

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

Petition No.: 09-024-06-1-5-00004
Petitioner: George L. Muehlhausen II
Respondent: Cass County Assessor
Parcel No.: 2409043046
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 Cass County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated December 12, 2006.
2. The PTABOA issued notice of its decision on August 23, 2007.
3. The Petitioner filed a Form 131 petition with the County Assessor on September 19, 2007. The County Assessor forwarded the Form 131 petition to the Indiana Board of Tax Review on September 12, 2008. The Petitioner elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated February 18, 2009.
5. The Board held an administrative hearing on April 29, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: George L. Muehlhausen II, Property owner
Michael E. Laird, Petitioner's witness
 - b. For Respondent: Judy Lewis, Cass County Assessor
Carolyn J. King, Cass County Deputy Assessor
Brian Thomas, County representative

Facts

7. The property is a single-family residence on a 105' x 130' lot located at 602 Michele Lane, Walton, Tipton Township, in Cass County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. The PTABOA determined the assessed value to be \$13,000 for the land and \$86,500 for the improvements, for a total assessed value of \$99,500.
10. The Petitioner requested an assessed value of \$13,000 for the land and \$67,000 for the improvements, for a total assessed value of \$80,000.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in assessment:
 - a. The Petitioner contends the property under appeal is over-assessed compared to the sale prices of other properties in the area. *Muehlhausen testimony*. In support of his position, the Petitioner submitted a 2009 comparative analysis prepared by a local realtor, Mr. Michael Laird, and multiple listing sheets (MLS) for three properties located in the neighborhood. *Petitioner Exhibit 1*. Mr. Laird determined three properties were comparable to the property under appeal in size, age, condition, design and location. *Laird testimony*. According to Mr. Laird, he prepared a grid with adjustments made to the property under appeal and comparable properties. *Id.* Mr. Laird argues that the comparable analysis shows the property under appeal should be valued at \$58.20 per square foot or \$74,500. *Id.*
 - b. Further, Mr. Muehlhausen argues that his property is over-assessed based on its market value. *Muehlhausen testimony*. Mr. Muehlhausen testified that he consulted with A-Team Realty & Auction, Inc. in 2007 or 2008 when he attempted to refinance his property. *Id.* According to the Petitioner, the realtor told him that homes located in the area of the property under appeal were selling for no more than \$80,000. *Id.*
 - c. Finally, the Petitioner contends that the local assessor made several errors on the subject property's 2006 property record card. *Muehlhausen testimony; Petitioner Exhibit 2*. According to Mr. Muehlhausen, the house was assigned a "C" grade by the assessor. *Id.* The Petitioner contends, however, that no maintenance has been done on the dwelling in the last 20 years and therefore the grade is incorrect. *Id.* In addition, the dwelling has electric baseboard heat, not gas forced air heat, and only one masonry stoop. *Id.* Further, the enclosed frame porch listed on the

property record card should be reclassified as part of the attached garage. *Id.* According to the Petitioner the enclosed frame porch area is used as an office and for storage. *Muehlhausen testimony.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends the property under appeal is correctly assessed at \$99,500. *Thomas testimony.* According to the Respondent's representative, the Petitioner's assessment was determined by applying an approved trending factor based on sales analyses conducted in the neighborhood for 2005 and 2006. *Id.* Further, the Respondent contends the Petitioner has not presented any probative evidence to establish the 2006 assessment is incorrect. *Petitioner Exhibit A; Id.* Mr. Thomas argues that all of the Petitioner's witness' sales occurred in 2009 which is far removed from the January 1, 2005, valuation date at issue in this appeal. *Thomas testimony.*
- b. The Respondent's representative testified that, as a result of the PTABOA hearing, the county re-evaluated the Petitioner's property. *Petitioner Exhibit A; Thomas testimony.* According to Mr. Thomas, the enclosed frame porch is actually used by the Petitioner as an office, so the county determined it did not fit the description of garage and would be of more benefit to the taxpayer to leave the area as an enclosed frame porch. *Thomas testimony.* Further, Mr. Thomas testified, he determined the Petitioner only had one masonry stoop and that error was corrected by the PTABOA. *Id.*
- c. Finally, the Respondent's representative contends the grade of the home was based on the quality of construction which is not dependent on the maintenance or upkeep of the structure. *Thomas testimony.* Further, the dwelling was assessed in average condition. *Id.* Mr. Thomas argues that the grade and condition assigned to the property under appeal are correct for determining the property's market value-in-use as of January 1, 2005. *Id.*

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 – Comparable analysis and multiple listing sheets for 624 Holly Court, 302 Church Street and 506 High Street, Walton,

Petitioner Exhibit 2 – Assessment sheet and partial property record card for 602 Michele Lane, Walton,

Respondent Exhibit A – Respondent’s testimony brief,

Respondent Exhibit B – Notice of Appearance of Consultant on Behalf of Assessor dated April 29, 2009,

Respondent Exhibit C – Verification by Local Government Representative pursuant to 52 IAC 1-1-2.5 (b),

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

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 evidence. *Id;* *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. 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, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (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. *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 (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 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 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, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
- d. The Petitioner first argues that his property is over-assessed based on the sale of comparable properties. *Muehlhausen and Laird testimony*. 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 two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. *Id.* at 470-

71. They must explain how any differences between the properties affect their relative market value-in-use.

- e. Here, the Petitioner's witness prepared a comparable analysis wherein he adjusted the sales prices of the three comparable properties for features such as living area, room count and the size of the garage. While Mr. Laird's assertions may not differ significantly from those made by a certified appraiser in an appraisal report, an appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Mr. Laird, however, is not a licensed appraiser in Indiana. Further, he did not certify that the analysis he prepared for the Petitioner complied with USPAP. The Board therefore will not simply defer to Mr. Laird's "comparable analysis" without evidence showing the data upon which he grounded his observations. More importantly, the Petitioner failed to relate the 2009 sales prices of the comparable properties to the January 1, 2005, valuation date. Therefore, the Petitioner failed to raise a prima facie case that his property was assessed in error.

- f. Additionally, the Petitioner contends that the property is valued incorrectly because the property under appeal would not sell for more than \$80,000. *Muehlhausen testimony*. The only evidence the Petitioner presented, however, was Mr. Muehlhausen's testimony that a realtor at A-Team Realty stated the property would not sell for more than \$80,000. The Petitioner presented no appraisals, sales information or other market data in support of this argument. Conclusory statements regarding the property's value are no probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Further, this value estimate was given in 2007 or 2008. Again, far removed from the January 1, 2005, valuation date at issue in this appeal.

- f. Next, the Petitioner argues that the assessor made an error in applying a "C" grade to his house. *Petitioner Exhibit 2; Muehlhausen testimony*. Under Indiana's true tax value system, improvements have various grades based on their design and the quality of material and workmanship. *Sollers Pointe Co. v. Department of Local Government Finance*, 790 N.E.2d 185, 190 (Ind. Tax Ct. 2003). "Construction quality and the resultant quality grade assigned is a composite of characteristics." GUIDELINES, App. A at 3. Although the construction quality of individual components of an improvement may vary, the overall construction quality tends to be consistent for the entire residence. *Id* at 9. Here, the Petitioner did not offer any detailed description of the actual features of the structure or how the features contribute to the overall design of the dwelling and the quality of the materials and workmanship. This is insufficient to show an error in the assessment.

- g. To the extent that the Petitioner was arguing that the condition rating on his house, rather than its grade, was in error, the Board similarly finds he failed to raise a prima facie case. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” See GUIDELINES, App. B at 5. A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. While the Petitioner testified that the house’s condition was not average because it has not been properly maintained for twenty years, the Petitioner presented no evidence which would justify a determination that the structure’s condition rating is incorrect. Conclusory statements, unsupported by factual evidence are not sufficient to establish an error in an assessment. *Whitley Products, Inc.*, 704 N.E.2d at 1119, 1120.
- h. Finally, the Petitioner contends the square footage of the enclosed frame porch should be removed and reclassified as attached garage. *Muehlhausen testimony*. The Petitioner, however, failed to offer any evidence to show that the enclosed frame porch should be classified as an attached garage. Thus, the Petitioner failed to prove that the Respondent erred in its assessment. Further, even if the Petitioner had shown that the enclosed frame porch was incorrect on the property’s assessment, which he did not, the Petitioner failed to show that the assessment did not accurately reflect the market value of the property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).¹
- i. Where the taxpayer fails 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 *Lacey Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221 – 1222 (Ind. Tax Ct. 2003).

¹ Mr. Muehlhausen contends his house has electric baseboard heat, but the Respondent has incorrectly assessed the dwelling with a gas force air heating system. *Petitioner Exhibit 2; Muehlhausen testimony*. The Respondent’s representative testified the county has no objection to changing the property record card to show the Petitioner’s home is heated by electric baseboard instead of gas forced air. *Thomas testimony*. However, Mr. Thomas contends this change has no affect on the property’s market value-in-use. *Id.* The Board agrees. The Petitioner has not shown that the type of heating system in the house would impact the property’s market value-in-use. *Eckerling*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Mr. Muehlhausen also contends the property record card shows the house is being assessed for two masonry stoops when in fact there is only one masonry stoop located on the front of the structure. *Petitioner Exhibit 2; Muehlhausen testimony*. Mr. Thomas testified that, as a result of the PTABOA hearing, the Petitioner’s property record card was corrected to reflect the dwelling only has one masonry stoop. *Thomas testimony*. After a brief discussion the parties agreed the PTABOA corrected the Petitioner’s property record card to reflect that the structure has only one masonry stoop.

Conclusion

15. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines 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

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>.