

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

Petition #: 46-023-03-1-5-00030
Petitioners: Robert and Joy Kuchler
Respondent: Michigan Township Assessor (LaPorte County)
Parcel #: 45-01-14-154-069
Assessment Year: 2003

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 LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 17, 2004.
2. The Petitioners received notice of the decision of the PTABOA on March 15, 2005.
3. The Petitioners filed a Form 131 with the county assessor on April 14, 2005, which initiated an appeal to the Board. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 24, 2006.
5. The Board held an administrative hearing on July 25, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:

For Petitioner: Robert Kuchler, Property Owner¹

For Respondent: Terry Beckinger, Michigan Township Assessor
Judith Anderson, LaPorte County Deputy Assessor

Marilyn Meighen appeared as counsel for the Michigan Township Assessor and the LaPorte County PTABOA.

¹ Walter Binder, neighbor of the Petitioner, accompanied Mr. Kuchler to the hearing. Mr. Binder was not sworn in and did not testify.

Facts

7. The subject property is a single family residence on a lot measuring 100' x 70' located at 2403 Lake Shore Drive in Long Beach, Indiana.
8. The ALJ did not conduct an on-site inspection of the property.
9. The PTABOA determined the assessed value of the subject property to be \$215,000 for the land and \$191,900 for the improvements, for a total assessed value of \$406,900.
10. The Petitioners were unable to specifically state what assessed value is being sought for the property.

Objections

11. The Respondent's attorney, Marilyn Meighen, objected to any issues raised by the Petitioners, with the exception of the effective year issue. According to Ms. Meighen, the effective year issue was the only issue listed on the Petitioners' Form 131 petition. Ms. Meighen argues that the Board's procedural rules state that only issues raised in the appeal petition or an amended petition may be addressed. The Respondent is correct. 52 IAC 2-5-2-(g) states "Only issues raised in the appeal petition or any approved amendments to the petition may be raised at the hearing." The Petitioners listed only one issue on the Form 131 petition. Thus, the only evidence that will be addressed in these findings is evidence relevant to the effective year of the structure.

Issue

12. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend that the property is over-valued because there is an error in the effective year of the dwelling resulting in the application of an incorrect depreciation percentage. In support of this contention, the Petitioners testified that the dwelling was originally built in 1925 and was remodeled in 1948. *R. Kuchler testimony*. The Petitioners further submitted photographs of the original structure and a property record card with the addition highlighted. *Petitioner Exhibit 4 at 4-6*.
 - b. The Petitioners contend the property record card indicates an effective year of 1937, which represents the average of the 1925 original year built and the 1948 remodel. *R. Kuchler testimony and Petitioner Exhibit 4 at 6*. According to the Petitioners this is an incorrect calculation for effective year based on the description in the Real Property Assessment Guideline in Chapter 3, page 57. *Petitioner Exhibit 4*. The Petitioners argue that the effective year for many houses in the subject neighborhood have not been adjusted as a result of remodeling. *Id.*

- c. The Petitioners further contend that the structure's physical depreciation was erroneously applied. *R. Kuchler testimony*. According to the Petitioners, if the dwelling were depreciated using a grade factor of C, the original year built of 1925 (over 70 years old) and a condition rating of average, the physical depreciation applied should be 45%. *Id.*
- d. In further support of its contention that the subject property is over-valued, the Petitioners submitted an appraisal of the subject property. *Petitioner Exhibit 1*. The appraisal estimates the value of the subject property to be \$370,000 as of 1999. *Id.*
- e. In response to the Respondent's entry into evidence of the December 1999, Sales Disclosure Form for the subject property, the Petitioners contend that the subject property was not bought in an arms-length transaction. *R. Kuchler testimony*. According to the Petitioners, the property was purchased on December 16, 1999, from a trust established by Mr. Kuchler's father-in-law when his mother-in-law died. *Id.* Mr. Kuchler testified that he paid his wife's brothers, the two other members of the trust, \$150,000 each to purchase the property fully furnished. *Id.* Mr. Kuchler further testified that the \$475,000 sale price also included the Petitioners' ownership interest in a common lakeside lot, Lot 334. *Id.*
- f. Finally, the Petitioners argue that seven of the eight comparable properties that the Respondent submitted as evidence are located on the lakeside of Lakeshore Drive. *Petitioner cross examination of Judith Anderson*. According to the Petitioners, lakeside properties sell for substantially more than hillside property more comparable to the subject property. *Id.*

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

- a. The Respondent contends that the assessment of the subject property properly reflects the market value-in-use of the property. *Meighen argument*. In support of this contention, the Respondent submitted a Sales Disclosure form showing that the property sold for \$475,000 on December 16, 1999. *Respondent Exhibit B*. According to the Respondent, the box for "Transfer of entire parcel" was checked, but "Personal Property included" was not checked. *Anderson testimony*. The Respondent also argues that the list of furnishings and the estimated price of the furnishings transferred with the house were not supported by appraisals. *Id.*
- b. The Respondent further contends that the property's assessment is correct on the basis of the sale of similar properties. *Meighen argument; Anderson testimony*. In support of this contention, the Respondent submitted property record cards for eight properties located on Lake Shore Drive. *Respondent Exhibits B-J*. In response to cross examination, however, Ms. Anderson admitted that the "comparable" properties were generally lakeside properties in a different neighborhood from the Petitioner's property. *Anderson testimony*. Ms. Anderson further admitted that lakeside properties sell for higher amounts than hillside properties like the subject property. *Id.*

- c. In addition, Mr. Beckinger testified that prior to his taking office in 2003 the methodology used to calculate the effective year was an average of year built and the remodeling date. *Beckinger testimony*. According to the Respondent's witness, the effective year on the property record card could have been done prior to that time. *Id.*
- d. Finally, the Respondent contends that the comparables submitted by the Petitioner in the appraisal are much smaller in square footage than the Petitioner's improvement. *Anderson testimony*. According to the Respondent, the Petitioner's house has 3,220 square feet listed on the property record card. *Id.* The appraisal, however, identifies the house as having 1,778 square feet and compares the property to homes with 1,836 to 2,240 square feet. *Respondent testimony*.

Record

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

- a. The Petition,
- b. The tape recording of the hearing labeled BTR # 6248,
- c. Exhibits:

Petitioner Exhibit 1 – Appraisal of 2403 Lake Shore Drive,
 Petitioner Exhibit 2 – Sale price inflation 1998-2000,
 Petitioner Exhibit 3 – Inventory of furniture and furnishings included in purchase price,
 Petitioner Exhibit 4 – Requested change of effective year,
 Petitioner Exhibit 5 – Requested change of quality grade,
 Petitioner Exhibit 6 – Summary of quality grades by town with hillside neighborhood,
 Petitioner Exhibit 7 – Requested change to recognize land influence factors,
 Petitioner Exhibit 8 – Lot 334 information.

Respondent Exhibit A – Property record card for subject property,
 Respondent Exhibit B – December 1999 sales disclosure form,
 Respondent Exhibit C – PRC for 2731 Lake Shore Drive,
 Respondent Exhibit D – PRC for 2027 Lake Shore Drive,
 Respondent Exhibit E – PRC for 1904 Lake Shore Drive,
 Respondent Exhibit F – PRC for 1601 Lake Shore Drive,
 Respondent Exhibit G – PRC for 1510 Lake Shore Drive,
 Respondent Exhibit H – PRC for 1506 Lake Shore Drive,
 Respondent Exhibit I – PRC for 1407 Lake Shore Drive,
 Respondent Exhibit J – PRC for 2948 Lake Shore Drive,
 Respondent Exhibit K – *Eckerling v. Wayne Township Assessor*, Cause No. 49T10-0502-TA-12, Ind. Tax Ct., February 2, 2006

Board Exhibit A - Form 131 petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C – Notice of Appearance for Marilyn Meighen,
Board Exhibit D – Hearing Sign In Sheet.

d. These Findings and Conclusions.

Analysis

15. 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 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).
 - 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 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”).
 - 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.
16. 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. The Petitioners contend that the effective year of the dwelling is incorrect. *Kuchler testimony*. In support of this contention, the Petitioners testified that the subject property was constructed in 1925 and remodeled in 1948. *Id.* The Petitioners further submitted into evidence several pages from the Manual, photographs of the original structure, and a property record card showing the addition. *Petitioner Exhibit 4*. Finally, the Petitioners submitted an appraisal to support their contention that the subject property is assessed incorrectly. *Petitioner Exhibit 1*. The Petitioner’s appraisal estimated the value of the property to be \$370,000 as of 1999. *Id.*
 - b. “Room additions added to existing dwellings before March 2, 1999, must be calculated as part of the original structure and depreciated based on the age of the main structure.” REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, (the GUIDELINES), Chapter 3 at 57 (incorporated by reference at 50 IAC 2.3-1-2). While the assessment is presumed to be correct, a taxpayer may offer evidence relevant to

- the fair market value-in-use of the property to rebut that presumption. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006). “The most effective method to rebut a presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).” *Id.* n. 3 quoting (*Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 NE.2d 501, 506 n. 6 (Ind. Tax Ct. 2005)).
- c. Here, the Petitioners submitted an appraisal as of October, 1999, performed by a licensed appraiser. *Petitioner Exhibit 1*. The appraiser attests the appraisal was prepared in accordance with USPAP. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioners 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 276. In response to the Petitioners' case, the Respondent submitted evidence showing that the property sold for \$475,000 on December 16, 1999. *Respondent Exhibit B*. The Respondent further submitted property record cards for eight properties located on Lake Shore Drive that sold for values ranging from \$325,000 to \$475,000. *Respondent Exhibits B-J*. The Respondent's witness also disputed the comparable properties used in the appraisal of the subject property. *Anderson testimony*. In response to cross-examination, however, the Respondent's witness admitted that the “comparable” properties were generally lakeside properties in a different neighborhood from the Petitioner's property. *Anderson testimony*. Ms. Anderson further admitted that lakeside properties sell for higher amounts than hillside properties like the subject property. *Id.* In addition, in rebuttal, the Petitioners' witness testified that the sale of the subject property was not an arms'-length transaction and included both personal property and an ownership interest in a “common” lot.
- f. Thus, we find that the weight of the evidence supports the appraised value of \$375,000. While the sale of the subject property is generally the best evidence of its value, here the evidence is that the sale was not an arms-length transaction. The property was purchased from a trust by one of the beneficiaries of the trust. Thus, many factors unrelated to the value of the property, such as the distribution of the estate, may have contributed to the sales price. Further, the sale may have included other property such as personal property and an ownership interest in a second lot. We are similarly unpersuaded by the Respondent's “comparable” sales. The Respondent's witness testified that the properties were “lakeside” properties and that lakeside properties typically sell for more than “hillside” properties like the subject property. Moreover, the Respondent failed to show that the properties were, in fact,

comparable to the subject property.² Finally, that the Respondent might have chosen other comparables than were chosen by the Petitioners' appraiser, is insufficient to rebut or impeach that evidence. "Conclusory statements" are not sufficient to rebut the Petitioners' case here. See *Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) ("In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Russell's calculations. Rather, he merely asked open-ended questions or made conclusory statements").

Conclusion

17. 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.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

² To rebut or impeach Petitioner's case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "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." 836 N.E.2d at 1082 (citations omitted).

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>.