

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

Petition #: 53-006-06-1-5-00003
Petitioners: Robert & Laura Labis
Respondent: Clear Creek Township Assessor (Monroe County)
Parcel #: 004-15120-06
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 Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 15, 2006.
2. The Petitioners received notice of the decision of the PTABOA via a Form 115 Notification of Final Assessment Determination dated January 23, 2007.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 with the county assessor on February 9, 2007. 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 October 23, 2007.
5. The Board held an administrative hearing on January 17, 2008, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioners: Robert Labis, Petitioner
Laura Labis, Petitioner
Thelma Kelley Jeffries, Clear Creek Township Assessor¹
Tony Jeffries, Clear Creek Deputy Assessor

¹ The township assessor is the Respondent in Form 131 appeals cases. In this case, however, the Township Assessor Thelma Kelley Jeffries, and her deputy Tony Jeffries, chose to appear as witnesses for the Petitioners and delegated the role of Respondent to the Monroe County Assessor Judith Sharp to defend the assessment that was issued by the Monroe County PTABOA following Petitioners' Form 130 appeal at the county level. *See Respondent Exhibit 1.*

b. For Respondent: Judith Sharp, Monroe County Assessor

Facts

7. The subject property is an improved residential five-acre plot with a one-acre home site located at 7119 S. Ketcham Road, Clear Creek Township, Bloomington.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$28,000 for the land and \$351,900 for the improvements, for a total assessed value of \$379,900.
10. The Petitioners requested an assessment of \$28,000 for the land and \$300,500 for the improvements, for a total assessed value of \$328,500.

Issues

11. Summary of Petitioners' contentions in support of changing the assessment²:
 - a. The Petitioners contend that the PTABOA's determination raising their assessed value was based on errors on the property record card. *R. Labis testimony*. According to the Petitioners, their property is over-assessed because the square footage listed as "finished" on the house is incorrect, the basement garage is assessed twice, and a concrete patio and a fireplace for which they were assessed do not exist. *Id.* Mr. Labis testified that the home has 2,172 square feet of living space on the first floor, 1,609 square feet on finished living space on the upper floor and 251 square feet as "attic" for a total of 1,860 square feet on the upper floor. *Id.* In addition, the basement has 836 finished square feet and 1,336 square feet of unfinished garage, for a total of 2,172 square feet. *R. Labis testimony; Board Exhibit A, supplement*. In support of this contention, the Petitioners submitted photographs of the improvements on the subject property, including interior and exterior pictures of the house, interior pictures of the basement garage and the upper level of the house, as well as interior pictures of the improvement identified as a pole barn with office. *Petitioner exhibit 8, A through N*.
 - b. The Petitioners further contend that the property is over-assessed because the sales disclosure form filed when Petitioners purchased the subject property in 2003 reflects an over-payment based on inadequate research of the subject property by the Petitioners. *R. Labis testimony*. According to the Petitioners, the purchase of the subject property on June 16, 2003, for \$353,000 does not reflect market value of the

² The Petitioners and their witnesses repeatedly referred to the data on a property record card which represented the assessment prior to the PTABOA hearing on the Form 130 Petition, and the subsequent issuance of the Form 115 Notification of Final Assessment Determination on January 23, 2007. The Petitioners and their witnesses also referred to data from a property record card from the 2007-pay-2008 tax year assessment. Judge Barter requested multiple copies of the applicable 2006 assessment property record card and gave Petitioners and their witnesses time to inspect it prior to continuing their testimony. Because the evidence and testimony not applicable to the 2006 assessment, is irrelevant to this appeal, the Board will take no notice of it.

- property for 2006 because the Petitioners made the decision to purchase the house in a short time span and without appropriately researching the property. *Id.* In support of this contention, the Petitioners submitted aerial photographs of the subject property and a neighboring property, the Multiple-Listing data sheet for the subject property prior to the purchase by Petitioners, and a photograph and a property data sheet for 7100 S. Ketcham Road. *Petitioners Exhibits 3 through 7.*
- c. Finally, the Petitioners contend that they were treated unfairly by the PTABOA when it substantially raised the assessment because the Form 130 appeal was filed. *Labis testimony.* According to the Petitioners, they were penalized by the Monroe County PTABOA because they filed an appeal. *R. Labis testimony.* In support of this contention, the Petitioners submitted property record cards for the subject property before and after the PTABOA hearing. *Petitioners Exhibits 1 and 2.*
12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent argues that the Petitioners never addressed the bottom line market value which is required in an appeal. *Sharp testimony.* According to the Respondent, the Petitioners merely alleged issues with the grade of the house and its measurements. *Id.* Ms. Sharp testified that when the PTABOA looked at the assessment and compared it to the multiple-listing data and the testimony, the PTABOA determined that there were several improvements which had not been assessed by the township assessor. *Id.* Once those improvements were added to the assessment, such as the fireplace, the PTABOA adjusted the grade down to a "C" and came to the assessment for 2006 of \$379,900. *Id.*
- b. The Respondent further contends that the assessment is correct because it is based on the 2003 sales disclosure filed by the Petitioners where the property sold for \$353,000. *Sharp testimony.* According to Ms. Sharp, the PTABOA routinely calculates annual appreciation in Monroe County of three percent for the years 1999 through 2003. *Id.* Thus, the Respondent argues, when the 2003 sale is adjusted to the 2006 assessment date of January 1, 2005, the assessment is in the correct range. *Id.* In support of this contention, the Respondent entered into evidence a copy of the sales disclosure of Petitioners' purchase of the property dated June 17, 2003, a copy of a photograph of the house and a copy of the multiple-listing data for the property.

Record

13. The official record for this matter is made up of the following:
- a. The Petition and other relevant documents,
- b. The digital recording of the hearing labeled 53-006-06-1-5-00003Labis,
- c. Exhibits:

- Petitioner Exhibit 1 – Property record card for the subject property after the PTABOA hearing,
- Petitioner Exhibit 2 – Property record card for the subject property prior to the PTABOA hearing,
- Petitioner Exhibit 3 – Aerial photograph of a neighboring property with C grade,
- Petitioner Exhibit 4 – Aerial photo of the subject property,
- Petitioner Exhibit 5 – Multiple-listing data sheet for the subject property from 2003,
- Petitioner Exhibit 6 – Monroe County property detail report and photo of 7100 S. Ketcham Road,
- Petitioner Exhibit 7 – Photo of a nearby property with a B-1 grade,
- Petitioner Exhibit 8 – Photographs of the subject property,
 - A,B,C – Exteriors of the house,
 - D,E,F – Interior of the basement garage,
 - G – Interior of attic storage,
 - H – Interior of the basement outside of garage,
 - I,J – Kitchen counter tops,
 - K,L – Pole barn office,
 - M,N – Interior of the pole barn outside office,

- Respondent Exhibit 1 – Notice of County Assessor Representation on behalf of the township assessor,
- Respondent Exhibit 2 – Sales disclosure for the subject property dated June 17, 2003,
- Respondent Exhibit 3 – Photograph of the house dated June 5, 2001,
- Respondent Exhibit 4 – Multiple listing data for the subject property from 2003,

- Board Exhibit A – Form 131 petition and all subsequent mailings to the Board,
- 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 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 (hereinafter MANUAL) defines the “true tax value” of real estate 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, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL – VERSION A at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. “[A]ny individual assessment is to be deemed accurate if it is a reasonable measure of “True Tax Value’ . . . No technical failure to comply with the procedures of a specific assessing method violates this [assessment] rule so long as the individual assessment is a reasonable measure of ‘True Tax Value’ . . .” 50 IAC 2.3-1-1(d).
 - b. The Petitioners argue that the PTABOA erred in assessing their property and that, as a result, the assessment is over-stated.³ However, the Petitioners failed to present evidence that the assessment did not reflect the value of the property. The Tax Court explained how Indiana’s assessment system has changed: “Simply put, under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value *is actually correct.*” *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax

³ The Petitioners argued that the PTABOA made changes to their property record card in order to raise their assessed value. *R. Labis testimony*. According to the Petitioner, the home’s grade was changed from a B+2 to a C, then to a B+1 and back to a C. *Id.* In addition, Mr. Labis argued, the PTABOA increased the amount of “finished” square footage and added improvements that were not present in the home. *Id.* We make no finding here that any information on the property record card in this matter is in error. We note, however, that in general an assessing official should not change the description of a property or the characteristics of a property on the property record card to obtain a value that the assessor believes is representative of the market value of a property. Rather, the assessor should “sound value” the property. Such a practice would limit argument that the property’s description or characteristics are incorrect and allow all parties to focus on what they believe to be the property’s true tax value. Moreover, for many reasons unrelated to an appeal of an assessment, it is important that a property record card accurately describe a property.

- Ct. 2006). The Petitioners have the burden to present an appraisal, sales information, or other market data to establish the true tax value of their property. Here, the Petitioners did not do so. Instead, they primarily contended that the PTABOA erred in applying the Guidelines. However, the purported errors identified by the Petitioners focus on the methodology used to determine the assessment. Even if the Respondent's assessment did not fully comply with the Guidelines, the Petitioners failed to show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't. of Local Gov't. Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
- c. The Petitioners further contend that the assessor erred in relying on the purchase price of the property to determine the property's value. The Manual and Guidelines provide that assessing officials can use a variety of approaches to determine a property's market value-in-use. *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). Thus, the PTABOA's consideration of the sale price of the property is an acceptable method to determine the property's true tax value. To the extent that the Petitioners contend that the sales price did not represent the market value of the property because they had over-paid for the property, the Petitioners' argument also fails. Mr. Labis testified that they purchased the property for too much because they failed to exercise due diligence prior to the purchase and the agreement was executed without the Petitioners' knowledge that the property had been on the market for an extended period. This testimony, however, was unsupported by evidence. For this Board to determine the Petitioners' purchase price for the property was in excess of its market value, the Petitioners needed to present probative evidence of the property's actual market value. Conclusory statements that the Petitioners "overpaid" are not probative of the property's value. *See Lacy Diversified Indus. v. Dep't. of Local Gov't. Fin.*, 799 N.E.2d, 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d. Finally, the Petitioners claim that they were treated unfairly and penalized by the PTABOA with an increase in their assessment because they filed an appeal. Due process requires "an opportunity to meet and rebut adverse evidence." *See Castello v. State Bd. of Tax Comm'rs*, 638 N.E.2d, 1362, 1365 (Ind. Tax Ct. 1994). Here the Petitioners had an opportunity for a comprehensive review of their assessment at hearings before both the PTABOA and the Board. Thus, the Petitioners were not denied their due process rights. Additionally, the Form 130 document filed by Petitioners to initiate the appeal to the PTABOA states "[a]s a result of filing this petition, the assessment may increase, may decrease, or may remain the same." *Board Exhibit A* The Form 131 petition to the Board contains identical language. Thus, the PTABOA may weigh the evidence presented to it and determine the assessed value of a property regardless of whether that value is in excess of the assessed value on appeal. The Petitioners' argument that the assessment should not increase as a result of the appeal process lacks merit. The Petitioners failed to

establish any violation of due process requirements or show they were treated unfairly.

- e. The Petitioners failed to raise a prima facie case that their assessment was in error. When 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*, 799 N.E.2d at 1221-1222; *Whitley Products*, 704 N.WE.2d at 1119.

Conclusion

16. The Petitioners failed to raise a prima facie case. 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 the assessment should not be changed.

ISSUED: _____

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>.