

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

Petition No.: 02-074-07-1-5-01756
Petitioners: Neil & Nancy Bussard
Respondent: Allen County Assessor
Parcel No.: 02-12-07-402-008.000-074/94-2697-0007
Assessment Year: 2007

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

Procedural History

1. The Bussards appealed their assessment to the Allen County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its determination on September 4, 2009.
2. The Bussards timely filed their Form 131 petition with the Board on October 21, 2009. They elected to have their appeal heard under the Board’s small claims procedures.
3. On July 15, 2010, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:
 - a) For the Bussards: Neil Bussard
 - b) For the Assessor: Amanda Miller, deputy assessorF. John Rogers appeared as counsel for the Allen County Assessor.

Facts

5. The subject property, which contains the Bussards' home, is located at 5829 Lois Lane in Fort Wayne.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for the subject property:
Land: \$24,700 Improvements: \$65,400 Total: \$90,100.

8. On their Form 131 petition, the Bussards did not request a specific value, but instead indicated that they would “let [the] judge decide.” *Board Ex. A.*

Parties’ Contentions

9. Summary of the Bussards’ contentions:

- a) The Bussards claim that the subject property is assessed too high. In 2006, the property was originally assessed for \$98,000. But the assessor came out to the neighborhood after the Bussards filed an appeal, and the assessment went down to \$81,000.¹ *Bussard testimony.* For 2007, however, the assessment went back up to more than \$91,000. That increase was significantly greater than .29%, which, according to an article in the *Journal Gazette*, was the average assessment increase for Wayne Township properties. *Id.*; *Pet’rs Ex. 8.*
- b) The Subject property’s street, Lois Lane, has suffered from a significant increase in crime following the completion of a nearby low-income housing project. Since that time, the neighborhood has seen armed robberies, murders, suicide attempts, and more. There was a hostage situation about six months after the housing project opened, causing 26 police cars to drive down Lois Lane. *Bussard testimony*; *Pet’rs Ex. 2.*
- c) Although the rising crime has hurt property values, Mr. Bussard did not know how to show that. Some neighborhood homes have sold for prices similar to the subject property’s assessment. Once people move in, though, they question what they have done. Many neighbors are moving out. At one time, the county used Maurane Drive for comparable sales. But Maurane Drive is not really comparable to Lois Lane; although both dead end, Lois Lane dead ends into the low-income housing project. *Bussard testimony.*

10. Summary of the Assessor’s contentions:

- a) The Assessor’s witness, Amanda Miller, did a sales-comparison analysis using five sales from the subject property’s neighborhood. Two were from Maurane Drive, two were from Lois Lane, and one was from Reckeweg Road. *Miller testimony*; *Resp’t Exs. 2-8.* While Ms. Miller admitted that Lois Lane was unique, she used sales from Maurane Drive because it “backs up somewhat” to the same low-income housing project as Lois Lane, it has houses built within the same timeframe as the houses on Lois Lane, and the houses on both streets are similar sizes. *Miller testimony.* She used the Reckeweg Road sale because Reckeweg Road and Lois Lane had a similar amount of traffic. *Id.*
- b) Ms. Miller abstracted a portion of each sale that was attributable to improvements by subtracting each property’s land assessment. She then adjusted each sale price to account for various ways that the property’s house differed from the subject house,

¹ According to the Form 115 Notification of Final Assessment Determination issued by the PTABOA, the property’s 2006 assessment was actually reduced to \$81,800. *Pet’rs Ex. 7*; *see also, Resp’t Ex. 2.*

including differences in age, grade, and condition. She also reduced each property's land value by 25% to account for traffic. *Miller testimony; Resp't Ex. 3.*

- c) The adjusted sale prices for the comparable improvements ranged from \$33.14 to \$51.29 per square foot, with a median of \$39.04 and a mean of \$40.54. When multiplied by the subject property's 1888 square feet, those median and mean values translated to \$98,409.51 and \$101,231.60 just for the subject improvements. When Ms. Miller added land values back in, the properties sold for adjusted prices ranging from \$45.28 to \$72.29 per square foot of living area, with a median of \$55.10 and a mean of \$56.55. Those median and mean values translated to overall values of \$104,022.71 and \$106,763.56 for the subject property. *Miller testimony; Resp't Ex. 3.*
- d) According to Ms. Miller, one could quantify the effect of crime on property values by doing a time study and looking at the progression of sales prices. The situation Mr. Bussard described was similar to what happened on the southeast side of Fort Wayne. In that area, assessments began to drop after people started leaving the neighborhood and houses went into foreclosure. An assessor, however, must look at sales from a specific period. In this case, the sales relevant to the 2007 assessment date showed that Lois Lane properties were holding their values. *Miller testimony.*

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners' Exhibit 2: Fort Wayne Police History Report Law Incident Address Report for Lois Lane from January 1, 2005 to October 18, 2009,

Petitioners' Exhibit 3: 2007 Notice of Assessment,

Petitioners' Exhibit 4: 2007 Notification of Final Assessment Determination,

Petitioners' Exhibit 5: 2006 Notice of Assessment,

Petitioners' Exhibit 6: 2007 Allen County appeal form,

Petitioners' Exhibit 7: 2006 Notification of Final Assessment Determination,

Petitioners' Exhibit 8: *Journal Gazette* article.²

Respondent Exhibit 1: 2007 Allen County appeal form,

Respondent Exhibit 2: Subject property record card ("PRC") with photograph,

Respondent Exhibit 3: Comparable-sales worksheets,

Respondent Exhibit 4: PRC for 5410 Maurane Drive with photograph,

Respondent Exhibit 5: PRC for 5419 Maurane Drive with photograph,

² The Bussards did not offer an Exhibit 1. They provided a coversheet that listed Exhibit 1 as "Blank sheet."

Respondent Exhibit 6: PRC for 5926 Lois Lane with photograph,
Respondent Exhibit 7: PRC for 5730 Lois Lane with photograph,
Respondent Exhibit 8: PRC for 1940 Reckeweg Road with photograph.

Board Exhibit A: Form 131 petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Appearance of Counsel for F. John Rogers,
Board Exhibit D: Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect, and what the correct assessment should 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to rebut or impeach the taxpayer’s evidence. *See American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
15. The Bussards failed to make a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion for the following reasons:
 - a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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 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, sales comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use 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, 505 (Ind. Tax Ct. 2005); *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 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 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, or any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) Here the Bussards offered no market-based evidence to show that the subject property was assessed for more than its market value-in-use. Instead Mr. Bussard pointed to what he believed was a greater-than-average increase in the subject property's assessment between 2006 and 2007 and to what he described as a rising crime problem on Lois Lane. Neither of those things suffices to rebut the presumption that the subject property was accurately assessed.
- d) First, Mr. Bussard's comparison of the subject property's 2006 and 2007 assessments does not show that the property was incorrectly assessed. Because each tax year stands alone, evidence of a property's assessment in one tax year is not necessarily probative of its true tax value in a different tax year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991).
- e) Similarly, by itself, Lois Lane's crime problem does little to show that the subject property was inaccurately assessed. While crime rates undoubtedly affect property values, one cannot simply point to a neighborhood's crime rate and say that any particular property within that neighborhood is overvalued. The Bussards needed to offer something to help quantify the effect of Lois Lane's crime rate on the subject property's market value-in-use or otherwise explain how that crime rate supported a given value or range of values under generally accepted appraisal principles. The Bussards did not do that.

Conclusion

- 16. Because the Bussards offered no probative market value-in-use evidence to rebut the presumption that the subject property's assessment was accurate, they failed to make a prima facie case. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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>>.