

REPRESENTATIVE FOR PETITIONERS: Melissa Rhodes Garrard, Attorney at Law

REPRESENTATIVE FOR RESPONDENT: Lawrence Giddings, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Donald and Kerrie Corea,)	Petition No. 06-009-08-1-5-00356
)	Parcel No. 003-15940-03
Petitioners,)	
)	
v.)	
)	Boone County
Boone County Assessor,)	Eagle Township
)	2008 Assessment
Respondent.)	

Appeal from the Final Determination of the
Boone County Property Tax Assessment Board of Appeals

June 8, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

Did the Petitioners prove that the current assessment of \$1,150,000 fails to accurately reflect the market value-in-use of their property and did the Petitioners prove specifically what the correct assessment amount should be?

- Exhibit 6 – Summary appraisal report of subject property as of January 1, 2008, by Jason Tillema,
- Exhibit 7 – Copy of electronic mail from M. Garrard to Respondent dated December 15, 2009,
- Exhibit 8 – Withdrawn,
- Exhibit 9 – Withdrawn,
- Exhibit 10 – List of twenty-five sales of comparable size homes in same school district as subject from January 1, 2007, to January 21, 2008.

8. The Respondent presented the following exhibits:

- Exhibit 1 – Withdrawn,
- Exhibit 2 – Boone County appeal worksheet with attachments,
- Exhibit 3 – Withdrawn,
- Exhibit 4 – Appraisal of subject property dated March 23, 2006, by Laura Geier,
- Exhibit 5 – Notice of Hearing,
- Exhibit 6 – Notice of Hearing,
- Exhibit 7 – Tillema Appraisal of subject property dated January 1, 2008, and realtor listings of the six comparables used in appraisal,
- Exhibit 8 – Boone County appeal worksheet, Form 115, and 2008 pay 2009 Tax calculation worksheet,
- Exhibit 9 – Form 115,
- Exhibit 10 – Letter dated January 27, 2010, to County Assessor from Melissa Garrard,
- Exhibit 11 – Form 131 Petition,
- Exhibit 12 – Letter dated August 6, 2010, to Melissa from County Assessor Lisa Garoffolo,
- Exhibit 13 – Photograph of the subject property,
- Exhibit 14 – PRC for the subject property,
- Exhibit 15 – Notice of Hearing.

9. The following additional items are recognized as part of the record:

- Board Exhibit A – Form 131 Petition,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing Sign In Sheet.

OBJECTIONS

10. The Petitioners objected to the admission of the appraisal of the subject property prepared by Ms. Laura Geier (*Resp't Ex. 4*). The objection was based on relevance, lack of foundation, and hearsay. The relevance and foundation issues pertaining to this exhibit were cleared up by subsequent testimony establishing that this 2006 appraisal was

provided from the Petitioners to the Respondent, but this appraisal is clearly hearsay. As the Petitioners' counsel correctly pointed out, one of the main problems related to hearsay evidence is that the person who purportedly made the statements (in this case Ms. Geier) is not present for verification or cross examination.

11. Nevertheless, exclusion of hearsay evidence is not mandatory. Hearsay evidence can be admissible, but with significant limitations:

52 IAC 2-7-3. Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence: (1) is properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.

By our procedural rules admitting it is a discretionary point, but unfortunately neither party provided any substantial argument along those lines.

12. After reviewing all of the evidence and arguments, it is apparent that the Petitioners were not surprised by the Geier Appraisal and there is no real dispute about its authenticity. Furthermore, it has frequently been recognized that an appraisal can be the best way to prove what an assessment should be. Therefore, the Geier Appraisal (*Resp't Ex. 4*) is admitted—although our final determination in no way depends on it.
13. The Petitioners objected to Ms. Lewis' testimony because the Respondent did not provide a summary of her testimony before the hearing. Although Ms. Lewis was on the list of witnesses provided to the Petitioner, the Respondent's counsel acknowledged that no summary of her testimony was provided.¹ He offered no reason or excuse for failing to provide the summary and he presented no substantial reason for allowing her testimony

¹ "A party to the appeal must provide the following to all other parties: (1) Copies of documentary evidence and summaries of statements of testimonial evidence at least five (5) business days before the hearing. (2) A list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) business days before the hearing." 52 IAC 2-7-1(b). "Failure to comply with subsection (b) may serve as grounds to exclude the evidence or testimony at issue." 52 IAC 2-7-1(f).

in the absence of such a summary as required by 52 IAC 2-7-1(b). At the hearing this objection was taken under advisement by our ALJ and Ms. Lewis was allowed to testify subject to our final ruling on the objection. Thus, at this point we have the benefit of knowing the substance of her testimony. Ms. Lewis was identified as a PTABOA member and a real estate appraiser. Almost all of her testimony was in those two categories. She attempted to explain the PTABOA proceedings and decision. Those points, however, are irrelevant because this is a *de novo* hearing. Regardless of what happened at the PTABOA proceedings and the reasons for the PTABOA valuation, we are concerned with evidence that helps to establish the most accurate market value-in-use for the subject property. She also attempted to review or critique Mr. Tillema and his appraisal.² The Petitioners were entitled to a summary that would have provided notice and an opportunity to prepare for that kind of testimony, but the requirement was ignored by the Respondent's counsel. Therefore, the objection is sustained. Ms. Lewis should not have been allowed to testify and her testimony will not be considered in making our final determination. (On the other hand, even if the testimony from Ms. Lewis were considered, it would not change our final determination.)

14. The Petitioners objected to Respondent Ex. 12, which is a letter from Assessor Garoffolo about what the accurate square footage of the subject property is. The Petitioners' counsel correctly objected that the document is hearsay, while also noting that Assessor Garoffolo was present and she could offer her sworn testimony covering the same material—thereby avoiding the hearsay problem. As previously noted, hearsay evidence *can* be admitted at Board hearings, but nothing says it *will* be. If Assessor Garaffolo had provided testimony on the same subject matter (and the opportunity for cross examination about it) we probably would permit the letter to be part of the evidence, but she did not. The letter itself indicates four different square footage totals, but does nothing to establish which total is correct. The differences are small and the Respondent failed to establish that they have any real significance. Furthermore, undisputed testimony established that

² Nobody addressed what an appraiser's professional standards might have to say about doing so under these circumstances. Therefore, neither will we.

square footage measurements for a complex building such as the subject property commonly have small differences that are not significant to an ultimate conclusion about the value of the property. Under these circumstances, the hearsay objection to Respondent Ex. 12 is sustained.

SUMMARY OF THE PETITIONERS' CASE

15. Ms. Laura Heigl is a realtor with approximately 20 years experience selling real estate in the Zionsville market and specializing in “luxury” homes that are in the \$800,000 to \$2,000,000 price range. *Heigl testimony.*
16. In 2008 the numbers in this market were getting softer, meaning that homes did not sell or their values decreased. “In 2008 we saw a decline in our market...our market was strong in about 2006-2007, and then we started seeing a decrease in the market.” Significant decreases in the prices for luxury homes were not uncommon. *Heigl testimony.*
17. The subject property is in the luxury home price range. It is in a neighborhood that has only five lots. The subject property was build based on a contract with the Petitioners. The two other homes in this neighborhood (8535 and 8550 Hunt Club Road) were “spec homes” that did not have a contract buyer at the time they were built. And there still are two vacant lots. They were listed for sale for more than two years, but there was no interest in them. *Heigl testimony.*
18. The properties at 8535 and 8550 Hunt Club Road are better comparables for the subject property than other homes in Zionsville would be. Other neighborhoods such as the Willows or Stonegate have a perception of greater value than the Petitioners’ neighborhood. The common areas and amenities in the Petitioners’ neighborhood are inferior to the Willows or Stonegate. *Heigl testimony.*

19. The spec home at 8535 Hunt Club Road (next door to the subject property) was built in 2006 and was listed for more than two years at \$1,125,000. The builder finally sold it for \$740,000 on October 20, 2008, but that was a short sale where the builder owed more than that on it. In a short sale the owner still holds title and control of the property—it is not the same as a foreclosure. *Heigl testimony; Pet’rs Ex. 2.* The 8535 Hunt Club Road property has been listed for sale again since April 2010 for \$990,000 with no offers received. *Heigl testimony.*
20. The property at 8550 Hunt Club Road was listed in May 2005 for \$1,249,900. After extensive marketing efforts and reducing the price, the builder finally sold it for \$755,000 in November 2008. This transaction also was a short sale, not a foreclosure. *Heigl testimony; Pet’rs Ex. 3.* This comparable is slightly larger than the subject property, but the two homes are very similar in amenities and quality of finishes. *Heigl testimony.*
21. Another comparable is located at 3126 Huddersfield Lane. Although this home is in a different subdivision, the lot size, finishes, and square footage are similar to the subject property. It was built in 2006 as a spec home and listed at \$1,250,000. It sold for \$834,000 in March 2010. *Heigl testimony; Pet’rs Ex. 4.*
22. In 2008 the subject property would not have sold for \$1,150,000. *Heigl testimony.*
23. Jason Tillema is a licensed Indiana appraiser. *Tillema testimony; Pet’rs Ex. 5.*
24. Mr. Tillema inspected the subject property and estimated its value, primarily based on the sales comparison approach: “The income approach is not used due to the lack of viable data for the GRM. Due to the age of the subject and subjective factors involved, there is little consideration given to the cost approach. The market data approach is best suited to illustrate the pulse of today’s market place.” He concluded the true tax value of the Petitioners’ property was \$875,000 as of January 1, 2008. *Tillema testimony; Pet’rs Ex. 6 at 1.*

25. During the second half of 2006 and all of 2007, the local housing market was declining and average sale prices were dropping. *Tillema testimony; Pet'rs Ex. 6 at 12.*
26. Mr. Tillema applied negative adjustments to five of the six comparables used in his sales comparison approach to account for the downward trend in the market from the time of those sales to January 1, 2008. *Tillema testimony; Pet'rs Ex. 6 at 8-9.*

SUMMARY OF THE RESPONDENT'S CASE

27. On May 16, 2005, the Petitioners purchased the subject property from the builder as new construction for \$1,300,000. *Resp't Ex. 7 at 1.*
28. Laura Geier appraised the Petitioners' property and concluded the value was \$1,150,000 as of March 23, 2006. *Resp't Ex. 4 at 1.*
29. The PTABOA determination states, "Board recommends using appraised value of \$1,150,000." *Resp't Ex. 9.*
30. The assessed value as determined by the PTABOA is the correct assessment for March 1, 2008. *Giddings argument.*

ADMINISTRATIVE REVIEW AND BURDEN

31. 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).
32. In making a 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”).

33. 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.

ANALYSIS

34. Real property is assessed based on its "true tax value," which 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. 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. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it 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.
35. The Petitioners tried to prove their case with sales information regarding comparable properties and with an appraisal. Both methods are potentially viable alternatives for proving a more accurate valuation. *Id.* In this particular case, however, both attempts ultimately missed the mark.

36. The Petitioners started by presenting evidence from an experienced, knowledgeable realtor, Laura Heigl, about declining prices for luxury homes in the Zionsville market in 2008. They focused on three other home sales to demonstrate a pattern of declining value. In those instances the properties were offered for sale in 2005 or 2006 for approximately \$1.1 or \$1.2 million, but they did not sell until much later. When they finally did in 2008 or 2010, the sale prices were between \$740,000 and \$834,000. Although three properties is an extremely small sample, the Respondent did not dispute that point or the general conclusion about the value of these luxury homes declining by 2008. Therefore, we will accept that it is an accurate conclusion; however, by itself it does little (if anything) to make the Petitioners' case.
37. Ms. Heigl also testified that those same home sales at 8535 Hunt Club Road, 8550 Hunt Club Road, and 3126 Huddersfield Lane were the best comparables for the subject property. She made a few cursory statements comparing age, lot size, square footage, quality of finishes and amenities, but the facts and analysis that she provided were far short of what is required for any meaningful conclusion about the value of the subject property. In order to effectively use that approach as evidence, the proponent must develop a basis for comparison with specific facts and analysis. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long v Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). The party seeking to rely on a sales comparison approach must explain the characteristics of the subject property, how those characteristics compare to those of purportedly comparable properties, and how any differences between the properties affect their relative market value-in-use. *Id.* at 470-71. Perhaps more facts for comparison could have been gleaned from the realtor listing information and the property record cards, but the Petitioners did nothing more to develop the comparisons, and it is not the Board's responsibility to examine all the

documentation in an attempt to do so. *Id.* at 471.³ Her ultimate conclusion was that the subject property would not have sold for \$1,150,000 in 2008. Such unsupported, conclusory testimony is not probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). And even if her conclusion were accurate, it does not prove what the assessment should be.

38. After presenting evidence about general market conditions in the Zionsville area and the three comparable home sales, the Petitioners presented a professionally prepared, certified appraisal for the subject property. The most effective method to prove a more accurate value and make a case for changing an assessment is often through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 n. 3 (Ind. Tax Ct. 2006), *Koostard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The Tillema appraisal appears to be exactly that kind of evidence, but for this case it has a major problem with the date of its value opinion.
39. The required valuation date for a 2008 assessment is January 1, 2007. 50 IAC 21-3-3 (2009).⁴ A party relying on evidence of value relating to any other time must also provide some explanation as to how the evidence demonstrates, or is relevant to, the required valuation date. A failure to do so makes that evidence irrelevant, which means it does not help to prove what a more accurate assessment might be. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long*, 821 N.E.2d at 471. Unfortunately for the Petitioners, all of their evidence suffers from this fatal mistake.
40. The Petitioners did not establish how the home sales from 2008 through 2010 relate to the valuation date of January 1, 2007, when values were higher. And the Tillema

³ Ms. Heigl did not testify about the long list of sales on Pet'rs Ex. 10, but they suffer from the same problem in that meaningful analysis for any legitimate conclusion about the subject property was not provided.

⁴ The required valuation date changes every year. For a 2009 assessment that date was January 1, 2008.

appraisal probably established that the value of the subject property was \$875,000 as of January 1, 2008, but nothing establishes how the appraised value or any of the other evidence is relevant to January 1, 2007. This point is particularly significant because of the evidence about declining values. Assuming the appraisal is accurate for January 1, 2008, the value of the subject property would have been something more than \$875,000 as of January 1, 2007, but again nothing in the record indicates what the exact number is. The failure to relate any of the evidence to the required valuation date precludes ordering an assessment change.

41. When a taxpayer fails to provide probative evidence supporting the 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*, 704 N.E.2d at 1119.

SUMMARY OF FINAL DETERMINATION

42. The Board finds in favor of the Respondent. The assessment will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.

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>