

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

Petition #: 91-011-06-1-5-00014
Petitioner: Jack C. Elam
Respondent: White County Assessor
Parcel #: 008-63680-00
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Jack C. Elam appealed his property’s assessment to the White County Property Tax Assessment Board of Appeals (“PTABOA”).¹ The PTABOA issued its determination on December 1, 2007.
2. Mr. Elam timely filed a Form 131 petition with the Board. He elected to proceed under the Board’s small claims rules.
3. On June 5, 2008, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) For Mr. Elam: Jack C. Elam, property owner
Nelda J. Elam
 - b) For the Assessor: Scott Potts, Authorized County Representative

Facts

5. The property is a single-family residence located at 5279 East - 350 North, Monticello, Indiana.

¹ On his Form 131 petition, Mr. Elam listed only himself as the property’s owner. And only he signed the petition. At the hearing, Mr. Elam testified that his wife, Nelda J. Elam, also owned the property. The Form 115 determination lists the property’s owners as “Jack and Nelda Elam” and the property’s record card lists the owners as “Elam, Jack C & Jean.” For consistency’s sake, the Board refers to the property as Mr. Elam’s. By doing so, however, the Board makes no finding about Nelda Elam’s interest in the property.

6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following values for Mr. Elam's property:
Land: \$16,100 Improvements: \$85,100 Total: \$101,200.
8. Mr. Elam requests a total assessment of \$87,000.

Parties' Contentions

9. Mr. Elam offered the following evidence and arguments:
 - a) The property is assessed for more than its market value. To prove his point, Mr. Elam offered what Ms. Elam called a "market analysis" report" prepared by a real estate company, and an appraisal report prepared by Lawrence Culp, a certified appraiser. *Pet'r Exs. 1-2.*
 - b) The market analysis consists of a sales-comparison grid from a uniform residential appraisal report, listing information for the three comparable properties identified in the grid, and a property record card for Mr. Elam's property. *Pet'r Ex. 1.* The sales-comparison grid lists information about three properties that sold during 2006 and notes various adjustments to those sale prices. The grid contains a handwritten note apparently indicating that the report's preparer estimated the value of Mr. Elam's property at \$92,000 as of September 8, 2006. *See id.* It also contains a handwritten calculation appearing to reduce that amount by 6% to reflect a value of \$86,480 as of May 27, 2008. *Id.* The market analysis is unsigned and bears the term "DEMO COPY" in bold letter across its front page. *Id.*
 - c) Mr. Culp's appraisal values the property at \$87,000 as of October 23, 2006. *Pet'r Ex. 2 at 1.* Mr. Culp arrived at his opinion by applying the sales-comparison approach to value. *Id.* He also certified that he prepared the appraisal report in conformity with the Uniform Standards of Professional Appraisal Practice. *Id. at 9.*
 - d) Mr. Elam has been trying to sell the property since 2002. He has not been able to sell it for "under \$90,000." *J. Elam testimony.* A renter would have bought the property for \$89,000, but he wanted a new roof and furnace installed, and the Elams declined his offer. *N. Elam testimony.* At some point, Mr. Elam listed the property with "Network"² but he still could not sell the property for "under \$90,000." *J. Elam testimony.* Network's owner just wanted to sell the property and said that she would take \$80,000. *Id.*
 - e) The property's assessment increased by another \$5,000 in 2007 despite the fact that properties have been depreciating by 6%. *J. Elam testimony.*

² Mr. Elam's testimony was not clear. The name of the real estate company he identified sounded like "Network."

f) It is unfair for property owners to pay an “extra 20%” assessment over the actual value of a property. “Equalization” has nothing to do with the actual value of an individual property. *J. Elam argument.*

10. The Assessor offered the following evidence and arguments:

- a) Mr. Culp’s appraisal report actually supports the property’s current assessment. Indiana uses a mass-appraisal system for assessing properties. And the appraised value falls within an acceptable statistical range under that system. *Potts argument.*
- b) Under Ind. Admin. Code, title 50, rule 21-11-1, the Department of Local Government Finance incorporated the Standard on Ratio Studies approved by the International Association of Assessing Officers (“IAAO”) in July 1999. *Potts testimony; Resp’t Exs. A-B.* And 50 IAC 21-11-1 allows a Coefficient of Dispersion (COD) of 15% for improved residential property. *Potts testimony; Resp’t Ex. A at 9.* The COD is the average deviation of a group of numbers from the median, expressed as a percentage. *Potts testimony; Resp’t Ex. B at 59.* The current assessment is correct because it is only 16.3% higher than the appraisal value, or 1.3% more than the allowable COD. *Potts argument.*
- c) Changing the assessment for Mr. Elam’s property would create an invalid uniformity. To avoid such a situation, the IAAO Standard prohibits “sales chasing,” which it defines as the practice of assessing properties based on their sale prices. *Potts testimony; see also Resp’t Ex. B at 62.* Reassessing Mr. Elam’s property at its appraised value would equate to sales chasing. *Potts argument.*

Record

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

- a) The Form 131 petition
- b) A digital recording of the hearing
- c) Exhibits:

Petitioner Exhibit 1: Market Analysis Report for the subject property
Petitioner Exhibit 2: Appraisal of the subject property

Respondent Exhibit A: 50 IAC 21
Respondent Exhibit B: 1999 IAAO Standard on Ratio Studies
Respondent Exhibit C: Statement of contentions.
Respondent Exhibit D: Notice of appearance for Scott Potts on behalf of the
White County Assessor

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

12. The following describes the parties' burden of proof:
- a) A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should 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 petitioner must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1012 (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 respondent to impeach or rebut the petitioner’s 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.
13. Mr. Elam failed to make a prima facie case for reducing his property’s assessment. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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, sales-comparison, and income approaches. *Id.* at 3, 13-15. 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, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *See MANUAL* at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But 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 (“USPAP”) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A

taxpayer may also offer actual construction costs, sales information for the subject or comparable properties and other any information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) Regardless of the method used to rebut the assessment's presumption of accuracy, a party must explain how its evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 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). For the March 1, 2006 assessment, that valuation date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.
- d) Mr. Elam offered two different estimates of his property's value—an unsigned report that Ms. Elam described as a “market analysis,” and an appraisal report prepared by Lawrence Culp, a certified appraiser. *Pet'r Exs. 1-2*. Neither document is probative of the property's true tax value.
- e) The market analysis is unsigned. The Board cannot give any weight to a valuation opinion where there is no evidence either identifying the person who offered it or indicating whether it was based on generally accepted appraisal principles.
- f) Mr. Culp's appraisal, however, is more substantial. He formed his opinion using a generally accepted appraisal methodology—the sales-comparison approach—and he certified that he complied with the USPAP. Nonetheless, Mr. Culp estimated the property's value as of October 23, 2006, more than 22 months after the relevant January 1, 2005, valuation date. And Mr. Elam did not explain how that appraisal related to the property's value as of January 1, 2005. At most, Mr. Elam testified that property values were decreasing at a 6% rate. But he neither specified the time period he was referring to nor offered any evidentiary support for that claim. The Board therefore cannot give any probative weight to Mr. Culp's appraisal.
- g) Finally, Mr. Elam testified that he had been trying to sell the property since 2002. If a seller has marketed his property in a commercially reasonable manner for an appropriate length of time, the seller's asking price tends to establish a ceiling on that property's market value. Of course, the strength of that inference rests on the efforts taken to market the property. And Mr. Elam offered very little evidence in that regard. The only offer that Mr. Elam identified was from someone who rented the property—hardly a sign of extensive marketing. Mr. Elam did testify that he listed the property with “Network,” which the Board infers was a realtor. But he did not identify the timeframe during which Network marketed the property, much less how Network's inability to sell the property for “under \$90,000” related to its value as of January 1, 2005.
- h) Because Mr. Elam failed to establish a prima facie case, the Assessor was not obligated to rebut Mr. Elam's evidence. The Board, however, reminds the Assessor that it has repeatedly rejected attempts to rebut probative market-based evidence with claims that a property's assessment falls within statistical measures of uniformity.

And both the Tax Court and the Board have recognized market value-in-use appraisals performed in conformance with USPAP as compelling evidence of a property's market value-in-use. *E.g., Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *Kooshtard Property VI*, 836 N.E.2d at 506 n.6.

Conclusion

14. Mr. Elam failed to establish a prima facie case of error. The Board finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

ISSUED: _____

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>