

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

Petition No.: 06-019-07-1-5-00415
Petitioner: Shane C. Labuzan
Respondent: Boone County Assessor
Parcel No.: 019-49920-31
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 Petitioner initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 13, 2008.
2. The PTABOA issued its decision on December 5, 2008.
3. The Petitioner filed a Form 131 petition with the Board on December 31, 2008. The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 12, 2009.
5. The Board held an administrative hearing on July 16, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Shane C. Labuzan, Petitioner
 - b) For Respondent: Lisa Garaffolo, Boone County Assessor
Cliff Hardy, county vendor and witness

Facts

7. The property is a single family residence located at 4151 Huntsman Drive, in the city of Zionsville, Eagle Township in Boone County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

9. For 2007, the PTABOA determined the assessed value of the subject property to be \$44,700 for the land and \$280,500 for the improvements, for a total assessed value of \$325,200.
10. The Petitioner requests an assessed value of \$36,400 for the land and \$229,600 for the improvements, for a total assessed value of \$266,000.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his assessment:
 - a) The Petitioner contends that the assessed value of his property is excessive based on the condition of his property on the valuation date. *Labuzan testimony; Petitioner Exhibits 1-12*. According to Mr. Labuzan, his property is located in the Brittany Chase subdivision. *Labuzan testimony; Petitioner Exhibit 2*. Sometime around 2004, mold and water intrusion issues appeared in many of the homes in the subdivision. *Labuzan testimony; Petitioner Exhibit 12*. Mr. Labuzan testified that the builder, Trinity Homes, initially bought back 50 of the 127 homes in the neighborhood, and was later ordered to purchase back more as a result of a class-action lawsuit. *Id.* The homes were subsequently put back on the market in late 2007 after Trinity fixed the construction defects and mold issues. *Labuzan testimony*. Thus, the Petitioner argues, as of the January 1, 2006, valuation date, it was not possible to value the subject property because of the property's condition. *Id.*
 - b) The Petitioner further contends that his house is over-valued based on his purchase of the property and the purchase prices of other comparable homes in the neighborhood. *Labuzan testimony*. Mr. Labuzan testified that he purchased his home from the builder in December of 2007 for \$266,000. *Labuzan testimony; Petitioner Exhibits 1 and 2*. Similarly, other properties that had mold infestation sold in July or August of 2008 at prices that ranged from \$250,000 to \$267,500. *Labuzan testimony; Petitioner Exhibits 3 through 10*. According to the Petitioner, Tucker Realtors determined that Boone County experienced a 2.4 percent decline in sale prices from 2006 to 2007. *Labuzan testimony; Petitioner Exhibit 11*. Based on this information, the Petitioner assumed that his property decreased in value five percent from the January 1, 2006, valuation date to his December of 2007 purchase of the property. *Labuzan testimony*. Thus, he concludes the proper value for his home is \$280,000. *Id.*
 - c) Finally, the Petitioner argues that the Respondent's sales comparable analysis should be given little weight because the sales data she used did not include any of the homes included in the buyback or class-action settlement. *Labuzan testimony*. Mr. Labuzan also contends that Ms. Garaffolo included data from the custom homes in Brittany Chase, which he argues are more expensive homes and did not have the mold and water intrusion issues that the Trinity homes had. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent argues that the Petitioner's purchase price is not representative of the property's market value-in-use. *Garaffolo testimony*. According to the Respondent, the Brittany Chase homeowners' association wanted to make sure that the sales information from the homes bought back by Trinity would not be included in the data used to determine the assessments because the homes were bought back at inflated prices. *Id.* Ms. Garaffolo testified that she agreed not to use the inflated buy-back prices but would also exclude sales from the rehabilitated homes, because those prices would be artificially low. *Id.*
 - b) Further, the Respondent contends the assessment was correct based on a comparative market analysis. *Garaffolo testimony; Respondent Exhibit 3*. Ms. Garaffolo testified that the average price per square foot of properties in Brittany Chase was \$110 based on 31 neighborhood sales in 2005 and 2006. *Garaffolo testimony; Respondent Exhibit 3*. According to Ms. Garaffolo, applying the average price per foot to the subject property results in a value of \$377,520, which is well above the current assessment. *Garaffolo testimony*.

Record

13. The official record for this matter is made up of the following:
- a. The Petition and all subsequent pre-hearing and post-hearing submissions by either party.
 - b. The digital recording of the hearing.
 - c. Exhibits:
 - Petitioner Exhibit 1: Settlement statement for the subject property,
 - Petitioner Exhibit 2: Property Record Card (PRC) for the subject property,
 - Petitioner Exhibit 3: Real Estate transaction record for 4170 Huntsman Drive,
 - Petitioner Exhibit 4: PRC for 4170 Huntsman Drive,
 - Petitioner Exhibit 5: Real Estate transaction record for 4200 Huntsman Drive,
 - Petitioner Exhibit 6: PRC for 4200 Huntsman Drive,
 - Petitioner Exhibit 7: Real Estate transaction record for 4171 Huntsman Drive,
 - Petitioner Exhibit 8: PRC for 4171 Huntsman Drive,
 - Petitioner Exhibit 9: Real Estate transaction record for 4190 Huntsman Drive,
 - Petitioner Exhibit 10: PRC for 4190 Huntsman Drive,

Petitioner Exhibit 11: Indianapolis Market Watch report from Tucker Realtors,

Petitioner Exhibit 12: Indianapolis Star article about Brittany Chase subdivision, dated September 5, 2004,

Respondent Exhibit 1: County Appeal Worksheet,

Respondent Exhibit 2: Photograph of 4171 Huntsman Drive,¹

Respondent Exhibit 3: Comparative Market Analysis using 2005 and 2006 sales data,

Respondent Exhibit 4: MIBOR listing sheet for the subject property,

Respondent Exhibit 5: Form 114, Notice of Hearing by County Property Tax Assessment Board of Appeals,

Respondent Exhibit 6: PRC for the subject property,

Respondent Exhibit 7: Form 115,

Respondent Exhibit 8: Form 131 Petition,

Respondent Exhibit 9: Notice of Hearing

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

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.

¹ The Respondent presented a photograph at the hearing and represented that it was a picture of the subject property. *Garaffolo testimony; Respondent Exhibit 2*. The Petitioner, however, testified that it was actually a neighboring property at 4171 Huntsman Drive which is “virtually identical” to the subject property. *Labuzan testimony*.

15. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in the assessed value of his home. 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). The appraisal profession traditionally has 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. In Indiana, assessing officials generally value 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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, that valuation date is January 1, 2006. 50 IAC 21-3-3.
 - d) The Petitioner argues that his property’s assessed value is excessive, based on sales prices of other properties in the neighborhood. *Labuzan testimony, Petitioner Exhibits 3-10*. In making this argument, Mr. Labuzan essentially relies on a sales comparison approach to establish the market value-in-use of his property. *See* MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify

the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- e) Here, the Petitioner made no effort to compare the properties which he claimed were “comparable” to his own property. Mr. Labuzan did not identify the common features of the properties nor did he value the differences between the properties. He merely argued that the properties are in the same community and suffered the same construction defects and mold damage. *Labuzan testimony; Petitioner Exhibits 3-10.* This is insufficient to prove the comparability of the properties. Thus, Mr. Labuzan failed to raise a prima facie case that his property was over-valued based on the sales of other properties.
- f) The Petitioner, however, also presented evidence that he purchased the subject property for \$266,000 in December of 2007. *Labuzan testimony.* In order to relate his purchase price to the proper time period, Mr. Labuzan used a negative 2.4 percent factor published in a Tucker Realtors report for 2006 to 2007. *Labuzan testimony; Petitioner Exhibit 11.* Based on this information, Mr. Labuzan applied a five percent reduction in value for the roughly two year period between the January 1, 2006, valuation date and his December of 2007 purchase and concluded that the proper value of his home was \$280,000 for the March 1, 2007, assessment year. *Id.* The sale of a property is often the most compelling evidence of its market value. *MANUAL* at 5. Further, the Petitioner presented some evidence relating his December of 2007 purchase to the January 1, 2006, valuation date. *Long, 821 N.E.2d at 471.* Thus, the Board finds that the Petitioner presented a prima facie case that the subject property is over-assessed.
- g) Once a 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 Petitioners’ case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise a prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).*
- h) Here, the Respondent first argues that the Board should disregard the Petitioner’s purchase of the property because the prices of the rehabilitated homes sold by Trinity were “artificially low.” *Garaffolo testimony.* Ms. Garaffolo, however, provided no evidence that the resale prices did not reflect the market value of the homes that had formerly suffered mold damage. Unsupported and conclusory statements are not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).* The Petitioner purchased his property from an unrelated entity whose business was to build, own and sell residential properties. Barring probative evidence to the contrary, the Board will

not simply assume that the builder sold its properties at prices below their market values.

- i) The Respondent also offered a comparative market analysis which identified the price per square foot for thirty-one sales in the Petitioner's neighborhood. Like the Petitioner's sales analysis, however, the Respondent made no effort to compare the properties which she claimed were "comparable" to the subject property. Ms. Garaffolo did not identify the common features of the properties. Nor did she value the differences between the properties. She merely determined the average sale price of thirty-one neighboring homes and applied it to the Petitioner's house. This is insufficient to rebut the actual purchase of the property.

Conclusion

- 16. The Petitioner established a prima facie case. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of the Petitioner and holds that the property's value is \$280,000 based on the Petitioner's trended purchase price of the property.

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 \$280,000.

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 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>.