

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

Petition No.: 45-026-06-1-5-00002
Petitioner: Joseph B. Matuga
Respondent: Lake County Assessor
Parcel No.: 007-16-27-0389-0040
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 Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 26, 2007.
2. The Petitioner received notice of the decision of the PTABOA on December 4, 2008.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the Board on December 10, 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 September 22, 2009.
5. Administrative Law Judge Ellen Yuhan held the Board's administrative hearing on November 9, 2009.
6. Persons present and sworn in at hearing:

For Petitioner: Joseph B. Matuga, Petitioner

For Respondent: No one appeared to represent the Respondent.

Facts

7. The subject property is a condominium located at 2261 Martha Street, Highland, in Lake County.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$108,300.
10. The Petitioner requested an assessment of \$103,000.

Issues

11. Summary of the Petitioner's contentions in support of an error in his assessment:
 - a. The Petitioner contends that he appealed his assessment for 2002 and the Board reduced the value of his condominium to \$103,300. *Matuga testimony*. According to Mr. Matuga, the North Township Assessor increased the assessment to \$127,700 for 2006 – although the PTABOA subsequently reduced it to \$108,300. *Id.*
 - b. Mr. Matuga further contends the assessment is unfair because he never had a hearing with the North Township Assessor or the Lake County PTABOA. *Matuga testimony*. The Petitioner argues that the appeals process was tainted because he was denied a hearing and was, therefore, prevented from expressing his opinion of the property's value. *Id.*
 - c. The Petitioner also argues that his condominium is over-assessed compared to a larger, more desirable condominium. *Matuga testimony*. According to the Petitioner, his unit has only 1,600 square feet of living area and is located on a busy thoroughfare, while a larger condominium unit in a better location within the complex is assessed for less. *Id.*; *Petitioner Exhibits F and G*.
 - d. Finally, the Petitioner argues his property is over-valued based on its purchase price. *Matuga testimony*. Mr. Matuga testified that he purchased the property in August 2001 for \$101,000. *Matuga testimony*. According to the Petitioner, the assessed value of the property should be close to its purchase price because the real estate market has been going down. *Id.*

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. Digital recording of the hearing,

c. Exhibits:¹

Petitioner Exhibit A and A-1 – Photographs of 2261 Martha Street,
Petitioner Exhibit B and B-1 – Photographs of 2300 Bordeaux Walk,
Petitioner Exhibit E – General layout of the Chateau complex,
Petitioner Exhibit F – 2008 tax record for 2261 Martha Street,
Petitioner Exhibit G – 2008 tax record for 2300 Bordeaux Walk,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing-Reschedule dated September 22,
2009,

Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

13. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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.

14. The Petitioner failed to provide sufficient evidence to establish an error in his assessment. The Board reached this decision for the following reasons:

¹ The Petitioner referenced a Petitioner Exhibit C, Plat of 2261 Martha Street, and Petitioner Exhibit D, Plat of 2300 Bordeaux Walk, during the hearing. However, Mr. Matuga did not submit those exhibits. Therefore they are not a part of the record and will not be considered by the Board in making its determination.

- 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). Appraisers traditionally have 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. Indiana assessing officials generally assess 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 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. 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. Here the Petitioner claims that the Board lowered his property’s assessment for 2002 to \$103,300, but the PTABOA determined his value to be \$108,300 for 2006. The Board first notes that the Petitioner failed to provide any evidence of the Board’s earlier determination on his 2002 assessment appeal. Mr. Matuga did not submit a copy of that decision. Nor did the Petitioner provide a citation to the Board and ask that it take judicial notice of that determination. The Petitioner merely made vague references to an earlier Board determination on his 2002 assessment and expected the Board to find that decision to support his claims. The Petitioner is reminded that “it is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis.” *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
- e. Further, the 2002 assessed values were based on a valuation date of January 1, 1999. MANUAL at 12. As stated above, the 2006 assessment must reflect the value of the property as of January 1, 2005. Thus, even if the Petitioner had

established the Board changed the property's value to \$103,300 as of January 1, 1999, for the March 1, 2002, assessment, Mr. Matuga failed to provide any evidence of how that January 1, 1999, value related to the January 1, 2005, valuation date for the March 1, 2006, assessment year.

- f. Additionally, each assessment and each tax year stands alone. *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)). Thus, evidence as to a property's assessment in one tax year does not prove its true tax value in a different tax year. *See, Id.* This is particularly true for the March 1, 2006, assessment year and beyond because, as of the 2006 tax year, assessments must be annually adjusted to reflect changes in value between general reassessment years. *See* Ind. Code § 6-1.1-4-4.5(b) (requiring the Department of Local Government Finance (DLGF) to adopt rules for establishing a system to adjust assessed values in years between general reassessments); 50 IAC 21 (DLGF's rules governing annual adjustments).
- g. The Petitioner similarly argues that the property's assessed value should be close to its 2001 purchase price because the real estate market has gone down. The Petitioner, however, again only made vague references to his purchase of the property and provided no evidentiary support for that sale. Likewise, the Petitioner's statement that the real estate market has gone down is unsupported by any evidence in the record and therefore is not probative. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Even if Mr. Matuga had supported his contentions with probative evidence, however, his purchase of the property in 2001 is too far removed from the January 1, 2005, valuation date to be probative of the property's 2006 value.
- h. Mr. Matuga further argues that his property is over-valued based on the assessed value of a nearby condominium unit. 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). 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. Further, the Petitioner failed to show the comparability of that neighboring condominium unit. By comparing his assessed value to the assessed value of another property, the Petitioner essentially relies on a "sales comparison" method of establishing the market value of the property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioner merely contends that the neighboring unit is larger and is in a more desirable location. This falls far short of the showing required to prove comparability.

- j. Finally, the Petitioner claims his appeals process was tainted because he did not have a hearing with the township assessor and he was not given notice of the PTABOA hearing. Once a taxpayer has properly invoked the Board’s jurisdiction, however, its proceedings are *de novo*. *See* Ind. Code § 6-1.1-15-4 (m) (A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.) Further, the Board owes no deference to the PTABOA determination. Thus, while the Petitioner may feel he was deprived of a PTABOA hearing, it did not hinder his ability to present his case to the Board.
- k. The Petitioner therefore failed to raise a prima facie case. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 15. The Petitioner failed to establish a prima facie case that his property is over-valued for the 2006 tax year. Thus, although the Respondent failed to show up and support its assessment, the Board reluctantly finds in favor of the assessor.

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

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>>