

REPRESENTATIVE FOR PETITIONER:

Mark Matson, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:

Lori Carney, LaGrange County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mark & Rita Matson,	)	Petition No.:	44-014-06-1-5-00001
)		
Petitioners,	)	Parcel No.:	013-11100-26
)		
v.	)	County:	LaGrange
)		
LaGrange County Assessor,	)	Township:	Newbury
)		
Respondent.	)	Assessment Year:	2006

Appeal from the Final Determination of the
LaGrange County Property Tax Assessment Board of Appeals

April 29, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. In this case, the LaGrange County Assessor tried to rebut a probative certified appraisal by arguing that the subject property's assessment was within 10% of the value estimated in that appraisal and that the assessment was fair and equitable compared to the assessments for other properties within the same neighborhood. Finding no authority for the Assessor's position, the Board concludes that the subject property's assessment should be reduced to \$550,000—the amount estimated by the appraiser.

Procedural History

2. On January 8, 2007, the Matsons filed notice with the LaGrange County Assessor contesting their property's 2006 assessment. On December 21, 2007, the LaGrange County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering that assessment, but not to the level that the Matsons had requested.¹ As a result, on February 4, 2008, the Matsons filed a Form 131 petition with the Board. The Board has jurisdiction over the Matsons' appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On February 12, 2009, the Board's Administrative Law Judge, Patti Kindler ("ALJ"), held a hearing on the Matsons' appeal. Neither the Board nor the ALJ inspected the subject property.

¹ The PTABOA issued two determinations dated December 21, 2007. The first determination lists a total assessment of \$747,000. *Board Ex. A*. The PTABOA then issued a "revised" determination lowering the total assessment to \$596,800. *Resp't Ex. 11*.

4. The following people were sworn in as witnesses:

For the Matsons:

Mark Matson, property owner
Jerry L Stanner, Indiana Certified General Appraiser

For the Assessor:

Lori Carney, LaGrange County Assessor
Joy Sharpe, former PTABOA member

5. The Matsons submitted the following exhibits:

Petitioners Exhibit 1 – January 26, 2009, letter from Todd Stock, with enclosed listing contract for the subject property; proposal by Jay Dee Hostetler Enterprises, Inc.,

Petitioners Exhibit 2 – Appraisal of the subject property by Jerry L. Stanner,

Petitioners Exhibit 3 – Two copies of November 6, 2008, letter from Mark Matson to the ALJ listing the Matsons’ witnesses; copies of the following documents: December 5, 2007, letter from Jerry Stanner (marked “Exhibit A”); Hostetler Enterprises proposal (marked “Exhibit B”); listing contract (marked “Exhibit C”); MLS listing sheet for the subject property (marked “Exhibit C-1”); document entitled “A Touch of Country Yearly Sales Comparison” (marked (“Exhibit D”).

6. The Assessor submitted the following exhibits:

Respondent Exhibit 1 – Subject property’s record card (“PRC”),

Respondent Exhibit 2 – Photographs of the subject house,

Respondent Exhibit 3 – GIS map of the subject area,

Respondent Exhibit 4 – GIS map of the subject area and surrounding area,

Respondent Exhibit 5 – Drawing of the subject lot and nearby lots,

Respondent Exhibit 6 – “iDOX” sheet with sales information from neighborhood 4130100,

Respondent Exhibit 7 – None submitted,²

Respondent Exhibit 8 – “iDOX” sheet with sales information from neighborhood 4130200,

Respondent Exhibit 9 – Sales disclosure for the subject property, dated June 27, 2003,

Respondent Exhibit 10 – Portion of Form 130 petition showing Township Assessor/Petitioner Conference results,

Respondent Exhibit 11 – Revised Form 115 with corrected 2006 assessed values,

² According to Ms. Carney, this exhibit was a duplicate of Resp’t Ex. 6.

Respondent Exhibit 12 – Hostetler Enterprises proposal,
Respondent Exhibit 13 – Document entitled “LaGrange County 2006 Trending Adjustments,”
Respondent Exhibit 14 – Neighborhood trending notes,
Respondent Exhibit 15 – Trending and ratio study,
Respondent Exhibit 16 – PRC and photograph for 145 Harrison Street,
Respondent Exhibit 17 – PRC and photograph for 310 Harrison Street,³
Respondent Exhibit 18 – PRC and photograph for 225 Depot Street,
Respondent Exhibit 19 – PRC and photograph for 145 Morton Street,
Respondent Exhibit 20 – PRC and photograph for 140 Harrison Street,
Respondent Exhibit 21 – PRC and photograph for 100 Talmadge Street,
Respondent Exhibit 22 – Document entitled “Comparison of Shipshewana Neighborhood 4130300,”
Respondent Exhibit 23 – Assessor’s witness and exhibit list.

7. The Board recognized the following additional items as part of the record of proceedings:
 - Board Exhibit A – The Form 131 petition with attachments,
 - Board Exhibit B – Notices of hearing,
 - Board Exhibit C – Hearing sign-in sheet,
 - Board Exhibit D – Request for continuance,
 - Board Exhibit E – Board’s letter granting continuance.
8. The subject property contains a 2,280-square-foot two-story commercial building built in 1994. It is located at 115 Harrison Street in the retail district of Shipshewana.
9. The PTABOA determined the property’s assessment at \$34,300 for the land and \$562,500 for the improvements, for a total assessment of \$596,800.
10. The Matsons request a total assessment of \$550,000.

Administrative Review and the Parties’ Burdens

11. 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,*

³ The Assessor identified the property as comparable #2 from Mr. Stanner’s appraisal. *Carney testimony.* The address listed in the appraisal is 130 Depot Street. *Pet’rs Ex. 2.*

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).

12. 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”).
13. If the taxpayer establishes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach 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.

Analysis

Parties' Contentions

A. The Matsons' Contentions

14. The Matsons argue that the subject property's assessment is too high in light of the value estimated by Jerry L. Stanner, a certified appraiser. Mr. Stanner estimated the property's value at \$550,000 as of 2005. *Pet'rs Ex. 2*. And he formed his opinion and prepared his appraisal report in conformity with Uniform Standards of Professional Appraisal Practices (“USPAP”). *Id.*
15. The Matsons hired Mr. Stanner to do a “limited approach” to value, which was acceptable under USPAP. *Stanner testimony*. Mr. Matson asked Mr. Stanner to use an approach that Mr. Stanner thought indicated the subject property's value. *Id.* Mr. Stanner chose the “market data” approach, which he also referred to as the “sales-comparison” approach. *Stanner testimony; see also Pet'rs Ex. 2*. He decided against using the income approach because commercial properties in Shipshewana typically are not bought for investment purposes. Under those circumstances, he thought that the income approach would not reliably show the subject property's value. *Stanner*

testimony. Similarly, Mr. Stanner decided against the cost approach largely because there were few vacant land sales on Harrison Street where the subject property is located. *Id.*

16. Even the sales-comparison approach had challenges, because there were very few sales of comparable properties. *See Stanner testimony*. Location is everything in Shipshewana, so Mr. Stanner only used sales from within the retail shopping district. *Id.* As a result, all of the comparable properties that Mr. Stanner used were inferior to the subject property. He therefore substantially adjusted all of their sale prices. *Id.*; *Pet'rs Ex. 2*. Those total adjustments ranged from 30% to 80% of the properties' unadjusted sale prices. *See Pet'rs Ex. 2*. In each instance, the adjustments increased the comparable property's sale price. *Id.*
17. Thus, if anything, Mr. Stanner's opinion represents the top end of the subject property's potential value. *Stanner testimony*. No other property in Shipshewana has sold for \$550,000 or \$155 per square foot. *Id.* In fact, in 2003, the Matsons bought the subject property on contract for only \$500,000. *Id.*⁴ And from April 2008 to September 2008, they listed it for sale at \$525,000. Yet they received only two inquiries from potential buyers and had no showings. *Stanner testimony; Matson testimony; Pet'rs Ex. 1*. Granted, the market declined between 2005 and 2008, but the lack of interest in the property at that reduced price shows that it was worth no more than \$550,000 in 2005. *Stanner testimony*. Also, while Mr. Stanner did not rely on the income approach, he did review that approach as a way of making sure he had not made a mistake. And he determined that the subject property would have rented for \$12 per square foot in 2005, which would have led to a value of less than \$500,000. *Id.*
18. Both the original and revised assessments are too high because the Assessor used faulty data in calculating trending adjustments. *Stanner testimony*. That data led her to conclude that properties had appreciated 500% from 2002-2006. *Id.* But she arrived at that figure using sales of commercially zoned properties that were assessed as residential.

⁴ Although Mr. Stanner analyzed that sale, he did not ultimately rely on it because the transaction began in 2000 as a lease. *Stanner testimony*. In Mr. Stanner's view, the transaction simply showed that the Matsons were willing to buy the property for \$500,000 at some time in the future. *Id.*

Because the 2002 assessments were artificially low, the market-driven sale prices from 2004 and 2005 were substantially higher. *Id.*

B. The Assessor's Contentions

19. The subject property's assessment is correct. After its hearing, the PTABOA applied 48% obsolescence to the subject building to bring the property's total assessment to within 10% of what Mr. Stanner estimated in his appraisal. That was enough. *Carney testimony.*
20. Sales from the subject property's neighborhood and nearby neighborhoods support the property's current assessment. *Carney testimony; Resp't Ex. 6.* Given that the sales involved small buildings, the per-square-foot sale prices for those properties show that the subject property's assessment is fair and equitable. *Carney testimony.* In particular, the \$420,000 sale of a property at 240 N. Morton Street supports the subject property's assessment. *Id.; Resp't Ex. 6.*
21. The sales also show that values in those neighborhoods increased substantially between 2002 and 2006. *Carney testimony; Resp't Exs. 6, 8.* In fact, the property record cards for the four comparable properties that Mr. Stanner used in his appraisal show that increases in assessments closely mirrored increased sale prices. *Carney testimony; see also Resp't Exs. 16-21; Carney testimony.* Because of the dramatic increase in values within Shipshewana's retail sector, the Assessor had to establish a new neighborhood for that sector to differentiate it from the surrounding residential areas. *Id.* The other properties in the subject property's assessment neighborhood saw similar increases between their 2002 and 2006 assessments and the Assessor was consistent in the way she assessed properties. *Carney testimony; Resp't Exs. 13-22.* So the subject property's assessment was fair and equitable. *Carney testimony.*
22. The 2003 sale in which the Matsons bought the subject property on contract for \$500,000 also supports the property's assessment. *Carney testimony; Resp't Ex. 9.* Although the

Assessor cannot consider contract sales when determining assessments, one must assume that the property's market value increased during the three years following that sale.

Carney testimony.

Discussion

23. 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). Appraisers traditionally have 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 set forth in the Real Property Assessment Guidelines for 2002 – Version A.
24. 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 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.
25. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the 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 the March 1, 2006, assessment, that valuation date was January 1, 2005. 50 IAC 21-3-3.

A. The Matsons Made a Prima Facie Case of Error

26. Through Mr. Stanner's testimony and appraisal report, the Matsons offered precisely the type of market-value-in-use evidence contemplated by the Manual and Tax Court. Mr. Stanner certified that he formed his opinion and prepared his report in conformity with USPAP. *Pet'rs Ex. 2*. And he used the sales-comparison approach, a generally accepted valuation method. True, he did not use the cost or income approaches—the other two generally accepted valuation approaches. *Id.* But he reasonably explained his decision not to use those approaches. *See Stanner testimony.*
27. And Mr. Stanner estimated the property's value as of 2005. While that admittedly broad period does not coincide precisely with the January 1, 2005, valuation date for March 1, 2006, assessments, it is sufficiently close to make a prima facie case. The Department of Local Government Finance's rules for annual adjustments instruct assessors to use sales from January 1, 2004, through December 31, 2005, in performing ratio studies for the March 1, 2006, assessment date. 50 IAC 21-3-3(a). The effective date of Mr. Stanner's estimate fit within that window, as did the dates for three of the four sales he relied on in his sales-comparison analysis. *Pet'rs Ex. 2*.

B. The Assessor did not Impeach or Rebut the Matsons' Evidence

28. The burden therefore shifted to the Assessor to impeach or rebut the Matsons' evidence. *Meridian Towers*, 805 N.E.2d at 479. The Assessor tried to do both but ultimately succeeded in doing neither.
29. The Assessor sought to impeach Mr. Stanner's valuation opinion by arguing that he used comparable properties that were significantly inferior to the subject property. Indeed, Mr. Stanner readily acknowledged the inferiority of his comparable properties. But he

explained that the subject property was the best property in Shippshewana and that because location was such a big influence on value in the town's retail district, he could not use property sales from other areas. *Stanner testimony*. He also made adjustments to each comparable property's sale price to reflect relevant ways in which that property differed from the subject property. *Id.*; *Pet'rs Ex. 2*. While the size of those adjustments casts some doubt on the accuracy of Mr. Stanner's valuation opinion, that opinion still carries significant weight.

30. The Assessor also attempted to rebut Mr. Stanner's opinion by arguing that the subject property's assessment was "fair and equitable" when compared to the sale prices and assessments of other properties. But the Assessor offered little factual or legal support for those claims. While the Assessor pointed to the sale prices for several other properties from the Matsons' neighborhood and what she described as a similar neighborhood, she did nothing to compare those properties to the subject property. Without more, those sales say little about the properties' comparative values. *See Long*, 821 N.E.2d at 470-71 (holding that evidence of other sales lacked probative value where taxpayers did not explain how those other properties compared to their property).
31. And the Assessor offered no support for her underlying premise—that an assessment is correct even if it exceeds a property's market value so long as it is "fair and equitable" when compared to other properties' assessments. To the contrary, both the Manual and the Tax Court's decisions expressly recognize an individual taxpayer's right to prove that its property's assessment does not accurately reflect the property's market value-in-use. *See MANUAL* at 5. That right exists independently of constitutional and statutory requirements for uniform and equal assessments.⁵ A taxpayer may have his property's assessment reduced to its market value-in-use, even if neighboring properties are also over-assessed.

⁵ 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."

32. The Assessor's other main argument—that the subject property's assessment should not be changed because it is within 10% of Mr. Stanner's valuation opinion—is similarly mistaken. Once again, the Assessor does not point to, nor does the Board find, any authority to support the notion that an assessment should be upheld if it falls within a certain range of a property's market value-in-use. And even if that were the case, the Assessor did not say why she chose 10% as the appropriate range. She may have relied on general standards for measuring the overall accuracy of mass-appraisal assessments within a jurisdiction. *See* MANUAL at 20-21 (explaining that a median assessment ratio of 10% on either side of the legal level provides a reasonable range for measuring mass-appraisal methods). But those standards are not meant to address appeals where an individual taxpayer alleges that his property is assessed for more than its market value-in-use.

SUMMARY OF FINAL DETERMINATION

33. The Matsons made a prima facie case that their property's assessment should be reduced to \$550,000. The Assessor failed to impeach or rebut the Matsons' evidence. The Board therefore finds for the Matsons and orders that the subject property's March 1, 2006, assessment be reduced to \$550,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>>