

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

Petition No.: 43-016-08-1-5-00015
Petitioners: Gerald and Madeline Wahlgren
Respondent: Kosciusko County Assessor
Parcel No.: 29-712006-40 (43-07-12-300-163-000-016)
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 Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 4, 2009.
2. The PTABOA issued notice of its decision on December 9, 2009.
3. The Petitioners filed a Form 131 petition with the Board on January 22, 2010. 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 November 3, 2010.
5. The Board held an administrative hearing on January 13, 2011, 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: Gerald Wahlgren, property owner
Madeline Wahlgren, property owner
 - b. For Respondent:¹ Laurie Renier, Kosciusko County Assessor
John P. Beer, Respondent's witness

¹ Ms. Marilyn Meighen, Meighen & Associates, P.C. appeared as counsel for the Respondent.

Facts

7. The subject property is a house and detached garage located at 23 EMS T30B Lane, Leesburg, in Kosciusko 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 to be \$73,600 for the land and \$181,900 for the improvements, for a total assessed value of \$255,500.
10. The Petitioners requested an assessed value of \$73,600 for the land and \$156,538 for the improvements, for a total assessed value of \$230,138.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
 - a. The Petitioners contend that the assessed value of their house is overstated compared to the assessed values of other channel-front houses in their area.² *M. Wahlgren testimony*. In support of this contention, the Petitioners submitted assessment information and property record cards for four comparable properties. *Petitioner Exhibits 1, 3, 4, 5 and 6*. Mrs. Wahlgren argued that the assessed values of the four comparable houses ranged from \$77.79 to \$88.78 per square foot, for an average of \$85.28. *M. Wahlgren testimony; Petitioner Exhibit 1*. The Petitioners' house, on the other hand, is being assessed at \$99.06 per square foot. *Id.*
 - b. The Petitioners also contend that the PTABOA improperly raised the assessed value of their house. *M. Wahlgren testimony; Petitioner Exhibits 8 and 9*. According to Mrs. Wahlgren, the PTABOA identified their house as "brick" on its determination, but the house is frame construction with a brick veneer. *Id.* In addition, the garage was redrawn from 36' x 24' landscape view to 24' x 36' portrait view which raised its value \$600. *Id.* However, Mrs. Wahlgren argues, the garage did not change position or size and therefore should not have changed in value. *Id.* Moreover, she contends, the open frame porch the Petitioners were assessed for did not exist as of the assessment date, but Mrs. Wahlgren admitted that the screened porch and deck that the Petitioners built in 2008 replaced a deck and enclosed porch that previously existed. *Id.* In addition, the PTABOA lowered the room count from seven rooms to six rooms, but did not reduce the property's assessment. *Id.* Finally, Ms. Wahlgren argues, the PTABOA

² According to Mrs. Wahlgren, the Petitioners are not comparing or seeking a reduction in their land assessment. *M. Wahlgren testimony*.

increased the market adjustment on the property from 1.66 to 1.71. *M. Wahlgren testimony; Petitioner Exhibits 8, 9, 10 and 12.* In support of their contentions, the Petitioners submitted two photographs of the exterior of the house, the county's original property record card and the PTABOA's property record card. *Petitioner Exhibits 8, 9 and 10.*

- c. In response to the Respondent's case, the Petitioners argue that the Respondent's evidence shows the average channel front property sold for approximately \$240,000 in 2008. *M. Wahlgren testimony; Respondent Exhibit D.* Mrs. Wahlgren therefore argues that the Respondent's evidence supports their contention that the Petitioners' property is over-assessed at \$255,500. *M. Wahlgren testimony.* In addition, Mrs. Wahlgren argues, the Respondent erred in relying on their purchase price because they "overpaid" for their home. *M. Wahlgren testimony.* According to Mrs. Wahlgren, at the time they purchased their property, the Petitioners were not aware of the property's "flaws." *Id.*
12. Summary of the Respondent's contentions in support of the property's assessment:
- a. The Respondent's witness, John Beer, contends that the property's assessment is correct based on the Petitioners' purchase of the property on June 9, 2005, for \$255,000.³ *Beer testimony; Respondent Exhibit B.* Mr. Beer admitted that the sale is far removed from the January 1, 2007, valuation date for the March 1, 2008, assessment. *Beer testimony.* However, Mr. Beer argues, he conducted a sales analysis of channel front properties that sold in northeast Kosciusko County from January 6, 2005, through December 31, 2007, and the analysis showed that between 2005 and 2008 the average sales price of channel front homes increased 29.1%. *Beer testimony; Respondent Exhibit D.* Mr. Beer argues that, because sales prices continued to increase in Kosciusko County, the Petitioners' property is not over-valued based on the property's purchase price. *Beer testimony.*
 - b. The Respondent also argues the property under appeal is correctly assessed at \$255,500. *Meighen argument.* Regardless of whether there are "errors" on the Petitioners' property's property record card, Ms. Meighen argues, it is the "bottom-line value" of the property that matters. *Id.* Here, Ms. Meighen contends, the Petitioners failed to present any probative evidence of their property's market value-in-use. *Id.*

Record

13. The official record for this matter is made up of the following:
- a. The Form 131 petition and related attachments.

³ Mr. Beer testified he is a licensed appraiser.

b. The digital recording of the hearing.

c. Exhibits:

- Petitioner Exhibit 1 – Summary of the Petitioners’ contentions,
- Petitioner Exhibit 2 – Original property record card for the subject property,
- Petitioner Exhibit 3 – Property record card for 11 EMS T30B Lane, Leesburg,
- Petitioner Exhibit 4 – Property record card for 37 EMS T30A Lane, Leesburg,
- Petitioner Exhibit 5 – Property record card for 23 EMS T30A Lane, Leesburg,
- Petitioner Exhibit 6 – Property record card for 17 EMS T31 Lane, Leesburg,
- Petitioner Exhibit 7 – Notification of Final Assessment Determination – Form 115, dated December 9, 2009,
- Petitioner Exhibit 8 – Corrected property record card for the subject property prior to the PTABOA hearing,
- Petitioner Exhibit 9 – Property record card for the subject property after the PTABOA hearing,
- Petitioner Exhibit 10 – Two exterior photographs of the Petitioners’ house,
- Petitioner Exhibit 11 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
- Petitioner Exhibit 12 – Summary of the Petitioners’ contentions,

- Respondent Exhibit A – Property record card for the subject property after the PTABOA hearing,
- Respondent Exhibit B – Sales Disclosure Form for the subject property, dated June 9, 2005,
- Respondent Exhibit C – Building permit for the subject property, dated September 5, 2007,
- Respondent Exhibit D – Multiple Listing Sheets for channel front properties in northeast Kosciusko County,

- 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. 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, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) (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. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (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 Township 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 the presumption, however, 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. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer 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 date, the valuation date is January 1, 2007. 50 IAC 21-3-3.
- d. The Petitioners first argue that their house is over-valued based on the assessed values of comparable houses in their area. *M. Wahlgren testimony; Petitioner Exhibits 1, 3, 4, 5 and 6*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the property's 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 that the method of the Petitioners' assessment was not uniform. The Petitioners presented no evidence to show that their assessment did not reflect the market value-in-use of their property.
- e. Further, the Petitioners failed to show the comparability of the neighboring properties. By comparing the assessed value of the Petitioners' house to the assessed values of comparable houses, the Petitioners essentially rely on a "sales comparison" method of establishing the market value of their property. 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 properties. *Long*, 821 N.E.2d at 470. 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 merely offered the property record cards for each of the properties and highlighted the differences in the value of the properties based on

each house's living area. This falls far short of the showing required to prove the properties are comparable.

- f. The Petitioners also argue that the PTABOA erred in raising the assessed value of their property. *M. Wahlgren testimony*. However, "When a taxpayer elects to challenge its assessment, it assumes a certain degree of risk, as resolution of a property tax appeal may lead to an increase in assessment." *Hubler Realty, Inc. v. Hendricks Cty Ass'r*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010). The mere fact that the Petitioners' assessment increased as a result of their appeal, therefore, is not evidence of an error in their property's assessment.
- g. The Petitioners further contend that the PTABOA made improper changes on their property record card. *M. Wahlgren testimony*. According to Mrs. Wahlgren, the PTABOA identified their house as "brick" on its determination, but the house is frame construction with a brick veneer. *Id.* By Mrs. Wahlgren's own admission, then, the house's exterior is brick. *Id.* Despite this, the Petitioners' property record card shows that, while the assessor labeled the drawing of the house as brick, the house was still priced with a wood frame construction. *Petitioner Exhibit 9*. In addition, Mrs. Wahlgren argues, the garage was redrawn from 36' x 24' landscape view to 24' x 36' portrait view which raised the value \$600. *M. Wahlgren testimony*. However, Mrs. Wahlgren admitted that the garage sits in a portrait position and therefore the card was simply corrected to reflect the house as it exists. *Id.* Similarly, Mrs. Wahlgren argues that the PTABOA changed the room count of their house on the property record card, but she presented no evidence that the PTABOA's room count was incorrect. *Id.*
- h. Even if the Petitioners had shown that there were errors on their property's property record card, which they did not, the Petitioners failed to show that the property's assessed value did not accurately reflect the property's market value-in-use. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*").
- i. Ultimately, the Board notes that the components of the Petitioners' house were identically priced before and after the PTABOA hearing. The only change the PTABOA made that affected the assessed value of the Petitioners' property was that it increased the market adjustment from 1.66 to 1.71. The Petitioners

presented no evidence to show that the market adjustment was incorrect. More importantly, the Respondent presented evidence that the assessed value reflected the property's market value-in-use. Mr. Beer testified that the property was purchased in June of 2005 for \$255,000. *Beer testimony; Respondent Exhibits B.* The sale of a property is often the most compelling evidence of its market value. MANUAL at 5. Further, Mr. Beer showed that the values of properties in the Petitioners' neighborhood increased between January 1, 2005, and December 31, 2007. *Beer testimony; Respondent Exhibit D.* Because, the Respondent presented some evidence relating the Petitioners' June 2005 purchase to the property's January 1, 2007, value, the Respondent's evidence supports the property's assessed value.⁴ *See Long*, 821 N.E.2d at 471.

- j. The Petitioners, however, argue that the Respondent's market evidence "supports" their case because the average sale price of a channel-front home in Mr. Beer's sales analysis was only \$240,712; whereas their property was assessed for \$255,000. *M. Wahlgren testimony.* But the Petitioners failed to show that their property was an "average" property or was comparable to the "average" channel-front property. *See Long*, 821 N.E.2d at 470 (discussing how a property can be valued based on the sales prices of other properties). Taken to its extreme, Mrs. Wahlgren's argument suggests that all properties in her neighborhood should be assessed for \$240,712, because the average property sold for that price in 2007. This defeats the purpose of a market value-in-use system of assessment. The Petitioners' argument that they "over-paid" for the property similarly fails. Conclusory statements, unsupported by probative evidence are of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- k. The Petitioners failed to raise a prima facie case. Where the Petitioners fail to provide probative evidence that their property's 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).

⁴ The Petitioners contend they were assessed for an open frame porch and deck that were not constructed until approximately June of 2008. *M. Wahlgren testimony.* However, Mrs. Wahlgren testified that the open frame porch and deck replaced an existing porch and deck on the house. *M. Wahlgren testimony.* Therefore the Petitioners' evidence is insufficient to determine whether a porch and deck existed on the property as of the assessment date. Regardless, the Respondent has shown that the property's assessed value reflects the property's market value-in-use. Therefore, whether the porch and deck existed on March 1, 2008, does not change the property's assessed value for the 2008 assessment year.

Conclusion

16. The Petitioners failed to raise a prima facie case that their property was assessed in error. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines the assessed value of the Petitioners' property 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>.