

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

Petition No.: 06-004-10-1-5-00008
Petitioners: Chris A. and Gina L. Badillo
Respondent: Boone County Assessor
Parcel No.: 004-00540-00
Assessment Year: 2010

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 appealed the assessment of their property for 2010 with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by letter dated September 30, 2010.
2. The PTABOA issued a notice of its decision on October 20, 2010.
3. The Petitioners filed a Form 131 petition with the Board on October 25, 2010. The Petitioners elected to have their case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 18, 2012.
5. The Board held an administrative hearing on March 14, 2012, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Gina Badillo, property owner
 - b. For Respondent: Lisa Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA Member

Facts

7. The property under appeal is a single-family rental home located at 1360 West 650 South, Lebanon, in Boone County.

8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2010, the PTABOA determined the assessed value of the property to be \$23,500 for the land and \$87,600 for the improvements, for a total assessed value of \$111,100.
10. The Petitioners requested an assessed value of \$23,500 for the land and \$64,000 for the improvements, for a total assessed value of \$87,500.

Issue

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
 - a. The Petitioners contend that the Respondent assessed their property for more than its market value-in-use based on a comparable sales analysis. *Badillo testimony; Petitioner Exhibit 1.* According to Mrs. Badillo, she hired Janis Smith of RE/MAX Countryside, to research comparable older homes. *Id.* Mrs. Badillo testified that Ms. Smith identified seven sales that occurred in Harrison, Jackson and Jefferson Townships between 2008 and 2010, with prices ranging from \$74,900 to \$91,000, resulting in an average sale price of \$82,543. *Id.* Mrs. Badillo testified that the three sales in Harrison Township, where the subject property is located, sold from \$74,900 to \$83,000, with an average sale price of \$77,633. *Id.* Based on the sales analysis, Mrs. Badillo argues, the market would not support the Petitioners' property's \$111,100 assessed value in 2010. *Badillo testimony.*
 - b. Mrs. Badillo further testified that the Petitioners purchased their property for \$109,000 in 2002. *Badillo testimony.* According to Mrs. Badillo, the Petitioners purchased the house during an "economic boom" when properties were selling for more than their actual market value. *Id.* Mrs. Badillo argues that, due to a general decline in housing prices, their house would not sell for its current assessed value. *Id.*
 - c. Finally, Mrs. Badillo argues that the effective age assigned to the Petitioners' house is flawed. *Badillo testimony.* According to Mrs. Badillo, the Respondent changed the effective age of the home based on an inaccurate property description on the multiple listing sheet. *Id.* Mrs. Badillo testified that, prior to the Petitioners' purchase of the property, the previous owners replaced the windows and added vinyl siding to the house, but the total remodel listed on the MLS was exaggerated in an attempt to sell the property. *Id.* Because the local officials used incorrect information to change the effective age, Mrs. Badillo concludes, their property is over-valued. *Id.*

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

- a. The Respondent testified that upon reviewing the Petitioners' property for the March 1, 2010, assessment date, the county discovered a 2002 multiple listing sheet that showed the house had been updated. *Garoffolo testimony; Respondent Exhibit 5*. According to Ms. Garoffolo, the listing sheet stated that the roof was six years old, the windows were nine years old, and two bedrooms and a bathroom had been remodeled that year. *Id.* In fact, the bathroom was identified as "totally remodeled" with a jetted garden tub. *Id.* The Petitioners' property record card, however, still reflected the year of construction and effective age of the house to be 1900. *Lewis testimony*. Ms. Lewis contends by remodeling and modernizing the house, the Petitioners have added to the life expectancy of the property, which in turn adds to the property's market value. *Id.* Ms. Lewis contends that, adjusting the effective age of the house to 1960, resulted in the assessed value of \$111,100. *Id.; Respondent Exhibit 4*. Thus, the Respondent concludes, the Petitioners' property is not over-valued. *Garoffolo and Lewis testimony*.
- b. Further, the Respondent's witness argues that the Petitioners' realtor's comparative market analysis should be given little weight. *Lewis testimony*. According to Ms. Lewis, the Petitioners' realtor did not disclose whether she inspected the interior of the homes her in analysis or if the comparable homes had been remodeled or updated. *Id.; citing Petitioner Exhibit 1*. In fact, Ms. Lewis argues, many of the comparable properties' listing sheets state they were sold as is and needed work. *Id.* Thus, she concludes, the Petitioners' comparative market analysis fails to show that the property under appeal was over-valued in 2010. *Lewis testimony*.
- c. The Respondent also contends that the comparative market analysis that the Petitioners submitted to the PTABOA supports her contention that the Petitioners' property's assessed value was correct for the assessment year at issue. *Garoffolo testimony; Respondent Exhibit 6*. According to Ms. Garoffolo, the Petitioners submitted four sales from Harrison Township. *Id.* One sale, located at 1803 North 700 West, was classified as a "fixer-upper" and was sold "as is" on October 2, 2009 for \$81,000. *Id.; Respondent Exhibit 6*. Another sale, located at 3465 South 900 West, was a foreclosure sale that sold on September 23, 2010, for \$72,000. *Id.* Removing these two invalid sales from the analysis, Ms. Garoffolo argues, leaves a sale in November of 2009 for \$122,000, or \$87 per square foot of living area, and a sale in December of 2009 for \$120,000, or \$55 per square foot. *Id.* Applying the average of \$71 per square foot to the Petitioners' home's 1,822 square feet of living area, Ms. Garoffolo argues, results in a value of \$129,362. *Garoffolo testimony*. Thus, Ms. Garoffolo concludes, the Petitioners' property was not over-valued for the March 1, 2010, assessment. *Id.*

- d. Finally, the Respondent argues that the Petitioners' property is properly assessed based on its sales price. *Garoffolo testimony*. According to Ms. Garoffolo, the listing sheet shows that the property sold for \$109,000 on March 7, 2002. *Id.*; *Respondent Exhibit 5*.

Record

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Comparative Market Analysis and multiple listing sheets for seven properties in Jackson, Jefferson and Harrison Townships and a Boone County Tax Report for the subject property,

Respondent Exhibit 1 – Boone County appeal worksheet,

Respondent Exhibit 2 – Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) – Form 114,

Respondent Exhibit 3 – Two exterior photographs of the subject property,

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

Respondent Exhibit 5 – Multiple listing sheet for 1360 West 650 South, Lebanon, dated March 7, 2002,

Respondent Exhibit 6 - Comparative Market Analysis and multiple listing sheets for 3841 West 715 South, Jamestown, 202 South Main Street, Advance, 1803 North 700 West, Thorntown, and 3465 South 900 West, Jamestown,

Respondent Exhibit 7 – Notification of Final Assessment Determination – Form 115,

Respondent Exhibit 8 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Respondent Exhibit 9 – Indiana Board of Tax Review Notice of Hearing on Petition,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.¹ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

15. Here, the Petitioners and Respondent agreed that the property's value increased from \$87,500 in 2009 to \$111,100 for the 2010 assessment. *Form 11, Notice of Assessment of Land and Structures, attached to the Petitioners' Form 131 Petition*. However, the Respondent presented evidence that, in approximately 2002, the house was significantly remodeled with updated bedrooms, exterior doors and a bathroom with a jetted garden tub.² *Respondent Exhibit 5*. In addition, prior to 2002, the home had a new roof and new double pane windows installed. *Id.* Because of these updates, the assessor testified, the "effective age" of the house was increased from 1900 to 1960 – which resulted in the increase in the assessed value of the improvements. *Garoffolo testimony*. While the Petitioners contend that the listing sheet exaggerated the updates, Mrs. Badillo failed to identify any specific inaccuracy in the description. For example, Mrs. Badillo did not deny that the bathroom has a jetted garden tub or that the roof was replaced and, in fact, she admitted that new siding and windows were installed prior to their purchase of the property. Mrs. Badillo merely argued that they had only "maintained" the property since

¹ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

² The Assessor testified that although the property's sale occurred in 2002, the property's effective age was changed as soon as she learned about the MLS listing identifying the upgrades to the house. *Garoffolo testimony*.

they purchased it.³ However, that the current property owners only “maintained” the house, rather than remodeled the property, does not rebut the Respondent’s evidence that the former owners made significant improvements to the property.

16. Indiana Code § 6-1.1-15-17.2 applies where “the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property.” Ind. Code § 6-1.1-15-17.2. “When faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997), *review denied*. Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than five percent. Therefore, because the property’s 2010 assessment accounted for the improvements made to the property; whereas the property was not assessed for those updates in 2009, the assessor was not assessing the “same property” in 2010 as she did in 2009. Thus, Indiana Code § 6-1.1-15-17.2 does not apply in this case.
17. The Petitioners failed to provide sufficient evidence to establish a prima facie case that their property was over-assessed in 2010. 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 have traditionally 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 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); *PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A party 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 (USPAP) often will suffice. *Id.*; *Kooshtard Property*

³ Mrs. Badillo testified that “Prior to when the previous owners bought the house that vinyl siding and windows was put on. ... I do not call that a total remodeling... The frame, the floors, none of that was redone. We did not do any improvements on the house... We maintained it, but we did not remodel the house.” *Badillo testimony*.

VI, 836 N.E.2d at 506 n.6. A party may also offer evidence of actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c. Here, the Petitioners argue that their property was over-valued based on a comparable market analysis prepared by a real estate agent. *Petitioner Exhibit 1*. In her analysis, the agent identified seven properties built between 1850 and 1980 in Jefferson, Harrison, and Jackson townships that sold in 2008, 2009 and 2010. *Id.*
- d. In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value-in-use of their property. *See* MANUAL at 3 (stating that 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.”) 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 two 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.*
- e. Here, the Petitioners presented no evidence to show that the realtor’s properties were comparable to the property under appeal. In fact, based on the “search criteria” the realtor used, properties appear to be merely “older homes” located near the subject property. Because the Petitioners made no attempt to identify the similarities in the properties or to value the differences between the properties, their sales comparable analysis has little probative value.
- f. To the extent that the Petitioners can be seen as arguing that their purchase price somehow proves their property is over-valued, the Board finds this argument likewise unpersuasive. Regardless of the method used to prove a property’s true tax value, 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. Dep’t of Local Gov’t Fin.*, 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, 2010, assessment, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c). Here, the Petitioners purchased the subject property in 2002, but they made no attempt to relate the property’s 2002 purchase price to the March 1, 2010, valuation date. Mrs. Badillo argued that they bought the property during an “economic boom” and the property would not sell for its purchase price in today’s market, but she presented no evidence to support her contention. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its

determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- g. The Petitioners failed to raise a prima facie case that their property's assessed value was over-stated for the March 1, 2010, assessment. Where a party has not supported its claim with probative evidence, the opponent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Petitioners failed to raise a prima facie case that their property was over-valued for the March 1, 2010, assessment date. The Board therefore finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioners' property should not be changed.

ISSUED: June 4, 2012

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>.