

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

Petition No.: 44-001-07-1-5-00003
Petitioner: Steven K. Livingston, Sr.
Respondent: LaGrange County Assessor
Parcel Nos.: 44-07-35-200-041.000-001
Assessment Year: 2007

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Steven K. Livingston, Sr. filed a written notice contesting his property’s assessment. On July 15, 2008, the LaGrange County Property Tax Assessment Board of Appeals (“PTABOA”) issued notice of its determination lowering the assessment, but not to the level that Mr. Livingston had requested.¹
2. Mr. Livingston then timely filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board’s small claims procedures.
3. On June 4, 2009, the Board held an administrative hearing through its designated Administrative Law Judge, Joseph Stanford (“ALJ”).
4. The following people were sworn in and testified:
 - a) Steven K. Livingston, Sr.,²
 - b) For the Assessor: Lori Carney, LaGrange County Assessor
Joy Sharp, witness

Facts

5. Mr. Livingston’s property is located along Fish Lake at 1460 South 505 East in LaGrange, Indiana. It includes two lots and contains an 800-square-foot house and a 200-square-foot utility shed.

¹ The PTABOA originally issued its determination on June 27, 2008, but mailed it to an incorrect address. *See Board Ex. A.*

² Nancy Lee Livingston also appeared at the hearing and was sworn in, but she did not testify.

6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined that the property's assessment was \$89,500 for the land and \$33,200 for the improvements, for a total of \$122,700.
8. Mr. Livingston asked for an assessment of \$50,000 for the land and \$30,000 for the improvements, for a total of \$80,000.

Parties' Contentions

9. Summary of Mr. Livingston's contentions:
 - a) Joel C. Shrock, a certified appraiser, prepared an appraisal to help value the property for the estate of Livingston's mother. *Livingston testimony; Pet'r Ex. 1 at 1*. In his appraisal report, Mr. Schrock estimated the property's market value at \$80,000 as of April 26, 2007. *Pet'r Ex. 1*. Mr. Shrock also certified that he prepared his appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Id.*
 - b) Mr. Shrock used the sales-comparison approach to value. In his analysis, he relied on three comparable properties that sold on April 8, 2005, May 25, 2006, and April 16, 2007. *Pet'r Ex. 1*. Mr. Shrock noted that "[a]n extensive search of the MLS revealed comps most similar to the subject area [were] very limited; therefore some of the comps may exceed typical suggested guidelines of 'Date of Sale/Time' and/or 'Gross/Net Adjustments.'" *Id.* Also, while Mr. Schrock acknowledged that the sale from 2005 was "slightly dated" he made no adjustment due to what he described as "minimal appreciation." *Id.*
 - c) According to Mr. Livingston, property values have been decreasing since 2006. In 2006 and 2007, the general price index for the area dropped 18%, and it dropped another 12% for 2008. *Livingston testimony*.
 - d) Mr. Livingston also pointed to the fact that his property is burdened by an easement for a 15-foot-wide road. *Livingston testimony; Pet'r Exs. 2-3*. Mr. Livingston and his family have maintained that road since 1952. Although they have repeatedly petitioned LaGrange County to take the road and maintain it, the county has refused to do so. According to Mr. Livingston, someone in Indianapolis told him that his property's assessment should be discounted by 35% because of the road. Mr. Livingston requested that his assessment reflect that discount. *Livingston testimony*.
10. Summary of the Assessor's contentions:
 - a) The property's current assessment is correct, fair, and equitable. *Carney argument*. Based on its analysis of other houses in the neighborhood, the PTABOA lowered the house's grade to "D-1." Because Mr. Livingston's

property is located on a popular boating lake, however, most of its value is in the land. *Carney testimony*.

- b) A ratio study for Bloomfield Township shows that assessments and market-factor adjustments were within the allowable ranges for the mean, COD and PRD.³ *Carney testimony; Resp't Ex. 6*. Mr. Livingston's property was assessed using the same guidelines and methodology as those other properties. *Carney testimony*.
- c) Although the Assessor offered sales data for a number of properties, she focused on four specific ones:
- A property owned by Nancy Meyer-Brown is located near Mr. Livingston's property and sold for \$130,000 in May 2006. It was assessed for \$104,500. Ms. Meyer-Brown's property has a one-story 836-square-foot house that is very similar to Mr. Livingston's one-story 800-square-foot house. *Carney testimony; Resp't Exs. 7, 18*.
 - A property owned by the Stanfields sold for \$170,000 in July 2007. It was assessed for \$178,300. The Stanfields' house is a little larger than Mr. Livingston's house. *Carney testimony; Resp't Ex. 20*.
 - A property owned by the Schladenhauffens sold for \$232,000 on January 5, 2005 and was assessed for \$193,300. *Carney testimony; Resp't Ex. 11*.
 - A property owned by the Montels sold for \$165,000 on April 12, 2006, and was assessed for \$202,000. *Carney testimony; Resp't Ex. 8*.
- d) Also, Mr. Livingston's evidence has problems. His appraiser, Mr. Shrock, used comparable properties from outside Mr. Livingston's neighborhood. One was even on a different lake. Mr. Shrock, however, could have chosen from several more-comparable sales that occurred in Mr. Livingston's neighborhood. *Carney argument and testimony*. Further, Mr. Shrock noted that "there are currently 2 listings for lake front homes on Fish Lake ranging in list price from \$174,000 to \$178,900," and that "[t]here have been 3 reported sales during the past year [according] to MLS, ranging in sales price from \$90,000 to \$183,000." *Pet'r Ex. 1 at 5*. Those facts contradict Mr. Livingston's contention that property values are decreasing and support the 3% market-factor adjustment that the Assessor used in valuing properties. *Carney argument*.
- e) Finally, the Assessor acknowledged that Mr. Livingston's property was burdened by an easement. But Mr. Shrock did not consider that easement in his appraisal and neither should the Board. *Carney testimony, argument*.

³ Ms. Carney did not explain what she meant by the "COD" and "PRD," but the Board assumes she was referring to the coefficient of dispersion and the price-related differential.

Record

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

- a) The Form 131 petition,
- b) The digital recording of the hearing,
- c) Exhibits:

Petitioner's Exhibit 1 – Appraisal prepared by Joel C. Shrock,
Petitioner's Exhibit 2 – Aerial photograph of Mr. Livingston's property,
Petitioner's Exhibit 3 – "Schedule C" from homeowner's insurance
policy,

Respondent's Exhibit 1 – Property record card for Mr. Livingston's
property,

Respondent's Exhibit 2 – Photograph of Mr. Livingston's property,

Respondent's Exhibit 3 – Aerial photograph of Mr. Livingston's
property,

Respondent's Exhibit 4 – Form 115,

Respondent's Exhibit 5 – Trending neighborhood adjustments,

Respondent's Exhibit 6 – LaGrange County Trending 2007,

Respondent's Exhibit 7 – Property record card for Meyer-Brown
property,

Respondent's Exhibit 8 – Property record card for Montel property,

Respondent's Exhibit 9 – Duplicate of Exhibit 7,

Respondent's Exhibit 10 – Duplicate of Exhibit 8,

Respondent's Exhibit 11 – Property record card for Schladenhauffen
property,

Respondent's Exhibit 12 – Property record card for Fogle property,

Respondent's Exhibit 13 – Property record card for Mervau property,

Respondent's Exhibit 14 – Property record card for Terpstra property,

Respondent's Exhibit 15 – Property record card for Lackey property,

Respondent's Exhibit 16 – Property record card for Rembrowski property,

Respondent's Exhibit 17 – "iDox" report,

Respondent's Exhibit 18 – Property record card for Meyer-Brown
property with photographs and sales disclosure,

Respondent's Exhibit 19 – Property record card for Mervau property with
photographs and sales disclosure,

Respondent's Exhibit 20 – Property record card for Stanfield property
with photographs and sales disclosure,

Respondent's Exhibit 21 – "Time Adjustments" sheet

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

Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
14. If the taxpayer establishes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also Meridian Towers*, 805 N.E.2d at 479.

Discussion

15. Mr. Livingston proved that his property’s assessment should be reduced to \$80,000. The Board reaches this conclusion for the following reasons:
 - a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Real Property Assessment Manual defines 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).
 - b) Assessors typically use a mass-appraisal version of the cost approach to assess individual properties. The Real Property Assessment Guidelines for 2002 – Version A detail that approach. But those Guidelines are merely a starting point for determining value. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, while a property’s market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate, that presumption may be rebutted using relevant evidence that is consistent with the Manual’s definition of true tax value. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *see also* MANUAL at 5. That evidence includes market-value-in-use appraisals, actual construction costs, sales information regarding the appealed parcel or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.*

- c) Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the appealed 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 March 1, 2007, assessments, that valuation date was January 1, 2006.
- d) Here, Mr. Livingston offered an appraisal report from Joel C. Shrock. As the Tax Court has repeatedly said, the most effective method to rebut an assessment's presumed accuracy is by offering "a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *Eckerling*, 841 N.E.2d at 678. Mr. Shrock's appraisal meets that description. Mr. Shrock certified that he prepared his appraisal in conformance with USPAP. And he used a generally recognized appraisal methodology—the sales-comparison approach.
- e) Also, while Mr. Shrock estimated the property's value as of April 26, 2007, his appraisal report contains information to relate that estimate to the property's value as of the relevant January 1, 2006, valuation date. In explaining why he did not adjust the sale price from an April 8, 2005, sale, Mr. Shrock wrote that there had been only minimal appreciation between that date and April 26, 2007. Mr. Schrock similarly chose not to adjust the price from a May 25, 2006, sale. Thus, Mr. Schrock found no time-related differentials between the date of his appraisal and two other dates that bracketed the relevant January 1, 2006, valuation date. Admittedly, Mr. Shrock's conclusion differs from the views of both Mr. Livingston, who believed that the market had depreciated significantly between 2006 and 2008, and the Assessor, who believed that the market had appreciated by 3%. The Board, however, finds Mr. Shrock's opinion more credible.
- f) But that does not end the Board's inquiry into Mr. Livingston's case. Mr. Livingston also offered evidence that his property is burdened by an easement, and he asked that his assessment be reduced by 35% to account for that easement. Mr. Livingston, however, failed to offer any market evidence or cite to any authority supporting such an adjustment. Simply relying on a statement from an unidentified person in Indianapolis is not probative.
- g) Nonetheless, by offering Mr. Shrock's appraisal, Mr. Livingston made a prima facie case for reducing his property's assessment to \$80,000. The burden therefore shifted to the Assessor to impeach or rebut Mr. Shrock's appraisal. *Meridian Towers*, 805 N.E.2d at 479. While the Assessor sought to do both, she succeeded in doing neither.
- h) The Assessor tried to impeach Mr. Shrock's appraisal by attacking the comparability of the properties that Mr. Shrock used in his sales-comparison approach. Specifically, the Assessor argued that Mr. Shrock used sales from other neighborhoods, and even from a different lake, when he could have chosen

from several sales in Mr. Livingston's neighborhood. But while the Assessor offered evidence of several other sales, she did little to explain how those properties compared to Mr. Livingston's property, much less to show that they were more comparable than the properties upon which Mr. Shrock relied. At most, the Assessor pointed out that the Meyer-Brown property was located near Mr. Livingston's property and that it contained a one-story house that was only 36-square-feet larger than Mr. Livingston's house. By contrast, Mr. Shrock considered a wide array of characteristics in analyzing how the properties in his appraisal compared to Mr. Livingston's property and adjusting their sale prices to reflect relevant differences. *See Pet'r Ex. 1.*

- i) The Assessor also pointed to Mr. Shrock's recognition that two houses on Fish Lake were listed for sale with asking prices of \$174,000 and \$178,900 and that, in the year preceding his appraisal, three houses on the lake had sold for prices ranging from \$90,000 to \$183,000. According to the Assessor, those sales and listings show that property values were increasing. Without knowing a lot more about those properties, however, those sales and listing prices do nothing to show that property values were significantly appreciating. Instead, as the Board has already explained, Mr. Shrock found that property values had appreciated only minimally.
- j) The Assessor also tried to justify the assessment of Mr. Livingston's property by claiming that assessments throughout Bloomfield Township met certain statistical measures of uniformity, equality, and accuracy. Somewhat contradictorily, she also pointed to two properties—the ones owned by Montels and the Schladenhauffens—that sold for prices significantly different from their assessments.
- k) In any event, the Board is not persuaded. First, the Assessor offered no support for her underlying premise—that an assessment is correct even if it exceeds a property's market value-in-use as long as assessments in general are within statistical ranges for measuring the overall uniformity, equality, and accuracy of mass appraisals. To the contrary, an individual taxpayer has the right to prove that his property's assessment does not accurately reflect its market value-in-use. *See MANUAL at 5.* That right exists independently of constitutional or statutory requirements for uniform and equal assessments.⁴
- l) Second, the fact that an assessor's mass-appraisal methodology led to relatively accurate assessments for other properties does little to show that the methodology resulted in an accurate assessment for a specific property under appeal. It certainly does not outweigh an appraiser's valuation opinion.

⁴ The Indiana Constitution requires the General Assembly to provide "a uniform and equal rate of property assessment and taxation." IND. CONST. ART. 10 § 1. Indiana Code § 6-1.1-2-2 similarly requires property to "be assessed on a just valuation basis and in a uniform and equal manner."

- m) Finally, the Assessor's claim that Mr. Livingston's property was assessed using the same Guidelines as the other properties amounts to little more than a claim that she followed the Guidelines. But strictly applying the Guidelines is not enough to rebut the presumption that an assessment is correct. *Eckerling*, 841 N.E.2d at 678. It follows that, once a taxpayer has offered probative market evidence to rebut an assessment's accuracy, an assessor cannot overcome that evidence by showing that she correctly applied the Guidelines.
- n) The Board therefore finds that Mr. Livingston proved that his property's current assessment is incorrect and that its correct assessment is \$80,000.

Conclusion

- 16. Mr. Livingston made a prima facie case for reducing his parcel's assessment and the Assessor failed to impeach or rebut Mr. Livingston's evidence. The Board therefore finds for Mr. Livingston.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the appealed parcel's assessment should be changed to \$80,000.

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>