

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

Petition No.: 53-009-07-1-5-00104
Petitioner: Lynn S. Duggan
Respondent: Monroe County Assessor
Parcel No.: 53-08-10-302-030.000-009 (015-40390-00)
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 Monroe County Property Tax Assessment Board of Appeals (PTABOA) by written document dated January 14, 2008.
2. The PTABOA issued its decision on March 5, 2008.
3. The Petitioner filed a Form 131 petition with the Board on March 28, 2008. The Petitioner elected to have her case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 13, 2010.
5. The Board held an administrative hearing on March 30, 2010, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Lynn Duggan, Petitioner
 - b) For Respondent: Judith Sharp, Monroe County Assessor¹

Facts

7. The property is a single-family residence located at 1807 Wexley Road in the city of Bloomington, Perry Township in Monroe County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

¹ Marilyn Meighen appeared as counsel for the Respondent.

9. For 2007, the PTABOA determined the assessed value of the Petitioner's property to be \$40,000 for the land and \$176,900 for the house, for a total assessed value of \$216,900.
10. The Petitioner requests an assessed value of \$40,000 for the land and \$157,300 for the house, for a total assessed value of \$197,300.²

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in her assessment:
 - a) The Petitioner contends her property is over-valued because the house floods in heavy rain. *Duggan testimony; Petitioner Exhibits IA and I-5.* Ms. Duggan testified that the land behind her house is very steep and her rear patio is located in a depression. *Duggan testimony; Petitioner Exhibits IA and 5.* When it rains, water runs down the hill and onto the patio, flooding the lower level of the house. *Duggan testimony; Petitioner Exhibit IA.* According to Ms. Duggan, the property flooded in both 2001 and 2008, and after the 2008 flooding, she spent about \$12,000 on water extraction, mold testing, drywall repairs, and replacing the carpeting. *Id.* In response to questions, Ms. Duggan testified that her house was the only property in the neighborhood that required drywall repair and new carpeting. *Id.*
 - b) Ms. Duggan also argued that the driveway and garage are unusable in winter due to the steep grade of the driveway. *Duggan testimony; Petitioner Exhibit IA and I-4.* In addition, Ms. Duggan testified that the garage itself is very small, which increases the likelihood of hitting the garage door frame if a car skids on the slick drive. *Duggan testimony; Petitioner Exhibit IA.* According to Ms. Duggan, this reduces the value of the property. *Duggan testimony.*
 - c) Finally, the Petitioner contends her assessment is too high based on the sale of a neighboring property, located at 1813 South Wexley Road. *Duggan testimony.* According to Ms. Duggan, the neighboring property, which has one more bedroom than her home and has a useable two-car garage, sold for \$210,000 on June 16, 2006. *Id.; Petitioner Exhibits IA and 6.* Ms. Duggan argues that because her home has one less bedroom and an unusable garage, it should be valued for \$195,000, which is \$15,000 less than the neighboring property. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a) Ms. Sharp testified that the Petitioner's home is a bi-level house with an integral garage, located on a larger corner lot. *Sharp testimony; Respondent Exhibits A and B.* The Petitioner's property is located in a stable subdivision near several schools. *Sharp testimony.* According to the Assessor, the houses in the subdivision are generally fair-sized and located on "nice-sized lots." *Id.*

² At the hearing, Ms. Duggan requested a total assessed value of \$195,000.

- b) The Respondent contends the property's assessed value is correct based on the sales of comparable properties in the Petitioner's neighborhood. *Meighen argument*. In support of this contention, the Respondent submitted information on four purportedly comparable properties located near the Petitioner's property. *Sharp testimony; Respondent Exhibits A and C – F*. Ms. Sharp testified that the first comparable property, located at 1817 East Kensington Place sold for \$218,000 on February 3, 2006; the second comparable property, located at 1813 Wexley Road, sold for \$210,000 on June 16, 2006; the third comparable property at 1906 East Kensington Place sold for \$305,000 on December 11, 2006 and the fourth comparable property at 1902 East Kensington Place sold for \$275,000 on April 26, 2006. *Id.* Thus, the Respondent concludes, the Petitioner's property's assessed value of \$216,900 is in line with the market for the neighborhood. *Sharp testimony*.
- c) Finally, the Respondent argues that she was unaware of any widespread flooding in Monroe County in 2001 and 2008. *Sharp testimony*. Furthermore, Ms. Sharp contends, any flooding that occurred in 2001 and 2008 would not have an impact on the property's 2007 assessed value because the floods occurred outside of the timeframe to determine the assessment. *Id.*

Record

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

- a) The Petition.
- b) The digital recording of the hearing.
- c) Exhibits:

Petitioner Exhibit 1A: Petitioner's statement of the case,
Petitioner Exhibit 1: Photograph of the upper section of the Petitioner's driveway,

Petitioner Exhibit 2: Photograph of the lower section of the Petitioner's driveway,

Petitioner Exhibit 3: Photograph of the Petitioner's driveway from the garage,

Petitioner Exhibit 4: Photograph of the Petitioner's driveway from the bottom of the drive,

Petitioner Exhibit 5: Photograph of the rear of the Petitioner's house,

Petitioner Exhibit 6: List of 2005 and 2006 sales for the Petitioner's neighborhood,

Respondent Exhibit A: Map and aerial photograph of the Petitioner's property and neighboring comparable properties,

Respondent Exhibit B: Property record card (PRC) and photograph for the Petitioner's property,

Respondent Exhibit C: PRC, sales disclosure form, and photograph for 1817 East Kensington place,

Respondent Exhibit D: PRC, sales disclosure form, and photograph for 1813 Wexley Road,

Respondent Exhibit E: PRC, sales disclosure form, and photograph for 1906 East Kensington Place,

Respondent Exhibit F: PRC and sales disclosure form for 1902 East Kensington Place,

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

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 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).
- 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 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”).
- 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 raise a prima facie case for a reduction in the assessed value of her property. 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). The appraisal profession traditionally has 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 value 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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 2006). A taxpayer may rebut that presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d) The Petitioner first argues that her property's assessed value should be lowered, because the elevation of the back yard causes the property to flood and the steep grade of the driveway limits the use of the garage in inclement weather. *Duggan testimony; Petitioner Exhibit 1A and 1-5*. In support of this contention, the Petitioner provided exterior photographs, showing the elevation of the land in the back and the driveway. *Petitioner Exhibits 1-5*.
- e) Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Board of Tax Commissioners*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). A Petitioner has the burden to produce "probative evidence that would support an application of a

negative influence factor and a quantification of that influence factor.” *Talesnick*, 756 N.E.2d at 1108.

- f) The Petitioner provided some evidence of an incline on her driveway and in her back yard. While the evidence may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value of the property under appeal. *See Talesnick*, 756 N.E.2d at 1108. Ms. Duggan merely argues that the conditions make her property worth “less” than neighboring properties. Simply contending the flooding of the land and use limitations of the driveway may affect the value of the property falls far short of the Petitioner’s burden to prove the value of her property.
- g) Further, Ms. Duggan contends her property is overvalued based on the sale of a neighboring property. *Duggan testimony*. 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 do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, Ms. Duggan offers only one property as a comparable and she only compares the steepness of the driveways, the functionality of the garages, and the number of bedrooms to determine comparability. Moreover, she fails to value the differences between the properties.³ This is insufficient to prove that the property is comparable. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).
- h) The Petitioner failed to raise a prima facie case that her property was assessed in excess of its market value-in-use. Where a petitioner has not supported its 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

- 16. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

³ Although Ms. Duggan suggests that the limited use of her garage and her one less bedroom is worth \$15,000 compared to the neighboring sale, Ms. Duggan provided no evidence that supports that valuation. 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).

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

IMPORTANT NOTICE

- 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>.