

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

Petition No.: 06-010-07-1-5-00141
Petitioners: John E. and Kelly P. Huguenard
Respondent: Boone County Assessor
Parcel No.: 010-02560-00
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 Petitioners initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by written documents on September 9, 2008.
2. The PTABOA issued notice of its decision on October 16, 2008.
3. The Petitioners filed a Form 131 petition with the Board on October 20, 2008. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated March 4, 2009.
5. The Board held an administrative hearing on June 23, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners:¹ John E. Huguenard, One of the Property owners
Geffrey M. Lady, Michael Lady Appraisal Company, Inc.
 - b. For Respondent: Lisa C. Garoffolo, Boone County Assessor
Charles T. Ewing, PTABOA Member

¹ Ms. Vickie Norman, Baker & Daniels, appeared as counsel for the Petitioners.

Facts

7. The subject property consists of a 6,017 square foot single-family home and 1,944 square foot barn on 20 acres located at 1255 South 900 East, Zionsville, Union Township, in Boone County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2007, the PTABOA determined the assessed value of the property to be \$497,800 for land and \$1,809,300 for the improvements, for a total assessed value of \$2,307,100.
10. The Petitioners requested an assessed value of \$497,800 for the land and \$1,352,200 for the improvements, for a total assessed value of \$1,850,000.

Issue

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a. The Petitioners contend their property is assessed for more than its market value-in-use based on its appraised value of \$1,850,000. *Norman argument.* In support of their position, the Petitioners submitted an appraisal report prepared by Geoffrey M. Lady of Michael C. Lady Appraisal Company, Inc. *Petitioner Exhibit 3.* Mr. Lady testified that he is a real estate broker who has worked in the real estate business since 1995. *Lady testimony.* In his appraisal report, Mr. Lady estimated the property's value to be \$1,850,000 as of January 1, 2006. *Petitioner Exhibit 3; Lady testimony.*
 - b. Mr. Lady testified that he appraised the property under appeal based on a fee simple interest. *Lady testimony; Petitioner Exhibit 3.* According to Mr. Lady, the property is a 20 acre parcel, with a two-story house built in 1996, consisting of 5,975 square feet of living area, with a finished basement area of 1,811 square feet and an outbuilding. *Id.; Lady testimony.* The property is also serviced by private well and septic systems. *Id.; Norman argument.* Mr. Lady contends that two-thirds of the Petitioners' 20 acres is low lying land in a flood zone which can not be built upon. *Lady testimony.* Also, Mr. Lady argues, the house has numerous average and outdated features, such as vinyl windows, standard kitchen cabinets and countertops, standard staircase railings, paver flooring in the entryway, standard bathroom vanities and fixtures and average trim and millwork through-out the house. *Id.* Thus, Mr. Lady concludes, the Petitioners' house lacks many of the amenities and detailed mill work that one would expect in a two-million dollar home. *Id.*

- c. Mr. Lady testified that he used sales data from five comparable properties to determine a price per square foot for the subject property. *Petitioner Exhibits 1 and 3; Lady testimony.* In support of his position, Mr. Lady submitted multiple listing sheets, interior and exterior photographs and property record cards for the five comparable properties. *Petitioner Exhibits 4-8; Lady testimony.* According to Mr. Lady, he adjusted the comparable properties' sales prices to account for the differences in amenities from the subject property. *Petitioner Exhibit 3; Lady testimony.* Mr. Lady's appraisal shows the comparable sales ranged in price from \$211.37 to \$316.21 per square foot, with an average price of \$308.70. *Id.* Mr. Lady concluded in his appraisal that, considering the appealed property's underlying land area, overall size and amenities, the sales price per square foot of the Petitioners' property would be \$305 to \$310. *Petitioner Exhibit 3; Lady testimony.* The appraiser chose a value of \$310 per square foot and estimated the property's value to be \$1,850,000 for the January 1, 2006, valuation date. *Petitioner Exhibits 1 and 3; Lady testimony.*
- d. Mr. Lady testified he also compiled data to show the number of homes that were listed or sold from 2005 through 2008 for over \$1,500,000 in three townships in Boone County. *Petitioner Exhibit 9; Lady testimony.* According to Mr. Lady, there were very few sales of homes over \$1,500,000 because it "takes a special buyer to purchase a million dollar house." *Lady testimony.* Further, if a buyer wants a home in that price range, the buyer will typically chose to build a new home rather than buy an existing structure. *Id.* This drives down the values of existing homes on the market priced at over \$1,500,000. *Lady testimony.* Ms. Norman argues that Mr. Lady's report shows that there were very few sales of homes for over \$1,500,000 in Boone County and that supports the Petitioners' claim that the property's \$2,307,100 assessed value is excessive. *Petitioner Exhibit 9; Norman argument.*
- e. Finally, in anticipation of the Respondent's argument, the Petitioners' counsel admitted that the Petitioners purchased the property for \$2,500,000 on February 15, 2006. *Norman argument; Petitioner Exhibit 2.* Mr. Huguenard testified the property under appeal was listed for sale on the market and that he that he represented himself in negotiating the purchase price of \$2,500,000 – which was almost \$400,000 off the list price. *Huguenard testimony.* According to Mr. Huguenard, the reason he paid the \$2,500,000 for the house was because he "could afford to do it" and because his wife loved the house and she had two horses. *Id.* Ms. Norman argues that one sale does not "make a market" and that the Petitioners have shown through independent evidence that their purchase price is not the true market value of the property under appeal. *Norman argument.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends the assessed value of the property is fair. *Garoffolo testimony*. According to the Respondent, for the 2007 assessment year the subject property was assessed for \$2,307,100, which is less than the \$2,500,000 that the property sold for on February 15, 2006.² *Respondent Exhibit 1; Garoffolo testimony*. Ms. Garoffolo argues that the Petitioners obviously believed the property was worth the purchase price or they would not have paid \$2,500,000 for the house. *Garoffolo testimony*. The Respondent's witness also testified that the Petitioners listed the property for sale in 2008 for \$3,395,000. *Respondent Exhibit 5; Ewing testimony*. Mr. Ewing argues that the subject property's value would not have increased so dramatically from the Petitioners' requested 2006 value to their 2008 listed sale price, because property values were declining in 2008. *Garoffolo testimony*.

- b. Further, the Respondent denied that the property's land is less valuable because two-thirds of it is in a flood plain and because it is located in Union Township as opposed to Eagle Township. *Garoffolo and Ewing testimony*. According to Ms. Garoffolo, while both townships are in the Zionsville school district, data collected by county showed that in 2007 land sales in Union Township were higher than Eagle Township. *Garoffolo testimony*. Further, Mr. Ewing testified that in large estate properties, such as the Petitioners' property, an owner does not normally consider whether it can build in the flood plain area of the land but rather looks at the aesthetic value of a creek or pond. *Ewing testimony*. Mr. Ewing argues therefore that the aesthetic value of the pond and flood plain area added to the land value of the Petitioners' property.³ *Ewing testimony*.

Record

13. The official record for this matter is made up of the following:
 - a. The Form 131 petitions and related attachments.
 - b. The digital recording of the hearing.
 - c. Exhibits:⁴

² The Respondent submitted multiple listing sheets showing that the property was listed for sale at \$2,895,000 in 2005. *Respondent Exhibit 5; Ewing testimony*.

³ In response to Ms. Norman questions regarding his qualifications, Mr. Ewing testified that he is a licensed appraiser and that he has appraised properties in the area where the subject property is located. *Ewing testimony*.

⁴ Ms. Garoffolo objected to the Petitioners' evidence because it was not exchanged prior to the hearing. This objection is overruled. The Board rules state that "[i]f requested by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5(d). Ms. Garoffolo admitted that she did not request the evidence from the Petitioner prior to the hearing.

- Petitioner Exhibit 1 – Petitioners’ Brief in Support of Real Property Tax Assessment Appeal prepared by Vickie Norman, Baker & Daniels, dated June 23, 2009,
- Petitioner Exhibit 2 – Property record card for Parcel No. 010-02560-00, located at 1255 South 900 East, Zionsville,
- Petitioner Exhibit 3 – Summary Appraisal Report prepared by Geoffrey M. Lady, Michael C. Lady Appraisal Company, Inc., dated October 3, 2008,
- Petitioner Exhibit 4 – Multiple listing sheet, two exterior photographs and property record card for 9601 East 300 South, Zionsville,
- Petitioner Exhibit 5 – Multiple listing sheet, ten interior and exterior photographs and property record card for 42 Monahan Road, Zionsville,
- Petitioner Exhibit 6 – Multiple listing sheet, ten interior and exterior photographs and property record card for 3065 South 975 East, Zionsville,
- Petitioner Exhibit 7 – Multiple listing sheet, ten interior and exterior photographs and property record card for 9650 Soaring Hawk Circle, Zionsville,
- Petitioner Exhibit 8 – Multiple listing sheet, ten interior and exterior photographs and property record card for 9277 Pleasantview Lane, Zionsville,
- Petitioner Exhibit 9 – Petitioners’ report showing \$1,500,000 homes in Union and Eagle Townships that sold in 2005, 2006, 2007 and 2008,
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- Respondent Exhibit 1 – Property record card and seven interior and exterior photographs for Parcel No. 010-02560-00 located at 1255 South 900 East, Zionsville,
- Respondent Exhibit 2 – Petitioners’ Request for Notice of Review – Preliminary Conference on the March 1, 2007, assessment on 1255 South 900 East, Zionsville, dated September 9, 2008, and Power of Attorney between John E. Huguenard and Vickie Norman of Baker & Daniels dated April 26, 2005,
- Respondent Exhibit 3 – Form 114, Notice of Hearing on Petition by County Property Tax Assessment Board of Appeals, dated September 18, 2008,
- Respondent Exhibit 4 – Petitioners’ Brief in Support of Real Property Tax Assessment Appeal prepared by Vickie Norman, Baker & Daniels, dated October 16, 2008, and Summary Appraisal Report prepared by Geoffrey

- M. Lady, Michael C. Lady Appraisal Company, Inc, dated October 3, 2008,
- Respondent Exhibit 5 – Multiple listing sheet and twelve interior and exterior photographs, dated August 6, 2008, and a multiple listing sheet and ten interior and exterior photographs, dated February 9, 2006, for 1255 South 900 East, Zionsville,
- Respondent Exhibit 6 – Form 115, Notification of Final Assessment Determination, dated October 16, 2008,
- Respondent Exhibit 7 – Notice of Appearance filed by Vickie Norman, Baker & Daniels, dated October 20, 2008; Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment; Form 115, Notification of Final Assessment Determination dated October 16, 2008; Petitioners’ Request for Notice of Review – Preliminary Conference on the March 1, 2007, Assessment, dated September 9, 2008; Power of Attorney between John E. Huguenard and Vickie Norman, Baker & Daniels, dated April 26, 2005; and Summary Appraisal Report prepared by Geoffrey M. Lady, Michael C. Lady Appraisal Company, Inc., dated October 3, 2008,
- Respondent Exhibit 8 – Indiana Board of Tax Review – Notice of Hearing on Petition, dated March 4, 2009,
- Board Exhibit A – Form 131 petition with attachments,
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 Township 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 Township 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 failed to provide 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). 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 assess 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 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.*; *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that assumption 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. *See id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
 - c. Regardless of the method used, the 2007 assessment must reflect the value of the property as of January 1, 2006. 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 presented an appraisal, dated October 3, 2008, that estimated the value of the property to be \$1,850,000 as of January 1, 2006. *Petitioner Exhibit 3*. The appraiser is an Indiana Certified Appraiser that prepared the

appraisal in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* The appraisal conforms to the correct valuation date and otherwise provides probative evidence of the estimated value of the property. An appraisal performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the Petitioner raised a prima facie case that the property is over-assessed.

- e. 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 Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- f. Here the Respondent argues that the Board should give little weight to the Petitioners' appraisal because the Petitioners purchased the property for substantially more than their appraised value within weeks of the statutory valuation date. *Garoffolo testimony*. The Respondent points to Mr. Huguenard's testimony wherein he admits that they purchased the subject property on February 15, 2006, for \$2,500,000. *Id.* Further, the Respondent's witness argues, the Petitioners could not have believed they "over-paid" for their property because they listed it for sale in 2008 for \$3,395,000 at a time when property values were falling. *Ewing testimony*. Sales information regarding the subject property may be probative of a property's market value-in-use. MANUAL at 5. Thus, the Respondent has presented sufficient evidence to rebut the Petitioner's appraisal.
- g. The Board therefore must weigh the evidence presented by both parties and determine the most persuasive evidence of the property's value – the Petitioners' appraisal for \$1,850,000 or their purchase of the property for \$2,500,000. The price paid for the property under appeal and the appraisal are both acceptable alternative approaches to determining the market value-in-use and both the appraisal's valuation date and the purchase of the property occurred sufficiently contemporaneously with the statutory valuation date to be probative.
- h. The Indiana Tax Court has often said that "the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *See generally Kooshtard Property VI, LLC v. White River Twp. Ass.*, 836 N.E. 2d 501, 506 n.6 (Ind. Tax Ct. 2005). The Tax Court, however, has not addressed the situation where a party has submitted evidence of the actual sale of the property within weeks of the valuation date that

rebutts the appraised value. The Board finds, in this case, the sale price is the better evidence.

- i. Here, the Petitioners purchased the property for \$2,500,000. *Huguenard testimony*. The Petitioners did not dispute their purchase price or attempt to prove that the circumstances of the sale were anything other than an arm's length transaction between a willing buyer and willing seller. The Petitioners, however, claimed that their appraisal of the property is the better indicator of property's value than its actual purchase price. The Petitioners' appraiser, Mr. Lady attempted to show that the Petitioners' purchase price was well above the estimated market value for the area. *Petitioner Exhibit 3; Lady testimony*. Mr. Lady also testified that two-thirds of the Petitioners' 20 acres is low lying land in a flood zone that can not be built upon. *Lady testimony*. Further, Mr. Lady argued that the Petitioners' home has numerous substandard features and lacks many of the amenities that a person would find in a two-million dollar house. *Lady testimony*.
- j. An appraisal represents an estimate of a property's value based on the opinion of an appraiser. The purchase price of a property is not an estimate, but rather an actual sale. In this case, the purchase price provides direct evidence of how the buyer and seller valued the utility of the property needed in order for the seller to abandon the property. While the appraiser provided some justification for his lower valuation, the Board finds that there was insufficient evidence to persuade it that the Petitioners' purchase price was somehow flawed or in error. The Board therefore finds the Petitioners' purchase price of \$2,500,000 is the best evidence in this appeal and gives it the greatest weight.
- k. Pursuant to Indiana Code § 6-1.1-15-4(a), after receiving a petition for review, "the Indiana board shall conduct a hearing at its earliest opportunity." According to statute, "the Indiana board may correct any errors that may have been made and adjust the assessment or exemption in accordance with the correction." *Id.* In *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E.2d 1189 (Ind. Tax Ct. 1997), the Tax Court held that "when a taxpayer petitions the State Board for review, the State Board is given the power 'to assess the property in question, correcting any errors which may have been made.'" According to the Court, "[t]his power gives the State Board the plenary authority to reassess the property at a value higher than the one appealed by correcting errors in the original assessment." 684 N.E.2d at 1194. While the Board no longer "assesses" properties, its power to weigh the evidence presented and to "correct any errors that may have been made and adjust the assessment... in accordance with the correction" likewise provides the Board the authority to increase the assessed value of property where the evidence shows the assessment is in error and the value of the property is in excess of its assessed value.

Conclusion

- 16. The Petitioners raised a prima facie case. The Respondent rebutted that evidence. The Board finds in favor of the Respondent and holds that the value of the property is \$2,500,000.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to \$2,500,000.

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 pursuant to 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 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/bills/2007/SE0287.1.html>.