

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

Petition No.: 45-026-06-1-5-00018
Petitioner: Urban S. Latta
Respondent: Lake County Assessor
Parcel No.: 007-26-33-0147-0010
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 Petitioner initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 25, 2008.
2. The PTABOA failed to hold a hearing on the Petitioner's appeal within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")
3. The Petitioner filed an appeal to the Board by filing a Form 131 on October 1, 2010. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.") 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 January 12, 2011.
5. The Board held an administrative hearing on February 22, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Urban Latta, property owner,

For Respondent: Margot Miller, Lake County Hearing Officer.

Facts

7. The subject property is a residential property located at 1942 Calumet Avenue, in Whiting, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the North Township Assessor determined the assessed value of the subject property to be \$39,900 for the land and \$48,300 for the improvements, for a total assessed value of \$88,200.
10. The Petitioner requested an assessment of \$18,100 for the land and \$48,300 for the improvements, for a total assessed value of \$66,400.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
 - a. The Petitioner contends that his property is improperly classified as commercial property. *Latta testimony*. According to Mr. Latta, when he purchased the property in 1987 it was a residential property. *Id.* Mr. Latta subsequently requested that the property be rezoned as commercial so that he could operate a business and he installed plate glass windows in the store front. *Id.* Mr. Latta testified that he has not rented the store since 2000 and he had the store front windows replaced in 2009. *Id.* Mr. Latta argues that a North Township Assessor's office employee inspected the property in 2008 and agreed the property was not commercial. *Id.* In addition, he argues, the City of Hammond Zoning Administrator wrote a letter dated April 1, 2009, stating the property's use was residential and that no business license had been issued for the property. *Id.*; *Petitioner Exhibit 14*.
 - b. Mr. Latta argues that Cole Layer Trumble stipulated that the property was residential in 2004 and the stipulation was signed by a state judge.¹ *Latta testimony*. According to Mr. Latta, Cole Layer Trumble admitted his property was incorrectly assessed as commercial and agreed to change the land classification to residential and lower the assessment to \$66,400. *Id.*; *Petitioner Exhibit 7*. Mr. Latta argues that both the North Township Assessor and the Lake County Assessor refused to honor the agreement and, when the values were trended for 2006, they based their trending on the original, incorrect value of \$88,200. *Latta testimony*.

¹ For the March 1, 2002, assessment, the Department of Local Government Finance assumed responsibility for assessing properties in Lake County. To assist in its assessment duties, the DLGF contracted with Cole Layer Trumble who performed the assessment work and defended appeals related to the 2002 assessment.

- c. In addition, Mr. Latta contends that his house was improperly assessed. *Latta testimony*. According to Mr. Latta, his house is assessed with 2,443 square feet of living area; whereas the actual living area is closer to 1,800 square feet. *Id.*
- d. The Petitioner further contends that his property suffers from adverse factors associated with the location of his house in the neighborhood. *Latta testimony*. According to Mr. Latta, his property is located next to a NIPSCO power station, which discourages renters who are afraid of electrical exposure. *Id.*; *Petitioner Exhibit 18*. In addition, the proximity of his property to the power station affects water drainage and causes seepage in his basement. *Id.* Mr. Latta contends there is standing water in the alley behind his home after every rain and that all the garages on his block have been tagged with gang graffiti. *Id.* Moreover, Mr. Latta testified, his house is located on a major street and parking in front of his house is difficult because high-school students, bar patrons, and people going to the beach all park on the street. *Id.*
- e. The Petitioner also argues that his property is over-assessed based on its appraised value. *Latta testimony*. In support of this contention, the Mr. Latta presented an appraisal report prepared by Frank Stolarz, an Indiana appraiser trainee, and Albert Minniti, a certified Indiana appraiser. *Petitioner Exhibit 18*. Mr. Stolarz and Mr. Minniti certified that they prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* In their report, the appraisers estimated the value of the Petitioner's property to be \$70,500 as of January 1, 2009. *Id.*
- f. Similarly, the Petitioner contends that his property is not assessed fairly or equitably with other properties in his neighborhood. *Latta testimony*. In support of this contention, Mr. Latta presented assessment records for five properties in his neighborhood. *Petitioner Packet B, Exhibits 3-7*. According to Mr. Latta, the assessments for the five properties substantially decreased from the previous year; whereas his property's assessed value increased. *Id.*
- g. Finally, the Petitioner contends that his property has not been used as a rental property since 2005, but he is still not receiving his full homestead credit. *Latta testimony*. In addition, Mr. Latta argues that, although he was successful in having his property's assessment reduced for the 2002 reassessment, he has not received any credit for his overpayment. *Id.*

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

- a. The Respondent's representative, Ms. Miller, contends that the Petitioner's appraisal values the property as of January 1, 2009, which she argues may be relevant to the Petitioner's property's 2010 assessment, but is not relevant to the property's 2006 assessment. *Miller testimony*. According to Ms. Miller, the appraisal was not trended back to the relevant valuation date and therefore it is not evidence of the property's value for 2006. *Id.*

- b. Ms. Miller further contends that the Petitioner's property was correctly assessed. *Miller testimony.* According to Ms. Miller, the Petitioner's assessed value stayed the same from 2002 to 2006 based on the stipulated agreement. *Id.* The property's 2006 value, however, was trended based on sales from 2004 and 2005. *Id.* Ms. Miller argues that the increase covered changes in the property's value for a four-year period. *Id.*
- c. Finally, Ms. Miller testified that Mr. Latta had a studio apartment and his daughter and granddaughter lived in the main area. *Miller testimony.* Based on that information, Ms. Miller testified that she changed the property from a commercial property to a two-family residence for 2006, 2007, 2008, and 2009 using a Form 133. *Id.* Ms. Miller agrees that the land is residential and she changed the land to homestead land, but she argues the change did not affect the overall value of the property. *Id.* Because the computer system does not allow changes back to 2006, Ms. Miller did not offer a property record card showing the changes that she contends she made to the property's 2006 assessment. *Id.*

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 45-026-06-1-5-00018 Urban Latta,
 - c. Exhibits:

Petitioner Packet A:

- Petitioner Exhibit 1 – September 27, 2010, letter requesting a hearing on the Petitioner's appeal,
- Petitioner Exhibits 2 – 4 – The Petitioner's Form 131,
- Petitioner Exhibit 5 – Request for preliminary conference, attached to Board Exhibit A,
- Petitioner Exhibit 6 – Assessed value of the subject property for 2006 pay 2007,
- Petitioner Exhibit 7 – Stipulated agreement for the property's 2002 assessment,
- Petitioner Exhibit 8 – Undated letter to the North Township Assessor,
- Petitioner Exhibit 9 – Undated letter to the North Township Assessor regarding the Petitioner's tax bill,
- Petitioner Exhibit 10 – Undated letter verifying an inspection of the Petitioner's property in 2008 by the North Township Assessor,
- Petitioner Exhibit 11 – Undated letter requesting an update on the status of the Petitioner's appeal,
- Petitioner Exhibit 12 – September 16, 2010, letter regarding the property's 2009 assessment

Petitioner Exhibit 13 – Assessed value of the subject property for 2009 pay 2010,
Petitioner Exhibit 14 – April 1, 2009, letter from the City of Hammond Zoning
Administrator,
Petitioner Exhibit 15 – September 28, 2009, letter appealing the property’s 2008
assessment,
Petitioner Exhibit 16 – November 17, 2010, letter appealing the property’s 2009
assessment,
Petitioner Exhibit 17 – Assessed value of the subject property for 2007 pay 2008,
Petitioner Exhibit 18 – Appraisal of the subject property prepared by Frank
Stolarz and Albert Minniti, dated February 20, 2011,
Petitioner Exhibits 19-21 – Interior photographs of the Petitioner’s property,

Petitioner Packet B:

Petitioner Exhibit 1 – Current assessment of the Petitioner’s property,
Petitioner Exhibit 2 – Living area of the Petitioner’s property,
Petitioner Exhibit 3 – Current assessment of 1933 Warwick Avenue,
Petitioner Exhibit 4 – Current assessment of 1943 Warwick Avenue,
Petitioner Exhibit 5 – Current assessment of 1940 Calumet Avenue,
Petitioner Exhibit 6 – Current assessment of 1941 Warwick Avenue,
Petitioner Exhibit 7 – Current assessment of 2006 Calumet Avenue.

The Respondent did not submit any exhibits.

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated January 12, 2011,
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 Board of Tax Commissioners*, 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 478.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case that his property was over-valued for the March 1, 2006, assessment. 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). 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 Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. Taxpayers may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
 - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
 - d. Here the Petitioner argues that his property is over-valued based on a stipulated agreement. *Latta testimony*. According to Mr. Latta, he appealed his 2002 assessment and as a result of that appeal the land classification on the property was changed to residential and the total assessed value was lowered to \$66,400. *Id.* In support of this contention, Mr. Latta submitted a stipulation agreement signed by Cole Layer Trumble and the Department of Local Government Finance. *Petitioner Exhibit 7*. However, a stipulation agreement is a compromise between a taxpayer and

an assessing official. Therefore a stipulated value does not constitute evidence of the correct valuation of a property.

- e. Even if a stipulation could have some probative value in an assessment appeal, here the Petitioner's stipulation was too far removed from the relevant valuation date to be probative evidence of the property's value in this appeal. The March 1, 2002, assessment was based on a valuation date of January 1, 1999; whereas the March 1, 2006, assessment year at issue in this appeal has a January 1, 2005, valuation date. Because the stipulation was based on the property's value six years prior to the January 1, 2005, valuation date, the stipulation has no probative value for the 2006 assessment.²
- f. The Petitioner also argues that several negative factors affect his property, including the location of the property on a major street, the house's proximity to the NIPSCO substation, and the property's parking constraints. Generally, land values in a given neighborhood are determined by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. The Petitioner, however, has the burden to produce both "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Thus, while the property's location and parking restrictions may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value of the subject property. *See Talesnick*, 756 N.E.2d at 1108.
- g. Further, even if the Petitioner had shown that an influence factor should have been applied to his property, the Petitioner failed to show that his property's assessment did not accurately reflect the property's market value-in-use. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly." In contrast, the new

² The Board notes however that, because both parties agreed that the property is residential, the Petitioner's property record card should be changed to reflect a residential land classification. Further, the Petitioner's appraisal indicates that the property has 1,951 square feet of living area with a 1,564 square foot basement; rather than the 2,443 square feet of living area that the property is currently assessed with. The Respondent presented no evidence in support of the assessment. Therefore, the property record card should also be corrected to reflect the house's proper size.

system “shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).

- h. Here, the Petitioner offered an appraisal that estimated the value of the Petitioner’s property to be \$70,500 as of January 1, 2009. *Petitioner Exhibit 18*. Mr. Stolarz, an appraiser trainee, and Mr. Minniti, an Indiana certified appraiser, attested that they prepared the Petitioner’s appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. *Id.* The report shows that the appraisers applied both the sales comparison approach to value and the cost approach in estimating the property’s value. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is often sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the appraisers valued the property a full four years after the January 1, 2005, valuation date. Therefore, the Petitioner’s property’s appraised value is not probative evidence of the property’s value for the March 1, 2006, assessment. *See Long*, 821 N.E.2d at 471 (holding that an appraisal estimating a property’s value as of December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date).
- i. The Petitioner also contends his property is over-assessed based on the assessed values of other nearby properties. *Latta testimony*. In support of this contention, the Petitioner presented current assessment information for his property and five other properties in his neighborhood. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the property’s assessed value does not accurately reflect the property’s market value-in-use. *Id.* Like the Petitioner in *Westfield Golf*, the Petitioner here only argued that the method of the Petitioner’s assessment was not uniform.
- j. Further, the Petitioner failed to show the comparability of the neighboring properties. By comparing the assessed value of his house to the assessed values of comparable houses, the Petitioner essentially relies on a “sales comparison” method of establishing the market value of his property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioner merely offered assessment information for each of the properties and testified regarding the change in value

between the property's current assessment and its assessment from the year before. This falls far short of the showing required to prove the properties are comparable. Furthermore, the Petitioner's comparable assessment information is from February 1, 2008. Therefore, the neighboring assessments do nothing to indicate market value-in-use of the Petitioner's property for the March 1, 2006, assessment.

- k. Finally, the Petitioner argues that, even though he was successful in appealing his 2002 assessment, he has not received any refund or credit for the overpayment. The Petitioner, however, failed to present any evidence regarding his taxes or what, if any, refund was due. The Respondent's representative, on the other hand, testified that the auditor did not issue any refund to the Petitioner because he owed past due taxes. Thus, the Petitioner failed to provide sufficient evidence to prove that he was not credited for the reduction in his taxes related to the stipulated resolution of his March 1, 2002, assessment appeal.
- l. To the extent that Mr. Latta claims he is not receiving the full homestead credit on his property, the Board lacks jurisdiction to hear his claim. The Board is a creation of the legislature and therefore has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). "All doubts regarding a claim to power of a governmental agency are resolved against the agency." *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996). The Board's general jurisdictional statute empowers the Board to review appeals concerning: "(1) the assessed valuation of tangible property; (2) property tax deductions; or (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law." Ind. Code § 6-1.5-4-1(a). That statute previously contained a fourth subdivision which referenced appeals concerning "credits." See Indiana Code § 6-1.5-4-1(a)(2002). But the statute was amended in 2003 to omit the reference to credits. See P.L. 256-2003 § 31. Thus, the Board no longer has jurisdiction over appeals claiming the right to a credit under Indiana law.
- m. The Petitioner failed to raise a prima facie case that his property was over-valued for the March 1, 2006, assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to raise a prima facie case that his property was over-valued for the March 1, 2006, assessment. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property 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>>