

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

Petition No.: 79-156-10-1-5-00001
Petitioner: Terry A. Masterson
Respondent: Tippecanoe County Assessor
Parcel No.: 79-07-21-379-016.000-004
Assessment Year: 2010

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 his 2010 assessment appeal with the Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) by filing a request for review with the county assessor on March 3, 2011.
2. The PTABOA issued notice of its decision on June 8, 2011.
3. The Petitioner filed his Form 131 petition with the Board on July 1, 2011. 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 18, 2012.
5. The Board held an administrative hearing on June 21, 2012, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The following persons were present and sworn in at hearing:

For Petitioner: Terry A. Masterson, property owner,

For Respondent: Linda Phillips, Tippecanoe County Assessor.

Facts

7. The property under appeal is a single-family home located at 1609 Rush Street, in Tippecanoe County, Lafayette, Indiana.
8. The ALJ did not conduct an on-site inspection of the property under appeal.

9. For 2010, the PTABOA determined the assessed value of the Petitioner's property to be \$16,000 for the land and \$56,000 for the improvements, for a total assessed value of \$72,000.
10. For 2010, the Petitioner requested a total assessed value of \$19,000.

Issues

11. Summary of the Petitioner's contentions in support of the alleged errors in his property's assessment:
 - a. The Petitioner contends he has standing to appeal the assessed value of the subject property. *Masterson testimony*. According to Mr. Masterson, the estate paid some of the property taxes, which were pro-rated at the date of sale. *Id.*; *Petitioner Exhibit 9*. The taxes, however, were pro-rated based on the old assessment, which was 10% less than the current assessment. *Masterson testimony*; *Petitioner Exhibit 25*. Mr. Masterson contends he is the only person who received the notice of assessment and the only person responsible for the taxes, which he paid in full. *Id.*
 - b. The Petitioner contends the assessed value of his property was too high in 2010 based on his purchase of the property in 2011. *Masterson testimony*. Mr. Masterson testified that the house was originally listed for \$52,900 but no one would look at the property because there were numerous comparable properties on the market for around \$20,000. *Id.*; *Petitioner Exhibit 8*. According to Mr. Masterson, the house was "trashed inside." *Masterson testimony*. "The plumbing had been frozen because nobody had prepared it for winter [and] it had been sitting vacant for about a year and a half." *Id.* The listing price eventually dropped to \$24,500 and he purchased the property for \$19,000. *Id.* Mr. Masterson contends his purchase of the property was the result of an open market process where everyone had the opportunity to look at the house for eighteen months, but no one was willing to pay more than \$19,000. *Masterson testimony*. Mr. Masterson further contends that the circuit court concurred the value of the property was \$19,000 and authorized the property to be sold for that amount. *Id.*; *Petitioner Exhibit 10*.
 - c. The Petitioner also contends that the property was over-valued compared to the sale prices of similar properties in the neighborhood. *Masterson testimony*. In support of this contention, Mr. Masterson submitted listing and sales information for four properties and the sale prices of ten additional properties. *Petitioner Exhibits 11-24*. According to Mr. Masterson, several of the comparable properties are on the same block as the subject property. *Masterson testimony*. Mr. Masterson argues that, although the Respondent's "comparable" properties may be in the same school district as his property, they are not comparable to a house on a block with several abandoned properties. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent contends the Petitioner does not have standing to appeal the property's 2010 assessment because he did not own the property on the assessment date; nor was he responsible for the taxes. *Phillips testimony*. In support of this contention, the Respondent submitted the Petitioner's settlement statement and agreement for real estate tax responsibility from his purchase of the property. *Respondent Exhibits 6 and 7*. According to Ms. Phillips, Mr. Masterson did not purchase the property until February 28, 2011, which is a year after the assessment date, and the estate provided funds at the closing to pay the 2010 real estate taxes.¹ *Phillips testimony*.
 - b. The Respondent further contends that, if Mr. Masterson has standing to appeal, his purchase of the subject property was outside the time frame for the valuation date and should not be considered by the Board. *Phillips testimony*. Moreover, Mr. Masterson provided no evidence as to the condition of the subject property on March 1, 2010. *Id.*
 - c. In addition, the Respondent contends that sales in the subject property's neighborhood and in an adjacent neighborhood support the property's assessed value. *Phillips testimony*. According to Ms. Phillips, both neighborhoods are in the same school district and share many of the same characteristics, such as the age of the houses and the topography of the lots. *Id.* The subject property is a single-family house with a partial basement and no garage. *Id.* Ms. Phillips contends that properties with similar characteristics had an average sale price of \$75 per square foot and a median sale price of \$65 per square foot during the relevant time period. *Id.*; *Respondent Exhibit 4*. Because the subject property was assessed at \$51 per square foot, Ms. Phillips concludes, the property was not over-valued for the 2010 assessment year. *Id.*
 - d. Similarly, the Respondent contends that sales from the Multiple Listing Service (MLS) during the proper time frame support the property's assessed value. *Phillips testimony*. In support of this contention, the Respondent submitted pages from the MLS, highlighting the sales of four properties that are similar in size, age, style, and location to the subject property. *Respondent Exhibit 5*. According to Ms. Phillips, the sale prices of the comparable properties ranged from \$47 per square foot to \$81 per square foot. *Id.*
 - e. Finally, the Respondent contends that the Petitioner's "comparable" properties were not valid sales for assessment purposes or are not comparable to the subject property. *Phillips testimony*. According to Ms. Phillips, the homes on Asher are two-unit buildings. *Id.*; *Respondent Exhibit 3*. In addition, Ms. Phillips testified, four of the

¹ Ms. Phillips testified the sale occurred on February 28, 2012, but she appears to have misspoken. The settlement statement from the sale was dated February 28, 2011, and she testified the sale occurred 365 days after the March 1, 2010, valuation date.

Petitioner's properties are not in a comparable neighborhood because they are in a different elementary school district and some of the sales were REO sales, estate sales, foreclosures, or distressed sales. *Id.*

Record

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

- a. The Form 131 petition,
- b. A digital recording of the hearing labeled 79-156-10-1-5-00001 Masterson,
- c. Exhibits:

Petitioner Exhibit 1-3 – Petition to the Indiana Board of Tax Review,
Petitioner Exhibit 4-6 – Form 115, PTABOA findings,
Petitioner Exhibit 7 – Petitioner's Request for Review of Assessment,
Petitioner Exhibit 8 – Listing information for the subject property,
Petitioner Exhibit 9 – Agreement for real estate tax responsibility,
Petitioner Exhibit 10 – Tippecanoe Circuit Court's "Order Authorizing
Revaluation of Property,"

Petitioner Exhibit 11 – Parcel information and sale price for 428 Asher,
Petitioner Exhibit 12 – MLS information for 415 Asher,
Petitioner Exhibit 13 – MLS information for 421 Asher
Petitioner Exhibit 14 – MLS information for 1827 Salem,
Petitioner Exhibit 15 – MLS information for 1213 Morton,
Petitioner Exhibit 16 – Parcel information and sale price for 2753 Ferry Street,
Petitioner Exhibit 17 – Parcel information and sale price for 1901 Greenbush
Street,

Petitioner Exhibit 18 – Parcel information and sale price for 1414 South 4th Street,
Petitioner Exhibit 19 – Parcel information and sale price for 1720 Morton Street,
Petitioner Exhibit 20 – Parcel information and sale price for 715 South 5th Street,
Petitioner Exhibit 21 – Parcel information and sale price for 628 North 8th Street,
Petitioner Exhibit 22 – Parcel information and sale price for 1705 Rainey Street,
Petitioner Exhibit 23 – Parcel information and sale price for 1202 South 2nd
Street,

Petitioner Exhibit 24 – Parcel information and sale price for 1728 Meharry Street,
Petitioner Exhibit 25 – Notification of Assessment,

Respondent Exhibit 1 – 2009 property record card,
Respondent Exhibit 2 – Valuation date guidelines,
Respondent Exhibit 3 – Assessor's comments on Petitioner's comparable
properties,
Respondent Exhibit 4 – Assessor's comparable properties,
Respondent Exhibit 5 – MLS information with four sales highlighted,
Respondent Exhibit 6 – Subject property's settlement statement,

Respondent Exhibit 7 – Agreement concerning real estate tax responsibility,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of hearing dated May 18, 2012,

Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.² That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2. Here, the property's assessed value increased from \$65,500 in 2009 to \$72,000 in 2010, which is an increase of approximately 10%. The Assessor, therefore, has the burden of proving the property's March 1, 2010, assessment was correct. To the extent that the Petitioner seeks an assessment below the previous year's level, however, the Petitioner has the burden of proving a lower value for his property.

Analysis

15. Before reaching the merits of the case, the Board must determine if Mr. Masterson had standing to bring this appeal. The Respondent contends that because the Petitioner was not the owner of the property on March 1, 2010, and the seller provided funds to pay the

² HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

real estate taxes for the 2010, assessment year, Mr. Masterson has no right to appeal the property's 2010 assessment.

16. Under the Board's regulations, a "Party" includes the "(1) the owner of the property; [or] (2) The taxpayer responsible for the property taxes payable on the subject property..." 52 IAC 2-2-13. Thus, the fact that the Petitioner was not the owner of the property on the March 1, 2010, assessment date does not automatically deprive the Petitioner of standing to appeal his property's assessment.
17. Here, Mr. Masterson testified that the former property owner paid taxes based on a significantly lower assessed value; leaving Mr. Masterson responsible for the remainder of the unallocated amount. In fact, the agreement between Mr. Masterson and the seller of the property recognized that Mr. Masterson might be responsible for unreimbursed taxes for the 2010 assessment year: "the payment/proration and/or credit of taxes are based on the most current bills at this time. As a result of action by the Indiana State Legislature, it is not possible to provide accurate pro-rations of taxes due and payable into the future." *Petitioner Exhibit 9*. Further, even if Mr. Masterson had not been required to pay a portion of the unreimbursed property taxes for 2010, he was still the person billed for the property's 2010 taxes and who ultimately paid the property taxes. Therefore Mr. Masterson had standing to bring this appeal.
18. The Respondent failed to establish a prima facie case that the property's March 1, 2010, assessment was correct. The Board reached this decision for the following reasons:
 - a. In Indiana, assessors value real property based on the property's market value-in-use, 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See id.* A market-value-in-use appraisal prepared according to USPAP often will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party 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 principles. MANUAL at 5.
 - a. Here, the Respondent presented fourteen sales from the neighborhood and an adjacent neighborhood that occurred in 2009. According to the Respondent, the average price per square foot was \$75 and the median price per square foot price was \$65. The Respondent also submitted MLS information for four sales with prices ranging from \$47 per square foot to \$81 per square foot. The Respondent contends that all of the sales were of single-family homes similar in size, age, location, and style to the Petitioner's property. Because the subject property was assessed for only \$51 per square foot, the Respondent argues, the property was not over-valued for the March 1, 2010, assessment.

- b. In making this argument, the Respondent essentially relies on a sales comparison approach to establish the market value-in-use of the Petitioner's 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 properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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.* This the Respondent did not do. Ms. Phillips merely testified that the properties were similar in characteristics and location to the subject property. This falls far short of the burden to show comparability between the properties.
 - c. The Respondent failed to establish a prima facie case that the property's assessed value was correct for the March 1, 2010, assessment date. Therefore, the property's assessment must be reduced to the previous year's assessed value of \$65,500 under Indiana Code § 6-1.1-15-17.2. That, however, does not end the Board's inquiry because the Petitioner requested an assessed value of \$19,000 for the property based on his purchase of the property. As explained above, the Petitioner has the burden of proving that he is entitled to that additional reduction. The Board therefore turns to the Petitioner's evidence.
19. The Petitioner presented probative evidence that the property's assessment should be lowered to \$19,000 for the 2010 assessment year. The Board reached this decision for the following reasons:
- a. The Petitioner purchased the property at issue in this appeal on February 28, 2011, for \$19,000. The sale of the subject property is often the best evidence of the property's value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). The Petitioner, however, bought the subject property a year after the relevant March 1, 2010, valuation date. Thus, by itself, the Petitioner's purchase price is not probative of the property's true tax value. Mr. Masterson needed to explain how the sale price related to the property's value as of March 1, 2010.
 - b. Mr. Masterson testified that the property was originally listed for \$52,900, but the listing price decreased to \$24,500. The house sat vacant for eighteen months before he purchased the property. During that time, the plumbing froze and the "house was trashed." By themselves, listings typically do little to show a property's market value-in-use, but an eighteen-month listing that ultimately results in a sale at or below

the list price is much more persuasive; particularly where, as here, the property was actively listed on the relevant valuation date. More importantly, the Tippecanoe County Circuit Court affirmatively found that the value of the subject property was \$19,000 in an order dated December 2, 2010. This determination was issued within nine months of the March 1, 2010, valuation date. Considering the totality of the evidence, the Board finds that Mr. Masterson raised a prima facie case that the subject property's true tax value was no more than \$19,000 for 2010.

- c. Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). As discussed above, however, the Respondent submitted a sales comparison analysis that failed to sufficiently show the comparability of the sales she offered as comparable properties. To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faces to raise his prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted). Thus, the Respondent failed to rebut or impeach the Petitioner's case for a reduction in his property's 2010 assessed value.

Conclusion

20. The Respondent failed to raise a prima facie case that the property's assessed value was correct for March 1, 2010. Therefore the assessment for the Petitioner's property must be returned to the previous year's level of \$65,500. The Petitioner, however, established a prima facie case that the property's value was \$19,000. The Respondent failed to rebut or impeach the Petitioner's evidence. The Board therefore finds in favor of the Petitioner and holds that the value of the property for the March 1, 2010, assessment date was \$19,000.

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 subject property should be reduced to \$19,000 for the March 1, 2010, assessment date.

ISSUED: August 24, 2012

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>.