

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

Petition No.: 18-010-06-1-5-00030
Petitioners: LeMoyne D. and Patricia L. Altic
Respondent: Delaware County Assessor
Parcel No.: 18-12-18-300-012-003
Assessment Year: 2006

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 Delaware County Property Tax Assessment Board of Appeals (PTABOA) by written document dated April 23, 2007.
2. The PTABOA issued its decision on June 20, 2008.
3. The Petitioners filed a Form 131 petition with the Board on July 15, 2008. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 8, 2009.
5. The Board held an administrative hearing on December 10, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at the hearing:
 - a) For Petitioners: LeMoyne D. Altic, Petitioner
 - b) For Respondent: Kelly Hisle, Delaware County Deputy Assessor

Facts

7. The property is a unit in a condominium duplex located at 4902 East Fairway Drive in the city of Muncie, Liberty Township in Delaware County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

9. For 2006, the PTABOA determined the assessed value of the subject property to be \$22,800 for the land and \$122,200 for the improvements, for a total assessed value of \$145,000.
10. The Petitioners request an assessed value of \$20,000 for the land and \$115,600 for the improvements, for a total assessed value of \$135,600.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a) The Petitioners contend that their property is over-valued based on their purchase of the property in May of 2005. *Altic testimony; Petitioners Exhibit 5.* According to Mr. Altic, the subject property had been listed for sale as early as November 2002, with an asking price at that time of \$153,900. *Altic testimony; Petitioners Exhibit 1.* Mr. Altic testified that it was listed again in November of 2003 for \$146,900 and in January of 2005 for \$139,000. *Altic testimony; Petitioners Exhibits 1-5.* At the time the Petitioners made an offer for the property, it was listed for \$125,900. *Id.* The Petitioners purchased the property for \$117,500 in May of 2005. *Id.* According to Mr. Altic, the condominium was rented during the time it was listed for sale, but the Petitioners are the first owners of the property. *Altic testimony.* In response to the Respondent's questions, Mr. Altic admitted that he purchased the property from National City Bank. *Id.*
 - b) The Petitioners further argue that they are assessed inequitably compared to their neighbors' assessments. *Altic testimony.* According to Mr. Altic, the subject property's assessed value increased from \$135,600 to \$161,300 for 2006. *Altic testimony; Petitioners Exhibit 7.* As a result, Mr. Altic argues, their condominium had the highest assessed value of any of the units in Ironwood, despite the fact that other units are larger. *Altic testimony; Petitioners Exhibit 8-12.* Furthermore, Mr. Altic contends, when compared against three other units in Ironwood, the Petitioners had the highest tax bill for the fall installment of 2006 pay 2007. *Id.* In subsequent installments, the Petitioners have paid "nearly as much" as two significantly larger units which sold for considerable higher prices than the Petitioners' unit, at \$189,818 and \$205,407 respectively. *Altic testimony; Petitioners Exhibit 13.*
 - c) The Petitioners also contend the property's land value is over-stated. *Altic testimony.* According to Mr. Altic, the original developers, Heritage MG, planned to build at least 28 condominium units at the development. *Id.* However, only nine units were built and there has been no construction for about five years. *Id.* The developers also planned to build single-family homes in Ironwood on an adjoining 36-acre tract, but that development never occurred. *Id.* Because Ironwood is a stagnant development, Mr. Altic argues that it was unreasonable for the property's land value to be increased. *Id.* In support of this contention, Mr.

Altic cited to an order from the Delaware Circuit Court concerning the 36-acre tract at Ironwood. *Petitioners Exhibit 15*. That order commented on the general decline of property values in the county and specifically referred to the diminution in value of the 36-acre tract. *Id.*

- d) Finally, Mr. Altic contends, the Respondent's analysis is flawed because the comparable properties she used are all in solid, sold-out developments. *Altic testimony*. According to Mr. Altic, those properties cannot be compared to Ironwood, because those developments have more units and are not subject to the legal problems present in Ironwood. *Id.*

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

- a) The Respondent contends the assessed value of the Petitioners' property is fair based on an analysis of three comparable properties that sold in 2004 and 2005. *Hisle testimony; Respondent Exhibit 1-8, and 10*. Ms. Hisle testified that she started with the base sale price of the comparable properties and then made adjustments for various features such as date of sale and the living area of the properties. *Id.* According to Ms. Hisle, the adjusted prices of the three comparable properties were \$152,300, \$144,100, and \$164,300, respectively. *Id.* Whereas the subject property is only assessed for \$145,000. *Id.*

Record

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

- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b. The digital recording of the hearing.
- c. Exhibits:

- Petitioners Exhibit 1: MLS listing for the subject property as of November 17, 2002,
- Petitioners Exhibit 2: MLS listing for the subject property as of November 5, 2003,
- Petitioners Exhibit 3: MLS listing for the subject property as of January 28, 2005,
- Petitioners Exhibit 4: Listing information sheet for the subject property as of March 25, 2005,
- Petitioners Exhibit 5: Settlement statement dated May 19, 2005,
- Petitioners Exhibit 6: Form 131 Petition,
- Petitioners Exhibit 7: Form 11 – Notice of Assessment dated March 21, 2007,
- Petitioners Exhibit 8: Comparison of Ironwood units from 2007 to 2009,

Petitioners Exhibit 9: 2007 fall installment tax information for four Ironwood units,
Petitioners Exhibit 10: 2008 spring installment tax information for four Ironwood units,
Petitioners Exhibit 11: 2008 fall installment tax information for four Ironwood units,
Petitioners Exhibit 12: 2009 spring installment tax information for four Ironwood units,
Petitioners Exhibit 13: Sales information for Ironwood Estates,
Petitioners Exhibit 14: Subject property's property record card (PRC),
Petitioners Exhibit 15: Order from the Delaware Circuit Court No. 2 in *T.E.K. Partners, L.L.C., v. Heritage/M.G., et al.*, dated October 16, 2007,

Respondent Exhibit 1: Sales comparison spreadsheet,
Respondent Exhibit 2: Subject property's PRC,
Respondent Exhibit 3: PRC for 3025 Applewood Court,
Respondent Exhibit 4: MLS listing sheet for 3025 Applewood Court,
Respondent Exhibit 5: Sales disclosure form for 3025 Applewood Court,
Respondent Exhibit 6: PRC for 112 North Talamore,
Respondent Exhibit 7: MLS listing sheet for 112 North Talamore,
Respondent Exhibit 8: Sales disclosure form for 112 North Talamore,
Respondent Exhibit 9: none submitted,
Respondent Exhibit 10: MLS listing sheet for 216 Talamore,

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

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 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.
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) The 2002 Real Property Assessment Manual defines “true tax value” 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 at 2 (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. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. 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, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
 - d) In this case, the Petitioners presented a settlement statement for their purchase of the subject property. *Petitioners Exhibit 5*. According to the settlement statement, the Petitioners purchased the condominium for \$117,500 on May 19, 2005. *Id.* While the Petitioners did not trend their May, 2005 sale date to the January 1, 2005, valuation date, the Board finds the purchase is sufficiently timely to be some evidence of the property’s market value-in-use. *See* 50 IAC 21-3-3(a) (“The local assessing official shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the

March 1, 2006, assessment date.”) Because the Petitioners purchased their property within the time period assessors use to determine the March 1, 2006, assessments, the Board finds that the Petitioners presented a prima facie case that the subject property is over-assessed.

- e) Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner’s evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E. 2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners’ case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise a prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E. 2d 1075, 1082 (Ind. Tax Ct. 2005). Here, Ms. Hisle attempted to defend the assessment through a sales comparison valuation. *Hisle testimony; Respondent Exhibit 1*. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, 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 proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- f) In reaching her conclusion of value, Ms. Hisle testified that she adjusted the sales prices 3% per year for the time of sale and \$10 per square foot for living area. *Hisle testimony*. According to Ms. Hisle, the living area adjustment came from the Marshall & Swift Handbook. However, she provided no basis for the time adjustment. Further, while the adjustments in Ms. Hisle’s analysis may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser’s assertions are backed by his or her education, training, and experience. The appraiser also typically certifies that he or she complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his or her adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his or her education, training and experience to estimate a reliable quantification. There is no evidence that Ms. Hisle is a licensed appraiser in Indiana. Moreover, she did not certify that she complied with USPAP in performing her valuation analysis. The Board therefore finds that the Respondent’s sales comparable analysis is insufficiently reliable to rebut the Petitioners’ sale evidence.

Conclusion

- 14. The Petitioners established a prima facie case. The Respondent failed to rebut the Petitioners’ evidence. The Board finds in favor of the Petitioners and holds that the true tax value of the property for the March 1, 2006, assessment date is \$117,500.

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: _____

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>.