

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

Petition No.: 18-003-06-1-5-00765
Petitioners David M. and Delinda L. Easterly
Respondent: Delaware County Assessor
Parcel No.: 181123152011000003
Assessment Year: 2006

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 Delaware County Property Tax Assessment Board of Appeals (PTABOA) by written document dated April 20, 2007.
2. The PTABOA issued its decision on June 13, 2008.
3. The Petitioners filed a Form 131 petition with the Board on July 14, 2008. 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 June 26, 2009.
5. The Board held an administrative hearing on September 23, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: David M. Easterly, Petitioner
 - b) For Respondent: Kelly Hisle, Delaware County Deputy Assessor

Facts

7. The property is a single-family residence located at 1905 East 17th Street, in the city of Muncie, Center Township in Delaware County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

9. For 2006, the PTABOA determined the assessed value of subject property to be \$9,400 for the land and \$17,700 for the improvements, for a total assessed value of \$27,100.
10. The Petitioners requested an assessed value of \$5,000 for the land and \$17,500 for the improvements, for a total assessed value of \$22,500.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a) The Petitioners contend that the assessed value of the subject property is overstated based on a sale of the property. *Easterly testimony*. Mr. Easterly testified that the Petitioners purchased the property from M Doed LLC in August of 2005 for \$22,500. *Id.*; *Petitioners Exhibit 2*. According to Mr. Easterly, the seller was a limited liability corporation which buys, sells and rents property in Muncie. *Id.*
 - b) The Petitioners further contend that the assessed value of the subject property is excessive based on an appraisal of the property. *Easterly testimony*. The appraisal was performed by Otis E. Cox of Dietrick Appraisal Services and was based on an exterior inspection of the property. *Petitioners Exhibit 3*. The appraisal estimates the value of the property to be \$25,000 as of July 28, 2006. *Id.* While the appraised price exceeds the Petitioners' purchase price of the property, Mr. Easterly argues that given the experience of the seller in real estate the purchase price would have been higher if the property was worth more. *Id.*; *Petitioners Exhibits 2 and 3*.
12. Summary of the Respondent's contentions in support of the assessment:
 - a) The Respondent contends the property's assessed value is fair based on an analysis of three comparable properties in the Petitioners' neighborhood that sold in 2004 and 2005. *Hisle testimony*; *Respondent Exhibit E*. For each of the three properties, the Respondent's representative testified that she started with the sale price and then made adjustments for the differences in features between the comparable sales and the subject property. *Id.* According to Ms. Hisle, the adjusted prices of the three comparable properties are \$25,900, \$36,950, and \$27,500, which result in a price per square foot of \$48.36, \$37.91, and \$42.39, respectively. *Id.* The subject property's assessed value is only \$31.37 per square foot. *Id.*
 - b) The Respondent's representative also argued that the Petitioners' appraisal is flawed. *Hisle argument*. According to Ms. Hisle, the third comparable property listed in the appraisal was adjusted at a different rate for its living area than the first and second comparables. *Id.*; *Petitioners Exhibit 2*. Also, Ms. Hisle argues, comparable three is on a basement whereas the subject property is on a crawl

space, but there is no adjustment to account for the difference in the properties' foundations. *Id.*

- c) Finally, Ms. Hisle argues that the appraisal was not timely. *Hisle argument.* According to the Respondent's representative, for the 2006 assessment, state guidelines require the use of 2004 and 2005 sales. *Id.* The Petitioners' appraisal, however, valued the property as of July, 28, 2006. *Id.*

Record

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

- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioners Exhibit 1: Form 131 petition,
Petitioners Exhibit 2: Settlement statement for the property dated August 12, 2005,
Petitioners Exhibit 3: Appraisal of the property as of July 28, 2006,

Respondent Exhibit A: The subject property's property record card (PRC),
Respondent Exhibit B: Sales disclosure form for the subject property,
Respondent Exhibit C: MLS listing sheet for the subject property,
Respondent Exhibit D: Listing of sales from 2004 and 2005 for neighborhoods 130500 and 130950,
Respondent Exhibit E: Comparable sales analysis,
Respondent Exhibit 1: PRC for 1926 East 17th Street,
Respondent Exhibit 1A: Sales disclosure form for 1926 East 17th Street,
Respondent Exhibit 2: PRC for 1703 East 17th Street,
Respondent Exhibit 2A: Sales disclosure form for 1703 East 17th Street,
Respondent Exhibit 3: PRC for 1422 East 17th Street,
Respondent Exhibit 3A: Sales disclosure form for 1422 East 17th Street,

Board Exhibit A: Form 131 Petitions,
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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners provided sufficient evidence to establish a prima facie case for a reduction in value. 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 Ct. 2006). A taxpayer may rebut that presumption, however, 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. *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 or any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) Regardless of the method used to rebut the presumption the assessment is correct, the 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of

value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- d) Here the Petitioners contend the property is over-valued based on both an appraisal of the subject property and their purchase price. *Easterly testimony; Petitioners Exhibits 2 and 3.*
- e) The Petitioners' appraisal estimated the value of the property to be \$25,000 as of July 28, 2006. *Easterly testimony; Petitioners Exhibit 3.* While an appraisal is valid method of showing an error in the assessment, the appraisal must value the property as of the relevant assessment date – in this case, January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Mr. Easterly did not provide any evidence showing how the appraisal related to the January 1, 2005, valuation date. Therefore, without further evidence to support the Petitioners' case, the appraisal fails to establish a prima facie case for a reduction in value of the Petitioners' property.
- f) The Petitioners purchased the property, however, in August of 2005 for \$22,500. *Easterly testimony; Petitioner Exhibit 2.* While the Petitioners did not trend their August 2005 sale date to the January 1, 2005, valuation date, the Board finds the purchase is sufficiently timely to be some evidence of the property's market value-in-use. *See 50 IAC 21-3-3(a)* ("The local assessing official shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date.") Because the Petitioners purchased their property within the time period assessors use to determine the March 1, 2006, assessments, the Board finds that the Petitioners presented a prima facie case that the subject property is over-assessed.
- g) Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E. 2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise a prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E. 2d 1075, 1082 (Ind. Tax Ct. 2005). Here, the Respondent's representative did not address the Petitioners' purchase of the property. Instead she focused on the property's appraisal as well as presenting her own comparable sales analysis.¹
- h) The Respondent contends that the property was properly valued based on a comparable market analysis. *Hisle argument; Respondent Exhibit E.* In making this argument, the Respondent's representative essentially relies on a sales

¹ The Board agrees with the Respondent that the appraisal was not timely. Therefore, the Board need not address the Respondent's contentions that the appraisal was "flawed" and that those flaws somehow invalidated the appraisal as evidence of the property's value.

comparison approach. *See* MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). 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 two 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.*

- i) While Ms. Hisle made adjustments to the properties in her comparative analysis, the Board finds that those adjustments are conclusory and unsupported. In form, Ms. Hisle’s sales comparison may not differ significantly from those made by a certified appraiser in an appraisal report. The appraiser’s assertions, however, are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Here, there is no evidence Ms. Hisle is a licensed appraiser in Indiana. Further, she did not certify that the opinion she prepared for the Respondent complied with USPAP in performing her valuation analysis. Nor did her report identify the data upon which such adjustments were made. The Board therefore finds that the Respondent’s sales comparable analysis is insufficiently reliable to be probative of the property’s market value-in-use.

Conclusion

16. The Petitioners established a prima facie case. The Respondent failed to rebut the Petitioners’ evidence. The Board finds in favor of the Petitioners and holds that the property’s value is \$22,500, based on the Petitioners’ purchase of the property.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review determines that the subject property’s assessment should be changed to \$22,500.

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>.