

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

Petition No.: 46-022-06-1-5-00208
Petitioners: Richard E. and Marcia M. Anderson
Respondent: LaPorte County Assessor
Parcel No.: 42-01-21-307-023
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 LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 14, 2007.
2. The Petitioners received notice of the decision of the PTABOA on April 3, 2008.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the Board on May 1, 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 April 24, 2009.
5. The Board held an administrative hearing on June 4, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The persons present and sworn in at hearing:

For Petitioners: Richard E. Anderson, Petitioner and attorney

For Respondent: Michael Schultz, County Assessor Hearing Officer¹

Facts

7. The subject property is a townhouse located at 210-A California Avenue, Michigan City, Indiana.

¹ Marilyn Meighen appeared as counsel for the Respondent.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$385,000 for the land and \$65,000 for the improvements, for a total assessed value of \$450,000.
10. The Petitioners requested an assessment of \$262,300 for the land and \$112,700 for the improvements, for a total assessed value of \$375,000.

Issues

11. Summary of the Petitioners' contentions in support of an error in the assessment:²
 - a. The Petitioners contend the assessment of the subject property is over-stated because the grade of their unit in Sunset Point is C+1, while the grade of the units at the neighboring complex, Dunescape, is C. *Anderson testimony*. According to one of the Petitioners, Mr. Anderson, Dunescape has superior views and has amenities the subject property does not have, such as an indoor pool, exercise room, attached indoor parking, security, outside maintenance and a beach front deck. *Id.*
 - b. The Petitioners submitted an appraisal that estimated the value of the property to be \$450,000 as of January 1, 2005. *Petitioner Exhibit 2*. In addition, the Petitioners submitted a list of the sale prices of condominiums between 2003 and 2006. *Petitioner Exhibit 3*. According to Mr. Anderson, the appraised value was influenced by the sale of a single unit in 2006 for \$530,000 which has since gone into foreclosure. *Anderson argument*. Except for that single sale, no condominium has sold for more than \$436,000. *Petitioner Exhibit 3*. In fact, the Median sale price for condominiums ranged from \$226,000 to \$293,000 between 2003 and 2006. *Id.*
 - c. The Petitioners contend they are not disagreeing with the appraised value but argue that for the 2006 assessment year, the assessor valued condominiums at only a percentage of their market values. *Anderson argument*. According to Mr. Anderson, the average sale price of a condominium in Dunescape was \$416,875 in 2004 and 2005. *Id.*; *Petitioner Exhibit 4*. The assessed values of those units, however, were \$364,800. *Id.* Similarly, the Dunescape Townhomes had an average sale price of \$339,450, but an assessed value of only \$284,300. *Id.* Likewise, the St. Andrews project had an average sale price of \$308,250 and an average assessed value of only \$253,625. *Id.* In support of this contention, the Petitioners presented a document prepared by Mr. Landing of Heritage Appraisal Service, which listed property addresses,

² On their Form 131 petition, the Petitioners raised an issue concerning the payment of interest on their over payment of taxes. Mr. Anderson testified that the interest issue had been resolved and withdrew the issue at hearing.

the date each unit was sold, the units' sales prices and assessed values, and the percentage of sales price to assessed value. *Id.* Based on this evidence, the Petitioners argue, the overall average of assessed value to sales price was 83.6% for the other condominium projects in the area. *Id.* The Petitioners' condominium, however, is assessed for 100% of its market value. *Anderson argument.* Thus, the Petitioners contend, they should receive a reduction in their assessed value of approximately 15%. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent argues that the property is correctly assessed. *Meighen argument.* According to the Respondent's counsel, the property is currently assessed at \$450,000, which is the appraised value of the property as of the January 1, 2005, valuation date. *Meighen argument; Respondent Exhibit 1.*
 - b. The Respondent also argues that the grade of the property is correct. *Meighen argument.* The Respondent's witness, Mr. Schultz, argues that the grade of the subject property differs from the units at Dunescape because the appealed property is a stick-built, row-type construction, while Dunescape is a high-rise with poured concrete construction. *Schultz testimony.* According to Mr. Schultz, all of the condominiums at the Sunset Point, like the Petitioners' property, are graded C+1. *Id.* Ms. Meighen further argues that the Board should not focus on the property's grade because the Indiana Tax Court, in cases such as *Eckerling*, has upheld the market value-in-use standard over the mechanical Guidelines way of valuing property. *Meighen argument.*
 - b. Finally, the Respondent argues that Petitioners' Exhibit 4 is essentially a sales ratio study. *Meighen argument.* According to Ms. Meighen, the Petitioners have submitted nothing that shows Mr. Landing is qualified to conduct such an analysis. *Id.* Furthermore, Ms. Meighen argues that the DLGF reviewed and approved LaPorte County's reassessment. *Id.; Respondent Exhibit 5.* Ms. Meighen contends that the official approval of the county's reassessment is more credible than Petitioners' Exhibit 4. *Id.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 46-022-06-1-5-00208 Anderson
 - c. Exhibits:

Petitioner Exhibit 1 – Form 131 petition with attached Form 130 and Form 115,

Petitioner Exhibit 2 – Appraisal of the subject property by Alan M. Landing, dated June 13, 2007,

Petitioner Exhibit 3 – Condominium sales for the years 2003, 2004, 2005, and 2006

Petitioner Exhibit 4 – Analysis of condominium sales in the beach area, including the Dunescape project,

Petitioner Exhibit 5 – Ind. Code 6-1.1-4-4.5,

Respondent Exhibit 1 – Appraisal of the subject property,

Respondent Exhibit 2 – Ind. Code 6-1.5-4-1,

Respondent Exhibit 3 – *Irwin Mortgage Corp. v. Ind. Bd. of Tax Review, et. al.*, 775 N.E.2d 720 (Ind. Tax Ct. 2002),

Respondent Exhibit 4 – Property record card for the subject property,

Respondent Exhibit 5 – DLGF letter dated January 23, 2009,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing dated April 24, 2009,

Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Objection

14. Ms. Meighen objected to Petitioners' Exhibit 4 on the basis that it is hearsay. Hearsay is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. Here, the appraiser who prepared the sales analysis did not appear at the hearing to testify and be cross examined. Consequently, the appraisal is hearsay. Nevertheless, hearsay evidence is admissible with significant limitations. "Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801) may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence." 52 IAC 2-7-3. Therefore, the sales analysis is admitted into the record. But because the Respondent objected and the Petitioner failed to establish that any recognized exception applies, the appraisal cannot serve as the sole basis for the Board's decision.

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 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.
16. The Petitioners failed to provide sufficient evidence to establish an error in their assessment. 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). Appraisers traditionally have 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. Indiana assessing officials generally assess 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 market value in use as determined using the Guidelines is presumed to be accurate. *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 assumption 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 (USPAP) often will suffice. *See id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. *MANUAL* at 5.

- c. Regardless of the method used, the 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d. Here, the Petitioners first contend that the grade assigned to their condominium was in error. The Petitioners contend that the grade of the subject property should be no more than the grade assigned to a neighboring complex because the neighboring complex has more amenities and more lake frontage than the subject.
- e. Under Indiana's true tax value system, improvements have various grades based on their design and the quality of materials and workmanship. *Sollers Points Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185,190 (Ind. Tax Ct. 2003). "Construction quality and the resultant quality grade assigned is a composite characteristic." 2002 REAL PROPERTY ASSESSMENT GUIDELINES-VERSION A, Appendix A at 3. The Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. The descriptions in those lists are intentionally general and emphasize the most prominent elements of dwelling units within a particular grade. *Id.* Although the construction quality of individual components of an improvement may vary, the overall construction quality tends to be consistent for the entire residence. *Id.*
- f. When contesting a grade assigned to an improvement, a taxpayer must offer probative evidence concerning the alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct.1998). Conclusory statements regarding grade, however do not constitute probative evidence. *Id.* Likewise, mere references to photographs, or regulations, without explanation, do not qualify as probative evidence for purposes of grading issues. *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329,333 (Ind. Tax Ct.1999). In support of their claim, the Petitioners failed to offer any probative evidence relating to the specific features of the subject townhouse or to its quality of construction. This kind of presentation does not make a case for a grade change. *Sterling Management v. State Bd. of Tax Comm'rs*, 730 N.E.2d 828, 838-840 (Ind. Tax Ct. 2000).
- g. Further, even if the Petitioners had shown that the grade was incorrect on their assessment, the Petitioners failed to show that the assessment did not accurately reflect the market value of the property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900

(Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is actually correct”).

- h. To the extent that the Petitioners can be seen as arguing that their assessment is over-stated because other condominiums were assessed with a different grade, this argument was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer’s lack of uniformity and equality claim where the taxpayer showed neither its own property’s market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property’s market value-in-use. *Id.*
- i. The Petitioners also contend that, while other properties are assessed at a level below their respective market values, the subject property is assessed at its market value. The Petitioners argue that their assessment should be equalized with the assessments of seventeen other properties identified in Petitioners’ Exhibit 4.
- j. In *Indiana Dep’t of Local Gov. Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222 (Ind. 2005), the Indiana Supreme Court concluded that, although taxpayers have no state constitutional right to an individual equalization adjustment, they have a right to show that their “property taxes were higher than they would have been had other property been properly assessed.” *Id.* at 1227. The Supreme Court, however, left open significant questions relating to an individual’s right to an equalization adjustment. For example, the Court did not address what types of statistical comparisons might be relevant or what levels of disparity might merit an adjustment. The Court similarly did not specify whether a taxpayer must analyze all or only some classes of property within a township, or if taxpayer may confine its analysis to smaller divisions, such as individual neighborhoods.
- k. The rules promulgated by the Department of Local Government Finance setting forth equalization standards governing class-wide relief for lack of uniformity and equality of assessment incorporate sophisticated statistical methodologies as set forth in the Standard on Ratio Studies published by the International Association of Assessing Officials in July 1999 (IAAO Standard). *See* 50 IAC 14-2-1. Although the Court in *Commonwealth Edison* held that the DLGF’s rules did not provide a procedure for individuals to seek

an equalization adjustment, the Board finds that they provide some guidance for determining the substance of such claims.

- l. Here, the Petitioners used an average ratio of assessed value to sales price as the basis for their comparative analysis. The Petitioners, however, presented no evidence that a simple average is an accepted method of analyzing sales for purposes of equalization. Similarly, the Petitioners' analysis included seventeen condominium sales, fifteen of which occurred during 2004-2005, the relevant time period for the March 1, 2006, assessment date.³ The Petitioners, however, presented no evidence that the sales reflected the universe of sales in the neighborhood, or even the universe of condominium sales in the neighborhood. In fact, Petitioners' Exhibit 3 shows that forty-five sales of condominiums occurred during that time period.
- m. Furthermore, the reliability of a ratio study depends on how well the sales reflect market value. "Sales should be verified, edited and adjusted as necessary for financing, personal property, and time of sale." *Standard on Ratio Studies*, International Association of Assessing Officials, (July 1999) Sec. 4-2. The Petitioners failed to show that any adjustments had been made to the sales in order to relate them to the January 1, 2005, valuation date or that any effort had been made to verify the sales as arms' length transactions.
- n. Finally, as previously discussed, the Respondent properly objected to the sales analysis as hearsay. While the exhibit was admitted into the record, the rules are specific that the resulting determination may not be based solely upon the hearsay evidence. 52 IAC 2-7-3. Thus, the sales analysis cannot serve as the basis for a final determination that a 15% equalization adjustment should be applied to the assessment. And in this case there is no other probative evidence to support a value that would be less than the current assessment.
- o. The Petitioners failed to establish a prima facie case. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. The Petitioners failed to raise a prima facie case for a change in the assessment. The Board finds in favor of the Respondent.

³ While generally the 2006 assessment is to reflect the value of the property as of January 1, 2005, pursuant to 50 IAC 21-3-3(a), local assessing officials "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."

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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 pursuant to 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 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/bills/2007/SE0287.1.html>.