

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

Petition No.: 45-026-06-1-5-00006
Petitioners: Mark Bruzan and Young Hee Han
Respondent: Lake County Assessor
Parcel No.: 45-06-12-152-007.000-023
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 Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated February 20, 2008.
2. The PTABOA failed to hold a hearing on the Petitioners' appeal within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")
3. The Petitioners filed an appeal to the Board by filing a Form 131 on November 16, 2009. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.") The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 14, 2010.
5. The Board held an administrative hearing on May 18, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Mark Bruzan, Taxpayer,
Young Hee Han, Taxpayer

No one appeared for the Respondent.

Facts

7. The subject property is a residential property located at 6756 Indi-Illi Parkway, Hammond, in Lake County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the North Township Assessor determined the assessed value of the subject property to be \$30,300 for the land and \$163,200 for the improvements, for a total assessed value of \$193,500.
10. The Petitioners requested an assessment of \$30,000 for the land and \$110,000 for the improvements, for a total assessed value of \$140,000.

Issues

11. Summary of the Petitioners' contentions in support of an error in their assessment:
 - a. The Petitioners contend that their property's assessment is too high based on errors in the assessment. *Bruzan testimony*. According to Mr. Bruzan, their house only has six rooms and one fireplace. *Id.* Further, there is no family room and the finished living area is 1,190 square feet for the first floor and 926 square feet for the half story. *Bruzan testimony*. The house was assessed, however, as having eight rooms, two fireplaces, a family room and 2,678 sq.ft. of living area. *Id.*; *Petitioner Exhibit 3*. In support of this contention, the Petitioners submitted a survey of their property, architectural drawings, and their property record card. *Petitioner Exhibit 3*.
 - b. The Petitioners further contend that their property is over-assessed based on the assessed value of a similar house in their neighborhood. *Bruzan testimony*. According to the Petitioners, the neighboring property is similar in size, but is assessed for \$141,500; whereas their assessment is \$193,500. *Bruzan testimony*; *Petitioner Exhibit 6*. In support of this contention, the Petitioners submitted a property record card and photograph of the neighboring property, as well as a comparison of their property with the comparable house. *Petitioner Exhibits 4 and 6*. In addition, the Petitioners argue, they have one of the smallest lots on the block, but their assessment is the highest. *Bruzan testimony*.
 - c. Finally, the Petitioners argue that their property's assessment continues to increase each year, but the housing market has been going down. *Young testimony*. According to Ms. Young, if the Petitioners sold their house, they would not be able to get near the assessed value for it. *Id.*

Record

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled 45-026-06-1-5-00006 Bruzan,
- c. Exhibits:

Petitioner Exhibit 1 – Form 131 Petition dated November 16, 2010,
Petitioner Exhibit 2 – Form 130 Petition dated February 20, 2008,
Petitioner Exhibit 3 – Property data for 6756 Indi-Illi Parkway,
Petitioner Exhibit 4 – Property data for 25 Indi-Illi Parkway,
Petitioner Exhibit 5 – Property tax bill dated September 29, 2009,
Petitioner Exhibit 6 – Property comparison, 6756 Indi-Illi Parkway and 25 Indi-Illi Parkway,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated April 8, 2010,
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Analysis

- 13. 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 Board of Tax Commissioners*, 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
- 14. The Petitioners failed to provide sufficient evidence to establish an error in their assessment. 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. 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 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. 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, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
 - d. Here the Petitioners first contend that their property was assessed in error. *Bruzan testimony*. In support of this contention, the Petitioners submitted their property record cards, a survey of the property, and architectural drawings of the house. *Petitioner Exhibit 3*. The evidence shows that the property’s living area is 1,190 sq.ft. for the first floor, 926 sq.ft. for the second floor, and 1,190 sq.ft. for the basement. Further, the house only has a single fireplace and six rooms. The Board therefore instructs the assessor to correct the data on the Petitioners’ property record card.
 - e. Despite the errors on their property record card, however, the Petitioners failed to show that their assessment did not accurately reflect the market value of the property. The Tax Court has repeatedly stated that even if an assessment does not fully comply with the Guidelines, a taxpayer must show that the assessment is not a reasonable measure of a property’s market value-in-use in order to prevail. *See* 50 IAC 2.3-1-1(d) (stating that a failure to comply with the Guidelines does not in itself show the assessment is not a reasonable measure of value); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the

- assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*"); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006) (explaining that a taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana's new assessment system). The Board therefore finds that the Petitioners failed to raise a prima facie case that their property is over-valued based on the errors in the property's data.
- f. The Petitioners also contend their property is over-valued based on the assessed value of a neighboring property. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- g. Moreover, the Petitioners failed to show the comparability of that neighboring property. By comparing their assessed value to the assessed value of other properties, the Petitioners essentially rely on a "sales comparison" method of establishing the market value of the property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, Mr. Bruzan merely argued that the neighboring property was similar in size but has a larger lot and more rooms than the subject property. This falls far short of the burden to prove the properties are comparable. Thus the Petitioners failed to raise a prima facie case that their property is over-valued based on the assessed value of other homes in the neighborhood.
- g. Finally, Ms. Young contends that their property would not sell for its assessed value. As noted above, however, the Petitioners failed to provide any market value evidence in support of this 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).
- h. The Petitioners therefore failed to raise a prima facie case. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v.*

Conclusion

- 15. The Assessor is instructed to correct the property record card to reflect the property's 1,190 sq.ft. living area on the first floor, 926 sq.ft. living area on the second floor, and 1,190 sq.ft. of living area in the basement. Further, the property record card must show that the house only has a single fireplace and six rooms. The Petitioners, however, failed to establish a prima facie case that their property is over-valued. The Board therefore finds in favor of the Respondent.¹

Final Determination

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

¹ The Board reaches this conclusion reluctantly in light of the Assessor's lack of regard for its process and the time and expense incurred by the Petitioners in pursuing their case

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>.