

REPRESENTATIVE FOR PETITIONER:

Dwayne Rodgers, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kelly Hisle, Delaware County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

DWAYNE RODGERS	)	Petition No.:	18-003-06-1-5-01535
)		
Petitioner,	)	Parcel No.:	1123332020000
)		
v.	)	County:	Delaware
)		
DELAWARE COUNTY	)	Township:	Center
ASSESSOR)		
	)	Assessment Year:	2006
Respondent.)		

Appeal from the Final Determination of the
Delaware County Property Tax Assessment Board of Appeals

April 26, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Although the appraisal report that Dwayne Rodgers offered to support his assessment appeal contains apparent errors that tend to show some lack of care and attention to detail, the appraiser’s valuation opinion is still credible. And the comparative sales analysis that the Assessor’s witness offered to counter the appraisal was too conclusory to

carry much probative weight. The Board is therefore persuaded by the appraiser's opinion and finds for Mr. Rogers.

Procedural History

2. Mr. Rodgers filed notice with the Delaware County Assessor contesting the subject property's 2006 assessment. On November 7, 2008, the Delaware County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination reducing Mr. Rodgers' assessment, but not to the value that Mr. Rodgers had requested. As a result, on December 15, 2008, Mr. Rodgers filed his Form 131 petition with the Board. The Board has jurisdiction over Mr. Rodgers's appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On January 26, 2011, the Board's administrative law judge, Jennifer Bippus ("ALJ"), held a hearing on Mr. Rodgers's appeal. Neither the Board nor the ALJ inspected the subject property.
4. The following people were sworn and testified:
 - Dwayne Rodgers
 - Kelly Hisle, Deputy Delaware County Assessor
5. Mr. Rodgers offered the following exhibit:
 - Petitioner Exhibit 1: Appraisal report prepared by Carmel Lewis.
6. The Assessor offered the following exhibits:
 - Respondent Exhibit 1: Spreadsheet for four comparable sales,
 - Respondent Exhibit 2: Ariel map showing locations of comparable properties,
 - Respondent Exhibit 3: Property record card ("PRC") for the subject property,
 - Respondent Exhibit 4: Comparable 1 PRC,
 - Respondent Exhibit 5: Comparable 1 MLS listing,
 - Respondent Exhibit 6: Comparable 1 sales disclosure form,
 - Respondent Exhibit 7: Comparable 2 PRC,
 - Respondent Exhibit 8: Comparable 2 MLS listing,
 - Respondent Exhibit 9: Comparable 2 sales disclosure form,
 - Respondent Exhibit 10: Comparable 3 PRC,
 - Respondent Exhibit 11: Comparable 3 MLS listing,

Respondent Exhibit 12: Comparable 3 sales disclosure form,
Respondent Exhibit 13: Comparable 4 PRC,
Respondent Exhibit 14: Comparable 4 MLS listing,
Respondent Exhibit 15: Comparable 4 sales disclosure form,
Respondent Exhibit 16: Ariel map showing appraisal comparables,
Respondent Exhibit 17: Appraisal comparable 1 PRC,
Respondent Exhibit 18: Appraisal comparable 1 MLS listing,
Respondent Exhibit 19: Appraisal comparable 1 sales disclosure form,
Respondent Exhibit 20: Appraisal comparable 2 PRC,
Respondent Exhibit 21: Appraisal comparable 2 MLS listing,
Respondent Exhibit 22: Appraisal comparable 2 sales disclosure form,
Respondent Exhibit 23: Appraisal comparable 3 PRC,
Respondent Exhibit 24: Appraisal comparable 3 MLS listing – list date 8/19/03,
Respondent Exhibit 25: Appraisal comparable 3 MLS listing – list date 11/19/03,
Respondent Exhibit 26: Appraisal comparable 3 sales disclosure form listing
1/30/04 as sale date.

7. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice dated September 29, 2010,
Board Exhibit C: Request for continuance from Kelly Hisle,
Board Exhibit D: Letter granting continuance,
Board Exhibit E: Hearing notice dated November 30, 2010,
Board Exhibit F: Hearing sign-in sheet.

8. The subject property contains a single-family home located at 2907 S. Meeker Avenue, Muncie.

9. The PTABOA determined the following assessment for the subject property:

Land: \$13,100 Improvements: \$94,500 Total: \$107,600.

10. Mr. Rodgers requests a total assessment of \$93,000.

Administrative Review and the Petitioner's Burden

11. 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).

12. 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”).
13. 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.

Analysis

Parties’ Contentions

A. Mr. Rodgers’s Contentions

14. Mr. Rodgers contends that his assessment is too high in light of appraisals from 2003, 2004, and 2008. Those appraisals estimate the subject property’s value in the range of \$90,000 to \$93,000. Mr. Rodgers does not have a 2005 appraisal because the appraisal company charged more than he wanted to pay. *Rodgers testimony*.
15. Mr. Rodgers offered a copy of an appraisal prepared by Carmel Lewis and signed by Robert Canan as a supervisory appraiser. *Pet’r Ex. 1*. Ms. Lewis estimated the subject property’s market value at \$93,000 as of February 19, 2004. She certified that she prepared her appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Id.*
16. Ms. Lewis formed her valuation opinion by using the cost and sales-comparison approaches to value. *Pet’r Ex. 1*. For her cost-approach analysis, Ms. Lewis estimated a site value using sales of lots from Muncie that were similar to the subject lot. *Id.* To arrive at a value for the improvements, Ms. Lewis used cost information from Marshall &

Swift Residential Cost Service. *Id.* She estimated physical depreciation using the “Age/Life Method” and “an allowance for the difference between current building costs and pre-owned housing.” *Id.* Ms. Lewis noted typical functional obsolescence as well as external depreciation “due to the predominately lower value homes in the neighborhood.” *Id.* Her cost-approach analysis indicated a value of \$94,100 for the subject property. *Id.*

17. For her sales-comparison analysis, Ms. Lewis used six sales from areas that she felt compared to the subject property’s location in terms of marketability and school districts, although the lack of sales near the subject property required her to extend her search parameters. *Pet’r Ex. 1.* The sales occurred between November 22, 2002, and January 8, 2004, and the properties sold for unadjusted prices ranging from \$72,000 to \$98,000. *Id.* Ms. Lewis adjusted those sale prices to account for various ways in which the sold properties differed from the subject property, including: house size; site size; construction quality; kitchen quality; and the presence of various exterior features, such as decks porches, patios and fences. *Id.* She also adjusted the sale prices to account for concessions. Based on “the stability of values in this market,” however, Ms. Lewis did not adjust the sale prices to account for time-related market differences. *Id.* Ms. Lewis’s adjusted sale prices ranged from \$87,500 to \$96,500, which she found supported a value of \$93,000 for the subject property. *Id.*
18. Ultimately, Ms. Lewis gave the most weight to her conclusions under the sales-comparison approach and referred to her conclusions under the cost approach as “supportive.” *Pet’r Ex. 1.*
19. Although the Assessor’s witness, Kelly Hisle, pointed to several properties that she described as comparable to the subject property, those properties are from nice additions in the county. By contrast, the subject property is in the city. *Rodgers testimony.* According to Mr. Rodgers, he could not sell the subject property for more than \$85,000. *Rodgers testimony.* And while Ms. Hisle’s third comparable has an adjusted sale price of \$113,300, it is assessed for only \$89,300. *Rodgers testimony; Resp’t Ex. 10.* Thus, even if the subject property had the same market value as Ms. Hisle’s third comparable, the two properties are not being taxed the same. *Rogers argument.*

B. The Assessor's Contentions

20. Ms. Lewis's appraisal contains information that is inconsistent with data from other sources. For her first comparable sale, Ms. Lewis lists concessions of \$2,000, while the MLS data sheet for that sale shows concessions of \$4,325. Similarly, Ms. Lewis describes that house as having 1,912 square feet while the PRC for that property shows 1,560 square feet and the MLS data sheet shows 1,680 square feet. *Hisle testimony; Pet'r Ex. 1; Resp't Exs. 17-18.* Similarly, Ms. Lewis lists no concessions for her second comparable sale, while the MLS sheet lists \$1,000 in concessions. *Id.; Resp't Ex. 21.* And Ms. Hisle could not find an MLS listing sheet matching the October 7, 2003 sale for \$93,000 that Ms. Lewis used for her third comparable. Ms. Hisle did find an MLS sheet for that property showing a January 30, 2004 sale for \$93,000 and another MLS sheet showing an October 7, 2003 sale for \$35,000. *Hisle testimony; Pet'r Exs. 23-24.* Also, while Ms. Lewis lists concessions of \$3,100, the MLS sheet for the January 30, 2004 sale lists concessions of \$3,000. *Hisle testimony; Resp't Ex. 24.*
21. In addition, Ms. Lewis's first and third comparable sales were from 2003, which is outside the window that assessors used to calculate 2006 assessments. According to 50 IAC 21-3-3(a), assessors had to use sales between January 1, 2004, and December 31, 2005, to calculate 2006 assessments. *Hisle testimony; Pet'r Ex. 1.*
22. The Assessor also offered her own evidence of the subject property's value. Ms. Hisle reviewed MLS listings to identify four comparable properties containing houses that were similar to the subject house's size. *Hisle testimony; Resp't Ex. 1.* Those properties sold between March 2004 and November 2005 for prices ranging from \$123,000 to \$160,000. *Resp't Exs. 1, 5, 8, 11, 14.* Ms. Hisle adjusted each property's sale price to account for ways in which that property differed from the subject property in terms of house size and features. She also adjusted the sale prices to account for any concessions and to relate the prices to January 1, 2005 values. *Hisle testimony; Resp't Ex. 1.* Ms. Hisle used \$10 per square foot for her size adjustment and 3% per year for her time adjustment, although she did not explain how she arrived at those numbers. *See id.* Ms. Hisle, however, did

explain how she arrived at adjustments of \$1,700 and \$1,400 to account for her fourth comparable property's fireplace and concrete patio—she used the values assigned to those features on the property's record card. *Hisle testimony; Resp't Exs. 1, 13.*

23. The adjusted sale prices ranged from \$113,300 to \$159,100 with the average being \$130,825. *Hisle testimony; Pet'r Ex. 1.* The average adjusted sale price per square foot was \$61, while the subject property was assessed for only \$51 per square foot. *Id.*
24. Finally, Mr. Rodgers's house is the exception in its neighborhood. It is larger than most of the other houses because Mr. Rogers converted the garage into living area and built new sections onto the house. *Hisle testimony.*

Discussion

25. 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 market value: the cost, sales-comparison, and income approaches. *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.
26. 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. P/A 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. *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.

27. Regardless of the method used to challenge an assessment's presumed 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. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006), *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, that evidence lacks probative value. *Id.* For March 1, 2006 assessments, the valuation date was January 1, 2005. 50 IAC 21-3-3 (2006).
28. Mr. Rodgers offered an appraisal that estimated the subject property's market value at \$93,000. *Pet'r Ex. 1*. The appraiser, Carmel Lewis, used two generally accepted valuation approaches, and she certified that she prepared her appraisal in accordance with USPAP. Robert Canan reviewed and signed the appraisal as a supervisory appraiser. *Id.* Thus, at least at first blush, Ms. Lewis's appraisal is probative of the subject property's market value-in-use as of February 19, 2004.
29. Of course, Ms. Lewis appraised the subject property as of a date more than 10 months before January 1, 2005—the valuation date for 2006 assessments. But that is close enough for the Board to find that Ms. Lewis's valuation opinion bears at least some relationship to the property's market value-in-use as of January 1, 2005. Indeed, an administrative rule promulgated by the Department of Local Government Finance directed assessing officials to use sales occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date. 50 IAC 21-3-3(a)(2006).
30. Thus, based on Ms. Lewis's appraisal, Mr. Rodgers made a prima facie case that the subject property's March 1, 2006 assessment was wrong and that the property should have been assessed for \$93,000.

31. The burden therefore shifted to the Assessor to impeach or rebut Ms. Lewis's valuation opinion. To impeach Ms. Lewis's opinion, the Assessor first pointed out that two of Ms. Lewis's comparable sales occurred before January 1, 2004, and therefore were outside the window for sales that assessors to calculate March 1, 2006 assessments. As explained above, however, Ms. Lewis actually estimated the property's market value as of February 19, 2004. And while Ms. Lewis used mostly sales from 2003, she found that the market had been stable in the interim. The Assessor did not offer any probative evidence to the contrary. While Ms. Hisle used a 3% annual appreciation rate to adjust sale prices in her own sales-comparison analysis, she did not offer any evidence to support that number.
32. Ms. Hisle also pointed to several instances where the data in Ms. Lewis's appraisal report did not match other sources. Thus, Ms. Lewis used slightly different amounts for concessions than what appeared in the MLS data sheets for three of her comparable sales. In all three cases, however, the difference was minor. And Ms. Hisle did not explain what the concessions were or how they related to the validity of the reported sale price as an indicator of the sold property's market value. Thus, by themselves, the discrepancy between the concessions that Ms. Lewis listed in her appraisal and those reported in the MLS data sheets does not significantly impeach Ms. Lewis's valuation opinion.
33. Similarly, Ms. Hisle, pointed to a discrepancy between what Ms. Lewis listed as the total finished living area for her first comparable sale and the finished living areas listed on that property's record card and MLS sheet, respectively. But there is nothing in the record to help the Board decide which of the three measurements most accurately reflects the house's size. In any case, the sale at issue was only one of six that Ms. Lewis used in her analysis. Thus, by itself, the unresolved question about the house's size does little to impeach the overall credibility of Ms. Lewis's opinion.
34. Ms. Hisle, however, raised a more troubling issue surrounding Ms. Lewis's third comparable sale. Ms. Lewis reported that sale as having occurred on October 7, 2003, and listed the sale price as \$93,000. But the MLS data does not match what Ms. Lewis reported. Instead, MLS lists a January 30, 2004 sale for \$93,000 and an October 7, 2003 sale for \$35,000. *Hisle testimony; Pet'r Exs. 23-24.* Ms. Lewis might have simply

reported the wrong sale date in her appraisal. If that is the case, however, Ms. Lewis's comment that she was unaware of any prior sale of the property in the past year would show a basic lack of research. Also, given that the two sales were less than five months apart, the vast difference in prices raises some concerns about using either sale price in a sales-comparison analysis, at least without some explanation. That being said, the questions surrounding Ms. Lewis's third comparable sale do not by themselves destroy the credibility of Ms. Lewis's overall valuation opinion.

35. While no single issue that Ms. Hisle raised completely impeaches the credibility of Ms. Lewis's valuation opinion, collectively those issues tend to show a lack of care and attention to detail. Thus, the Board has some relatively significant questions about the reliability of Ms. Lewis's valuation opinion. But those questions ultimately do not completely deprive her opinion of probative value. And without more credible evidence showing a different value for the subject property, Ms. Lewis's opinion is enough to persuade the Board that the subject property was inaccurately assessed.
36. To that end, the Assessor at least attempted to offer independent evidence of the property's market value-in-use through Ms. Hisle's own sales-comparison analysis. The Board therefore turns to that analysis.
37. In order to effectively use the sales-comparison approach as evidence in an assessment appeal, one must show that the properties being examined are actually comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not prove that the properties are comparable. *Long*, 821 N.E.2d at 470. Instead, one must identify the characteristics of the appealed property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.*
38. Ms. Hisle did little to show how the four properties on which she based her sales-comparison analysis actually compared to the subject property, other than explaining that all of the properties contained houses with a similar amount of finished living area.

Similarly, while Ms. Hisle adjusted a few of the sale prices, she did little to support her adjustments. For example, Ms. Hisle did not explain how she arrived at \$10 per square foot for her living-area adjustment, or 3% per year for her time adjustment. Ms. Hisle took her only other adjustments—those that accounted for her fourth comparable’s fireplace, porch, and concrete patio—from a property record card. Without more, however, the Board will not assume that simply using mass-appraisal cost data to quantify adjustments complies with generally accepted appraisal principles.

39. In form, Ms. Hisle’s sales-comparison analysis may not differ significantly from the analysis of a certified or licensed appraiser. The appraiser’s analysis, however, is backed by her education, training, and experience. The appraiser also typically certifies that she complied with USPAP. The Board therefore can infer that the appraiser used objective data, where available, to adjust the sale prices of comparable properties. And where objective data was not available, the Board can infer that the appraiser relied on her education, training, and experience to reliably adjust those sale prices.
40. Here, there is no evidence Ms. Hisle has a license to appraise properties in Indiana. Further, she neither certified that her analysis conformed to USPAP nor showed that her analysis otherwise complied with generally accepted appraisal principles. Thus, in light of the largely conclusory nature of Ms. Hisle’s analysis, the Board gives the Assessor’s comparative-sales evidence little probative weight. In any event, the Board finds Ms. Lewis’s valuation opinion more persuasive.

SUMMARY OF FINAL DETERMINATION

41. Ms. Lewis’s valuation opinion sufficed to rebut the presumption that the subject property was accurately assessed. Although the Assessor impeached Ms. Lewis’s opinion to some degree, Ms. Lewis’s opinion is still the most persuasive evidence of the subject property’s market value-in-use. The Board therefore finds for Mr. Rodgers and orders that the subject property’s 2006 assessment be reduced to \$93,000.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date written above.

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>>