

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

Petition No.: 18-004-06-1-5-00049
Petitioner: Jared L. Mastin
Respondent: Delaware County Assessor
Parcel No.: 18-08-08-305-013.000-004
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 Delaware County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 9, 2007.
2. The PTABOA issued its decision on May 30, 2008.
3. The Petitioner filed a Form 131 petition with the Board on July 14, 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 January 25, 2010.
5. The Board held an administrative hearing on March 2, 2010, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Jared Mastin, Petitioner
Jerry Mastin, witness for the Petitioner
 - b) For Respondent: Kelly Hisle, Appeals clerk, Delaware County Assessor's office

Facts

7. The property is an improved residential parcel located at 6700 East Woodside Road in the town of Albany in Delaware County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

9. For 2006, the PTABOA determined the assessed value of the Petitioner's property to be \$11,000 for the land and \$112,300 for the improvements, for a total assessed value of \$123,300.
10. The Petitioner requested an assessed value of \$11,000 for the land and \$70,000 for the improvements, for a total assessed value of \$81,000.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his assessment:
 - a) The Petitioner contends that his house was over-valued based on the condition of the property. *Jared Mastin testimony*. Mr. Mastin testified that he purchased the property from the Secretary of Housing and Urban Development (HUD) in December of 2006. *Id.* According to Mr. Mastin, any property in a HUD program has to sit empty for at least a year in order to give the previous owner a chance to reclaim the property and, he contends, his house sat empty for two years when he purchased it. *Id.* At that time, much of the carpeting had been removed, the furnace was inoperable, there were problems with the well that provided water for the house, and many of the water lines had burst. *Id.* In addition, he argued, the detached garage's roof leaked which caused damage to the walls and drywall in the garage. *Id.* Even after living in the house for three years, Mr. Mastin contends, one bathroom is still not functional. *Id.*
 - b) The Petitioner further argues that his house was over-valued based on two appraisals of the property. *Petitioner Exhibits 3 and 4*. According to the Petitioner, the first appraisal was prepared by Benjamin Alexander who valued the property at \$81,000 as of December 20, 2006. *Petitioner Exhibit 3*. The second appraisal was prepared by Jeremy Stow, who estimated the value of the property to be \$105,000 as of January 19, 2009. *Petitioner Exhibit 4*.
 - c) In addition, the Petitioner argues, his property is assessed substantially higher than the only other two-story house in the neighborhood. *Jared Mastin testimony*. In support of this contention, Mr. Mastin presented assessment information for his property and for the property located at 6812 Woodside Road. *Petitioner Exhibit 5*. According to Mr. Mastin, the 6812 Woodside property has an assessed value of \$100,100 for the 2008 assessment year; whereas his property is assessed for \$149,000 that year. *Jared Mastin testimony; Petitioner Exhibit 5*. The Petitioner's father testified that the house at 6812 Woodside is much nicer than the Petitioner's home. *Jerry Mastin testimony*. Further, the Petitioner's father argues that single-level homes in the Petitioner's neighborhood are generally assessed in the \$80,000 to \$90,000 range – which does not come close to the \$149,000 current assessed value of his son's home. *Id.*

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

- a) The Respondent's representative argues that the Petitioner was not the owner of the property as of the March 1, 2006, assessment date. *Hisle testimony*. According to Ms. Hisle, the Petitioner purchased the property from the Secretary of Housing and Urban Development as a foreclosure property on November 11, 2006. *Hisle testimony; Respondent Exhibit 1A*. Further, Ms. Hisle argues, the Assessor's records show that HUD was responsible for the 2006 taxes. *Hisle testimony; Respondent Exhibit 2*.
- b) The Respondent's representative also argues that the Petitioner's appraisals are flawed and should be given little weight by the Board. *Hisle testimony*. First, Ms. Hisle argues, there is a significant difference in living area between the two appraisals. *Hisle testimony; Petitioner Exhibit 3*. According to Ms. Hisle, the 2006 appraisal only lists 1,268 square feet of living area above grade. *Id.* The Petitioner's 2009 appraisal, on the other hand, lists 2,077 square feet of living area, and the property record card (PRC) for the Petitioner's property lists 1,820 square feet of living area. *Hisle testimony; Respondent Exhibit 1*. Thus, she argues, the Petitioner's 2006 appraisal undervalues the property because it underestimates the living area of the Petitioner's house.¹
- c) Further, the Respondent's representative contends that the evidence contradicts Mr. Mastin's testimony that his house was "unlivable." *Hisle testimony*. According to Ms. Hisle, the appraiser in the Petitioner's 2006 appraisal indicates in his report that the house was in average condition at the time of the Petitioner's purchase. *Hisle argument; Petitioner Exhibit 3*. Similarly, the MLS listing information sheet for the Petitioner's property states that the property is "well-maintained" with "lots of new updates." *Hisle testimony; Respondent Exhibit 9*.
- d) The Respondent's representative also argued that all of the comparable properties used by Mr. Alexander in his analysis were single-story houses; whereas Mr. Mastin's home is a tri-level. *Hisle testimony; Respondent Exhibits 1, 4-7, and 9-17*. Furthermore, Ms. Hisle argued, lot size information for two comparable properties in the appraisal report conflict with the Assessor's information. *Hisle testimony; Petitioner Exhibit 3; Respondent Exhibits 9-17*.
- e) Finally, the Respondent's representative argues that the Petitioner's 2009 appraisal has no probative value because assessors were required to use a January 1, 2005, valuation date for the 2006 assessment. *Hisle testimony*. Similarly, Ms. Hisle contends that the Petitioner's 2006 appraisal report is flawed because the

¹ The Board notes that the 2006 appraisal also values 539 square feet of living area below grade, totaling 1807 square feet of living area. This closely matches the 1,820 square feet of living area recorded by the Assessor, who calculates living area by outside measures rather than inside measurements. Thus, it appears that the 2009 appraisal – which estimates the property's size to be 2,077 square feet of living area – is the appraisal that is in error. However, the Board notes that the 2009 appraisal over-estimates the size of the property and, therefore, likely has also over-estimated the value of the property.

appraiser does not adjust his comparable sales or the appraised value to the 2005 valuation date. *Id.*

Record

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

- a) The Petition.
- b) The digital recording of the hearing.
- c) Exhibits:

Petitioner Exhibit 1: Form 11 - Notice of Assessment and property tax certification sheet,

Petitioner Exhibit 2: Form 115 - Notice of Final Assessment Determination,

Petitioner Exhibit 3: Appraisal report for the subject property as of December 20, 2006,

Petitioner Exhibit 4: Appraisal report for the subject property as of January 19, 2009,

Petitioner Exhibit 5: 2008 property tax information for the subject property and 6812 East Woodside Road,

Respondent Exhibit 1: Subject property's PRC,

Respondent Exhibit 1A: Sales disclosure form for the subject property dated November 29, 2006,

Respondent Exhibit 2: 2006 tax record for the subject property,

Respondent Exhibit 3: Sales disclosure form for the subject property dated August 16, 2006,

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

Respondent Exhibit 5: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, ch.3 at 12,

Respondent Exhibit 6: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, ch.3 at 26,

Respondent Exhibit 7: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, Glossary at 36,

Respondent Exhibit 8: A copy of 50 IAC 21-3-3,

Respondent Exhibit 9: MLS listing sheet for 390 West Albany Court,

Respondent Exhibit 10: PRC for 390 West Albany Court,

Respondent Exhibit 11: MLS listing sheet for 3401 East Ila Road,

Respondent Exhibit 12: PRC for 3401 East Ila Road,

Respondent Exhibit 13: MLS listing sheet for 201 East Elm Street,

Respondent Exhibit 14: Sales disclosure form for 201 East Elm Street,

Respondent Exhibit 15: PRC for 201 East Elm Street,

Respondent Exhibit 16: PRC for Parcel No. 18-08-01-310-005.000-005,

Respondent Exhibit 17: PRC for Parcel No. 18-08-01-310-006.000-005,
Respondent Exhibit 18: Aerial map of 201 East Elm Street,
Respondent Exhibit 19: The Board's final determination in *George and Betty Kohl v. Dep't of Local Gov't Fin.*, Petition No. 45-026-02-1-5-00531,

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.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of his property. 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 has traditionally 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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 property 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 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) As a threshold issue, the Respondent argued that the Petitioner, Mr. Mastin, did not acquire the property until November 29, 2006. *Hisle testimony; Respondent Exhibit 1A*. The Respondent also offered a printout of the tax payment record for 2006 which shows that the owner of the property and taxpayer for 2006 was the Secretary of Housing and Urban Development. *Hisle testimony; Respondent Exhibit 2*. Although Mr. Mastin testified that he was unsure if any amount for taxes was included as part of the purchase of the property, he submitted an exhibit showing that the escrow agent when he closed on the house was instructed to escrow \$199 per month to pay the semi-annual property tax amount of \$1,199.30 for taxes payable in 2007. *Petitioner Exhibit 1*. In Indiana, taxes are paid a year in arrears. *See* Ind. Code § 6-1.1-22-9. Therefore, the Petitioner has presented sufficient evidence to establish that he was responsible for the payment of the 2006 property taxes on the house and therefore he was a proper party to bring this appeal. *See* 52 IAC 2-2-13(2) (defining "party" as a "taxpayer responsible for the property taxes payable on the subject property.")
- e) In his appeal, Mr. Mastin first contends that his property is over-valued based on the condition of the house at the time he purchased the property. A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See* GUIDELINES, app. B, at 5. A condition rating is determined by relating the structure to comparable structures within the subject property's neighborhood. *Id.* While the Petitioner testified that half of the house was uncarpeted, the well was not functioning correctly, and the furnace was not

working properly, the appraisal prepared by Mr. Alexander at the time of the Petitioner's purchase of the property states that the house is "of average quality and reflect[s] average maintenance with minor repairs required." *Petitioner Exhibit 3*. Similarly, the MLS listing sheet for the Petitioner's property states that the property is "well-maintained" with "lots of new updates." *Respondent Exhibit 9*. Mr. Mastin could have presented pictures showing the condition of the property. Or he could have presented the HUD statement identifying the property's deficiencies or invoices related to repairs, but he did not. Because of the conflicting evidence, Mr. Mastin's testimony by itself is insufficient evidence to prove the condition rating assigned to his home or garage was incorrect. More importantly, the Petitioner purchased the property in December of 2006. Thus, there is no evidence of the property's condition as of the March 1, 2006, assessment date.

- f) Even if the Petitioner had sufficiently proven that the condition of his house was assessed in error, an assessor's failure to comply with the Guidelines alone does not show that the assessment is not a reasonable measure of a property's market value-in-use. 50 IAC 2.3-1-1(d); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) ("Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") Thus, the Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. The Petitioner's evidence and arguments relating to his property's condition therefore fail to overcome the presumption the assessment is correct.

- g) The Petitioner also argues his property is assessed incorrectly based on two appraisals of the property. *Petitioner Exhibits 3 and 4*. The first appraisal was prepared by Benjamin Alexander, who estimated the value of the property to be \$81,000 as of December 20, 2006. *Petitioner Exhibit 3*. The second appraisal was prepared by Jeremy Stow, who estimated the property's value to be \$105,000 as of January 19, 2009. *Petitioner Exhibit 4*. 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. Both of the Petitioner's appraisals, however, suffer from the same issue. When presenting market evidence of the value of a property, a party must explain how the evidence relates to the relevant valuation date – in this case, January 1, 2005. *O'Donnell*, 854 N.E.2d at 95. Here the Petitioner's first appraisal valued the property almost two years after the proper valuation date. The second appraisal valued the property more than four years later. The Petitioner offered no evidence as to how the appraisals' estimates of value relate to the valuation date of January 1, 2005. Thus, while the property may, in fact, be over-valued, the Petitioner's evidence is insufficient to raise a prima facie case for a change in his assessment.

- h) Finally, the Petitioner argued that his property was assessed much higher than another two story house in his neighborhood. *Jared Mastin testimony*. 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) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). 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 Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- i) Moreover, the Petitioner's appeal is for the 2006 tax year, but Mr. Mastin offered evidence relating to his property's and the comparable property's 2008 assessments. Evidence as to a property's assessment in one year does not prove its true tax value in a different year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Each assessment and tax year stands alone. *Id.* Thus, the Petitioner failed to raise a prima facie case that his property was assessed in excess of its market value-in-use.
- j) 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 Indus. v. Dep't of Local Gov't Fin.*, 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. 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 that the assessment should not be changed.

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>.