

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

Petition No.: 45-026-06-1-5-00012
Petitioners: Filiberto and Imelda Morado
Respondent: Lake County Assessor
Parcel No.: 007-28-29-0104-0034
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 Petitioners initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated February 19, 2008.
2. The PTABOA issued notice of its determination on April 20, 2010.
3. The Petitioners filed an appeal with the Board by filing a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment on June 8, 2010. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 29, 2010.
5. The Board held an administrative hearing on November 8, 2010. Both parties failed to appear at the hearing and the Board issued a Final Determination on December 29, 2010, denying the Form 131 petition for failure of the Petitioners to appear.
6. The Petitioners requested a rehearing within fifteen days and the Board granted the Petitioners' request. The Board issued a Notice of Rehearing on January 12, 2011.
7. The Board held the rehearing on February 22, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
8. Persons present and sworn in at hearing:

For Petitioner: Imelda Morado, property owner.

No one appeared for the Respondent

Facts

9. The subject property is a house located at 2214-16 New York Avenue, in Hammond, Indiana.
10. The ALJ did not conduct an on-site visit of the property.
11. For 2006, the PTABOA determined the assessed value of the subject property to be \$21,900 for the land and \$77,900 for the improvements, for a total assessed value of \$99,800.
12. The Petitioners requested an assessment of \$21,900 for the land and \$58,000 for the improvements, for a total assessed value of \$79,900.

Issues

13. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
 - a. The Petitioners contend that their property's assessment is too high based on the property's appraised value. *Morado testimony*. In support of this contention, Ms. Morado presented an appraisal report prepared by Howard Cyrus, a certified Indiana appraiser. *Petitioner Exhibit 2*. Mr. Cyrus valued the subject property at \$69,500 as of June 14, 2010. *Id.*
 - b. The Petitioners further contend that their property is over-valued based on its sale price. *Morado testimony*. According to Ms. Morado, the City of Hammond acquired the property in January of 2011. *Id.* The city originally offered \$70,750 for the property, but ultimately purchased it for \$82,500. *Id.*; *Petitioner Exhibit 1*. Mrs. Morado testified that the additional amount was for attorney's fees that she incurred during the condemnation process. *Morado testimony*.
 - c. Finally, the Petitioners contend that the property is overvalued based on comparable properties in their neighborhood. *Morado testimony*. In support of this contention, the Petitioners submitted assessment information for four properties. *Petitioner Exhibits 3, 5, and 6*. According to the Petitioners' evidence, 1945 Clark is a two-story property assessed for \$87,900; 2801 Schrage was assessed for \$72,600 and sold in 2006 for \$79,081; 1220 Euclid was assessed for \$91,300 and sold for \$68,950; and 2607 White Oak was assessed for \$76,900. *Petitioner Exhibits 3, 5 and 6*.

Record

14. The official record for this matter is made up of the following:
 - a. The Petition,

b. The compact disk recording of the hearing labeled 45-026-06-1-5-00012Morado,

c. Exhibits:

Petitioner Exhibit 1 – Uniform Property Acquisition Report,
Petitioner Exhibit 2 – Appraisal dated June 14, 2010,
Petitioner Exhibit 3 – Assessment information for 1945 Clark Street,
Petitioner Exhibit 4 – Form 131 petition,
Petitioner Exhibit 5 – Assessment information for 2801 Schrage,
Petitioner Exhibit 6 – Assessment information for 1220 Euclid Avenue and 2607
White Oak,
Petitioner Exhibit 7 – Income tax information for 2004 and 2005,
Petitioner Exhibit 8 – Request for preliminary conference,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated September 29, 2010,
Board Exhibit C – Final Determination dated December 29, 2010,
Board Exhibit D – Notice of Rehearing dated January 12, 2011,
Board Exhibit E – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

16. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 478.

17. The Petitioners failed to provide sufficient evidence to establish a prima facie case that their property is over-valued for the March 1, 2006, assessment. The Board reached this decision for the following reasons:
- 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. Taxpayers 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, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
 - d. The Petitioners first contend that their property’s assessed value is over-stated based on the property’s appraised value. *Morado testimony*. In support of their contention, the Petitioners offered an appraisal report prepared for the Hammond Port Authority by an Indiana certified appraiser in which the appraiser valued their property at \$69,500 as of June 14, 2010.¹ *Petitioner Exhibit 2*. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property’s assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the appraisal has no certification that it was prepared in conformance with USPAP, which casts doubts on the credibility of the appraiser’s valuation. More importantly, the appraiser estimated the property’s

¹ Ms. Morado contends that the condition of the Petitioners’ property was worse in 2006 than it was on the date of the appraisal because they added about \$5,000 in improvements in 2009. *Morado testimony*.

- value more than five years after the relevant valuation date of January 1, 2005. Because the Petitioners did not relate their property's June 14, 2010, appraised value to the property's value as of the January 1, 2005, valuation date, the appraisal fails to show that the Petitioners' property was over-assessed for the March 1, 2006, assessment. *See Long*, 821 N.E.2d at 471 (holding that an appraisal estimating a property's value as of 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 presented a Uniform Property Acquisition Offer from the City of Hammond through its Redevelopment Commission. *Petitioner Exhibit 1*. The City of Hammond offered the Petitioners \$70,750 for the subject property on July 9, 2010. *Morado testimony*. Ms. Morado testified that the City acquired the property in January of 2011 for \$82,000, with the additional \$12,000 as compensation for attorney's fees the Petitioners incurred during the condemnation process. *Id.* The purchase of a property is often the best evidence of a property's value. *See Hubler Realty Co. v. Hendricks County Ass'r.*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (The Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). Here again, however, the sale of the property occurred six years after the relevant valuation date of January 1, 2005, and therefore has no probative value for the March 1, 2006, assessment date.²
- f. Finally, the Petitioners contend their property is over-valued based on the assessed value of four properties in the Petitioners' neighborhood. *Morado testimony; Petitioner Exhibits 3, 5 and 6*. 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 taxpayer must present probative evidence to show that the property's assessed value does not accurately reflect the property's market value-in-use. *Id.* Like the Petitioner in *Westfield Golf*, the Petitioners here only argued that the method of the Petitioners' assessment was not uniform.
- g. The Petitioners also contend that two of their comparable properties sold for less than the subject property's assessed value proving that their property was assessed for more than its market value-in-use. *Morado testimony; Petitioner Exhibits 5 and 6*. 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*, 821 N.E.2d at 470. Instead, the proponent

² Similarly, the Petitioners contend that they purchased the property in 2003 for \$72,000. *Morado testimony*. Again, the sale falls outside the time frame used to value property for the March 1, 2006, assessment date.

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.* Here, the Petitioners failed to show how the properties were comparable to the subject property. The Board therefore finds that the Petitioners' evidence fails to prove the value of the Petitioners' property.

- h. The Petitioners failed to establish a prima facie case. Where the 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).³

Conclusion

- 18. The Petitioners failed to raise a prima facie case that their property is over-valued. The Board therefore finds for the Respondent.

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: _____

³ The Board reminds the Assessor that to the extent that it believes its assessment is correct, the Assessor should appear at the hearing and vigorously defend its assessment. If the Assessor believed the assessment was in error, the Assessor should have stipulated or settled the matter prior to hearing. The Board does not appreciate wasting its resources or those of the Petitioners to hold a hearing where the Respondent does not even appear.

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>>