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

Petition No.: **68-021-06-1-5-00178**
Petitioners: **Jan L. and Mary A. Chalfant**
Respondent: **Randolph County Assessor**
Parcel No.: **021-03008-00**
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 Randolph County Property Tax Assessment Board of Appeals (PTABOA) by written document.

2. The PTABOA issued its decision on March 14, 2008.

3. The Petitioners filed an appeal to the Board by filing a Form 131 dated April 11, 2008. The Petitioners elected to have this case heard pursuant to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated July 8, 2008.

5. The Board held an administrative hearing on September 16, 2008, before the duly appointed Administrative Law Judge Alyson Kunack.

6. Persons present and sworn in at hearing:

   a) For Petitioners: Jan L. and Mary A. Chalfant, Petitioners

   b) For Respondent: Beverly Fields, Randolph County Assessor
   Charles E. Ward, witness

Facts

7. The property is a single-family residence located at 10 Shannon Drive, Winchester, White River Township in Randolph County.

8. The Administrative Law Judge (ALJ) did not inspect the property.

9. The PTABOA determined the assessed value of subject property to be $38,900 for the land and $197,200 for the improvements, for a total assessed value of $236,100.

10. The Petitioners request an assessed value of $31,100 for the land and $157,000 for the improvements for a total assessed value of $188,100.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:

    a) The Petitioners contend that the PTABOA violated Indiana Code § 6-1.1-15-1(i)(2)(a) and (b). *J. Chalfant argument.* According to Mr. Chalfant, the Respondent failed to present the basis for the assessment decision or the reasons the taxpayer's contentions should be denied at the Petitioners' hearing before the PTABOA in December of 2007 and in the subsequently issued Form 115 determination. *J. Chalfant testimony.*

    b) The Petitioners also contend that their property was assessed inequitably when compared to other properties in their subdivision. *J. Chalfant argument.* In support of this contention, the Petitioners offered two exhibits showing the change in value from 2005 to 2006 for their land and improvements. *Petitioners Exhibits 1 and 2.* According to the Chalfants, their land value increased $7,800 from 2005 to 2006 and their improvement value increased $46,700. *Id.; J. Chalfant testimony.* By comparison, Mr. Chalfant argues, the majority of other homes in the subdivision, excluding duplexes and notably larger homes, experienced little or no increase in their values. *Id.* Mr. Chalfant testified that they obtained the data for Petitioners Exhibits 1 and 2 from the County Assessor's website, but he admitted that they did not confirm the data with any records in the Assessor's office. *Id*.

    c) Finally, the Petitioners argued that the Respondent should have provided the Petitioners with a copy of the Respondent's exhibits for the hearing out of courtesy. *Chalfant argument.*

12. Summary of Respondent's contentions in support of the assessment:

    a) The Respondent admitted that the PTABOA did not give any reason why the Petitioners' contentions were denied at the PTABOA hearing, but the assessor argues sufficient explanation was given on the Form 115 determination. *Fields testimony.*

    b) Further, the Respondent contends, the information that the Petitioners submitted on their exhibits is incorrect. *Fields argument.* According to Ms. Fields, the county's contractor, ProVal, used values on the website from uncertified data. *Id.*

Ms. Fields testified that Respondent's Exhibits 4 and 5 show the actual change in assessed value from 2005 to 2006 for the properties in the Petitioners' exhibits. *Id; Respondent Exhibits 4 and 5.* Several properties had large increases in value, not just the Petitioners. *Id.*

c) Finally, the Respondent argues, the Petitioners' property is not over-valued. *Fields argument.* According to Mr. Ward, sales from 2004 and 2005 show that properties were generally assessed for less than their selling prices. *Ward testimony.* Ms. Fields testified that there were multiple appeals from the Petitioners' subdivision. *Fields testimony.* This prompted her to go back and review the assessments. *Id.* In the process, the assessor found several errors which she corrected, including incorrectly-priced condominiums and other errors in pricing. *Id; Respondent Exhibit 6.*

Record

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

a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.

b. The digital recording of the hearing.

c. Exhibits:

Petitioners Exhibit 1: Plat map showing changes in land values,
Petitioners Exhibit 2: Plat map showing changes in improvement values,
Petitioners Exhibit 3: Form 115 determination,

Respondent Exhibit 1: Letter of intent to file an appeal and Form 131 and attachments,
Respondent Exhibit 2: Copy of Petitioners' Exhibit 1 from PTABOA hearing,
Respondent Exhibit 3: Copy of Petitioners' Exhibit 2 from PTABOA hearing,
Respondent Exhibit 4: Comparative data on parcels in Respondent Exhibit 3,
Respondent Exhibit 5: 2005 versus 2006 assessed values,
Respondent Exhibit 6: PTABOA worksheet for Willow Ridge subdivision,
Respondent Exhibit 7: Neighborhood sales,

Board Exhibit A: Form 131 Petition,
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). The appraisal profession traditionally has 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 value 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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *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). But 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 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

c) Here the Petitioners do not claim that their property is assessed in excess of its true tax value. The Petitioners merely argue that the PTABOA violated the requirements of Indiana Code § 6-1.1-15-1(i)(2)(a) and (b) at the PTABOA hearing, and that the assessor increased the property's assessment in 2006, but failed to increase the assessments of neighboring properties. These technicalities fail to raise a prima facie case that the subject property's assessment is in error.

d) First, Indiana Code § 6-1.1-15-1 requires that if a taxpayer files a notice for review, a county board must hold a hearing not later than 180 days after the date of the notice. Indiana Code § 6-1.1-15-1(g). At that hearing:

> (1) the taxpayer may present the taxpayer's reasons for disagreement with the assessment; and
> (2) the county or township official with whom the taxpayer filed the notice for review must present:
> (A) the basis for the assessment decision; and
> (B) the reasons the taxpayer's contentions should be denied.

Indiana Code § 6-1.1-15-1(i).

e) The Petitioners contend that the assessor failed to present the basis for the assessment decision and the reasons the taxpayer's contentions should be denied. The Assessor argues that the Form 115 provides the basis for the assessment determination. The parties appear to focus on the results of the PTABOA hearing rather than the hearing itself.[1] The Form 115 states that "A motion was made, seconded and passed to evaluate all Willow Ridge Parcels or [sic] correctness and adjust where necessary. Parcel grade corrected." *Petitioners Exhibit 3.* The Petitioners, however, failed to provide evidence of the documents or testimony given at the hearing leading to that result to determine whether the assessor presented to the PTABOA "(A) the basis for the assessment decision; and (B) the reasons the taxpayer's contentions should be denied."[2] Without a transcript of that hearing or testimony relating to the evidence submitted therein, the Petitioners failed to sufficiently show that any violation of Indiana Code § 6-1.1-15-1(i) occurred.

f) Indiana Code § 6-1.1-15-1 further states that if the maximum time elapses for the PTABOA to hold a hearing or to give notice of its determination, "the taxpayer may initiate a proceeding for review before the Indiana board by taking the action

[1] Indiana Code § 6-1.1-15-1(k) governs the requirements of the notice of the determination. That section states: "Regardless of whether the county board adopts a recommendation under subsection (h), the county board shall prepare a written decision resolving all of the issues under review. The county board shall, by mail, give notice of its determination not later than one hundred twenty (120) days after the hearing under subsection (g) to the taxpayer, the county assessor, and the township assessor."

[2] The Form 115 records that the Assessor submitted a "Property Record Card & photo" which suggests that the Assessor did, in fact, submit evidence of the basis for the assessment.

required by section 3 of this chapter at any time after the maximum time elapses." Indiana Code § 6-1.1-15-1(l). Thus if the PTABOA fails to act, the Petitioners' remedy is to petition to the Board. Even if the Petitioners had sufficiently proven that the PTABOA hearing did not comply with Indiana Code § 6-1.1-15-1, the Board finds the violation was remedied by the Petitioners' hearing before the Board. The Petitioners are entitled to no greater remedy for an assessor's failure of proof before the PTABOA than if the PTABOA had never held a hearing at all.

g) The Petitioners had an opportunity for a comprehensive review of their assessment at the hearing before the Board. Due process requires "an opportunity to meet and rebut adverse evidence." *See Castello v. State Bd. of Tax Comm'rs,* 638 N.E.2d 1362, 1365 (Ind. Tax Ct. 1994). Here, the Petitioners failed to provide any evidence that the assessment of their property exceeded the market value-in-use of the property. The Petitioners' argument that the Respondent violated Indiana Code § 6-1.1-15-1(i) fails to raise a prima facie case that the assessment of their property was in error.

h) The Petitioners also argued that their property's assessment was increased in 2005, but none of their neighboring properties' assessments were similarly increased. *J. Chalfant argument.* In support of this contention, however, the Petitioners only presented two plat maps wherein they purported to write in the assessment changes for the land values and improvement values with red marker. *Petitioners Exhibit 1 and 2.* The Chalfants failed to present any records or evidence in support of those values despite the fact such documentation was readily available from the assessor.[3] The Board finds that, without supporting documentation, this type of demonstrative evidence is too unreliable to sufficiently prove an error in assessment.

i) Further, even if the Petitioners had sufficiently shown that their property was the only property whose assessment had changed, this exact argument was rejected by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.,* 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the landing area for the petitioner's driving range was assessed as "usable undeveloped" land and assigned a value of $35,100 per acre, while the landing areas of other driving ranges were assessed at a golf course rate of $1,050 per acre. 859 N.E.2d at 397. Westfield appealed contending that its assessment was not uniform and equal. *Id.*

j) The Indiana Tax Court held that under the prior assessment system, "true tax value" was determined by Indiana's assessment regulations and "bore no relation to any external, objectively verifiable standard of measure." 859 N.E.2d at 398. Therefore, "the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties." *Id.* Presently, "Indiana's overhauled property tax assessment system

[3] In fact, the Respondent's evidence shows that most properties increased in value between 2005 and 2006. *Respondent Exhibit 5.* Some properties had relatively larger increases in assessment than the subject property. *Id.*

incorporates an external, objectively verifiable benchmark – market value-in-use." 859 N.E.2d at 399. "As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use." *Id.*

k) Thus, it is not enough for a taxpayer to show that its property is assessed higher or differently than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property's market value-in-use. *Id.* Like the petitioner in *Westfield Golf,* the Petitioners here only argued that their assessment was not uniform. The Petitioners failed to offer any evidence to show that the assessment exceeded the property's market value-in-use. Thus, the Petitioners failed to raise a prima facie case.[4]

l) When a taxpayer fails to provide probative evidence 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).

Conclusion

14. The Petitioners failed to make a prima facie case. The burden never shifted to the Respondent to rebut the Petitioners' evidence. The Board finds in favor of Respondent.

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.

---

[4] Finally, to the extent that the Petitioners can be seen to argue that the Respondent acted improperly or prejudiced the Petitioners by failing to provide copies of its evidence to the Petitioners prior to hearing, the Board notes that 52 IAC 3-1-5 (d) states that "If requested by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." If the Petitioners wished to receive copies of the Respondent's evidence, they merely needed to make a request pursuant to the Board's rules. Alternatively, the Petitioners could have chosen to opt out of the Board's small claims procedures wherein their petition would have been heard under the Board's regular procedures where the evidence exchange is mandatory. *See* 52 IAC 2-7-1(b).

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.