

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

Petition No.: 32-013-08-1-5-00004
Petitioners: William C. and Bernice Mink
Respondent: Hendricks County Assessor
Parcel No.: 32-14-17-100-016.000-013
Assessment Year: 2008

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 Petitioners initiated an assessment appeal with the Hendricks County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 8, 2009.
2. The PTABOA issued notice of its decision on June 18, 2010.
3. The Petitioners filed a Form 131 petition with the Board on July 21, 2010. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated April 7, 2011.
5. The Board held an administrative hearing on May 12, 2011, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: William C. Mink, property owner
Alice Bernice Mink, property owner
 - b. For Respondent:¹ Gail L. Brown, Hendricks County Assessor
Lester E. Need, PTABOA member

¹ PTABOA members, Gordon McIntyre and M. Allen Parsons Jr., were also in attendance but were not sworn in as witnesses to give testimony.

Facts

7. The subject property is a 1,759 square foot house, detached garage, two utility sheds and two lean-tos located at 7379 South County Road 200 West, Clayton, Liberty Township in Hendricks County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2008, the PTABOA determined the assessed value of the property to be \$56,600 for the land and \$169,700 for the improvements, for a total assessed value of \$226,300.
10. The Petitioners requested a total assessed value of \$190,000.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
 - a. The Petitioners contend their property is over-assessed based on their property's appraised value. *W. Mink testimony*. In support of their position, the Petitioners submitted a residential appraisal report prepared in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) by Charles Mowery of Mowery Appraisal Service. *Petitioner Exhibit 1*. Mr. Mowery is an Indiana residential certified appraiser. *Id.* In his appraisal report, Mr. Mowery estimated the property's value to be \$190,000 as of February 16, 2009. *Id.*
 - b. The Petitioners also argue that the comparable property the Respondent used to support the 2006 assessed value of their property should be given little weight. *W. Mink and B. Mink testimony*. According to Mrs. Mink, the neighboring property has over 5 acres of land, not 3.79 acres as the Respondent shows. *B. Mink testimony*. Thus, Mrs. Mink argues, the Respondent's comparable property is superior to the subject property and should not have been used to sustain their property's assessment. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent's witness contends the property under appeal is correctly assessed at \$226,300 for March 1, 2008. *Need testimony*. According to Mr. Need, the PTABOA acknowledged in 2006 that the Petitioners' property's assessment was in error. *Need testimony; Respondent Exhibit 1 at 4, 5 and 6*. Mr. Need testified that the PTABOA reduced the house's grade, applied a negative influence factor to the land and corrected the size of the land and house. *Id.* Mr. Need contends that these corrections brought the Petitioners' property's assessed value in line with the assessed value of a neighboring property. *Id.* According to

Mr. Need, the Petitioners' assessed value increased from \$206,000 in 2006 to \$226,300 in 2008 because of the state mandated "trending" which requires assessing officials to annually adjust assessed values to account for changes in market values.² *Need testimony; Respondent Exhibit 1 at 8, 9 and 10.*

- b. Mr. Need also argues that the property's assessment is correct based on the ratio of assessed values to sales prices of properties in the Petitioners' neighborhood. *Need testimony.* In support of this position, the Respondent's witness submitted assessment data and sales information for three properties located in the area. *Respondent 1 at 15 – 21.* According to Mr. Need, sales prices ranged from \$175,000 to \$200,500; whereas assessed values ranged from \$165,400 to \$202,500.³ *Need testimony; Respondent Exhibit 1 at 18.* Mr. Need contends that, on average, properties in the area were assessed at only .05% more than their sales prices. *Need testimony.* Thus, Mr. Need argues, the evidence shows that properties are not over-valued in the Petitioners' area. *Id.*
- c. Similarly, Mr. Need argues that assessments in the Petitioners' area were "within the state requirement of .90 to 1.10 for assessment to sales ratio."⁴ *Need testimony; Respondent Exhibit 1 at 21.* According to Mr. Need, the county's sales ratio study shows that the assessed values of properties in the Petitioners' area are "well within the state requirement" for a proper assessment. *Id.*
- d. Finally, the Respondent's witness argues that the Petitioners' 2009 appraisal should be given little weight. *Need testimony.* According to Mr. Need, the appraised value is approximately two years removed from the valuation date. *Id.* In addition, Mr. Need argues that a bank appraisal done for refinancing or to acquire a loan is "questionable" because it may not reflect the "top value" or actual market value of the property. *Id.*

² Mr. Need is referring to Indiana Code § 6-1.1-4-4.5, which states "The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took place." Ind. Code § 6-1.1-4-4.5.

³ Mr. Need argues that the comparable properties in the area are slightly inferior to the property under appeal in land size, basement area, grade, garage size and extra buildings on the property. *Need testimony; Respondent Exhibit 1 at 20.*

⁴ Mr. Need appears to be referring to the Real Property Assessment Manual which states that "standards for evaluating the accuracy and uniformity of mass appraisal methods have been developed by the assessing community. These standards state the overall level of assessment, as determined by the median assessment ratio, should be within ten percent (10%) of the legal level. In Indiana, this means the median assessment ratio within a jurisdiction should fall between 0.90 (90%) and 1.10 (110%) in order to be considered accurate. This standard of ten percent (10%) on either side of the value provides a reasonable and constructive range for measuring mass appraisal methods." 2002 REAL PROPERTY ASSESSMENT MANUAL at 21.

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Residential appraisal report prepared by Charles Mowery, Mowery Appraisal Service, dated February 16, 2009,

Respondent Exhibit 1 – Respondent’s power-point presentation,
Respondent Exhibit 2 – Excerpt of the Petitioners’ appraisal,
Respondent Exhibit 3 – Petitioners’ property record card,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated April 7, 2011,
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 Township 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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. The Board reached this decision 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, for the property." 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has 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 use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).
 - 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 Township 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 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 505, 506 n.1. A taxpayer 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 practices. 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, 2008, assessment date, the valuation date was January 1, 2007. 50 IAC 21-3-3.
 - d. The Petitioners first argue that their property is over-assessed based on its appraised value. *W. Mink testimony*. In support of this contention, the Petitioners submitted an appraisal report prepared by an Indiana certified appraiser in which the appraiser estimated the value of their property to be \$190,000 as of February 16, 2009. *Petitioner Exhibit 1*. The appraiser certified that his report conformed

to USPAP. *Id.* Appraisals performed in accordance with generally recognized appraisal principles are often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the appraisal estimates the property's value over two years after the relevant valuation date of January 1, 2007. Because the Petitioners did not relate the property's February 16, 2009, appraised value to the property's value as of the January 1, 2007, valuation date, the appraisal lacks probative value. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date.)

- e. The Petitioners also argue that the assessor erred in 2006 when she based the assessed value of their property on the flawed assessment of a comparable property. *W. Mink and B. Mink testimony*. However, the Petitioners presented no evidence to support their claim that the neighboring property has five acres and was improperly assessed as only having 3.79 acres. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Furthermore, any error that may have occurred in the subject property's or the neighboring property's 2006 assessment is not probative of the property's 2008 value because each assessment and tax year stands alone. *See Thousand Trails Inc. v. State Board of Tax Commissioners*, 757 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Thus, the Petitioners failed to raise a prima facie case that their property's 2008 assessment was in error.
- f. Where the Petitioners fail 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to raise a prima facie case that their property was over-assessed. The Board finds in favor of the Respondent.

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 Petitioners' property 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>.