude that their property could not be worth more than \$190,000 based on neighboring properties’ sales prices. This is insufficient evidence for the Board to determine the market value-in-use of the Petitioners’ property. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998) (statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination). Moreover, the Petitioners base their argument on 2008 sales. As stated above, the valuation date for the March 1, 2008, assessment is January 1, 2007. The Petitioners failed to relate those 2008 sales to the January 1, 2007, valuation date. *Long*, 821 N.E.2d at 470.
- f. The Petitioners also contend their property is over-valued based on the assessment of a comparable property in the area. *Lowder testimony; Petitioner Exhibit 3*. However, it is not enough for a taxpayer to show that its property is assessed higher or differently than other comparable properties. *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). (rejecting taxpayer’s lack of uniformity and equality claim where the taxpayer showed neither its own property’s market value-in-use nor the market values-in-use of purportedly comparable properties). Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property’s market value-in-use. *Id.* Like the Petitioner in *Westfield Golf*, the Petitioners here only argued their assessment was not uniform. Mr. Lowder failed to offer any probative evidence to show that the Petitioners’ assessment exceeded their property’s market value-in-use. Thus, the Petitioners failed to raise a prima facie case.

- g. Finally, the Petitioners contend that the county reduced the assessed value of the property under appeal to \$170,100 for the 2009 assessment. *Lowder testimony*. Mr. Lowder argues that it is inconceivable that the market value of the property would have dropped from an assessed value of \$256,400 in 2008 to \$170,100 in 2009. *Id.* However, each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Evidence of a property's assessment in one tax year is not probative of its true tax value in a different year. *Id.* Therefore, regardless of how much the property's assessment changed between tax years, the Petitioners needed to show that their property was assessed in excess of its market value-in-use for the tax year at issue.
- h. While the Petitioners' property may, in fact, be over-valued for the 2008 assessment year, the Petitioners failed to provide sufficient evidence of the property's market value-in-use for the Board to determine what the property's assessment should be.
- i. Where the 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to provide sufficient evidence to support a change in the assessed value of their property. The Board finds in favor of the 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 pursuant to 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 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/bills/2007/SE0287.1.html>.