

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

Petition No.: 20-012-07-1-5-00212
Petitioners: Kevin & Kimberly R. Foy
Respondent: Elkhart County Assessor
Parcel No.: 20-06-06-293-004.000-012
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 March 14, 2008, Kevin & Kimberly R. Foy filed notice with the Elkhart County Assessor contesting the subject property’s 2007 assessment. On June 24, 2009, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Foys relief.
2. On July 28, 2009, the Foys timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On December 22, 2009, the Board held an administrative hearing through its designated Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people testified under oath:
 - a) Kevin Foy
 - b) Ronette DeFreese, Concord Township Deputy Assessor¹

Facts

5. The subject property contains a one-story home with a partial basement and a detached garage. It is located at 815 Cedar Street in Elkhart, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.

¹ Cathy Searcy, Elkhart County Assessor, was sworn in but did not testify.

7. The PTABOA determined the following values for the subject property:

Land: \$10,400 Improvements: \$40,000 Total: \$50,400.

8. The Foys requested the following assessment:

Land: \$6,000 Improvements: \$40,000 Total: \$46,000.

Parties' Contentions

9. Summary of the Foys' contentions:

- a) The subject property's land assessment is too high because the neighborhood's water supply is contaminated. *Foy argument and testimony; Pet'rs Ex. 3.* When the Foys first told the Assessor about the contamination, she said that they first needed to prove that the contamination existed. *Foy testimony.* The Foys responded by giving the Assessor a copy of a report by the Environmental Protection Agency ("EPA"). That report detailed the contamination levels in the neighborhood's well field. *Id.; Pet'rs Ex. 4.* One EPA sample taken from the neighborhood showed readings of 670 parts per billion ("ppb") dichloroethylene ("DCE") and 2.4 ppb trichloroethylene ("TCE"). *Id.* Although the subject property has city water, many people in Elkhart are still getting water from contaminated wells. *Foy testimony; Pet'rs Ex. 1.* The contamination also may be migrating through basements and subfloors. The EPA has yet to determine the effect of that migration. *Foy testimony.*
- b) Despite being given the EPA's report, the Assessor did not lower the subject property's assessment. *Foy testimony.* She instead told the Foys that they needed to submit an appraisal or some other evidence showing how the contamination affected property's value. *Id.* The Foys attempted to comply and contacted several appraisers. But the appraisers all refused the assignment because it was beyond their expertise. *Foy testimony; Pet'rs Ex. 5.*
- c) Also, in determining land values, the Assessor improperly considered sales from higher-priced subdivisions together with sales from the subject property's neighborhood. The Assessor therefore ended up with values that ranged from \$86 to \$302 per front foot. *Foy testimony; Pet'rs Ex. 2.*

10. Summary of the Assessor's contentions:

- a) The Foys' appeal marks the first Ms. DeFreese has heard about contamination in the subject neighborhood. No other homeowners from the neighborhood appealed. While the Foys submitted an EPA report, that report was beyond her expertise. Ms. DeFreese therefore contacted John Hulewicz, a local groundwater expert. *Id.; Resp't Ex. 5.* Mr. Hulewicz told her that, while trace amounts of contamination existed back

in the 1980s, it was not enough to be a public health hazard or to lower the value of the Foys' land. *DeFreeze testimony*.

- b) Although the Foys rent the subject property to tenants, they did not present any rental income information. *Id.*; *Resp't Ex. 16*. The Assessor therefore could not use a gross rent multiplier to assess the property. *DeFreeze testimony*.
- c) Finally, the Foys erred in analyzing front foot prices for properties in the subject neighborhood because they failed to account for properties having different depth factors. They also misstated the number of front feet for some properties. *DeFreeze testimony*; *Resp't Ex. 17*. Properties in the neighborhood were consistently assessed using \$308-per-front-foot base rate. *Id.*

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:

Petitioners Exhibit 1: EPA Elkhart City-Wide City Water Hookup Information
Petitioners Exhibit 2: Front footage calculations for neighborhood properties
Petitioners Exhibit 3: Plat map of Elkhart City
Petitioners Exhibit 4: Laurel-Plum Street Area Master Well Location List
Petitioners Exhibit 5: January 14, 2009, letter from Kevin Foy to the Assessor

Respondent Exhibit 1: First two pages of the Foys' Form 130 petition
Respondent Exhibit 2: Third and fourth pages of the Foys' Form 130 petition
Respondent Exhibit 3: The subject property record card
Respondent Exhibit 4: GIS map location of the subject parcel
Respondent Exhibit 5: Township assessor's statement for PTABOA hearing
Respondent Exhibit 6: Second page of the township assessor's statement to PTABOA²
Respondent Exhibit 7: December 17, 2008, Petitioner Evidence Request Form with "Ronnie DeFreeze" crossed out and Kevin Foy's name handwritten next to it
Respondent Exhibit 8: First page of sales ratio study for neighborhood 0003
Respondent Exhibit 9: Second page of sales ratio study for neighborhood 0003
Respondent Exhibit 10: Sales ratio study for neighborhood 5510, page 39
Respondent Exhibit 11: Sales ratio study for neighborhood 5510, page 40
Respondent Exhibit 12: December 17, 2008, Petitioner Evidence Request Form to Kevin and Kim Foy
Respondent Exhibit 13: January 14, 2009, letter from Kevin Foy to the Assessor

² This document is also included in Respondent Exhibit 5.

- Respondent Exhibit 14: May 4, 2009, Petitioner Evidence Request Form to Kevin Foy
- Respondent Exhibit 15: May 11, 2009, letter from Kevin Foy to the PTABOA
- Respondent Exhibit 16: May 18, 2009, letter from Ronette DeFreese to the PTABOA
- Respondent Exhibit 17: The Foys' front foot cost calculations with handwritten notes
- Respondent Exhibit 18: Form 115

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Notice of hearing
- Board Exhibit C: Hearing sign-in sheet
- Board Exhibit D: Assessor's request for continuance
- Board Exhibit E: Board's grant of continuance

d) These Findings and Conclusions.

Analysis

12. A petitioner seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and 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 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, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
14. If the petitioner makes a prima facie case, the burden shifts to the respondent to rebut or impeach 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.
15. The Foys failed to make a prima facie case for reducing the subject property’s assessment. The Board reaches that 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). Appraisers traditionally have used three methods to determine a property’s 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). A taxpayer, however, 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, or any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) The Foys primarily claimed that the subject property's land assessment should be reduced from \$10,400 to \$6,000 because of its significant groundwater contamination. The Foys did offer at least some evidence of that contamination. But the Foys' burden did not end there—they needed to offer probative evidence to quantify how that contamination affected the property's market value-in-use. The Foys, however, offered no market-based evidence whatsoever to help determine either the subject land's overall value or any loss resulting from contamination. While the Board sympathizes with the Foys' inability to get an appraiser to appraise their property, that fact did not relieve the Foys of their burden of proof.
- d) The Foys also pointed to what they claimed were widely varying front foot values for lots throughout the subject neighborhood. As Ms. DeFreese pointed out, however, those variations likely stemmed from differences in the depths of those lots rather than from differences in the front foot rate used to assess them. More important, the Foys did not offer any evidence to show that the subject property was assessed differently in relation to its market value-in-use than were 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 value-in-use of its property or of any comparable properties).

Conclusion

16. Because the Foys offered no probative market-based evidence to rebut the presumption that the subject property's assessment was accurate, they failed to make a prima facie case. The Board therefore 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: _____

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>.