

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

Petition No.: 79-017-07-1-5-00001
Petitioner: Gerry J. Dail
Respondent: Tippecanoe County Assessor
Parcel No.: 126062030149
Assessment Year: 2007

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 Petitioner initiated an assessment appeal with the Tippecanoe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 14, 2008.
2. The PTABOA issued notice of its decision on June 1, 2009.
3. The Petitioner filed a Form 131 petition with the Board on July 7, 2009. The Petitioner elected to have his case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated January 11, 2010.
5. The Board held an administrative hearing on February 16, 2010, before the duly appointed Administrative Law Judge (the ALJ), Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Gerry Dail, Property Owner
 - b. For Respondent: Pamela Hruska, Tippecanoe County Deputy Assessor

Facts

7. The subject property is a 2,831 square foot, single-family home located at 5283 Grapevine Drive, West Lafayette, Tippecanoe Township, in Tippecanoe County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.

9. For 2007, the PTABOA determined the assessed value of the Petitioner's property to be \$112,300 for land and \$286,400 for the improvements, for a total assessed value of \$398,700.
10. The Petitioner requested an assessed value of \$79,979 for the land and \$286,400 for the improvements, for a total assessed value of \$366,379.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in his assessment:
 - a. The Petitioner contends that the PTABOA erred in evaluating the evidence he submitted at the local level. *Dail testimony*. According to Mr. Dail, the PTABOA's Notification of Final Assessment Determination – Form 115 states the reason the PTABOA denied his appeal was because the “[m]arket comps provided by the petition [sic] are not on golf course, Board has insufficient evidence to change value.” *Petitioner Exhibit 10; Dail testimony*. To the contrary, however, Mr. Dail argues, his Google Earth aerial map shows the comparable properties are, in fact, located on the golf course. *Petitioner Exhibit 4; Dail testimony*. Thus, Mr. Dail argues, because the PTABOA denied his request based on an inaccurate conclusion, the Indiana Board of Tax Review should reverse the PTABOA's decision and grant a reduction in the assessed value of his land. *Dail testimony*.
 - b. Mr. Dail also contends the value of his land is overstated compared to the sale prices and assessed values of properties in his neighborhood. *Dail testimony*. In support of his position, Mr. Dail submitted maps, parcel information, valuation histories and sales disclosure information for properties in the surrounding area. *Petitioner Exhibits 2, 3, 4 and 9*. According to Mr. Dail the property located at 5143 Grapevine Drive has 30.2% more land than his property. *Petitioner Exhibits 1 and 9*. Mr. Dail testified that the lot sold in 2001 for \$72,900 or \$3.36 per square foot for living area, but in 2007, it was only assessed for \$66,000 or \$3.13 per square foot. *Petitioner Exhibits 1 and 9*. Further, Mr. Dail argues that, because the lot was assessed at half of the assessed value of his lot, it created an inequity in the amount of taxes paid on neighboring lots. *Dail testimony*. Thus, Mr. Dail, argues he was over-charged on his taxes and is entitled to equal treatment. *Id.*
 - c. Similarly, Mr. Dail argues, the sales prices of the neighboring lots ranged from \$4.07 to \$6.23 per square foot, with an average sale price of \$4.94 per square foot, while his land was assessed for \$112,300 or \$6.94 per square foot. *Petitioner Exhibit 1; Dail testimony*. Accordingly, Mr. Dail argues, his land is valued 40.4% higher than the average land sale of comparable properties. *Id.* In response to the

Respondent's questioning, however, Mr. Dail testified that he purchased his land for \$108,000 in 2003. *Dail testimony*. He further admitted that the total assessed value of his property is less than the price he paid to purchase the lot and build the house. *Id.*

- d. Finally, Mr. Dail contends that in 2006, 2007 and 2008 property values declined in West Lafayette, as well as all over the country. *Petitioner Exhibits 6 and 7; Dail testimony*. Mr. Dail argues that it is inconceivable that the value of the property under appeal would have increased, while properties in the West Lafayette area have declined. *Dail testimony*. Accordingly, he concludes, the property under appeal is over-valued. *Id.*

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

- a. The Respondent contends the property under appeal is correctly assessed at \$398,700. *Hruska testimony*. In support of this position, the Respondent submitted sales information for eighteen properties located in the area of the Petitioner's property. *Respondent Exhibit 6*. According to the Respondent's representative, the average sales price for properties located in the Petitioner's neighborhood was \$146.98 to \$157.97 per square foot in 2006 and \$143.37 to \$155.56 per square foot in 2007, while the Petitioner's property was assessed for only \$140.83 per square foot. *Respondent Exhibit 6; Hruska testimony*. Thus, Ms. Hruska concludes, the subject property is assessed below its market value. *Id.*
- b. The Respondent similarly argues that the Petitioner's land value is correct. *Hruska testimony*. In support of this contention, the Respondent submitted an aerial map and information on sales of vacant land located in the area of the Petitioner's property. *Respondent Exhibits 3, 4 and 7*. According to the Respondent's representative, the comparable lots were located on the golf course and similar in size to the Petitioner's lot. *Id.; Hruska testimony*. Ms. Hruska testified that the price of vacant lots in the Petitioner's neighborhood has increased from an average of \$105,795 in 2004 to \$128,410 in 2007. *Id.* Thus, she concludes, the Petitioner's land is not over-valued. *Hruska testimony*.
- c. Finally, the Respondent contends that, despite the Petitioner's evidence that the housing market in West Lafayette is declining, custom built homes with golf course access in West Lafayette are actually increasing in value. *Hruska testimony*. According to the Respondent's representative, eleven properties in the area of the Petitioner's property sold twice from 2004 to 2009. *Petitioner Exhibit 5; Hruska testimony*. The properties, on average, showed a 1.06% increase in their sales prices. *Id.* The Respondent, therefore, concludes that the value of properties in the Petitioner's neighborhood is not affected by the local or national economy. *Hruska testimony*.

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Property Valuation Comparison Data on Selected Winding Creek Properties and Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Petitioner Exhibit 2 – Plat map of Winding Creek Subdivision – Section One,

Petitioner Exhibit 3 – Plat map of Winding Creek Subdivision – Section Two,

Petitioner Exhibit 4 – Google Earth Aerial Map of Winding Creek Properties,

Petitioner Exhibit 5 – Electronic mail message from Gerry Dail to Samantha Steele, Tippecanoe County Assessor, dated April 14, 2008, requesting an appeal of the Petitioner’s property taxes,

Petitioner Exhibit 6 – A graph showing 2004 – 2008 home sales in West Lafayette, Indiana,

Petitioner Exhibit 7 – A graph showing the 2005 – 2009 median home value trend nationwide and in West Lafayette, Indiana,

Petitioner Exhibit 8 – Notice of Assessment of Land and Structures – Form 11 R/A, dated January 20, 2009,

Petitioner Exhibit 9 – Parcel Information and Valuation History for 5283 and 5099 Grapevine Drive, West Lafayette and 5143 Grapevine Boulevard, West Lafayette; Parcel Information and Sales Disclosures for 5062, 5300 and 5230 Gardenia Court, West Lafayette; and Parcel Information, Valuation History and Dwelling Information for 5243 Grapevine Drive, West Lafayette,

Petitioner Exhibit 10 – Notification of Final Assessment Determination – Form 115, dated June 1, 2009,

- Respondent Exhibit 1 – Property record card for 5283 Grapevine Drive,
West Lafayette,
 - Respondent Exhibit 2 – Exterior photograph and floor plan of the
Petitioner’s house,
 - Respondent Exhibit 3 – 2004 – 2007 vacant land sales for Neighborhood
No. 555,
 - Respondent Exhibit 4 – 2004 – 2007 average and median vacant land sales
prices for Neighborhood No. 555,
 - Respondent Exhibit 5 – 2004 – 2009 Winding Creek Subdivision home
sales,
 - Respondent Exhibit 6 – 2006 and 2007 average per square foot sales
prices for homes in Winding Creek Subdivision,
 - Respondent Exhibit 7 – Aerial map showing Winding Creek Subdivision
vacant land sales,
- Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated January 11, 2010,
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 Township 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 Township 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 case. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner failed to provide sufficient evidence to raise a prima facie case for a reduction in the assessed value of his land. 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 have traditionally 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. In 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 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). 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 Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
 - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
 - d. Here, the Petitioner contends that his land is over-valued based on the assessed value and sales prices of comparable properties. *Petitioner Exhibit 1 and 9*. In support of this contention, Mr. Dail submitted maps, parcel information, valuation history and sales disclosure information for neighboring properties. *Id.* By comparing his land’s assessed value to the sales prices of other parcels, Mr. Dail is essentially relying on a “sales comparison” method of establishing the market value of his property. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a

property is “similar” or “comparable” to another property are not 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 subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.* Here the Petitioner merely contends that all of the properties border the golf course. This is insufficient to prove comparability. *See e.g. Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Moreover, all three of the Petitioner’s sales occurred in August of 2007 – which is more than twenty months after the January 1, 2006, valuation date at issue in a March 1, 2007, assessment appeal.¹ *Petitioner Exhibit 5*. Thus, the Petitioner failed to raise a prima facie case that his land was over-assessed based on the sales of neighboring properties.²

- e. The Petitioner further argues that the land located at 5143 Grapevine Drive is assessed for half of his land’s assessed value. *Dail testimony*. Mr. Dail argues that this created an inequity in the tax burden in his neighborhood and violates his right to equal treatment. *Id.* 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) (rejecting taxpayer’s lack of uniformity and equality claim where the taxpayer showed neither its own property’s market value-in-use nor the market values-in use of purportedly comparable properties). 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 Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property’s market value-in-use.³ *Id.*

¹ Petitioner Exhibit 1 also includes four additional sales: one dated July 23, 2004, one dated simply 2001, one dated 2006 and one that is undated. The sale in 2004 is wholly untimely to be probative of the property’s value and the Petitioner provided too little information about the remaining sales to be probative of the property’s value here.

² The Board notes that even if the Petitioner’s comparable sales were sufficient to raise a prima facie case that the Petitioner’s land is over-assessed, that evidence is rebutted by the Petitioner’s admission that the property as a whole is assessed for less than what he paid to buy the lot and build his house. The fact that too much assessed value may be allocated to the land and too little value allocated to the house does not change the result that the property’s assessment as a whole does not exceed the property’s market value-in-use.

³ Further, the Petitioner’s evidence shows that the assessed value of 5143 Grapevine Drive *exceeds* the value of the Petitioner’s property. *See Petitioner Exhibit 9*. Thus, again, regardless of whether too much or too little assessed value is allocated to the land or to the improvements, the property’s assessment as a whole may still reflect the property’s market value-in-use. Therefore, the Petitioner has not sufficiently shown that any inequality in tax treatment occurred.

- f. Finally, Mr. Dail argues that property values are declining in West Lafayette and, in fact, across the country. *Petitioner Exhibit 6 and 7*. Therefore, he argues, the Assessor erred by increasing the value of his land in 2007. *Dail testimony*. While Mr. Dail provided graphs showing a general decline in the housing market in West Lafayette, that evidence alone is insufficient to conclude the Petitioner's property itself declined in value. *Petitioner Exhibit 7*. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).⁴
- g. Where the 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to raise a prima facie case. 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 that the assessment should not be changed.

ISSUED: May 11, 2010

⁴The Petitioner also argues that the assessor erred in evaluating the evidence he submitted at the PTABOA hearing and therefore the Board should invalidate the PTABOA determination. *Dail testimony*. Mr. Dail, however, misunderstands the nature of the proceedings before the Board. Once a taxpayer has properly invoked the Board's jurisdiction, its proceedings are *de novo*, which means the Board owes the PTABOA's determination no deference. Thus, while the Petitioner may feel the PTABOA failed to evaluate his evidence properly, it does not hinder his ability to present a case to the Board.

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 pursuant to 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 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/bills/2007/SE0287.1.html>.