

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

Petition: 47-005-08-1-5-00006
Petitioners: Howard Scott, Kelli Lucas, Tom Lucas
d/b/a Dogwood Realty
Respondent: Lawrence County Assessor
Parcel: 47-11-36-320-024.000-005
Assessment Year: 2008

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

Procedural History

1. The Petitioners appealed the 2008 assessment of the subject property. They initiated an assessment appeal with the County Property Tax Assessment Board of Appeals (PTABOA) by written document on September 4, 2009.
2. The PTABOA mailed a Form 115 decision on May 5, 2010.
3. The Petitioners filed a Form 131 petition with the Board on May 17, 2010. They elected to have the case heard according to the Board's small claims procedures.
4. Administrative Law Judge Rick Barter held the Board's administrative hearing on March 7, 2012. He did not inspect the property.
5. Petitioner Kelli Lucas, Lawrence County Assessor April Stapp Collins, and Kirk Reller were sworn as witnesses.

Facts

6. The property at issue is an improved residential parcel located at 507 Marion Street in Mitchell.
7. The PTABOA determined that the 2008 assessment is \$5,900 for land and \$45,800 for improvements (total \$51,700).
8. The Petitioners claimed the assessment should be \$5,900 for land and \$26,466 for improvements (total \$32,366).

Contentions

9. Summary of the Petitioners' case:

- a. When the Petitioners bought the property they became responsible for taxes stemming from the 2008 assessment. *Lucas testimony.*
- b. The 2008 assessment is too high. The Petitioners bought the subject property as a foreclosure for \$12,500 on February 3, 2009. Subsequently the Petitioners discovered condition issues—it was in poor condition. *Lucas testimony.*
- c. As shown on the following chart, even though they were not in need of repairs, five of seven other properties in the same block have lower assessed values per square foot than the subject property. *Lucas testimony; Petitioner Exhibit 1.*

Address	Condition	Sq.Ft.	2008 AV	Year built	\$/Sq. Ft.
515 Marion	Average	938	\$21,700	1900	\$23.13
503 Marion	Average	1,014	\$23,800	1915	\$23.47
511 Marion	Average	968	\$30,100	1900	\$31.10
531 Marion	Fair	986	\$35,900	1920	\$36.41
537 Marion	Poor	1,064	\$40,000	1915	\$37.59
516 Marion	Fair	768	\$40,000	1956	\$52.08
517 Marion	Good	1,938	\$128,900	1910	\$66.51
507 Marion	Poor	1,056	\$54,200	1915	\$51.33 ¹

- d. Similarly, as shown on the following chart, in 2008 other properties in close proximity to the subject property sold for less per square foot than the assessed value of the subject property. Furthermore, some of those properties sold for less than their assessed values. *Lucas testimony; Petitioner Exhibit 1.*

Address	Condition	Sq.Ft.	2008 AV	Year built	\$/Sq. Ft.	Sold \$
525 Grissom	Fair	993	\$46,500	1916	\$46.83	\$12,000
324 Frank St.	nd ²	nd	nd	nd	nd	\$14,900
223 Oak St.	Average	984	\$33,300	1923	\$33.84	\$22,000
1221 Warren	Fair	964	\$42,000	1910	\$43.57	\$45,900
212 9 th St.	Average	1,104	\$41,900	1912	\$37.95	\$50,470

- e. A comparable property at 608 Crawford Street is listed for sale at \$39,000. It was built in 1919. It has 952 square feet, two bedrooms, a partial basement, and a detached garage. *Lucas testimony; Petitioner Exhibit 5.*

¹ This line is for the subject property.

² Presumably “nd” means no data.

10. Summary of the Respondent's case:
- a. To prove an assessment must be changed, the Petitioners must provide probative evidence of value. The 2008 assessment date was March 1, 2008 and the valuation date was January 1, 2007. Trending for the 2008 assessment was based on sales between January 1, 2006, and December 31, 2007. *Reller testimony; Respondent Exhibit 3.*
 - b. The subject property sold in 2006 and in 2007 before the Petitioners bought it in 2009. On January 23, 2006, it sold for \$65,000. On November 13, 2007, it sold for \$55,250. *Reller testimony; Respondent Exhibits 3, 4, 5, 6.*
 - c. The 2009 purchase was two years after the valuation date and 11 months after the assessment date. The 2006 and 2007 transactions are within the appropriate time range for consideration in the 2008 assessment, and are more relevant than the 2009 transaction. *Reller testimony.*

Record

11. The official record contains the following:
- a. Form 131 Petition and attachments,
Notice of Hearing,
Hearing sign-in sheet,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 – List of comparable properties, assessments and sales,
Petitioner Exhibit 2 – Multiple Listing Service (MLS) data sheet,
Petitioner Exhibit 3 – 2010 tax data report,
Petitioner Exhibit 4 – Property report card for 507 Marion Street (page 1 of 6),
Petitioner Exhibit 5 – MLS listing for 608 Crawford Street,
 - d. Respondent Exhibit 1 – Form 130,
Respondent Exhibit 2 – Form 115,
Respondent Exhibit 3 – PRC for the subject property,
Respondent Exhibit 4 – Sales disclosure form for the subject property dated
January 23, 2006,
Respondent Exhibit 5 – Sales disclosure form for the subject property dated
November 13, 2007,
Respondent Exhibit 6 – Sales disclosure form for the subject property dated
January 28, 2009,
Respondent Exhibit 7 – Photograph of the subject property,
Respondent Exhibit 8 – Board decision on Pet. 47-010-08-1-5-00015,
 - e. These Findings and Conclusions.

Analysis

12. A taxpayer generally has the burden to establish a prima facie case by proving the current assessment is incorrect and proving 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).
13. 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”).
14. Once a petitioner establishes a prima facie case, the burden of going forward with the case shifts. Then a respondent needs to impeach or rebut that evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner 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. 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 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. Dep't of Local Gov't Finance*, 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 2008 assessment was January 1, 2007. 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *Long*, 821 N.E.2d at 471.

- c. It frequently has been recognized that the sale of the subject property can be some of the best evidence of its actual market value-in-use. Here there is evidence related to three such sales. On January 23, 2006, the subject property sold for \$65,000. On November 13, 2007, it sold for \$55,250. Finally, the Petitioners bought the subject property for \$12,500 on February 3, 2009.³ The Respondent correctly pointed out that both the 2006 and 2007 sales are within the two-year period that is considered for 2008 assessment trending purposes, while the 2009 sale is not. Nothing presented in this case establishes how the sale price from February 3, 2009, might relate to value of the property as of January 1, 2007. Therefore, the Petitioners' purchase price does not help to prove the disputed assessment should be changed, while the other two sales indicate the assessment of \$51,700 is not too high.
- d. The Petitioners also attempted to use a sales comparison approach to establish the value of their property. But in order to do so, they needed to 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 comparability. *Long*, 821 N.E.2d at 470. The party seeking to rely on a comparison must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *Id.* at 470-71. The proponent also must explain how any differences between the properties affect their relative values. In this case the conclusory information related to the Petitioners' sales comparison approach (purportedly calculating price per square foot⁴) falls far short of what would be required for any truly meaningful comparative value analysis. *Id.* Even assuming, *arguendo*, that four other properties had selling prices between \$33.84 per square foot and \$46.83 per square foot, the point does not prove a valuation of the subject property at \$51.33 per square foot is wrong.
- e. In addition, the purportedly comparable sales took place sometime in 2008—the Petitioners failed to establish specific dates of sale. To be relevant, however, the record would need to establish how the selling prices relate to market value-in-use as of January 1, 2007. *O'Donnell v. Dep't of Local Gov't Fin.*, 864 N.E.2d 90, 95 (*Ind. Tax Ct.* 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 472 (*Ind. Tax Ct.* 2005). Nothing in the record relates those sale prices to the required valuation date. That is another reason those sales do not help to prove the disputed assessment must be changed.
- f. The Petitioners attempted to compare their 2008 assessment to the assessments of purportedly comparable properties, apparently intending to show a lack of uniformity and equality. But a taxpayer cannot make such a claim simply by

³ To be a reliable indicator of market value, any sale must satisfy certain conditions. For example, the buyer and seller must be typically motivated, well informed and acting in their own best interests. *See* MANUAL at 10. Ms. Lucas testified that the Petitioners bought the property as a foreclosure. It is not clear that their purchase price is a reliable indication of the market value.

⁴ The Petitioners provided only an address, year built, condition rating, and square footage for each sale.

comparing assessments without showing that the property is assessed at a higher percentage of its market value-in-use than other properties. *See Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (finding that taxpayer failed to prove a lack of uniformity and equality where it did not show the market values-in-use of its property or any of the purportedly comparable properties). Furthermore, this attempted comparison is simply based on assessed value per square foot. But again, such an approach lacks the kind of detail and analysis that would be required for any legitimate conclusion about the relative values of those properties. *See Long*, 821 N.E.2d at 470-471.

16. The Respondent's duty to support the assessment with substantial evidence was 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

17. The Petitioner failed to make a case for any change in assessed value. The Board finds in favor of the Respondent.

Final Determination

In accordance with these findings and conclusions, the assessment will not be changed.

ISSUED: May 25, 2012

Commissioner, 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>.