

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

Petition No.: 82-025-06-1-5-13262
Petitioners: Harold and Lois Bartlett¹
Respondent: Vanderburgh County Assessor
Parcel No.: 10-020-18-028-034
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 Vanderburgh County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 7, 2007.
2. The Petitioners received notice of the decision of the PTABOA via a Form 115 Notification of Final Assessment Determination dated October 11, 2007.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 dated November 26, 2007. The Petitioners elected to have this case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 30, 2008.
5. The Board held an administrative hearing on July 29, 2008, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Timothy H. Bartlett, Petitioner
Richard A. Reid, Richard Reid Appraisal Co., Inc.
 - b. For Respondent: Candy Wells, PTABOA Hearing Officer
Tiffany Collins, PTABOA Administrative Asst.

¹ Harold and Lois Bartlett, the taxpayers of record when this appeal was initiated, predeceased the Board's hearing and their heirs and sons, Timothy Bartlett and David Bartlett, pursued the appeals process with Timothy appearing at the Board's hearing. Ownership of the parcel has transferred to Timothy and David Bartlett, dba D & S Properties. See *Petitioner Exhibit 5*.

Facts

7. The property under appeal is an improved residential parcel located at 1832 Hathaway Avenue, Perry Township, in Vanderburgh County, Evansville, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property is \$14,500 for the land and \$11,500 for the improvements, for a total assessed value of \$26,000.
10. The Petitioner requested an assessed value of \$5,000 for the land and \$9,500 for the improvements, for a total of \$14,500.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend the Respondent assessed the appealed property for more than its market value-in-use. *Bartlett testimony*. According to the Petitioners, the property appraised for \$14,500. *Id.* In support of their position, the Petitioners submitted an appraisal report prepared by Richard Reid of Richard Reid Appraisal Co., Inc. *Petitioner Exhibit 1*. Mr. Reid is an Indiana Certified General Appraiser. *Id.* In the September 5, 2007, report Mr. Reid estimated the market value-in-use of the appealed property to be \$14,500 as of August 28, 2007. *Id.* In response to the Respondent's argument that the appraisal valuation is not timely, Mr. Reid testified that market prices have been falling in the area. *Reid testimony*. Thus, Mr. Reid argues, he would apply a negative adjustment to the appraised value if he were to value the property as of January 1, 2005. *Id.*
 - b. The Petitioners further contend that the property is over-valued based on the size and condition of the improvements. *Bartlett testimony*. According to Mr. Bartlett, the house on the property is only 590 square-feet which makes it difficult to secure bank financing. *Bartlett argument*. In addition to being less than 600 square feet, the Petitioners' appraiser testified that the residence is in disheveled condition and has a strong foul odor which may come from mold as a result of water standing in the basement. *Reid testimony*.
 - c. The Petitioners also contend that a Gross Rent Multiplier (GRM) of 40 calculated by the appraiser is more appropriate than the township's 109 GRM used in the assessment. *Bartlett testimony*. In support of this contention, Mr. Reid testified that he established the GRM used in the appraisal based on sales and rents of comparable nearby properties. *Reid testimony*.
12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the 2006 assessed value is correct following an adjustment as a result of the county-level hearing. *Wells testimony*. In support of this argument, the Respondent entered into evidence a copy of its recommendation from county-level hearing. *Respondent Exhibit 2*.
- b. The Respondent also contends that the appraisal's valuation date of August 28, 2007, falls outside the time frame mandated by the state for the trending assessment adjustment. *Wells testimony*. According to Ms. Wells, the 2006 assessment must reflect the value of the property as of January 1, 2005. *Id.* Properties are valued by examining sales of properties occurring between January 1, 2004, and December 31, 2005, and performing sales ratio studies for the March 1, 2006, assessment date. *Id.*
- c. Finally, the Respondent contends, the Petitioners' appraisal is flawed. *Wells testimony*. According to Ms. Wells, the GRM used in the appraisal's income approach to value is too low at 40 when compared to the 108.06 GRM established by the township assessor as standard for the Perry Township. *Id.* Further, one of the three comparables used by the appraiser was inappropriate because the \$8,000 sale of the property at 3904 Saunders involved an improvement that is the shell of a house that has been gutted. *Petitioner Exhibit 1; Wells testimony*.

Record

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

- a. The Petition and related attachments,
- b. The digital recording of the hearing labeled 82-025-06-5-1-13262Bartlett,
- c. Exhibits:

Petitioner Exhibit 1 – Appraisal Report prepared by Robert Reid Appraisal Co.
Inc.,

Petitioner Exhibit 2 – Copy of the Form 131,

Respondent Exhibit 1 – Copy of Petitioners' Appraisal Report,

Respondent Exhibit 2 – Hearing Officer's Recommendation to Vanderburgh
County PTABOA,

Respondent Exhibit 3 – 2006 property record card for appealed parcel,

Board Exhibit A – Form 131 petition and related attachments,

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 Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a. Real property is assessed based on its “true tax value.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). True tax value is “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, for the property.” *Id.* A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* 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 IV*, 836 N.E.2d at 505, 506 n.1.
 - b. In addition, the 2006 assessment is to 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).
 - c. Here the Petitioners presented an appraisal that estimated the value of the appealed property to be \$14,500 as of April 28, 2007. *Petitioner Exhibit 1; Bartlett testimony*;

Reid testimony. The appraiser attested that the appraisal was prepared in accordance with USPAP standards, and includes the cost, the sales comparison, and the income approaches to value. *Id.*

- d. The appraisal, however, suffers from a shortcoming in that it does not value the subject property as of the relevant valuation date. The Petitioners' appraiser, in response to the Respondent's argument that the appraisal's valuation date is out of compliance with the Manual, testified that properties with multiple sales showed that properties in the area had been losing value. *Reid testimony.* Despite this testimony, Mr. Reid argues that using the valuation date of January 1, 2005, would result in a negative adjustment to the subject property's appraised value. *Id.*
- e. The Petitioners' appraiser's testimony that he would apply a negative adjustment to trend the value to the January 1, 2005, valuation date is some evidence relating the Petitioners' August 28, 2007, appraised value to the January 1, 2005, valuation date. However, this testimony is contradicted by the evidence. Mr. Reid testified that property values are declining. Further, all three comparable sales used by Mr. Reid in his appraisal had prior sales in excess of the properties' sale prices in 2007. *Petitioner Exhibit 1.* For example, comparable sale No. 1, sold in 2003 for \$33,000 and in 2007 for \$8,000. Similarly comparable sale No. 2 sold in 2001 for \$53,000 and in 2007 for \$27,500. Finally, comparable sale No. 3 sold in 2002 for \$41,900 and again in 2007 for just \$16,000. Moreover, the assessor trended the property's value downward between 2006 and 2007. The Board finds the evidence that properties are declining in value persuasive. As such, the Board must conclude that the property's January 1, 2005, value is higher than the August 28, 2007, appraised value. Therefore, the Board finds that the appraised value is not probative of the property's market value-in-use as of the valuation date.
- f. The Petitioners also contend the property is over-valued because of the size and condition of the residence. According to the Petitioners, the house is only 590 sq.ft. in area. *Barlett testimony.* Further, Mr. Reid argues, the residence is in bad condition and has a foul smell. *Reid testimony.* While these characteristics may, in fact, negatively impact the value of the property, as the Board found above, the Petitioners failed to show what that value is. It is not enough to show that the current assessment is incorrect. A Petitioner must specifically show what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 478.
- g. The Petitioners failed to raise a prima facie case that their property is over-assessed. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't. Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioners failed to raise a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines 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 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>.