

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

Petition #: 20-025-02-1-5-00018
Petitioners: Rick and Susan Vandegrift
Respondent: Olive Township Assessor (Elkhart County)
Parcel #: 20-09-36-105-005-000-025
Assessment Year: 2002

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 Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 10, 2003.
2. The Petitioners received notice of the decision of the PTABOA on June 14, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on July 13, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 7, 2006.
5. The Board held an administrative hearing on June 20, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Susan Vandegrift, Property Owner
Rick Vandegrift, Property Owner
 - b) For Respondent: Nancy Cook, First Deputy Assessor Elkhart County ¹

¹ Jenny Hopper of the Elkhart Assessors Office observed the hearing, but did not participate and was not sworn.

Facts

7. The property is a single-family residence located at 206 S. Walnut Street, Wakarusa, Olive Township, in Elkhart County.
8. The ALJ did not conduct an on-site inspection of the property.
9. The PTABOA determined the assessed value of the property is \$37,100 for the land and \$216,500 for the improvements, for a total assessed value of \$253,600.
10. The Petitioners requested a total assessed value of \$175,000 for the property.

Issue

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend that the subject property is over-valued relative to its market value in use. *S. Vandegrift testimony*. In support of this contention, the Petitioners submitted an appraisal of the property showing a value of \$175,000 as of 1998-1999. *Petitioner Exhibit 3*.
 - b. The Petitioners further contend that the dwelling's square footage of 2,448 is overstated on the assessor records. *S. Vandegrift testimony*. In support of this contention, the Petitioners submitted a letter from the builder of the home showing the square footage is 2,162. *Petitioner Exhibit 2*.
12. Summary of Respondent's contentions in support of the assessment:
 - a. According to Iverson Grove, PTABOA member and appraiser, the appropriate value for the property should be \$237,500. *Cook testimony*.
 - b. The Respondent submitted property record cards (PRCs) for four properties that are comparable to the subject property. *Respondent Exhibit 1*. The Respondent also submitted PRCs to support the contention that all land in the subject's neighborhood is valued at \$275 per front foot. *Cook testimony; Respondent Exhibit 2*.
 - c. In addition, the Respondent testified that the subject property was re-measured and that changes were made to the square footage of the dwelling and that the grade was lowered. *Cook testimony*.

Record

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

- a. The Petition,
- b. The tape recording of the hearing labeled BTR # 6241,
- c. Exhibits:²

Petitioner Exhibit 1 - Form 131 Petition,
Petitioner Exhibit 2 - Letter from Homestead Builders regarding square footage,
Petitioner Exhibit 3 - Appraisal of subject property by Associated Appraisers,
Petitioner Exhibit 4 - PRCs for comparables in the appraisal,

Respondent Exhibit 1 – Comparable PRCs for the subject home,
Respondent Exhibit 2 – Comparable PRCs for the subject’s land value,

Board Exhibit A - Form 131 petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C – Authorization for county to represent township,
Board Exhibit D – 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 Board of Tax Commissioners*, 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.

² Exhibits were submitted without objections from either party and entered into the record.

15. The Petitioners provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. Real property in Indiana is assessed on the basis of its “true tax value.” Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) at 12 (2001) (incorporated by reference at 50 IAC 2.3-1-2). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* 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.” *Id.*
 - b. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, 821 N.E.2d at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
 - c. Here, the Petitioners presented an appraisal estimating the market value for the subject property at \$175,000 as of 1998-1999. *Petitioner Exhibit 3*. The appraisal was prepared by a certified appraiser in accordance with the requirements and guidelines of the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* An appraisal performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Further, while the appraisal did not value the subject property as of January 1, 1999, the appraisal was sufficiently timely to be probative.
 - d. In addition, to determine the January 1, 1999, market value of all classes of residential land, commercial land, industrial land, and agricultural homesite within his or her jurisdiction, a township assessor selects a representative number of sales disclosures filed under IC 6-1.1-5.5 or written estimations of a property value provided by a licensed real estate professional that are based on relevant sales data to justify the land value determination for each neighborhood. 2002 REAL PROPERTY ASSESSMENT GUIDELINES (GUIDELINES) ch. 2 at 7. According to the GUIDELINES, “representative disclosure statements . . . refer to a transaction, or written estimation of value must refer to an estimation of value that is dated no more than eighteen months prior or subsequent to January 1, 1999.” GUIDELINES, at 8. Accordingly, an appraisal comparing sales that occurred within eighteen months of January 1, 1999,

assessment valuation date has some evidentiary value.³ *Id.* Thus, the Board finds that the Petitioner has raised a prima facie case that the subject property is over-valued.

- e. 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.*, 803 N.E.2d at 281. In the case at bar, the burden shifted to the Respondent to produce evidence to impeach or rebut the Petitioners' evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479. To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise its prima facie case. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005)⁴.
- f. The Respondent testified that in the *opinion* of a member of the PTABOA, who is an appraiser, the appraisal was "too low". *Cook testimony*. The Respondent also submitted PRCs for properties purported to be comparable to the subject. *Respondent Exhibits 1 and 2*.
- g. Though the Respondent stated that a member of the PTABOA claimed that the Petitioners' appraisal was too low, such statements are conclusory at best when not supported by any further clarification or evidence of irregularities within the appraisal. In addition, the person whose opinion was referenced was not present at the hearing so that the Petitioner could ask questions regarding the opinion about the appraisal. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- h. The Respondent's submission of PRCs of comparable properties also fell far short of proving that the assessment is correct. To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Long*, 821 N.E.2d at 470-471 (The party offering...evidence is responsible for explaining the characteristics of the subject property, how those characteristics compare to the purportedly comparable properties, and how any differences affect the relevant market value of the properties). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Id.* *See also, Hoogenboom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999) (holding that taxpayer failed to make prima facie case when he offered conclusory statements

³ The sales dates of the comparables used in the Petitioners' appraisal were May 1999, December 2001, and May 1999.

⁴ In this case it states that "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." *See Fidelity Federal Savings & Loan*, 836 N.E.2d at 1082.

and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation). Here again, the Respondent has the same burden the Petitioners faced to make a case with probative evidence. See *Fidelity Federal Savings & Loan*, 836 N.E.2d at 1082. The Respondent failed to make any comparisons of the similarities or differences between the purported comparable properties and that of the subject property to show that the properties were in fact comparable to one another. Therefore, the purportedly comparable properties offered by the Respondent have no probative value.

Conclusion

16. The Petitioners provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of the Petitioners.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$175,000.

ISSUED: _____

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.