

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

Petition #: 46-065-02-1-5-00014
Petitioner: John H. & Carol L. Laun
Respondent: Union Township Assessor (LaPorte County)
Parcel #: 751518161022
Assessment Year: 2002

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

Procedural History

1. The Petitioners filed an appeal with the LaPorte County Property Tax Assessment Board of Appeals (“PTABOA”) on January 23, 2004.
2. The PTABOA mailed notice of its determination on November 8, 2004.
3. The Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment on December 6, 2004. The Petitioners elected to have their appeal heard under the Board’s rules for small claims.
4. On September 12, 2007, Jennifer Bippus, the Board’s duly appointed Administrative Law Judge (“ALJ”), held an administrative hearing on the Petitioners’ Form 131 petition.
5. Marilyn Meighen of Meighen & Associates appeared as counsel for the Respondent. The following persons were present and sworn in at hearing:
 - a) For Petitioners: John Laun, Owner
Mike Laun, Witness
 - b) For Respondent: Carol McDaniel, LaPorte County Assessor
Joshua D. Pettit, LaPorte County Technical Advisor

Facts

6. The subject property is located at 271 Hadley Road, Kingsford Heights. It is classified as a single-family residential property.

7. The ALJ did not inspect the subject property.
8. The PTABOA determined the assessed value of the subject property to be:
Land \$2,100 Improvements \$9,600 Total \$11,700.
9. The Petitioners requested the following assessed value on their Form 131 petition:
Land \$950 Improvements \$2,500 Total \$3,450.

Parties' Contentions

10. Summary of Petitioners' contentions:
 - a) The Petitioners offered several reasons why they believe that the Respondent over-assessed the subject property.
 - b) First, the subject lot is 38 feet by 97 feet. The property has no side lot; it ends at the bottom of the subject house's steps. And the lot does not conform to current zoning regulations, which require 75 feet of frontage for a buildable home site. *Id.*; *Pet'rs Ex. 2*. Thus, the land would be worthless without the house, because a buyer would not be able to build on it. *M. Laun argument*; *J. Laun argument*.
 - c) Second, the subject house is not habitable. It is unfinished on the inside. It lacks interior walls, ceilings, insulation, plumbing, and fixtures. And it has no heating system. Plus, its floors have rotted through and there is no foundation. Because of those issues, and the fact that the house is only 560 square feet, the Petitioners only use the house for storage. *M. Laun testimony*; *J. Laun testimony*. To further support their claims that the house is not habitable, the Petitioners submitted a condemnation order that Mike Laun testified was for the subject house, although he acknowledged that the order specified a different address. *M. Laun testimony*; *Pet'rs Ex. 6*.
 - d) Finally, the Petitioners pointed to comparable properties' sale prices and assessments to support their claim that the subject property is over-assessed. They offered information for several purportedly comparable properties contained in a report prepared by Ronald H. Nowak, a certified appraiser. *Pet'rs Ex. 2, 4*. In that report, Mr. Nowak estimated market values for several properties owned by Ann A. Laun's estate. *Id.* Mr. Nowak, however, did not estimate the subject property's value.
 - e) The Petitioners emphasized that all the comparable properties that Mr. Nowak examined contained houses that were larger than the subject house. And unlike the subject house, the comparable houses were habitable. *M. Laun testimony*; *Pet'rs Ex. 4*.
 - f) The Petitioners also offered information about a property located at 257 Ivanhoe Road that they contended was comparable to the subject property. The property is one street away from the subject property. The Ivanho Road house is about the same size as the subject house, but it is about 20 years newer and is occupied. And its front

lot is twice as wide as the subject lot. Yet it is assessed for only \$3,000 more than the subject property. *M. Laun testimony; Pet'rs Ex. 3.*

11. Summary of Respondent's contentions:

- a) The Petitioners did not meet their burden of providing specific evidence to prove the subject property's market value-in-use. *Meighen argument.*
- b) Some of the comparable sales in Mr. Nowak's report occurred in 1994 and 1997, which is outside the relevant time frame for establishing true tax value for the 2002 reassessment. And those sale prices ranged from \$6,000 to \$11,500. The subject property's assessed value is only \$200 higher than the highest comparable sale price. *Meighen argument; Pet'rs Ex. 4.*
- c) And the Petitioners' comparable on Ivanhoe Road (*Pet'rs Ex. 3*) sold for \$23,000. *Pet'rs Ex. 3.* That sale price equals \$41 per square foot. The subject property, by contrast, is assessed for only \$20.39 per square foot. While the sale occurred in 2005, and is therefore outside the relevant time frame for the 2002 reassessment, it is significant that the subject property is assessed for only half the sale price for a property the Petitioners themselves identified as a comparable property. *Meighen argument; Pet'rs Ex. 3.*
- d) While the Petitioners could not build a house on the subject lot today, the existing house has been grandfathered in. *Meighen argument.*
- e) The Respondent also noted that the Petitioner's condemnation order does not address the subject property. That order lists 281 Hadley as the condemned house's address, and it references lot numbers 3233 & 3235. The subject property, by contrast, is located at 271 Hadley on lot 3204. Similarly, the subject property's parcel number does not match the parcel number listed in the order. *Meighen argument; Pet'rs Ex. 6; Resp't Ex. B.*
- f) The PTABOA hired a local appraiser to review the subject property's assessment. *Pettit testimony; Resp't Ex. C.* He identified properties that were comparable to the subject property in location and size, and that sold between 1998 and 1999. He computed a price per square foot for each property and determined that the subject property's assessment was reasonable. *Id.*
- g) The Respondent submitted property record cards for each of the appraiser's comparables. *Resp't Exs. D – L.* Like the subject house, the comparable houses all have wood-frame-with-sheeting construction and are one story. The subject house and all but one of the comparables were built in 1942. *Pettit testimony; Resp't Exs. D – L.* The houses all have quality grades in the D range. And all of the houses have one bathroom, except the subject house, which has no plumbing. *Pettit testimony; Resp't Exs. D – L.*

Record

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

- a) The Form 131 petition,
- b) The digital recording of the hearing,
- c) Exhibits:

- Petitioners Exhibit 1: Copy of appeal forms,
- Petitioners Exhibit 2: Letter from Ronald H. Nowak noting zoning regulations for frontage,
- Petitioners Exhibit 3: Photograph and assessment information for 257 Ivanhoe Rd. property,
- Petitioners Exhibit 4: Pages 3-5 of report prepared by Ronald H. Nowak and photographs of comparable properties,
- Petitioners Exhibit 5: Photograph of subject property,
- Petitioners Exhibit 6: Letter of Condemnation,
- Petitioners Exhibit 7: Witness name and address sheet,

- Respondent Exhibit A: Four photographs of subject property,
- Respondent Exhibit B: Property record card for subject property,
- Respondent Exhibit C: AI Landing Field Review,
- Respondent Exhibits D thru L: Corresponding property record cards for Field Review,

- Board Exhibit A: Form 131 Petition,
- Board Exhibit B: Notice of Hearing,
- Board Exhibit C: Hearing Sign-In Sheet,

- d) These Findings and Conclusions.

Analysis

13. Cases governing Administrative Rule and Petitioner's Burden:

- a) A taxpayer challenging an assessing official's determination must establish 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).
- b) In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. 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) If the taxpayer establishes a prima facie case, the burden shifts to the assessing official 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. The Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:
- a) Real property is assessed based on its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c). The Department of Local Government Finance’s regulations, in turn, define “true tax value” as “[t]he 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. Because of time and resource constraints, Indiana assessors primarily use a mass-appraisal version of the cost approach contained in the Real Property Assessment Guidelines for 2002 – Version A. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006).
 - b) A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *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. Market value-in-use appraisals conforming to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) The Petitioners failed to rebut the assessment’s presumption of accuracy. They relied, in part, on evidence about the subject property’s location and zoning restrictions as well as evidence about the subject house’s size and condition.
 - d) As an initial matter, at least some of the Petitioner’s evidence has little probative value. For example, the condemnation notice, on its face, does not apply to the subject property. Also, that order is dated June 20, 2007. Thus, even if the order’s reference to a different property was simply a mistake, the order describes conditions existing more than five years after the assessment date under appeal.
 - e) Nonetheless, the Board infers that at least some of the conditions that the Mike and John Laun described also existed on March 1, 2002. And those conditions, as well as

the zoning issues and location problems, likely affected the subject property's market value. But those facts do not, by themselves, quantify that value.

- f) They are, however, relevant to generally accepted appraisal methods that may be used to quantify the property's value. And the Petitioners attempted to use one of those methods—the sales-comparison approach. Thus, they pointed to information about five purportedly comparable properties contained in Mr. Nowak's report. And by comparing those properties to the subject property, they sought to quantify the subject property's value.
- g) The sales-comparison approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute improved property already existing in the market place. MANUAL at 13. An appraiser applying that approach locates sales of comparable improved properties and adjusts their selling prices to reflect the subject property's total value. *Id.* Those adjustments are designed to quantify property characteristics that cause sale prices to vary. *Id.* Thus, using objectively verifiable evidence, the appraiser examines all possible differences between the subject property and the comparable properties. The appraiser then isolates the items that influence market value. *Id.* Finally, the appraiser quantifies the relevant items' contributory values and uses those contributory values to adjust the comparable properties' sale prices. *Id.*
- h) Thus, in order to use the sales-comparison-approach as evidence in an assessment appeal, 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 suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must compare the subject property's characteristics to the characteristics of the purportedly comparable properties. *Id.* at 471. And the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- i) Here, the Petitioners did little more than present sales information, noting each property's house size, lot size and sale price. The Petitioners did not meaningfully compare the subject property's relevant characteristics to those of the purportedly comparable properties. While the Petitioners' evidence may contain some information from which such a comparison could be made, a party must do more than simply present raw data. Instead, the Petitioners must explain the relevance of that information to their contentions. See *Indianapolis Racquet Club*, 802 N.E.2d at 1022 ("[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis"). And even if the Petitioners showed that the properties were generally comparable to the subject property, the Petitioners did not adjust the 'comparable' properties' sale prices to reflect any relevant differences.

Conclusion

15. The Petitioners failed to make a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment for the subject parcel should not be changed.

ISSUED: _____

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>