

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

Petition #: 44-002-06-1-5-00050
Petitioners: Charles & Holly Long
Respondent: LaGrange County Assessor
Parcel #: 0123010206
Assessment Year: 2006

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

Procedural History

1. Charles and Holly Long filed a written request asking the LaGrange County Property Tax Assessment Board of Appeals (“PTABOA”) to reduce their property’s assessment. On October 23, 2007, the PTABOA issued its determination lowering the Longs’ assessment, but not to the value they requested.
2. The Longs timely filed a Form 131 petition asking the Board to review their property’s assessment. They elected to proceed under the Board’s rules for small claims.
3. On April 8, 2008, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) For the Longs: Charles Long
 - b) For the LaGrange County Assessor: Lori Carney, County Assessor
Joy Sharp, Witness

Facts

5. The Longs’ property is a single-family residence located at 306 Orchard Hill Drive, LaGrange, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA valued the Longs’ land at \$19,500 and their improvements at \$176,700 for a total assessment of \$196,200.

8. On their Form 131 petition, the Longs requested a total value of \$157,000.

Parties' Contentions

9. The Longs offered the following evidence and arguments:
- a) The Longs contend that their property is worth less than its current assessment of \$196,200. To support that contention, the Longs pointed to their unsuccessful attempt to sell the property. They originally attempted to sell the property themselves, asking for \$179,000. On November 8, 2005, they received an offer of \$163,000. They felt the offer was fair and accepted it. Unfortunately, the sale fell through. *Long testimony; Pet'r Ex. 1*. They received a second offer for approximately \$160,000, but that fell through as well. *Long testimony*.
 - b) The Longs then listed the property with a realtor for \$179,000, but the listing didn't generate any interest. They switched realtors and continued to list the property at \$179,000 with the same results. The Longs then switched back to their original realtor, but they lowered their asking price to \$157,000. With the advent of nicer weather, they have received some interest but no offers. *Long testimony*.
 - c) While the Petitioners don't know what the property's actual market value is, they contend that its listing prices together with the offers they received show that it is worth less than its current assessment. *Long testimony*.
 - d) While many of the Assessor's comparables contain homes that are older than the Longs' home, they have been remodeled. *Long testimony; Resp't Exs. 7-9*. One of the homes is actually newer than the Longs' home. *Long testimony; Resp't Ex. 9*. That newer home is approximately the same size as the Longs' home, yet it sold for only \$141,500. *Id.*
10. The LaGrange County Assessor offered the following evidence and arguments:
- a) The Assessor offered record cards for five properties that she believed were comparable to the Longs' property. *Carney testimony; Resp't Exs. 1 - 5*. She also offered sales and assessment information and photographs for three other comparable properties. *Carney testimony; Resp't Exs. 6 - 9*.
 - b) A property at 405 S. Sherman Street sold for \$130,000. Another property at 621 Hawpatch sold for \$133,385. Both properties contain homes that are much older than the Long's home—they were built in 1900 while the Long's home was built in 1993. According to the Assessor, those sales show that other homes in the area are older and in worse condition than the Longs' home. The property at 110 Gum Street, however, is a newer home that sold for \$141,500. *Carney testimony; Resp't Exs. 7 - 9*.

- c) Although some of the older homes have been remodeled, the Longs' property has features that those properties' lack. For example, the Longs' property has a two-car garage, an extra garage, a walkout deck, and a gazebo. Those features add to the property's value, making the Longs' home the nicest in the area. *Sharp testimony.*
- d) At the PTABOA hearing, Mr. Long said the Longs were renting their property to tenants who didn't keep the house neat. According to Mr. Long, that detracted from the home's appeal when it was shown to potential buyers. *Sharp testimony.*
- e) Also, real-estate values were up at the time of the PTABOA hearing. They have since declined. For example, the 621 Hawpatch property sold for \$133,385 in 2004, but was recently listed for only \$99,900. *Sharp testimony; Resp't Ex. 8.*

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:

Petitioners Exhibit 1: Copy of Purchase Agreement from November 2005,

Respondent Exhibit 1: Property Record Card – Jasso,

Respondent Exhibit 2: Property Record Card – Frain,

Respondent Exhibit 3: Property Record Card – Sherman,

Respondent Exhibit 4: Property Record Card – Garvin,

Respondent Exhibit 5: Property Record Card – Walz,

Respondent Exhibit 6: iDox Result Sheet – Neighborhood Comparisons,

Respondent Exhibit 7: Sales Disclosure – Philbrook to Gould,

Respondent Exhibit 8: Sales Disclosure – Stutzman to Cira,

Respondent Exhibit 9: Sales Disclosure – Long to Smith,

Respondent Exhibit 10: Property Record Card – Long,

Board Exhibit A: Form 131 Petition,

Board Exhibit B: Notice of Hearing,

Board Exhibit C: Notice of Appearance for County Assessor,

Board Exhibit D: 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 assessing official 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.

The Longs’ Case

15. The Longs proved that their property should be assessed for no more than \$179,000. 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 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). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use 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) *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 (“USPAP”) 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 any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) Parties must explain how their evidence relates to an appealed property's market value-in-use as of the relevant valuation date. *See 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). That valuation date will vary depending upon the assessment year. For 2002-2005 assessments, the relevant valuation date was January 1, 1999. *Id.*; *see also* MANUAL at 4, 8. Starting with the March 1, 2006 assessment, however, the valuation date is "January 1 of the year preceding the year of the assessment date." 50 IAC 21-3-3. Thus, for a March 1, 2006 assessment at issue in this case, the valuation date was January 1, 2005.
- d) The Longs claim that their unsuccessful attempts to sell their property at \$179,000 together with the two aborted offers for \$163,000 and \$160,000 show that their property is over-assessed.
- e) The two aborted offers do little to show the property's market value-in-use. A property's actual sale price is often compelling evidence of its market value-in-use, provided that the parties negotiated at arm's length and that other requisites to a market-value transaction are present. Rather than approximating how market participants would act, as the various valuation approaches taken by appraisers do, a subject property's sale price shows how those participants actually acted.
- f) But where the parties don't ultimately complete a transaction, their unconsummated agreement carries little weight, at least where the grounds upon which the sale foundered are not revealed. The Longs' evidence about the two aborted sales is simply too vague for the Board to give any weight to the proposed prices. Mr. Long testified only that the Longs accepted an offer of \$163,000 on November 11, 2005, and that the buyer "backed out." He did not describe the buyer's reasons for backing out. And the sale contract that the Longs offered doesn't contain a signature showing that they accepted the buyer's offer in the first place. *See Pet'rs Ex. 1*. Mr. Long gave even less information about the \$160,000 offer.
- g) The Longs' unsuccessful attempts to sell their property for \$179,000 are another matter. If a seller has marketed its property in a commercially reasonable manner for an appropriate length of time, the seller's asking price tends to show the ceiling on that property's market value. Here, the Longs showed that they unsuccessfully tried to sell the property for \$179,000 for at least two years. Although they didn't provide much evidence about their own efforts to market the property without a realtor, those efforts did yield at least one offer. And they listed the property with two different realtors at that same price. While not overwhelming, those facts are at least some evidence that the Longs marketed their property in a commercially reasonable manner.
- h) The Longs' evidence also sufficiently relates to the January 1, 2005 valuation date. The Department of Local Government Finance's rules for determining annual adjustments direct assessors to examine sales disclosures and prepare ratio studies based on property sales from January 1, 2004 though December 31, 2005. 50 IAC

21-3-3(a). Thus, those rules implicitly recognize that sales occurring during 2005 bear some intrinsic relationship to the January 1, 2005, valuation date. Here, the Longs began marketing their property sometime in 2005, and those efforts actually generated an offer on November 11, 2005. While not compelling, that provides at least some explanation about how the Longs' \$179,000 list price relates to the subject property's value as of the relevant January 1, 2005, valuation date.

- i) The Longs therefore made a prima facie case that their property's true tax value was no more than \$179,000.

The Assessor's Case

- j) The Assessor tried to impeach the Long's evidence in two ways. First, Joy Sharp testified that Mr. Long had told her that the Longs' tenants didn't keep the house neat, which made showings less effective. At best, that detracts only slightly from the listing price's tendency to show the property's upper value limit. The Assessor didn't point to any specific instances where otherwise interested buyers lost interest after being shown the property. And even if the tenants' sloppiness hindered the Longs in selling the property for their asking price, it does little to show that the property was worth more than that asking price.
- k) Second, Ms. Sharp testified that property values had been declining since the PTABOA hearing. Even if the Board were to accept Ms. Sharp's claim that property values were declining, the Longs' inability to sell their property for \$179,000 predated that decline.
- l) The Assessor attempted to show that the assessment accurately reflects the property's market value-in-use by offering evidence of the assessments and sale prices for eight purportedly comparable properties. In doing so, she presumably sought to apply the sales-comparison approach to value.
- m) The Assessor's attempt to apply the sales-comparison approach was deeply flawed for at least two reasons. First, the Assessor relied on assessments, rather than sale prices, for five of the eight properties she identified. The sales-comparison approach assumes that potential buyers value a property based on what it would cost them to buy an equally desirable improved property in the marketplace. MANUAL at 13. It therefore involves inferring a value based on market transactions for comparable properties. Unlike sales, assessments aren't market transactions—they are mass-appraisal estimates based on a completely separate valuation approach. Thus, by relying on the assessments of other properties to estimate the value of the Longs' property, the Assessor improperly mixed valuation methods.
- n) Second, the sales-comparison approach requires the person applying it to locate properties that closely compare to the subject property and to adjust the comparable properties' sale prices to reflect relevant ways in which they differ from the subject property. *See id*; *see also Long*, 821 N.E.2d at 471 (holding that taxpayers failed to

offer probative evidence where they explained neither how their house compared to other properties nor how any differences affected the properties relative market values-in-use). The Assessor, however, did little to show that the other properties she identified closely compared to the Longs' property. And while she highlighted a number of differences, such as the respective ages of the homes situated on the properties, she did not even attempt to adjust the purportedly comparable properties' sale prices to account for those differences. The Assessor's failure to adjust the purportedly comparable properties' sale prices is especially troubling, given that those properties sold for significantly less than the subject property's assessment.

- o) Because the Longs offered un-rebutted probative evidence showing that their property was worth no more than \$179,000, they have demonstrated that they are entitled to have their assessment reduced to that amount.

Conclusion

16. The Longs made a prima facie case for reducing their property's assessment to \$179,000. And the Assessor failed to rebut the Longs' evidence. The Board therefore finds in the Longs' favor.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment for the property should be changed to \$179,000.

ISSUED: June 25, 2008

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>