

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

Petition No.: 82-019-06-1-5-08460
Petitioners: David and Dorothy Castle
Respondent: Vanderburgh County Assessor
Parcel No.: 02-160-02-444-002
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 Vanderburgh County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 9, 2007.
2. The Petitioners received notice of the decision of the PTABOA via a Form 115 Notification of Final Assessment Determination dated August 14, 2008.
3. The Petitioners timely initiated an appeal to the Board by filing a Form 131 petition dated September 15, 2008, with Vanderburgh County. In compliance with Ind. Code § 6-1.1-15-3(d) the county forwarded the Petition to the Board which received it on September 24, 2008. The Petitioners elected to have their case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 2, 2009.
5. The Board held an administrative hearing on June 3, 2009, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: David O. Castle, Petitioner
 - b. For Respondent: Candy Wells, Vanderburgh County Assessor's Hearing Officer
Tiffany Collins, Vanderburgh County PTABOA Administrative Assistant

FACTS

7. The property under appeal is an unimproved residential front lot measuring 100' x 167' feet, located on West Evergreen Road, in Center Township, Evansville, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$13,700.
10. The Petitioners requested an assessed value of \$8,700.

PARTIES' CONTENTIONS

11. Summary of the Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners contend that the Respondent assessed the appealed property disproportionately and unfairly for 2006.¹ *Castle testimony*. The basis of their appeal, according to Mr. Castle, is a comparison between the subject property's assessment and the assessment of a nearby property (the Bartels Road Property). *Id.* Mr. Castle contends the Bartels Road Property is similar to the appealed property, but it is five times larger than the Petitioners' property. *Castle testimony*. Thus, Mr. Castle argues, the assessment of the subject property should be one-fifth the assessed value of the Bartels Road Property. *Castle testimony*. According to Mr. Castle, the comparable property is assessed at \$24,000. *Id.*
 - b. The Petitioners also allege their assessment is incorrect because the Bartels Road Property is owned by a Vanderburgh County assessing official that has "manipulated" the system to lower his assessment while leaving the appealed property's assessed value too high. *Castle testimony*. Further, Mr. Castle contends, the PTABOA meeting was unduly influenced by the assessing official who owns the Bartels Road Property.² *Id.*
12. Summary of the Respondent's contentions in support of the assessment:

¹ Mr. Castle stated repeatedly during the hearing that a medical condition causes him to suffer from limited vision preventing him from performing certain aspects of the preparation he identified as necessary for the hearing. For instance, the Form 131 Petition was prepared by personnel in the Vanderburgh County Assessor's office and some notes he had written were attached. At the hearing he asked the county PTABOA's administrative assistant to read portions of his appeal because he could not see it. Instead, Judge Barter read from the 131 onto the record. The Board notes, however, that Mr. Castle apparently prepared and filed his Form 130 appeal without assistance.

² Mr. Castle repeatedly referred to the owner of the Bartels Road Property by name and by title and made disparaging remarks. Such unsupported accusations are not relevant to the issue of the value of the Petitioners' property and the Board will not consider Mr. Castle's remarks in its determination.

- a. The Respondent contends the 2006 assessed value is correct and that the Petitioners have offered no evidence to disprove the assessed value. *Wells testimony*. In support of this contention, the Respondent entered into evidence documentation of a meeting between Mr. Castle and township officials on October 24, 2007, as well as a copy of the letter notifying the Petitioners of the PTABOA's findings. *Respondent Exhibits 2 and 3*.
- b. The Respondent further contends that the property the Petitioner cited as comparable to the subject property was valued based on comparable sales, an independent appraisal and other market evidence. *Respondent Exhibit 5; Wells testimony*. Thus, the Respondent concludes, the Bartels Road property was properly valued. *Wells testimony*. Moreover, the "comparable" property is located on a flood plain, whereas the subject property is not. *Id.* In support of this contention, the Respondent entered into evidence three copies of flood zone maps with the appealed property and the Bartels Road Property highlighted. *Respondent Exhibit 4*. Therefore, the Respondent argues, the Bartels Road Property is not comparable to the subject property. *Wells testimony*.
- c. Finally, the Respondent argues the property is not over-valued based on a comparable sale. *Wells testimony*. In support of this contention, the Respondent submitted a multiple listing service sheet identifying an 85' x 110' lot located at 640 Balsam Lane that sold for \$33,000 on January 31, 2006. *Id.; Respondent Exhibit 5*.

RECORD

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

a. Exhibits:

Petitioner Exhibit 1 – Handwritten notes at the bottom of page 2 of the
Petitioners' Form 130,

Petitioner Exhibit 2 – A note written on the county's recommendation from the
hearing,

Petitioner Exhibit 3 – A note written on page 3 of the Form 115 from the county,

Petitioner Exhibit 4 – A note written at the bottom of page 2 of the Form 131,

Respondent Exhibit 1 – A copy of the Petitioners' Form 130 petition,

Respondent Exhibit 2 – The township's recommendation,

Respondent Exhibit 3 – Pre-hearing letter dated February 13, 2008,

Respondent Exhibit 4 – Copies of three aerial maps of flood plain properties,

Respondent Exhibit 5 – A copy of a real estate multiple listing service showing
the January 31, 2006, sale of a vacant comparable
property,

Board Exhibit A – Form 131 petition and related 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 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).
 - 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 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”).
 - 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 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 traditionally have 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 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 501,505 (Ind. Tax Ct. 2005) *reh’g den. sub. nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may

also offer sales information regarding the subject property or comparable properties. MANUAL at 5.

- c. Regardless of the method used, the 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d. Here the Petitioners presented no substantive evidence of the market value-in-use of the property. The Petitioners merely argued that their property is over-valued based on the assessment 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 taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- e. The Petitioners offered no probative market evidence to prove their 2006 assessment was incorrect or to show the property's market value-in-use. Without such proof the Petitioners' efforts fail. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

- 16. The Petitioners failed to raise a prima facie case that the appealed property was over-valued. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessments should not be changed.

ISSUED: August 26, 2009

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>.