

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

Petition No.: 91-013-07-1-5-00056
Petitioners: James D. and Sara Blythe II
Respondent: White County Assessor
Parcel No.: 010-18370-00
Assessment Year: 2007

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 White County Property Tax Assessment Board of Appeals (the PTABOA) by written document on December 5, 2008.
2. The PTABOA issued a notice of its decision on May 29, 2009.
3. The Petitioners filed a Form 131 petition with the Board on June 23, 2009. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated August 14, 2009.
5. The Board held an administrative hearing on November 10, 2009, 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: John L. Johantges, Property Tax Group 1
 - b. For Respondent: Scott Potts, County Representative

Facts

7. The property is a 1,548 square foot single-family residence located at 3386 Bailey Road, Monticello, Monon Township, in White County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. The PTABOA determined the assessed value to be \$145,100 for the land and \$120,200 for the improvements, for a total assessed value of \$265,300.
10. The Petitioners requested a total assessed value of “no more than \$214,400.”

Issue

11. Summary of the Petitioners’ contentions in support of an alleged error in their assessment:
 - a. The Petitioners’ representative argues that the 2007 assessed value of \$265,300 is incorrect because the Respondent failed to use the correct March 1, 2006, value when applying the 2007 trending factor to the subject property. *Johantges testimony*. According to Mr. Johantges, the property under appeal was originally assessed at \$228,300 for the March 1, 2006, assessment date. *Petitioner Exhibit B; Johantges testimony*. The Petitioners, however, appealed the 2006 assessment and the Board reduced the assessment to \$182,000. *Petitioner Exhibit A; Johantges testimony*. Mr. Johantges contends that when the local officials computed the 2007 assessment, they incorrectly applied the 2007 trending factor to the original 2006 assessment of \$228,300 instead of the Board determined value of \$182,000. *Johantges testimony*.
12. Summary of the Respondent’s contentions in support of the assessment:
 - a. The Respondent contends the property under appeal is correctly assessed at \$265,300. *Potts testimony*. The Respondent argues the Petitioners have not presented any probative market value evidence to establish their 2007 assessment is incorrect. *Id.*
 - b. The Respondent contends the neighborhood factor – or trending factor – was correctly applied by the local officials. *Potts testimony*. According to Mr. Potts, local officials used sales from 2005 and 2006 to establish assessed values for the March 1, 2007, assessment. *Id.* Mr. Potts contends the Petitioners are requesting that an appraisal that estimates the value of the property as of April 27, 2004, be considered valid in establishing the value of the property for the March 1, 2007, assessment. *Id.*

- c. The Respondent further contends the appraisal used to establish the March 1, 2006, assessment was erroneous and would only have been valid in estimating the value of the property under appeal on April 27, 2004, the date of the appraisal. *Respondent Exhibit L; Potts testimony.* According to Mr. Potts, the appraiser used 2003 sales without making time adjustments to those sale prices to estimate the value of the Petitioners' property.¹ *Id.* Mr. Potts argued that the county's data shows residential sales on Lake Shafer of properties on-water and off-water have continued to increase from 2003 to 2007. *Potts testimony.* In support of this contention, the Respondent submitted the 2003 through 2007 median sales prices and the improved residential sales for Lake Shafer and Lake Shafer Tributaries. *Respondent Exhibits A through K.*

Record

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

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

Petitioner Exhibit A – Indiana Board of Tax Review final determination in *James D. & Sara Blythe II v. White County Assessor*, Petition No. 91-013-06-1-5-00083 (May 12, 2009),

Petitioner Exhibit B – Property record card for Parcel No. 91-83-31-000-005.000-013 located at 3386 East Bailey Road, Monticello,

Respondent Exhibit A – 2003 Improved Residential Sales for Lake Shafer and Lake Shafer Tributaries in White County,

Respondent Exhibit B – 2004 Improved Residential Sales for Lake Shafer and Lake Shafer Tributaries in White County,

Respondent Exhibit C – 2005 Improved Residential Sales for Lake Shafer and Lake Shafer Tributaries in White County,

Respondent Exhibit D – 2006 Improved Residential Sales for Lake Shafer and Lake Shafer Tributaries in White County,

Respondent Exhibit E – 2007 Improved Residential Sales for Lake Shafer and Lake Shafer Tributaries in White County,

¹ Mr. Potts testified the Petitioners' appraiser used 2003 sales to form his opinion of value for April 27, 2004, however, the appraisal shows the appraiser used sales from January 5, 2004 to July 30, 2004. *Respondent Exhibit L.* While there were four supplemental sales used in the appraisal where the comparable properties sold in 2003, there were also two more sales in 2004 in those supplemental sales. *Id.*

- Respondent Exhibit F – 2003 Improved Residential Sales for Non-Water Front Properties near Lake Shafer and Lake Shafer Tributaries,
- Respondent Exhibit G – 2004 Improved Residential Sales for Non-Water Front Properties near Lake Shafer and Lake Shafer Tributaries,
- Respondent Exhibit H – 2005 Improved Residential Sales for Non-Water Front Properties near Lake Shafer and Lake Shafer Tributaries,
- Respondent Exhibit I – 2006 Improved Residential Sales for Non-Water Front Properties near Lake Shafer and Lake Shafer Tributaries,
- Respondent Exhibit J – 2007 Improved Residential Sales for Non-Water Front Properties near Lake Shafer and Lake Shafer Tributaries,
- Respondent Exhibit K – Summary of Median Sale Prices and Percentage of Sale Price Increase per Year for Lake Shafer Water Front and Lake Shafer Non-Water Front Properties,
- Respondent Exhibit L – Summary appraisal report prepared by Sid E. Holderly, Holderly Appraisal & Real Estate, dated March 28, 2005,
- Respondent Exhibit M – Notice of Appearance of Consultant and Certification of Tyler Technologies/CLT as a Professional Appraiser under Ind. Code § 6-1.1-31.7,
- 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. 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 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 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.
15. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Respondent, however, supported the Petitioners’ claims with the evidence it presented before the Board. 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 Ct. 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 property 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.

- d. Here, the Petitioners' representative did nothing more than submit the Board's decision in the Petitioners' 2006 assessment appeal and contend that it was the proper starting place for the assessor's 2007 trending. Mr. Johantges, however, failed to provide any evidence as to how that 2006 value related to the 2007 assessment year. He merely focused on how the assessor applied the statutory and administrative requirements for annually adjusting assessments in years between general reassessments. *See* Ind. Code § 6-1.1-4-4.5(b) (requiring the Department of Local Government Finance (DLGF) to adopt rules for establishing a system to adjust assessed values in years between general reassessments); 50 IAC 21 (DLGF's rules governing annual adjustments).
- e. To the extent that the Petitioners' representative can be seen as challenging the methodology used to compute the subject property's 2007 assessment, Mr. Johantges failed to make a case for the Petitioners. The Indiana Tax Court in *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) held that the "strict application of the regulations is not enough to rebut the presumption that the assessment is correct." Thus, the Petitioners must show through the use of market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. Here, the Petitioners' representative did not. While the Board's decision that the property's value was \$182,000 as of January 1, 2005, for the March 1, 2006, assessment, Mr. Johantges failed to provide any evidence of how that January 1, 2005, value related to the January 1, 2006, valuation date.
- f. The Board's May 12, 2009, final determination on the Petitioners' 2006 assessed value conclusively established one and only one factual issue – the market value-in-use of the subject property as of January 1, 2005. Mr. Johantges therefore needed to provide evidence that the property had not changed in the intervening year and evidence of how the market changed during that period. Mr. Johantges failed to do either. He merely assumed the county or Board would do the work for him and determine how the property's January 1, 2005, value should be adjusted to January 1, 2006. The Petitioners' representative is reminded that "it is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis." *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
- g. Further, even if it was sufficient for Mr. Johantges to show that the assessor's failure to start with the Board's \$182,000 valuation to trend for the 2007 assessment year was, in itself, an error, Mr. Johantges simply failed to prove that occurred here. The property record card submitted by the Petitioners provides no evidence of how the assessor applied the trending factor. *Petitioner Exhibit B*. In

fact, all the Petitioners' evidence shows is that the property is assessed for \$265,300 for the March 1, 2007, assessment date. Mr. Johantges merely contends, without any support, that the assessor improperly applied the trending factor to the property's former assessed value of \$228,300 rather than the Board's determined assessed value for 2006. Mr. Johantges must submit "probative evidence" that adequately demonstrates the errors he contends occurred in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998).

- h. Despite the Petitioners' representative's lack of evidence to prove the Petitioners' case, the Board finds that the Respondent presented the necessary evidence to trend the Petitioners' March 1, 2006, assessed value – valued as of January 1, 2005, to the March 1, 2007, assessment date – valued as of January 1, 2006. According to the Respondent's Exhibit K, properties in the area of the Petitioners' house increased in value 4.86 % between 2005 and 2006. Thus, the Board finds that the Petitioners raised a prima facie case that the subject property's 2007 value is the property's 2006 value of \$182,000 as found by the Board in its May 12, 2009, final determination, trended by the 4.86% increase in property values submitted by the Respondent's representative here, or a total assessed value of \$190,845.
- i. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' 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 their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- j. Here, the Respondent argued that the Petitioners presented no evidence to relate the Petitioners' April 24, 2004, appraised value to the January 1, 2006, valuation date for the March 1, 2007, assessment.² Had the Respondent ended its argument there, the Respondent would have prevailed. The Respondent's representative, however, chose to attempt to re-litigate the Board's final determination on the Petitioners' 2006 assessment.
- k. Mr. Potts argued that the Petitioner's appraisal "was erroneous to begin with." *Potts argument*. According to Mr. Potts, the appraisal is a "subjective opinion of

² The Board notes, however, that while Respondent's argument may be correct in principle, the Respondent is mistaken in fact. The Board determined the property's value as of January 1, 2005, in its May 12, 2009, final determination. Thus, the Respondent's argument can only be that the Petitioners failed to relate the property's January 1, 2005, value as determined by the Board to the January 1, 2006, valuation date for the March 1, 2007, assessment.

value” that is “only valid for the date of April 27, 2004.” *Id.* Further, Mr. Potts argued that the appraiser used 2003 sales and made no time adjustments. *Id.* According to Mr. Potts, a large change in market values occurred in the Petitioners’ neighborhood between 2003 and 2004 because of the introduction of a sewer system that the appraiser failed to account for. *Id.* In support of his contentions, Mr. Potts introduced a summary of median sales prices that showed the increase in values of residential properties in the area for 2003 to 2007. *Petitioner Exhibit K.* The Respondent, however, already litigated the issue of the accuracy and reliability of the Petitioners’ appraisal and lost. The Board would remind Mr. Potts that he had a fair and full opportunity to litigate the Petitioners’ 2006 appeal. He was allowed to call witnesses and offer any other evidence he believed was relevant to the property’s January 1, 2005, valuation. Further, the Respondent had the right to seek judicial review of the Board’s determination. *See* Ind. Code § 6-1.1-15-5; Ind. Code § 33-3-5-2. Thus, Mr. Potts cannot seek to re-litigate the issue here.

1. Of course, the ultimate issue in this appeal is the property’s true tax value for the March 1, 2007, assessment date – and the property’s value as of January 1, 2005, is not automatically relevant to, or especially probative of, that question. The Respondent could have offered its own independent evidence of the property’s market value-in-use as of the January 1, 2006, valuation date for the 2007 assessment. Mr. Potts, however, presented evidence of market sales simply to try to show the appraisal was incorrect, rather than to show that the value established by the assessor was correct. In doing so, Mr. Potts ultimately made the Petitioners’ case for them.

Conclusion

16. The Petitioners failed to present sufficient evidence to raise a prima facie case. The Respondent, however, presented the evidence necessary to value the property for the March 1, 2007, assessment date. The Board therefore finds in favor of the Petitioners and holds that the value of the Petitioners’ property for the March 1, 2007, assessment date is \$190, 845.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the property’s assessment should be changed.

ISSUED: February 2, 2010

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>.