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

Petition: **43-033-09-1-5-00004**
Petitioners: **John R. & Annette E.M. White**
Respondent: **Kosciusko County Assessor**
Parcel: **43-11-22-400-149.000-033**
Assessment Year: **2009**

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. John R. & Annette E.M. White filed a Form 130 petition contesting the subject property's March 1, 2009 assessment. On September 30, 2010, the Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Whites the relief they had requested.

2. The Whites then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board's small claims procedures.

3. On March 5, 2013, the Board held a hearing through its designated administrative law judge, Patti Kindler ("ALJ").

4. The following people were sworn and testified:

    a) John R. & Annette E.M. White

    b) Laurie Renier, Kosciusko County Assessor[1]

Facts

5. The subject property is a single-family residence located at 7 Stone Camp Trail in Winona Lake.

6. Neither the Board nor the ALJ inspected the subject property.

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

    Land: $95,100 Improvements: $441,600 Total: $536,700

[1] Jack C. Birch appeared as counsel for the Assessor.

8. The Whites requested the following assessment:

Land: $95,100 Improvements: $326,000 Total: $421,100

Summary of the Parties' Contentions

9. The Whites' evidence and arguments:

a) The subject property's March 1, 2009 assessment is too high in light of its listing history and its subsequent 2011 sale price. That evidence, along with a comparison to neighboring properties' assessments, indicates that the subject property was assessed for more than its market value. *J. White argument.*

b) The Whites first listed the subject property for sale on June 30, 2007. *J. White testimony; Pet'rs Ex. 1*. The asking price was $599,000, which Ms. White described as "wishful thinking." *A. White testimony.* The Whites lowered their asking price several times over the ensuing three years. The following is a summary of the property's listing history for that period:

- On March 26, 2008, the Whites reduced the price from $599,000 to $587,000.
- On May 8, 2008, they reduced the price to $575,000.
- On June 30, 2008, they reduced the price to $565,000.
- On April 16, 2009, they reduced the price to $530,000.
- On June 16, 2009, they reduced the price to $500,000.
- On March 18, 2010, they reduced the price to $470,000.

J. White testimony; Pet'rs Ex. 1.

c) The Whites ultimately sold the property for $405,000 in October 2011. The Whites recognize that the sale occurred well after the assessment date under appeal. But they argue that the sale price, together with the fact that they listed the property for $500,000 during much of 2009, is at least some evidence that the property's March 1, 2009 assessment should be reduced below $500,000. According to Mr. White, there was a "rapidly changing market in the negative direction" during the period that the subject property was listed for sale. *J. White testimony and argument.*

d) To pinpoint a more specific value, the Whites looked to the assessments for two properties located on each side of the subject property at 5 Stone Camp Trail and 9 Stone Camp Trail. The subject home was assessed at a much higher rate per square foot than were the other two homes. Using an average of the other two homes' assessments, the Whites computed an improvement value for the subject property of $326,000. When they added that amount to the property's land assessment ($95,100), they arrived at their request of $421,100 for the subject property's assessment as a whole. *See J. White testimony; Pet'rs Exs. 2-3, 5.* Mr. White also compared the properties' total assessment (land and improvements) per square foot of living space

and concluded that the neighboring properties were assessed for $98.56 per square foot (5 Stone Camp Trail) and $110.00 per square foot (9 Stone Camp Trail), while the subject property was assessed at $140.00 per square foot. *J. White testimony; Pet'rs Exs. 2-3*.

10. The Assessor's evidence and arguments:

    a) The subject property's listing history supports its assessment. For March 1, 2009 assessments, the Department of Local Government Finance required assessors to use sales from 2008. Throughout 2008, however, the subject property's list price exceeded its March 1, 2009 assessment. Thus, neither the subject property's list price in years following 2008, nor the property's 2011 sale price, are relevant to the question of what its 2009 assessment should be. *Renier testimony; Resp't Exs. 1-2*..

    b) The Whites' assessment comparison similarly fails to prove that the subject property was incorrectly assessed. Generally, comparing assessments based on price per square foot is neither accurate nor appropriate. In any event, the figures that the Whites used to compute the neighboring properties' per-square-foot prices did not include the 120% factor that the Assessor applied to bring the neighborhood up to selling prices. And the Whites did not account for variations between the properties, such as differences in size, construction quality, and age of the homes. *Renier testimony.*

    c) Also, while the Whites focused on the neighboring properties' assessments, both those properties actually sold. The property at 5 Stone Camp Trail sold for $520,000 on May 24, 2007, and the property at 9 Stone Camp Trail sold for $700,000 on January 10, 2008. *Renier testimony; Resp't Ex 5.*

Record

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

    a) The Form 131 petition,

    b) A digital recording of the hearing,

    c) Exhibits:

Petitioners Exhibit 1:	E-mail from Teresa Bakehorn to Annette and John White regarding subject property's listing history from June 2007 to March 2010,
Petitioners Exhibit 2:	Property record card for 5 Stone Camp Trail,
Petitioners Exhibit 3:	Property record card for 9 Stone Camp Trail,
Petitioners Exhibit 4:	Undated letter from Annette White containing assessment comparison data,

Respondent Exhibit 1: Multiple Listing Service sheet and history detail for the subject property,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Property record card for 5 Stone Camp Trail,
Respondent Exhibit 4: Property record card for 9 Stone Camp Trail,
Respondent Exhibit 5: Comparable sale grid,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: Notice of appearance for Jack C. Birch,

d) These Findings and Conclusions.

Analysis

Burden of Proof

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). The taxpayer must explain how each piece of evidence relates to his 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."). If the taxpayer makes a prima facie case, the burden of proof shifts to the assessor to offer evidence to impeach or rebut 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.

14. Effective July 1, 2011, however, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2.[2] That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment for the same property:

> This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property.

[2] HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

Ind. Code § 6-1.1-15-17.2. In this case, the assessment under review—the PTABOA's determination for the March 1, 2009 assessment date—is actually less than what the Assessor determined for March 1, 2008 ($549,000). So the Whites had the burden of proof.

Discussion

15. The Whites did not make a prima facie case for reducing the subject property's assessment. The Board reaches this conclusion 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, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 5 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party's evidence in a tax appeal must therefore be consistent with that standard. *See id.* For example, a market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI, LLC v. White River Township Assessor,* 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). A taxpayer may also offer actual construction costs, the appealed property's sale price, sales and assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5; *see also*, I.C. § 6-1.1-15-8 (allowing parties to introduce evidence of assessments for relevant, comparable properties).

b) In any case, a party must explain how its evidence relates to the appealed 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). For March 1, 2009 assessments, the valuation date was January 1, 2008. 50 IAC 21-3-3(b)(2009).

c) Because the Whites based their specific assessment request of $421,100 on an analysis of two other properties' assessments, the Board turns to that evidence first. As noted above, Ind. Code § 6-1.1-15-18 allows a party to offer evidence of comparable properties' assessments to prove the value of a property under appeal. But that statute does not automatically make evidence of other properties' assessments probative. The party offering the evidence must show both how the properties in question compare to the property under appeal and how any relevant differences between the properties affect their relative values. *See* Ind. Code § 6-1.1-15-18(c)(2) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties are comparable).

d) The Whites offered no such analysis. The Whites did not even attempt to account for the myriad relevant ways in which the subject property differed from the neighboring properties. For example, the subject home was assessed using a substantially higher quality grade ("A-1") than the other two homes ("B" and "B+1," respectively). That

reflects the Assessor's judgment as to the homes' relative construction quality, something the Whites did nothing to dispute or otherwise account for. Similarly, the Whites used price-per-square-foot as their unit of comparison. But the neighboring properties have significantly more above-grade living area than the subject property. One need look no further than the Guidelines' cost schedules to confirm that as a home's size increases, the price per square foot generally decreases. *See* 2002 REAL PROPERTY ASSESSMENT GUIDELINES, App. C (incorporated by reference at 50 IAC 2.3-1-2 (2009)). Similarly, a significant amount of the neighboring homes' living area is contained in upper stories, while the subject home has only one story. Once again, the Guidelines assign a lower price per square foot for upper stories than for the first story. *See id*. The assessment data for the neighboring properties therefore has little or no probative weight.

e) The Board therefore turns to the Whites' evidence about the subject property's listing history and eventual sale. While a property's advertised asking price, by itself, typically does not show a property's specific market value-in-use, that price may at least tend to show the upper limit of the property's value. That is particularly true where a seller has unsuccessfully advertised a property for sale at a given price over an extended period.

f) During the period most relevant to the January 1, 2008 valuation date at issue in this appeal, the Whites listed their property for sale with asking prices ranging from $599,000 to $565,000. It was not until April 16, 2009, that they lowered their asking price below the property's assessment of $536,700. Even then, they only lowered the price to $530,000. The first time that the Whites dropped their asking price significantly below the assessment was on June 16, 2009, when they listed the property for $500,000. Without more, that listing history does not show that the property was worth less than its assessed value as of January 1, 2008.

g) Similarly, while the property sold for only $405,000, that sale happened more than 3½ years after the January 1, 2008 valuation date. The Whites, however, offered nothing to explain how the sale price related to the property's market value-in-use as of that valuation date. At most, the Whites argued that there was a "rapidly changing market in the negative direction" during the period that the property was listed for sale. *J. White argument*. But that argument supports the Assessor's position, not the Whites' position. While the Whites may have shown that the subject property was worth less than $536,700 as of the valuation dates for future assessment years, they have not made a prima facie case for reducing the property's March 1, 2009 assessment.

Conclusion

15. The Whites did not make a prima facie case for reducing the subject property's March 1, 2009 assessment. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

ISSUED: May 9, 2013

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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.