

REPRESENTATIVE FOR PETITIONERS:

John C. & Ute A. Bailey, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:

Cathy Searcy, Elkhart County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|--------------------------|---|--------------------------------------|
| John C. & Ute A. Bailey, |) | Petition No.: 20-015-07-1-5-00059 |
| |) | |
| Petitioners, |) | Parcel No.: 20-11-21-477-011.000-015 |
| |) | |
| v. |) | Elkhart County |
| |) | |
| Elkhart County Assessor, |) | Elkhart Township |
| |) | |
| Respondent. |) | Assessment Year: 2007 |

Appeal from the Final Determination of the
Elkhart County Property Tax Assessment Board of Appeals

March 25, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. The Petitioners, John C. and Ute A. Bailey, offered no admissible market-value-in-use evidence to support their claim that the subject property was over assessed. What market-based evidence they did offer—sales and listing data for purportedly comparable

properties—the Board excludes because the Baileys failed to comply with pre-hearing-disclosure requirements. Even if the Board were to admit that evidence, it would not help the Baileys, because they failed to adequately explain how the raw data related to the subject property’s true tax value as of the relevant January 1, 2006, valuation date.

Procedural History

2. On April 2, 2008, the Baileys filed notice with the Elkhart County Assessor contesting the subject property’s 2007 assessment. On October 16, 2008, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Baileys relief. As a result, on October 21, 2008, the Baileys filed a Form 131 petition with the Board. They elected to opt out of the Board’s small claims procedures. The Board has jurisdiction over the Baileys’ appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On December 22, 2009, the Board’s Administrative Law Judge, Patti Kindler (“ALJ”), held a hearing on the Baileys’ appeal. Neither the Board nor the ALJ inspected the subject property.

4. The following people were sworn in as witnesses:

For the Baileys:

John C. & Ute A. Bailey

For the Assessor:

Cathy Searcy, Elkhart County Assessor

Grace Johnson

5. The Baileys submitted the following exhibits, although the Board excludes Exhibits 2-9 in response the Assessor’s objection:

Petitioners Exhibit 1 – A March 20, 2008, letter from the Elkhart Township Assessor to Mr. Bailey

Petitioners Exhibit 2 – Listing data and a property record card for a property at 2608 Salem Drive

- Petitioners Exhibit 3 – Sales information for 64669 Orchard Drive
- Petitioners Exhibit 4 – Listing and sales information and a property record card for 113 West Kercher Road
- Petitioners Exhibit 5 – Listing data and a property record card for 206 West Kercher Road
- Petitioners Exhibit 6 – Listing data and a property record card for 2727 Martin Manor Drive
- Petitioners Exhibit 7 – Listing data and a property record card for 2604 Violet Road
- Petitioners Exhibit 8 – Property record card for 2804 Martin Manor Drive
- Petitioners Exhibit 9 – October 23, 2009, October 30, 2009, and November 6, 2009 “Notice of Real Property Tax Sale” from the *Elkhart Truth*

6. The Assessor submitted the following exhibits:

- Respondent Exhibit 1 – Form 115 Notification of Final Assessment Determination
- Respondent Exhibit 2 – Photograph of the subject property
- Respondent Exhibit 3 – Map of the subject property’s neighborhood
- Respondent Exhibit 4 – Subject property record card
- Respondent Exhibit 5 – Sales-ratio-study data

7. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A – Form 131 petition with attachments
- Board Exhibit B – Hearing notices
- Board Exhibit C – Hearing sign-in sheet
- Board Exhibit D – County Assessor’s request for a continuance
- Board Exhibit E – Board’s approval of requested continuance

8. The subject property is a residential property located at 111 Island View Drive, Goshen, Indiana.

9. The PTABOA determined the following values for the subject property:

Land: \$29,300 Improvements: \$140,800 Total: \$170,100.

10. The Baileys requested the following values:

Land: \$29,300 Improvements: \$122,000 Total: \$151,300.

Objection

11. The Assessor objected to Petitioners' Exhibits 2-9, arguing that the Baileys failed to comply with pre-hearing disclosure requirements set forth in 52 IAC 2-7-1. The Baileys responded that they thought those disclosure requirements only applied if they were not going to attend the hearing. As permitted by 52 IAC 2-7-2(a), the ALJ deferred ruling on the Assessor's objection.
12. The Board sustains the objection. The Assessor correctly noted that 52 IAC 2-7-1 requires each party to give all other parties: (1) a list of the witnesses and exhibits it intends to offer at least 15 business days before any administrative hearing, and (2) copies of documentary evidence and summaries of its witnesses' anticipated testimony at least five business days before the hearing. 52 IAC 2-7-1(b)(1) and (2). The Board may exclude evidence based on a party's failure to comply with those deadlines. 52 IAC 2-7-1(f).
13. Although the Baileys apparently misunderstood 52 IAC 2-7-1's deadlines, both the rule itself and the Board's hearing notice clearly list those deadlines. *See Board Ex. B.* Because the documents in question were central to the Baileys' case, their failure to provide the Assessor with those documents until the day of the hearing prejudiced the Assessor. In any event, the Board explains below why the excluded evidence would not have helped the Baileys even if it had been admitted.

Administrative Review and Parties' Burdens

14. A taxpayer seeking review of an assessing official's determination must make 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).

15. 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”).
16. If a taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach 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.

Analysis
Parties’ Contentions

A. The Baileys’ contentions

17. When the Baileys first contested the subject property’s assessment, an Elkhart Township deputy assessor inspected the property and determined that the \$170,100 assessment was correct. *J. Bailey testimony; Pet’rs Ex. 1*. But the deputy assessor also noted that the property’s value range was between \$160,000 and \$170,000. *J. Bailey testimony*. According to the Baileys, the subject property should be valued at the low end of that range. *J. Bailey argument*.
18. When the Baileys bought the subject property, they paid about \$1,400 per year in taxes. *J. Bailey testimony*. For the last five years, however, the subject property’s annual taxes have been roughly \$2,400, and they have gone as high as \$3,100. *Id.*

B. The Assessor’s contentions

19. The subject property’s is assessed correctly. The Assessor reviewed the information on the property’s record card, including the house’s size and grade, and she verified that it was all correct. Also, the ratio study for the subject property’s assessment neighborhood

falls well within the Department of Local Government Finance's guidelines. *Searcy testimony; Resp't Ex. 5.*

20. The Baileys' rising tax bills are beside the point. Those bills have more to do with the tax rates in Elkhart Township and the City of Goshen than with the subject property's assessment. *Searcy testimony and argument.*

Discussion

21. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
22. 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 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. 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 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
23. Regardless of the method used to rebut an assessment's presumption of accuracy, however, a party must explain how its evidence relates to the 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 Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2007, assessments, that valuation date was January 1, 2006. Ind. Code § 6-1.1-31-6 (c); 50 IAC 21-3-3.

24. Because the Baileys failed to offer any admissible evidence of the types described by the Tax Court and Manual, they did not make a prima facie case. Mr. Bailey's conclusory statement that the subject property should not be valued at the high end of the range suggested by an Elkhart Township deputy assessor is not probative. *See Long*, 821 N.E.2d at 470 (explaining that conclusory statements are not probative evidence).
25. The Baileys also complained that their property taxes had risen dramatically since they bought their home 19 years ago. To the extent that the Baileys contest their taxes—as opposed to contesting the subject property's assessment—the Board lacks jurisdiction to hear their claim. The Board is a creation of the legislature and has only those powers conferred by statute. *Whetzel v. Dept' of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). The Indiana General Assembly has authorized the Board to address appeals from determinations made by local assessing officials and county PTABOs that concern property valuations, property tax deductions, and property tax exemptions. Ind. Code § 6-1.5-4-1. By contrast, no statute authorizes the Board to review the propriety of local tax rates.
26. The Baileys did offer sale, listing, and assessment data for eight purportedly comparable properties. Of course, the Board has excluded that evidence in response to the Assessor's objection. Even if the Board were to admit that evidence, however, it would not suffice to make a prima facie case for reducing the subject property's assessment.
27. First, the Baileys' sale and listing data was mostly from 2008 and 2009. The Baileys, however, offered nothing to relate that data to the relevant January 1, 2006, valuation date. That data therefore lacks probative value. *See Long*, 821 N.E.2d at 471 (finding

that evidence lacked probative value where the taxpayers failed to explain how it related to their property's value as of the relevant valuation date).

28. Second, by itself, the raw data that the Baileys offered does not show that the subject property was over assessed. True, one can show a property's value through sales information for comparable properties. Indeed, that is what the sales-comparison approach contemplates. See MANUAL at 3 (explaining 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."). To use the sales-comparison approach as evidence, however, the proponent must show that the properties being examined are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *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 those properties affect their relative market values-in-use. *Id.*
29. Here, the Baileys did little to explain how the eight properties in question compared to the subject property and nothing to explain how any differences affected the properties' relative values. For seven of the eight properties, Mr. Bailey simply offered property record cards and testified that the properties were within a two-to-six minute walk from the subject property. He said a little more about the eighth property, explaining that both it and the subject property contained 1 ½-story homes that were built in the 1970s and that were close to the same size. Again, though, Mr. Bailey did not explain how any differences between that eighth property and the subject property affected their relative values. Thus, even if the Baileys' market-based evidence had been admissible and had related to the January 1, 2006, valuation date, it still would not have sufficed to make a prima facie case.
30. Because the Baileys did not offer probative evidence to rebut the presumption that the subject property was correctly assessed, they failed to make a prima facie case.

Summary of Final Determination

31. The Baileys failed to make a prima facie case. The Board therefore finds for the Assessor and issues this Final Determination on the date first written above.

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>>