

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

Petition: 32-022-07-1-5-00056
Petitioners: Edward & Donna Brown
Respondent: Hendricks County Assessor
Parcel: 12-3-08-51E 352-004
Assessment Year: 2007

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal by written notice to Hendricks County Property Tax Assessment Board of Appeals (PTABOA) dated November 25, 2008.
2. The PTABOA issued notice of its decision (Form 115) for the 2007 assessment on November 10, 2009.
3. The Petitioners appealed to the Board by filing a Form 131 on December 23, 2009. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 9, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on May 13, 2010. He did not conduct an onsite inspection of the property.
6. Edward Brown, Donna Brown, PTABOA member Lester Need and County Assessor Gail Brown testified at the hearing.

Facts

7. The property is a single family residence located at 904 Nottingham Court in Avon.
8. The PTABOA determined the assessed value for the subject property is \$68,800 for land and \$258,200 for improvements (total \$327,000).
9. The Petitioners claimed the total assessed value should be \$275,000.

Contentions

10. Summary of the Petitioners' case:

- a. Other properties in the neighborhood have an average assessment to sales ratio of 90.8%. The subject property and only one other property have a ratio of over 100%. Because the other properties in the neighborhood are assessed at 90% of their sale prices, the Petitioners would be happy to have an assessment at 90% of their purchase price. (That calculation would produce a valuation of \$292,500.) *E. Brown testimony; Pet'r Ex. 1 at 6.*
- b. In 2006 the list price for the subject property was \$449,900. It was reduced to \$434,900 and then \$399,900 in 2007. The asking price was reduced to \$375,000 in 2008 before the Petitioners purchased it for \$325,000 in March 2008. *Pet'r. Ex. 1 at 18.* The actual purchase price is 25.27% less than the original asking price. Reducing the original assessment of \$368,000 by that same percentage would produce a valuation of \$275,000. *E. Brown testimony; Pet'r Ex 1.*
- c. The Respondent has compared the subject property with a property located at 4476 Nottingham Drive, but there are considerable differences between them. Although both homes were built by the same builder, the subject property was built as a "spec" home and the 4476 Nottingham Drive was a model home. Because the model home was built to showcase the contractor's building ability, it has more expensive plumbing and lighting fixtures. It also has a two-story deck and a walkout basement. These are features the subject property does not have. The lot sizes are also different. The subject property lot size is 0.29 acres and the 4476 Nottingham Drive lot size is 0.37 acres. Both properties were on the market for an extended period of time compared to the market time for the custom built homes in the neighborhood. The Petitioners bought the subject property from the builder for \$325,000. The superior property, 4476 Nottingham Drive, sold for only \$300,000. *E. Brown testimony.*
- d. An unimproved lot (0.32 acres) located directly across the street from the subject property sold for \$39,900 in August 2007. That sale is a good indication of lot value. Many unimproved lots in the neighborhood have sold for \$22,000. These sales show the land assessment for the subject property (0.29 acres at \$68,800) is too high. *E. Brown testimony; Pet'r Ex. 1.*

11. Summary of the Respondent's case:

- a. The Petitioners' description of the property differs from the MLS description. For instance, the Petitioners described their home as a "spec" home with inexpensive fixtures and minimal features, but the MLS describes it as a gorgeous custom home with a features such as wonderful great room, a top of the line kitchen, quality cabinetry, and a custom wet bar. *Need testimony; Resp't Ex.2.*

- b. It is a property's total assessment that is pertinent. While the Assessment Guidelines determine land and improvement values, in *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006) it was explained that this methodology is just a starting point. Focusing on only the land component would be contrary to the fundamental goal of the current assessment system, which seeks to arrive at the overall market value-in-use as of the assessment date. *Need testimony; Resp't Ex. 9.*
- c. The market values for properties in Nottingham Court were determined by actual sales. The Petitioners' proposed assessed value of \$275,000 is not supported by any market data. *Need testimony; Resp't Ex. 9.*
- d. The Petitioners' purchase price was \$325,000 plus the property tax of \$7,433 due on the property, making the actual purchase price \$332,433. Using the correct purchase price of \$332,433, the assessment/sale ratio would be 0.98366 compared to the neighborhood average of 0.95418. *Need testimony; Resp't Ex. 7, 9.*

Record

- 12. The official record for this matter contains the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Digital recording of the hearing,
 - c. Petitioners Exhibit 1 – Copy of Form 131 with attachments,
 Petitioners Exhibit 2 – Form 130 with attachments,
 Petitioners Exhibit 3 – Information, data, and photographs to support position,
 Respondent Exhibit 1 – Photograph of the property,
 Respondent Exhibit 2 – Sale listing for the property,
 Respondent Exhibit 3 – Nine interior and exterior photographs of the property,
 Respondent Exhibit 4 – Petitioners' statement that was attached to Form 130,
 Respondent Exhibit 5 – Petitioners' statement that was attached to Form 131,
 Respondent Exhibit 6 – Petitioners' worksheet with data for several properties,
 Respondent Exhibit 7 – Copy of the Petitioners' Exhibit 6 with corrections,
 Respondent Exhibit 8 – Highlighted portion of Respondent Exhibit 5,
 Respondent Exhibit 9 – Copy of presentation,¹
 Respondent Exhibit 10 – Sales ratio study,
 Board Exhibit A – Form 131 with attachments,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

¹ Respondent Exhibit 9 consists of a conglomeration of duplicate copies of Respondent's other exhibits and what appears to be a summary of Mr. Need's testimony. This duplication adds nothing but bulk and confusion to the record. It should be avoided.

Analysis

13. 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).
14. 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”).
15. The Petitioners did not make a prima facie case for any assessment change for the following reasons:
 - a. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner . . . from the property." 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). Indiana promulgated Guidelines for assessing officials that are based on the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002–VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. A 2007 assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioners failed to establish how their 2008 purchase price might relate to the required valuation date, so technically what they paid has no probative value. But nevertheless, it is worth noting that the very slight difference between the two figures, if anything, indicates that the assessment is reasonably accurate.
 - c. The biggest part of the Petitioners’ case really is based on a uniformity and equality issue. They contend that other homes in their neighborhood are assessed for approximately 90% of their selling prices, while their property is assessed at slightly more than 100% of what they paid for it (assessment is \$327,000 and they paid \$325,000). Petitioner Exhibit 1, page 6 shows a worksheet that they

prepared purporting to support their point. But we reach a different conclusion for several reasons.

- i. First, the ratio shown for the subject property (113.23076%) is clearly derived from the assessed value of \$368,000—the assessment before the PTABOA reduced it. The ratio based on the actual assessment of \$327,000 and purchase price of \$325,000 would be 100.61538%.
- ii. Second, the worksheet shows the Petitioners bought their property on March 31, 2009, but other evidence indicates the date was actually March 31, 2008. It appears that the Petitioners got the year wrong when they prepared the worksheet. Such errors create general doubt about the accuracy of all the sale dates shown on the worksheet, but we will accept that the dates shown are accurate because the Respondent did not challenge them.
- iii. Nevertheless, the sale dates are a third problem with the Petitioners' attempt to show disparate treatment because out of the six properties for which a ratio was calculated, only three are from the 2005-2006 period that is relevant to 2007 assessments.
- iv. Fourth, the ratio the Petitioners calculated for the Reinking property, 58.60998% is much lower than any of the others, but according to the Respondent that figure is based on an assessment for that property when it was only partially finished. When that property was fully assessed the ratio for it is 94.205%.
- v. The fifth problem is more serious than any of the others. According to the Tax Court, “when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Those studies must be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). Those studies must be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)). The assessment/sale ratio that the Petitioners submitted is based on only six sales, three of which were outside the time for sales that properly can be considered in determining 2007 assessments. Ind. Admin. Code tit. 50, r. 21-3-3. They failed to establish that their data constituted a statistically reliable sample or that their assessment/sale ratio was prepared according to professionally acceptable standards. Therefore, the evidence is not sufficient to make any legitimate conclusion about uniformity and equality of assessment in this case.

- vi. Even assuming, *arguendo*, that some sort of adjustment would be appropriate to achieve uniformity and equality of assessment for the subject property, the Petitioners failed to establish that simply using 90% would be a statistically reliable, professionally acceptable basis for change. The very limited data and the random variation make it impossible to draw any conclusion about what an appropriate change might be.
- vii. Therefore, the Petitioners failed to prove that their property should be assessed for only 90% of what they paid for it based on other assessments in their neighborhood.
- d. The Petitioners presented evidence that the property at 4476 Nottingham Drive is superior to theirs, but was purchased for only \$300,000. Since the date of that transaction was not established, it is not possible to make any kind of meaningful price comparison. Moreover, the significance of such a comparison was not established. Petitioner Exhibit 6 shows that the assessment for 4476 Nottingham Drive is \$434,600. The assessment for the subject property is \$327,000. This situation appears to be consistent with the Petitioners' representation that 4476 Nottingham Drive is superior to the subject property. They failed to establish how anything about 4476 Nottingham Drive actually supports their claim.
- e. The Petitioners established that their property originally listed for \$449,900 and they purchased it for \$325,000 at 25.27% below the original list price. The Petitioners calculated that a 25.27% reduction from the original assessment of \$368,000 (to \$275,000) would be appropriate. The Petitioners failed to provide any meaningful explanation for how such a calculation relates to the actual market value-in-use of their property. They failed to explain how this method of valuation complies with any generally accepted appraisal principles. For the purposes of this case, the relationship between original asking price and the ultimate purchase price is meaningless.
- f. The Petitioners also challenged their land assessment because it is more than the purchase prices of neighboring unimproved lots. The standards for establishing value for the land component of the assessment require that the Petitioners relate these sales to value as of January 1, 2006. The Petitioners failed to do so. Additionally, the Petitioner failed to offer the kind of detail—facts about how the properties are similar, how they differ and what such differences do to the relative market value-in-use of each property—that is required to make any comparison meaningful. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469-471 (Ind. Tax Ct. 2005). The Petitioners' unsupported conclusory statements about the comparability of lots and their relative value are not probative evidence. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 239 (Ind. Tax Ct. 1999); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

16. When taxpayers fail to provide probative evidence supporting their position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

17. The Petitioners failed to make a prima facie case for a lower assessed value. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

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- 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>