

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

Petition No.: 48-003-07-1-5-07647
Petitioner: Timothy L. Finley
Respondent: Madison County Assessor
Parcel No.: 18 76-11
Assessment Year: 2007

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

Procedural History

1. On August 8, 2008, Timothy L. Finley filed written notice with the Madison County Assessor contesting the subject property’s 2007 assessment. On May 6, 2009, the Madison County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying Mr. Finley relief.
2. Mr. Finley then timely filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board’s small claims procedures.
3. On June 9, 2010, the Board held an administrative hearing through its Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
 - a) For Mr. Finley: Timothy L. Finley
Tom Fisher, witness
 - b) For the Assessor: Jack Norris, Jr., Deputy Assessor

Facts

5. The subject property is a single-family residential dwelling located at 1648 West 8th Street, in Anderson, Indiana.
6. Neither the ALJ nor the Board inspected the subject property.
7. The PTABOA determined the following values for the subject property:
Land: \$8,000 Improvements: \$59,600 Total: \$67,600.

8. On the Form 131 petition, Mr. Finley requested the following assessment:

Land: \$3,500 Improvements: \$30,000 Total: \$33,500.

Parties' Contentions

9. Summary of Mr. Finley's contentions:

- a) The subject property is assessed too high. *Finley argument.* The home is erroneously assessed as having a crawl space despite the fact that the home's framing is just inches off the dirt. The previous owners built the home on the site of an old pioneer house that had not been properly excavated. They just put in footers and built up the home. As a result, contractors have had to tear out the home's hardwood floors several times to repair furnace ductwork and plumbing. That makes repairs very costly. In fact, the difficulty and cost of repairs has left the subject home's central heating system functional in only two of its eight rooms. Mr. Finley uses his bathtub as a kitchen sink because the kitchen plumbing froze and broke. *Finley testimony.*
- b) In addition, the Assessor incorrectly labeled the subject property's neighborhood as "static." *Finley testimony.* In reality, the neighborhood is dilapidated, and it continues to get worse. Nearly 60% of the homes located around the subject property are vacant. Many have been that way for nearly ten years and should be demolished. *Id.*
- c) Mr. Finley also claims that his property taxes are unfairly high compared to his neighbors' taxes. For example, Mr. Finley's taxes were nearly \$500, while the taxes for the property next door were only \$230. *Finley argument; Pet'r Ex. 1-7.* Many of the neighboring homes are in better condition than the subject home. And many of those neighboring properties are not being assessed for their basements and outbuildings. *Finley testimony.*

10. Summary of the Assessor's contentions:

- a) The Madison County PTABOA voted not to change the subject property's assessment, and the Assessor supports that decision. *Norris testimony.*

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's Exhibit 1: Madison County tax inquiry for 1708 West 8th Street,
Petitioner's Exhibit 2: Madison County tax inquiry for 1815 West 8th Street,
Petitioner's Exhibit 3: Madison County tax inquiry for 1615 West 8th Street,
Petitioner's Exhibit 4: Madison County tax inquiry for 1642 West 8th Street,
Petitioner's Exhibit 5: Madison County tax inquiry for 1640 West 8th Street,
Petitioner's Exhibit 6: Madison County tax inquiry for 928 Arrow Avenue,
Petitioner's Exhibit 7: Madison County tax inquiry for 1634 West 8th Street.

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

Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must make 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).
13. In making its case, the taxpayer 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, 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 the taxpayer makes a prima facie case, the burden shifts to the respondent to impeach or rebut the taxpayer’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.

Mr. Finley's Case

15. Mr. Finley did not make a prima facie case for reducing the subject 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 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). Appraisers traditionally have 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 use a

mass-appraisal version of the cost approach 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) *reh'g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 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 any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) By contrast, a taxpayer does not rebut the presumption that a property's assessment is accurate simply by contesting the assessor's methodology in computing it. *See Eckerling*, 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id.* Strictly applying the Guidelines does not suffice; rather, the taxpayer must offer the types of market-value-in-use evidence contemplated by the Manual. *Id.*
- d) Mr. Finley failed to offer any evidence to show the subject property's market value-in-use or to substantiate the \$33,500 assessment that he requested on his Form 131 petition. Instead, Mr. Finley argued that: (1) the property was erroneously assessed as having a crawl space; (2) the condition of the home's interior and of the surrounding neighborhood are both poor; and (3) he pays twice as much in property taxes as some of his neighbors whose homes are in better condition than the subject home and who have garages and basements that are not being assessed.
- e) It is not clear whether the subject home has a crawl space. Mr. Finley testified that the home's framing was "just inches off the dirt." *Finley testimony*. The Guidelines define a crawl space as, "[a] shallow space between the first tier of flooring and the ground (not a basement)." GUIDELINES, glossary at 4. Based on Mr. Finley's testimony, the space under the subject home arguably meets that definition. Regardless, whether the Assessor correctly viewed the home as having a crawl space is beside the point. As the Tax Court explained in *Eckerling*, a taxpayer must do more than just attack an assessor's methodology; he instead needs to offer probative evidence of the kind described in the Manual to show the property's market value-in-use. *Eckerling*, 841 N.E.2d at 678. And Mr. Finley failed to offer any evidence to quantify how the inability to easily access the space under his house affected the subject property's market value-in-use.
- f) The same is true for Mr. Finley's claims about the condition of the subject home's interior and of the surrounding neighborhood. At most, Mr. Finley's testimony might

call into question some of the Assessor's subjective judgments, such as the condition rating that the Assessor assigned to the home. Once again, however, Mr. Finley offered no probative evidence to quantify how those factors affected the subject property's market value-in-use.

- g) Mr. Finley's reliance on the disparity between the taxes that he and his neighbors pay is equally unpersuasive. Although Mr. Finley focused on the various properties' tax bills, he does not appear to claim that his neighbors were taxed at a different rate than he was. Instead, Mr. Finley appears to claim that neighboring properties were assessed for less than the subject property even though those neighboring properties have homes that are as nice as or nicer than the subject home. But outside of general statements about many of the neighboring homes having upper stories and air conditioning or being in better condition than the subject home, Mr. Finley did not meaningfully compare the properties. In any event, the assessments for the neighboring properties do little to show the subject property's market value-in-use. Similarly, because Mr. Finley did not offer probative evidence to show the market value-in-use for any of the properties at issue, he failed to prove a lack of uniformity and equality in the neighborhood's assessments. *See Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 398 (Ind. Tax Ct. 2007)(holding that taxpayer did not show a lack of uniformity and equality where the taxpayer focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties).

Conclusion

16. Because Mr. Finley did not offer probative market value-in-use evidence to rebut the presumption that the subject property's assessment was accurate, he failed to make a prima facie case. The Board finds for the Madison County Assessor.

Final Determination

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

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>>