

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

Petition: 19-001-09-1-5-00001
Petitioners: Kevin D. and Michelle L. Crouse
Respondent: Dubois County Assessor
Parcel: 19-07-31-402-207.000-001
Assessment Year: 2009

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioners initiated a 2009 assessment appeal with the Dubois County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 14, 2009.
2. The PTABOA mailed its Notification of Final Assessment Determination (Form 115) on October 6, 2009.
3. The Petitioners filed a Form 131 Petition with the Board on November 19, 2009. They elected the Board's small claims procedures.
4. Administrative Law Judge Rick Barter held the administrative hearing on April 24, 2012. He did not inspect the property.
5. Attorney Kevin Crouse appeared pro se. Attorney Marilyn Meighen represented the Respondent. Kevin Crouse and Jake Mauntel were sworn as witnesses for the Petitioners. County Assessor Gail Gramelspacher and Natalie Jenkins were sworn as witnesses for the Respondent, but they did not testify.

Facts

6. The property is a single family residence located at 525 Wright Road in Jasper.
7. The PTABOA determined the assessment is \$61,600 for land and \$170,900 for improvements (total \$232,500).
8. The Petitioners claim the assessment should be \$61,600 for land and \$137,800 for improvements (total \$199,400).

Contentions

9. Summary of the Petitioners' case:
- a. The Petitioners bought this property in 2001 for \$170,000 and have made no significant improvements since then. *Crouse testimony.*
 - b. Real estate broker Jake Mauntel appraised the property with a value of \$187,000 as of November 1, 2011. *Crouse testimony; Pet'rs Ex. 1.*
 - c. Mr. Mauntel's experience and background provide the knowledge needed to understand property values and trending over the years. The value of the subject property on January 1, 2008, and November 1, 2011, would have been about the same. *Mauntel testimony.*
 - d. Mr. Mauntel has been in the real estate business since 1991. During that time he has prepared well over a thousand appraisals for both individuals and banks. *Mauntel testimony.*
 - e. Mr. Mauntel viewed the property and found it to be in average condition. He noted the exterior needed some repairs. He did not inspect the interior for purposes of the appraisal, but he has been in the house. *Mauntel testimony.*
 - f. The Petitioners' home has 2,268 square feet and was built in 1977. Mr. Mauntel used his computer to find comparable properties in Jasper based on age and size criteria. He used three such comparables for his appraisal. The computer program made automatic adjustments to the selected comparables. It calculated an average adjusted price of \$186,722. That average adjusted price is the basis for the appraisal conclusion of \$187,000. *Mauntel testimony; Pet'rs Ex. 1.*
 - g. Seven comparable 2009 sales (similar age and square footage) support the same conclusion. Those comparables have from 1,782 to 4,119 square feet and were built between 1961 and 1978. They had sale prices ranging from \$154,000 to \$197,000. *Mauntel testimony; Pet'rs Ex. 4.*
 - h. Mr. Mauntel admitted he is not a licensed appraiser, but as a real estate broker he can prepare appraisals. Mr. Mauntel testified he has access to Multiple Listing Service (MLS) data which is very valuable in performing appraisals. Indiana appraisers do not have access to MLS data, but often get that information from real estate brokers. He further described how he calculates market value of properties and the adjustments he makes in the process, including adjustments for the condition of properties. While his appraisals are not prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP), his appraisals use the same form and procedure as licensed appraisers to reach an opinion about market value. *Mauntel testimony.*

10. Summary of the Respondent's case:
- a. The Petitioners did not make a prima facie case. *Meighen argument.*
 - b. The appraisal is not USPAP compliant and not performed by a licensed appraiser. The opinion of value is as of November 1, 2011. The valuation date for a 2009 appeal, however, should be January 1, 2008. The three sales it relied on all occurred in 2011. *Meighen argument.*
 - c. A party must present support for conclusory statements. It is not enough to say a computer made adjustments—that response provides no substantive probative evidence. Most of the Petitioners' case is simply conclusory statements without any real support. *Meighen argument.*
 - d. The Petitioners' Exhibit 4 is characterized as information about comparable properties. But it is not enough to say these are comparables. The Petitioners needed to establish why those actually are comparables. They did not do so. *Meighen argument.*

Record

11. The official record contains the following:
- a. The Petition,
 - b. The digital recording of the hearing,
 - c. Petitioners Exhibit 1 – Appraisal dated November 1, 2011,
Petitioners Exhibit 2 – Form 131 Petition,
Petitioners Exhibit 3 – Form 115 PTABOA determination,
Petitioners Exhibit 4 – Seven comparable properties,
Respondent Exhibits – None presented,
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

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17.2 and in some cases it shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor_or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

I.C. § 6-1.1-15-17.2.

13. The Petitioners claimed their 2009 assessment increased by more than 5% from the 2008 assessment. The property record card, however, shows otherwise. It shows that the Petitioners' claim the prior assessment was \$217,000 actually relates to the 2006 assessment. From 2008 to 2009 the assessed value did not change. *Pet'rs. Ex. 1 at 6*. Accordingly, in this appeal the burden shifting provision of Ind. Code § 6-1.1-15-17.2 does not apply.
14. The Petitioners needed to prove the assessed value is wrong and what a more accurate assessed value would be.
15. 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”).
16. The Petitioners did not make a case for any assessment change.
 - a. 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. Assessing officials primarily use 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, 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. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2009 assessment was January 1, 2008. 50 IAC 21-3-3 (2006). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.
- c. Many cases have recognized that the selling price of the subject property can be a good way to prove market value-in-use (if it is an arms-length transaction and if it is timely). The Petitioners bought the property for \$170,000 in 2001, but they failed to establish how that price relates to the required valuation date for a 2009 assessment or how it supports their proposed assessed value. In this case, therefore, their purchase price does not help to prove what a more accurate 2009 assessed value might be.
- d. Although they mentioned their purchase price, the Petitioners primarily relied on the Mauntel Appraisal to make their case. And many cases have recognized that the most effective method to show the value assigned by the assessor is incorrect 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), *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). But not all appraisals satisfy that standard. Such a failure is a problem that seriously impacts credibility and probative value of an opinion of value. It is a fundamental problem for the Petitioners in this case.
- e. Mr. Mauntel admitted that he is not a licensed appraiser and that his appraisal does not conform to USPAP. The appraisal contains no certification that generally accepted appraisal methods were used to arrive at his opinion of market value. With these serious weaknesses, it was incumbent upon either Mr. Mauntel or the Petitioners to provide substantial, detailed evidence or explanation to support the appraisal's conclusion about the value of the subject property. The totality of what was provided, however, is insufficient to establish the credibility or reliability of his opinion the subject property had a value of only \$187,000.
- f. The appraisal is based on three sales of purportedly comparable properties. According to Mr. Mauntel they were selected based on size and age criteria. He testified his computer program made adjustments, but he was unable to provide a substantial, meaningful explanation of the specific adjustments made to those comparables.¹ The appraisal itself simply shows adjustments for "living area: \$43.50 \$/sqft." Although the appraisal made adjustments to the comparable sales, what they

¹ The comparison "grid" in the appraisal shows the subject property is a 1½ story home and the comparables are all ranch homes. The subject property has 1.47 acres and one of the comparables has 0.67 acres (the acreage is not shown for the others). One of the comparables was built in 1962, so it is about 15 years older than the subject property (the other ages are closer to the age of the subject property). These are the kind of differences that probably require some kind of adjustments.

- specifically covered is unclear. Mr. Mauntel did not identify what software program was used. He did not provide any information about the nature or reliability of that program. This effort falls short of the Tax Court's requirement to explain the differences in the properties and their impact upon value. *Long*, 821 N.E.2d at 470-71. Consequently, the appraisal's estimated market value has no weight or credibility. *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique); *see also Canal Square Ltd. Partnership v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801 (Ind. Tax 1998) (obsolescence quantifications based on the witness's "experience" are not probative.)
- g. The three comparables selected for the appraisal are 2011 sales. Again, the valuation date for the March 1, 2009, assessment date was January 1, 2008. Although Mr. Mauntel testified in a conclusory manner that property values were very similar in 2008 and 2011, after considering his appraisal and all of his testimony that conclusion simply is not credible. (At one point Mr. Mauntel also testified, "later on, 2010-2011, which we are not even concerned with, actually property values went down.") Because the Petitioners failed to establish the 2011 valuation is relevant to value as of January 1, 2008, the Petitioners' evidence fails to raise a prima facie case. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date).
- h. The Petitioners also introduced evidence about seven 2008-2009 sales of nearby properties. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the property and how those characteristics compare to those of purportedly comparable properties. They must also explain how any differences between the properties affect their relative market value-in-use. *See Id.* at 470-71. The Petitioners failed to establish that these properties are comparable to their own, instead presenting only cursory descriptions. They provided no meaningful explanation about how those selling prices support either the appraisal or the assessment they requested. The evidence relating to those other sales does not help the Petitioners make their case.
17. Where the Petitioners have not supported their 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.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Petitioners failed to make a prima facie case for a lower assessed value. The Board finds in favor of the Respondent. The assessment will not be changed.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now finds the total assessed value of the property will not be changed.

ISSUED: July 23, 2012

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>.