

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

Petition No.: 56-013-09-1-5-00018
Petitioners: Richard A. Dietrich and Sandra K. Wilson-Dietrich
Respondent: Newton County Assessor
Parcel No.: 0080425000
Assessment Year: 2009

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 Newton County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated November 25, 2009.
2. The PTABOA issued a notice of its decision on May 12, 2010.
3. The Petitioners filed a Form 131 petition with the Board on May 29, 2010. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 7, 2010.
5. The Board held an administrative hearing on August 24, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:
 - For Petitioner:¹ Richard A. Dietrich, Property owner,
Sandra K. Wilson-Dietrich, Property owner,
 - For Respondent: Lester Terry Moore, Newton County Assessor,
Terri Pasierb, Chief Deputy Assessor, Newton County,
Brian Thomas, Expert witness.

¹ Ms. Jessica L. Hoover appeared as counsel for the Petitioners.

Facts

7. The subject property is house located at 3262 East 900 North, Lake Village, in Newton County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2009, the PTABOA determined the assessed value of the subject property to be \$26,300 for the land and \$386,400 for the improvements, for a total assessed value of \$412,700.
10. The Petitioners requested an assessment of \$26,300 for the land and \$306,000 for the improvements, for a total assessed value of \$332,300.

Issues

11. Summary of the Petitioners' contentions in support of an error in their property's assessment:
 - a. The Petitioners' counsel argues that the Petitioners' property is over-assessed based on an appraisal. *Hoover argument*. In support of this argument, the Petitioners submitted an appraisal performed by an Indiana certified appraiser in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) valuing the property as of November 5, 2009. *Petitioner Exhibit 1*. According to Ms. Hoover, the appraisal values the property using two approaches to value. *Hoover argument*. Under the sales comparison approach to value, the appraiser estimated the market value to be \$340,000. *Id.*; *Petitioner Exhibit 1*. The cost approach yielded a value of \$392,100. *Id.*
 - b. The Petitioners contend that the property's 2009 appraised value of \$340,000 is \$50,000 more than the property's 2008 appraisal, which was prepared before the Petitioners added an addition to their house. *S. Dietrich testimony*. According to Mrs. Dietrich, the additional \$50,000 adequately reflects the improvements made to their home. *Id.*
 - c. Finally, Ms. Hoover argues that the Board should give little weight to the cost approach used by the assessor. *Hoover argument*. According to Ms. Hoover, the assessor provided no explanation for the disparity between the property's \$443,700 assessment and the \$392,100 value that the Petitioners' appraiser estimated using the cost approach. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent contends the property's assessment is correct based on the Petitioners' January 10, 2008, appraisal. *Thomas testimony*. In support of this contention, the Respondent submitted an appraisal of the Petitioners' property

prepared by a licensed Indiana residential appraiser in accordance with USPAP. *Respondent Exhibit 2*. The appraiser valued the Petitioners' property at \$290,000, or \$169 per square foot. *Id.* According to Mr. Thomas, although the appraisal values the property prior to the Petitioners' addition to the house, the January 2008 appraisal is a better indication of value because it is closer to the January 1, 2008, valuation date. *Thomas testimony*. If the \$169 per square foot valuation determined by the 2008 appraisal is applied to the house's 2009 living area, Mr. Thomas contends, the value of the Petitioners' property would be over \$450,000. *Id.*

- b. The Respondent's witness further contends the Petitioners' 2009 appraisal should be given little weight by the Board. *Thomas testimony*. According to Mr. Thomas, the valuation is too far removed from the valuation date to be probative. *Id.* In addition, Mr. Thomas argues, the properties used by the appraiser as comparable properties in the 2009 appraisal are not replacements for the subject property because all of the "comparable" houses are smaller than the Petitioners' house. *Id.* Further, the appraiser's adjustments to those properties are much higher than the suggested limits of 15% for net adjustments and 25% for gross adjustments. *Id.*

Record

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled 56-013-09-1-5-00018 Dietrich,
- c. Exhibits:

Petitioner Exhibit 1 – Appraisal of the Petitioners' property,²

Respondent Exhibit 1 – Value of the property based on the Petitioners' 2008 appraisal,

Respondent Exhibit 2 – Appraisal dated January 10, 2008,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing, dated July 7, 2010,

Board Exhibit C – Hearing sign-in sheet,

² Mr. Moore objected to the submission of Petitioner Exhibit 1 as hearsay evidence because the appraiser was not present to explain the appraisal or answer questions about it. Pursuant to 52 IAC 3-1-5(b), "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." The Board, therefore, overrules the Respondent's objection and admits the appraisal as Petitioners Exhibit 1.

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 Board of Tax Commissioners*, 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 Petitioners failed to provide sufficient evidence to establish an error in their property’s assessment. 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 approach, the sales comparison approach and the income approach to value. *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); *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.1. 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 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, 2009, assessment, the valuation date was January 1, 2008. 50 IAC 21-3-3.
- d. The Petitioners first argue that their property is over-valued based on its appraised value. *Hoover argument*. In support of this contention, the Petitioners offered an appraisal report prepared by an Indiana certified appraiser in which the appraiser estimated the value their property to be \$340,000 as of November 5, 2009. *Petitioners Exhibit 1*. The appraiser certified that his report conformed to USPAP. Appraisals performed in accordance with generally recognized appraisal principles are often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the appraisal estimates the property's value almost two years after the relevant valuation date of January 1, 2008. Because the Petitioners did not relate the property's November 5, 2009, appraised value to the property's value as of the January 1, 2008, valuation date, the appraisal lacks probative value. *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.)
- e. The Petitioners also argue their property is over-valued based on its 2008 appraised value. *S. Dietrich testimony*. According to Mrs. Dietrich, the difference between the 2008 and 2009 appraised values was approximately \$50,000. *Id.* Mrs. Dietrich argues that \$50,000 adequately reflects the value of the improvements made to the property. *Id.* However, the Petitioners presented no support for the argument that the addition to their house added \$50,000 to the property's value as of January 1, 2008. Thus, the Petitioners' opinion amounts to little more than a conclusory statement and such statements, unsupported by factual evidence, are not sufficient to establish an error in an assessment. *Whitley Products, Inc. v. State Board of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- f. The Petitioners failed to raise a prima facie case. Where the Petitioners have not supported their claims with probative evidence, the Respondent's duty to

support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to raise a prima facie case. The Board therefore 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: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.