

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

Petition: 32-026-07-1-5-00023
Petitioners: David & April Burritt
Respondent: Hendricks County Assessor
Parcel: 23-2-16-51E 227-013
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 filing a Form 130 petition to the Hendricks County Property Tax Assessment Board of Appeals (PTABOA) on October 27, 2008.
2. On August 11, 2009, the PTABOA issued notice of its decision for the 2007 assessment via a Form 115.
3. The Petitioners appealed to the Board by filing a Form 131 petition on September 4, 2009. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties on March 9, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on May 13, 2010. He did not inspect the property.
6. David Burritt, April Haynes-Burritt, PTABOA member Lester Need and County Assessor Gail Brown were sworn as witnesses and testified at the hearing.

Facts

7. The property is a single family residence located at 1265 Balsam Fir Pass in Avon.
8. The PTABOA determined the assessed value is \$52,500 for land and \$238,200 for improvements (total \$290,700).
9. The Petitioners claimed the total assessed value should be \$52,500 for land and \$207,270 for improvements (total \$259,770).

Record

10. 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 – Notification of PTABOA Final Determination,
Petitioners Exhibit 2 – House plan of model 613F,
Petitioners Exhibit 3 – Map of Whispering Pines,
Petitioners Exhibit 4 – Property record cards (PRCs) for four model 613E homes in Whispering Pines,
Petitioners Exhibit 5 – PRCs for thirteen model 613F homes in Whispering Pines,
Petitioners Exhibit 6 – PRCs for eleven model 655A homes in Whispering Pines,
Petitioners Exhibit 7 – PRCs for five model 655B homes in Whispering Pines,
Petitioners Exhibit 8 – PRCs for nine model 657A homes in Whispering Pines,
Petitioners Exhibit 9 – PRCs for eleven model 658A homes in Whispering Pines,
Petitioners Exhibit 10 – PRCs for four model 658B homes in Whispering Pines,
Petitioners Exhibit 11 – PRCs for five model 658C homes in Whispering Pines,
Petitioners Exhibit 12 – PRCs for ten model 627A homes in Whispering Pines,
Petitioners Exhibit 13 – PRCs for twelve model 627C homes in Whispering Pines,
Petitioners Exhibit 14 – PRCs for two model 625B homes in Whispering Pines,
Petitioners Exhibit 15 – PRCs for six model 607C homes in Whispering Pines,
Petitioners Exhibit 16 – Real Property Assessment Guideline, Appendix A pages 3-8 and 13-14,
Petitioners Exhibit 17 – Exterior photograph,
Petitioners Exhibit 18 – Real Property Assessment Guideline, Appendix C page 9,
Respondent Exhibit 1 – Copy of presentation,
Respondent Exhibit 2 – Photograph of subject property,
Respondent Exhibit 3 – Petitioners’ contentions to the PTABOA,
Respondent Exhibit 4 – Hendricks County recommendation,
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.

Contentions

11. Summary of the Petitioners’ case:
 - a. The property is part of Whispering Pines, which is a tract community. The entire community was built by the same builder, Estridge, who started the Whispering Pines construction in 2004. Currently, there are thirteen homes in the community that are the same model (613F) as the subject property. The grades assigned to

these thirteen homes varied. For the 2007 assessment, it is appropriate to just look at homes that were built by the end of 2006. Thus, only ten of the thirteen 613F homes should be considered. *David Burritt testimony; Pet'r Ex. 5.*

- b. For the 2007 assessment, the property was classified as a B grade, but it should be classified with a C+1 grade because the Guidelines explain that tract homes are C grades and custom homes are B grades. *David Burritt testimony; Pet'r Ex. 16.*
- c. The Guidelines state that grade is determined by considering construction quality, workmanship, the costliness of materials, and the individuality of design. The six 613F homes built in 2005 in Whispering Pines were assigned grades varying from C to C+2. The grades are from C+2 to B on the four 613F homes built in 2006. The 613F homes built in 2007 and 2008 got grades from B to B+1. *David Burritt testimony; Pet'r Exs.4-15.* The quality of material, the workmanship, and the design of the 613F home has not changed since Estridge began construction of Whispering Pines. *David Burritt testimony; Pet'r Ex. 16.* This pattern of increasingly higher grades also exists with the other home models in Whispering Pines. *David Burritt testimony; Pet'rs Exs.4-15.*
- d. In later assessments, the grading error was recognized and more uniform grades were given for the homes in Whispering Pines. But the disparity was not corrected for the 2007 assessments. *David Burritt testimony.*
- e. Assessed values for 2007 are based on 2005 and 2006 sales data. The PTABOA did not consider 2005 data when reviewing the appeal because the homes built in 2005 were graded C. Instead, it considered only homes graded B or B+1. *David Burritt testimony.*
- f. The Petitioners' property record card incorrectly states there is a masonry stoop just outside the garage door. The assessor assigned it a value of \$1,100. The photograph the Petitioners provided shows this is only a three foot square piece of sidewalk. This item should be removed from the assessment. *Id.; Pet'r Ex.17-18.*
- g. With a C+1 grade and removing the value for a masonry stoop, the total assessment should be \$259,770. *David Burritt testimony.*

12. Summary of the Respondent's case:

- a. To establish a property's value in Indiana an assessor does not simply utilize a square foot multiplier. Rather the assessor considers other factors such as lot size, garages, porches, barns, decks, swimming pools, grades, landscaping, location, age, and depreciation. *Need testimony.*
- b. Assessment values for 2007 were based on sales data from 2005 and 2006. *Need testimony.*

- c. At their PTABOA hearing, the Petitioners presented six comparable properties. Four of those comparables sold during the correct timeframe. The average price of the four sales is \$267,679, and the average assessment of these properties is \$261,000. The ratio of assessment to sales of the homes is 97%. The average assessments of the six alleged comparables are \$261,983. These assessments are in compliance with the state requirements. *Need testimony; Resp't Ex. 1.*
- d. Evidence presented at the PTABOA hearing illustrated the wide range of grades assigned to the homes in Whispering Pines. The PTABOA reviewed nine additional properties in this development. It concluded the average assessment of these properties was \$341,689. The same nine parcels sold for an average of \$308,751, resulting in a sales ratio of approximately 111%. The 111% ratio exceeded the 110% ratio allowed by the state. Therefore, the Whispering Pines community was overassessed, but the assessor corrected that situation for 2008—the assessing officials changed the grades to bring the assessments in line with the actual sales data. *Need testimony; Resp't Ex. 1.*
- e. The PTABOA lowered the Petitioners' 2007 assessment because they had filed an appeal. The Petitioners' 2007 assessment had been \$310,100 with a sales ratio of 103% (based on its December 1, 2006, purchase price of \$300,732). When the PTABOA changed the grade from a B+1 to a B, the assessment was reduced to \$290,700. With that reduction, the 2007 assessment is 96.7% of purchase price, which is within an acceptable range. No further reduction should be made. *Need testimony; Resp't Ex. 1.*

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 does not mean fair market value. It means "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." 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). There are three generally accepted techniques to calculate market value-in-use: the cost

approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the 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). Here, both parties testified the 2007 assessed value should be based on sales occurring in 2005 and 2006.
 - c. The Petitioners attempted to prove that the Respondent did not correctly follow the Guidelines when assessing their home. Unfortunately for the Petitioners, those efforts were misdirected. Focusing entirely on proper application of the Guidelines does not prove that an assessment must be changed. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006).
 - d. Even if the assessment contains errors regarding grade and the classification of a masonry stoop, the Petitioners failed to show that the assessment is not a reasonable measure of true tax value. *See* 50 IAC 2.3-1-1(d) (“failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of ‘True Tax Value [.]’”) The Petitioners presented no market evidence to show that the assessment is not a reasonable measure of the property’s true tax value. Their arguments regarding a strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). (“when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”) The Petitioners needed to show through the use of market-based evidence that their assessed value does not accurately reflect the property’s market value-in-use. They failed to do so. Therefore, they did not make a prima facie case.
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, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

17. The Respondent had no duty to support its current assessment. Nevertheless, the Petitioners' 2006 purchase price is substantial evidence that the assessment does not exceed the property's market value in-use. Generally, the actual sale of a property provides the best evidence of its market value-in-use. The 2006 purchase price rebuts the contention that the property is overassessed.

Conclusion

18. 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>