

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

Petition No.: 20-015-08-1-5-00433
Petitioners: Robert M. & Carla J. Mathis
Respondent: Elkhart County Assessor
Parcel No.: 20-11-17-103-032.000-015
Assessment Year: 2008

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

Procedural History

1. Robert M. & Carla J. Mathis appealed the subject property’s March 1, 2008 assessment. On November 12, 2010, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Mathises the relief they had requested.
2. The Mathises then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On August 16, 2011, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
 - a) Robert M. Mathis
 - b) Cathy Searcy, Elkhart County Assessor
Dana Fisher, deputy assessor
Edward J. Bisch, Jr., consultant

Facts

5. The subject property contains a single-family home located at 1808 Greenwood Drive, Goshen, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following values for the subject property:

Land: \$33,900	Improvements: \$200,300	Total: \$234,200
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8. The Mathises requested the following values:

Land: \$29,900

Improvements: \$175,000

Total: \$204,900¹

Parties' Contentions

9. The Mathises offered the following evidence and arguments:

- a) The subject property was assessed for more than it was worth. While Elkhart County home values were decreasing, the subject property's assessment kept increasing. The property's assessment has since been reduced to \$210,700, which shows that it was over-assessed for years. *Mathis testimony and argument; Pet'rs Ex. 4B.*
- b) Mr. Mathis pointed to the sales of several properties that he contended were comparable to the subject property:
 - 116 Redspire. This property was listed at \$162,900 on March 30, 2007. It is very comparable to the subject property except it does not have a three-stall garage.
 - 112 Redspire. This property sold for \$170,000 on February 15, 2006. It is very comparable to the subject property.
 - 2408 Redspire. This property sold for only \$189,000 on March 27, 2007. It has crown molding, ceramic tile, solid wood cabinetry, and a finished basement. It was a 2003 Parade Home which means it is upscale. This home is very comparable to the subject home and even has a third garage stall.
 - 1614 Canton Drive. This property listed for \$199,900 and sold for \$187,000 in 2008. The house was built in 1993 by Schrock Homes—the same builder that did the subject house—and it has approximately 2,400 square feet, four bedrooms, and two and a half baths.

Mathis testimony; Pet'rs Exs. 1B - 1C, 2A - 2C.

- c) The former assessor, however, refused to consider Mr. Mathis's sales because they were from the Gardens and College Green instead of from the subject property's neighborhood, Greenwood Place. *Mathis testimony.* Instead, the assessor insisted on using sales from Greenwood Place. But the subject property is on the low end of value for Greenwood Place. Thus, the Assessor's purportedly comparable properties are not really comparable to the subject property. One of those properties has a two-story, 3,300 square foot, all-brick house with superior amenities, whereas the subject house is a 1,809-square-foot ranch-style house with no ceramic tile or custom features. Based on his eight years working for a lending institution, Mr. Mathis is sure that no underwriter would say that a two-story, all brick home is comparable to

¹ On their Form 131 petition, the Mathises listed the assessed value for their swimming pool under the personal property section. The pool's value instead should have been included with the improvements.

his ranch home. By contrast, the Gardens—the addition from which Mr. Mathis got many of his comparable sales—has homes that are more comparable to the subject property. *Mathis testimony; Pet'rs Ex. 1D.*

- d) Even if one looks at Greenwood Place, the following evidence shows that the subject property was assessed too high:
- A property directly across the street from the subject property was up for sale for two years. It originally listed for \$249,000, went down to \$219,000, and finally sold for \$201,000. Mr. Mathis, however, acknowledged that there are differences between the properties—the property across the street has a finished basement, while the subject property has a third garage stall and a pool.
 - 1923 Greenwood Drive sold for \$184,648 on November 16, 2006. Like the subject home, it was built by Schrock, and it is located on the same street as the subject property.
 - 815 Greenwood Drive, which is owned by Mr. Mathis's sister, appraised for \$258,000. That house has two stories, 2,400 square feet, a finished basement, tile, Corian countertops, a four-season room, and a pool with an automated cover, a heater, and a stained wood deck. By contrast, the subject house has only 1,800 square feet and no finished basement, yet it was assessed for barely \$20,000 less than what Mr. Mathis's sister's property appraised for. Mr. Mathis did not offer the appraisal at the Board's hearing because the PTABOA told him he was not authorized to use it.

Mathis testimony; Pet'rs Exs. 1A, 5A.

- e) The Assessor tried to justify the subject property's assessment by pointing to its location on a golf course. But the property does not sit on the golf course; a row of trees separates it from the course. If anything, the subject property should get a discount for being battered by golf balls. The property's fence has holes in it from errant balls. A person who was interested in buying the subject property changed his mind when he became aware of the damage and of the corresponding safety issues. Mr. Mathias therefore suggested a 10% discount based on the discount given to a neighbor's property that was located near a power station. *Mathis testimony; see also, Pet'rs Exs. 3A - 3G.*
- f) The subject home has issues in addition to the damage from golf balls. The concrete around the subject home is sinking and has large cracks. *Mathis testimony; Pet'rs Exs. 3H - 3I.*

10. The Assessor offered the following evidence and arguments:
- a) The Mathises did not offer valuation evidence from a qualified third party or any other market evidence to show that the subject property's assessment was wrong. *Bisch argument.*
 - b) Dana Fisher, a deputy assessor, prepared a sales-comparison analysis. Ms. Fisher found four comparable sales that were as close as possible to the subject property in construction and quality. Ms. Fisher first abstracted a price per square foot for each improvement by subtracting the property's land assessment from its sale price. She then multiplied the mean and median per-square-foot prices by the subject house's total area and added the property's land value to determine a range of \$222,400 to \$230,800 for the subject property. *Fisher testimony; Resp't Ex. 5.*
 - c) The subject property's assessment is just above the high end of that range because, unlike Ms. Fisher's comparables, it is located on a golf course. Although Mr. Mathis claims that his property is not on the golf course, an aerial photograph of the subject property shows otherwise. And while Mr. Mathis requested a discount for damage from golf balls hitting his fence and house, he did not offer any evidence to measure the extent to which that damage affected the property's market value-in-use. *Bisch testimony; Resp't Ex. 7.*
 - d) The sales ratio study for the subject property's neighborhood also supports the assessment. A mass-appraisal sales ratio study looks at all sales in a neighborhood regardless of their individual characteristics. *Fisher testimony.* Although Mr. Mathis offered a different sales ratio study, that study used sales from January 1, 2004 to December 31, 2005, which is outside the window used to compute March 1, 2008 assessments. *See Bisch testimony.*
 - e) The PTABOA did not consider the appraisal of the property owned by Mr. Mathis' sister. The appraisal report contains written restrictions for its use and the appraiser did not consent to the PTABOA using it. *Bisch testimony; Resp't Ex. 3.*

Record

11. The official record for this matter is made up of the following:
- a) The Form 131 petition,
 - b) A digital recording of the hearing,
 - c) Exhibits:

Petitioners Exhibit 1A: Real estate transfer information from *The Truth*, with 1923 Greenwood Drive, Goshen circled and handwritten notes

- Petitioners Exhibit 1B: Real estate advertisement from *The Goshen News* for 116 Redspire
- Petitioners Exhibit 1C: Handwritten notes regarding the sale of 1614 Canton Drive
- Petitioners Exhibit 1D: 2006 Selected Sales Ratio Study for Neighborhood 1701 with handwritten notes regarding 1848 Greenwood
- Petitioners Exhibit 2A: MLS data for 112 Redspire
- Petitioners Exhibit 2B: 2006 Selected Sales Ratio Study for Neighborhood 0704 with handwritten notes
- Petitioners Exhibit 2C: Real estate advertisement and handwritten notes for 2408 Redspire
- Petitioners Exhibit 3A: Selected Sales Ratio Study for Neighborhood 1701 with handwritten notes
- Petitioners Exhibit 3B: Photograph of buckets of golf balls
- Petitioners Exhibit 3C: Photograph of the subject fence
- Petitioners Exhibit 3D: Photograph of subject home's siding
- Petitioners Exhibit 3E: Photograph of subject home's siding
- Petitioners Exhibit 3F: Photograph of the subject fence
- Petitioners Exhibit 3G: Photograph of damage to the subject fence post
- Petitioners Exhibit 3H: Photograph of foundation sealed with foam insulation
- Petitioners Exhibit 3I: Photograph of foundation sealed with foam insulation
- Petitioners Exhibit 4A: Summary of taxes showing 2009 and 2010
- Petitioners Exhibit 4B: Results of Assessor/Petitioner Conference
- Petitioners Exhibit 5A: Letter from Dana Fisher, Deputy Assessor
- Petitioners Exhibit 5B: June 8, 2010 letter from the Mathises to the Elkhart County Assessor
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- Respondent Exhibit 1: Summary of Respondent's Exhibits and Testimony
- Respondent Exhibit 2: Power of Attorney for Edward Bisch, Jr.
- Respondent Exhibit 3: Handwritten letter from Robert Mathis to the Assessor with three pages from an appraisal report for 1815 Greenwood Dr.
- Respondent Exhibit 4: 2008 property record card ("PRC") for the subject property
- Respondent Exhibit 5: Evidence submitted to PTABOA (Sales Comparison for 1808 Greenwood Dr, PRC for 1832 Greenwood Dr., listing sheet for 829 Deerstone Dr., listing sheet for 1224 Mintcrest Dr., listing sheet for 23214 Wexford
- Respondent Exhibit 6: Form 115, Notification of Final Assessment Determination for the subject property
- Respondent Exhibit 7: Aerial Photograph of the subject property
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- Board Exhibit A: Form 131 petition
- Board Exhibit B: Hearing notice
- Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

Objections

12. The Assessor objected to Mr. Mathis' testimony that the former assessor had refused to consider sales outside Greenwood Place. The Board overrules that objection. The Board's procedural rules allow it to admit hearsay, with the caveat that the Board may not base its final determination solely on hearsay (1) that is properly objected to, and (2) that does not fall within a recognized exception to the hearsay rule. 52 IAC 2-7-3. As the discussion below shows, the Board does not base any part of its determination on the testimony in question.
13. Mr. Mathis objected to Respondent's Exhibit 7, an aerial map showing the subject property's proximity to a golf course. Mr. Mathias, however, did not give a basis for his objection. The Board therefore overrules that objection.

Analysis

Burden of Proof

14. A taxpayer seeking review of an assessing official's determination must make 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).
15. 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").
16. If the taxpayer makes 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); *Meridian Towers*, 805 N.E.2d at 479.

Discussion

17. The Mathises did not make a prima facie case for reducing the subject property's assessment. 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 (2009)). Appraisers traditionally have used three methods to determine a property's 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 Ct. 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 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) Regardless of the method used to challenge an assessment's presumed 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. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *See id.* ("[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value."). For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3(2009).
- d) The Mathises primarily relied on sales and listing information for properties located in the subject property's addition and in nearby additions. Of course, sale prices for other properties do not, by themselves, show the value for a given property. But when one analyzes those sale prices using generally accepted appraisal principles, such as the sales-comparison approach, that raw data can be transformed into a reliable value indicator. *See generally*, MANUAL at 13-14 (describing the sales-comparison approach).
- e) Thus, in order to effectively use a comparison approach as evidence in an assessment appeal, one must first show that the properties being examined are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property are not probative of the properties' comparability. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f) Mr. Mathis did not offer the type of analysis contemplated by the Indiana Tax Court in *Long*. In some cases, he simply asserted that the sold properties were comparable to the subject property. In other cases, he compared the sold or listed properties to the

subject property along a few lines, such as the sizes of the respective houses. But he ignored many other characteristics that likely would affect market value. And he did little to explain how any relevant differences affected the properties' relative values. Without a more reasoned analysis that complies with generally accepted appraisal principles, the sales and listings that Mr. Mathias pointed to do little to show the subject property's market value-in-use, or even to show a likely range of values.

- g) The same is true for Mr. Mathis' testimony about the appraised value of his sister's house. Without explaining how the substantial differences between the two properties affect their relative market values-in-use, that appraisal does little to show a likely value or range of values for the subject property. More importantly, an appraisal is an opinion of value, and Mr. Mathis did not offer the appraisal report² or give any other information to show how the appraiser reached his or her opinion. In any case, the appraiser estimated a value as of May 20, 2008, which is more than 16 months after the January 1, 2007 valuation date that applied to the property's March 1, 2008 assessment. And Mr. Mathis did not explain how the appraiser's valuation opinion related to the property's market value-in-use as of January 1, 2007.
- h) Mr. Mathis also asked that the subject property's assessment be reduced by 10% because of its proximity to the golf course, which, according to Mr. Mathis led, to property damage and created a safety issue. But Mr. Mathis did not offer any probative evidence to quantify the extent to which those factors affected the property's market value-in-use. At most, he claimed that another property had received a 10% adjustment because it was located near a power station. Mr. Mathis, however, offered nothing to show that the market was likely to value those two locations in a similar way. Mr. Mathis similarly failed to offer any evidence to quantify how sinking concrete around the subject house affected the property's market value-in-use.
- i) Next Mr. Mathis pointed out that the subject property's assessment was reduced to \$210,700 in a later year, arguing that the reduction shows that the property had previously been over-assessed. The subject property's assessment in years after 2008, however, is irrelevant. Each tax year and each assessment year stands alone, and evidence of a property's assessment for one year does not necessarily show its true tax value for a different assessment 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)).
- j) Finally, Mr. Mathis's claims about the former Assessor ignoring Mr. Mathis's comparables and the PTABOA refusing to consider the appraisal of his sister's property are beside the point. First, an assessor is likely to have disagreed with the taxpayer's position in most taxpayer appeals—hence the appeal. Second, the Board's proceedings are *de novo*; the Board therefore does not review the PTABOA's

² Mr. Mathis apparently did not offer the appraisal because the PTABOA had refused to consider it. As explained below, however, the Board's hearings are *de novo*, and if a party wants the Board to consider evidence, he must offer that evidence at the Board's hearing.

reasoning or lack thereof. Thus, instead of focusing on the Assessor and the PTABOA, the Mathises needed to offer probative evidence to show the Board that the subject property's assessment did not accurately reflect its market value-in-use. Because the Mathises did not offer such evidence, they failed to make a prima facie case.

Conclusion

18. The Mathises failed to make a prima facie case for reducing the subject property's assessment. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

ISSUED: November 14, 2011

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>>.