

**Small Claims
Final Determination
Findings and Conclusions**

Petition Number: 65-008-06-1-5-00001
Petitioners: Michael R. and Rendie A. Koressel
Respondent: Posey County Assessor
Parcel No.: 65-13-11-340-008.000-016
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 Posey County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 23, 2008.
2. The Petitioners received notice of the decision of the PTABOA through a Form 115, Notification of Final Assessment Determination, dated December 19, 2008.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition dated January 7, 2009. The Petitioners elected to have this case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 7, 2009.
5. The Board held an administrative hearing on August 5, 2009, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Michael R. Koressel, Petitioner
 - b. For Respondent: Kristi D. Carroll, Posey County Assessor
Debra Eads, contractor for the county assessor

FACTS

7. The property at issue in this appeal is an improved residential parcel located at 10400 Pineneedle Drive, Robinson Township, Posey County, in Evansville, Indiana.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$32,200 for the land, and \$166,600 for the improvements, for a total assessed value of \$198,800.
10. For 2006, the Petitioners requested the assessed value of the property to be \$30,000 for the land and \$160,000 for the improvements, for a total assessed value of \$190,000.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a. The Petitioners contend that the property's 2006 assessed value is over-stated. *Koressel testimony.* Mr. Koressel testified that the Petitioners' home was the first home in the subdivision. *Id.* It was built in 1997 as a "spec home" by a masonry company – rather than by a custom builder – using mismatched bricks left over from a shopping center project. *Id.* Further, because the house is located on a corner at the entrance to the subdivision, the property suffers from high traffic volumes. *Id.* In addition, the Petitioners contend that the houses on neighboring lots were built too close to their home which also lowers the value of their property. *Id.* In support of this contention, the Petitioners submitted black and white copies of several photographs of their property in relation to neighboring properties. *Petitioner Exhibit 1.* According to Mr. Koressel, the photographs show the close proximity of neighboring houses to their home. *Id.*
 - b. The Petitioners further contend that their home is less valuable than other houses in the neighborhood. *Koressel testimony.* According to Mr. Koressel, all of the other homes in the community except one are custom-built and designed using higher quality materials and workmanship. *Id.* In addition, Mr. Koressel argues, the Petitioners' home only has a two-car garage while most homes in Woodland Court West have three-vehicle garages. *Id.* Further differences contributing to the lower value of the Petitioners' home compared to their neighbors, he testified, include the fact that their house does not have a walkout basement while many other homes in the community do, and their basement walls are masonry block construction while all other homes in the neighborhood have poured concrete wall basements. *Id.* In support of their contentions, Mr. Koressel entered into evidence a memorandum of the history and characteristics of their house. *Petitioner Exhibit 1; Koressel testimony.*
 - c. The Petitioners also contend the property is over-assessed based on changes made by the Assessor to the property's 2007 assessment. *Koressel testimony.* In support of this contention, the Petitioners submitted a copy of a June 8, 2009, letter from the Posey County Assessor to the Petitioners offering a 15 percent negative influence factor on the land and an adjusted neighborhood factor for the

2007 assessment of their property. *Petitioner Exhibit 3*. In addition, the Petitioners presented a copy of a revised property record card and a response to the Assessor from the Petitioners dated June 16, 2009, in which they agreed to the changes and agreed to withdraw their 2007 appeal pending the outcome of the 2006 appeal at hand. *Id.*

- d. Finally, in response to the Respondent's testimony that 10380 Pineneedle sold for \$245,000 in June 2006, and 10381 Pineneedle was assessed for \$207,000, Mr. Koressel testified that those homes are both custom-built and contain high-end workmanship and detail that is lacking in their home. *Koressel testimony*.

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

- a. The Respondent contends that the Petitioners' 2006 assessment is correct based on the market value of the home and its neighboring properties. *Carroll testimony*. Ms. Carroll argues that the Petitioners purchased the property in 1998 for \$190,000. *Id.* According to the Assessor, \$198,800 ten years later is therefore a reasonable valuation. *Id.* In addition, Ms. Carroll testified, the property at 10380 Pineneedle, which is 600 sq.ft. larger than the Petitioners' home, sold for \$245,000 in June 2006 and the property at 10381 Higgins, which is 400 sq.ft. smaller than the Petitioners' home, was assessed for \$207,000. *Id.* Finally, Ms. Carroll testified that two vacant lots sold in September 2007 for \$58,000. *Id.*
- b. The Respondent further argues that the Petitioners' evidence offers no quantification of the impact of the home's alleged defects on the property's market value-in-use. *Eads testimony*.

RECORD

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled 65-008-06-1-5-00001Koressel,
- c. Exhibits:

Petitioner Exhibit 1 – A list of defects in the property and copies of five photographs of the appealed property and neighboring parcels,

Petitioner Exhibit 2 – Copies of the Form 131, Form 115, Form 130 and the 2006 property record card,

Petitioner Exhibit 3 – A copy of a June 8, 2009, letter from the county assessor to the Petitioners; the 2007 property record card; and a copy of an Appeal Withdrawal form with Petitioners' response and signature dated June 16, 2009,

Respondent Exhibits – None submitted

Board Exhibit A – Form 131 petition and related 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 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 failed to raise a prima facie case for a reduction in the property's assessed 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 approach, the sales comparison approach and the income approach to value. *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); *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).
- c. Here, the Petitioners argue that their property's assessment should be lowered because of the condition and characteristics of their property. *Koressel testimony*. Mr. Koressel identified a number of purported "defects" in their property, including that the property was a "spec home" built with mismatched bricks, which is located in a high traffic area with neighboring homes in too close of proximity. *Id.* In addition, Mr. Koressel contends their home is less valuable than other homes in the neighborhood because most of the other homes in the community have three car garages and walk out basements. *Id.* The Petitioners did not contend that their assessment was somehow incorrect in that the county assessed the property for amenities the house did not possess. Mr. Koressel merely contends that because his house has different characteristics than the majority of the homes in the neighborhood, the Petitioners' house is somehow worth less than its assessed value. Mr. Koressel, however, presented no market evidence to show the value of his property. Nor did he show the values of the neighboring properties. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (stating that parties are responsible for explaining the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable property, and how any differences affect the relevant market value-in-use of the properties). Thus, the Petitioners failed to raise a prima facie case based on the characteristics and conditions of their property.
- d. The Petitioners further argue that their property is over-assessed based on changes made to their property's 2007 assessment. *Koressel testimony*. The Petitioners are mistaken in their reliance on the property's 2007 property record card because each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.* More importantly, those changes were made by the Assessor in an effort to settle the Petitioners' 2007 appeal. As the Indiana Supreme Court held, "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even

settlement negotiations to prove liability for or invalidity of a claim or its amount.” *Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227, (Ind. 2005). The strong policy justification for denying settlements precedential effect in a property tax case is that allowing parties to use the settlement would have a chilling effect on the incentive of the parties to resolve cases outside of the courtroom. *Id.* at 1228. *See also Indiana Rules of Evidence, Rule 408* (“Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.”) Therefore, changes made to the property’s assessment in 2007 by the Assessor in an effort to negotiate or settle the Petitioners’ appeal in that year are not probative of what past or future assessments should be.

- e. The Petitioners failed to raise a prima facie case that the subject property was assessed in excess of its market value-in-use for the March 1, 2006, assessment date. Where a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioners failed to raise a prima facie case that the subject property is over-assessed. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Chairman, 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>.