

REPRESENTATIVES FOR RESPONDENT:

Shirley LaFever, Chief Deputy Assessor, Porter County
Susan A. Larson, Center Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Alan D. Nagatz	)	Petition No.:	64-003-06-1-5-00005
	)	Parcel:	09-11-129-009.000
Petitioner,)		
)		
v.)		
	)	County:	Porter
Porter County Assessor	)	Township:	Center
	)	Assessment Year:	2006
Respondent)		

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

December 22, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (the “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

ISSUE

1. The issue presented for consideration by the Board is whether the subject property was over-assessed given that it was appraised for a lower value and that other neighborhood properties sold, were listed for sale, and were assessed for lower values.

PROCEDURAL HISTORY

2. On May 9, 2008, the Porter County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination upholding the subject property’s March 1, 2006, assessment.
3. On June 16, 2008, the Petitioner filed a Form 131 petition asking the Board to review the subject property’s assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. On October 1, 2008, the Board’s designated Administrative Law Judge, Ellen Yuhan (“ALJ”), held a hearing in Valparaiso, Indiana.
5. The following people were sworn and presented testimony at the hearing:
 - For the Petitioner: Alan D. Naggatz
Nancy Naggatz
 - For the Respondent: Shirley LaFever, Porter County Chief Deputy Assessor
Susan A. Larson, Center Township Assessor
6. The Petitioner offered the following exhibits, all of which were admitted into evidence:
 - Petitioner Exhibit 1 – Appraisal by Thomas R. Laird
 - Petitioner Exhibit 2 – Photograph and parcel information for the subject property
 - Petitioner Exhibit 3 – Photograph and parcel information for 4001 Winter Lane
 - Petitioner Exhibit 4 – Photograph and parcel information for 300 Shamrock Lane
 - Petitioner Exhibit 5 – Parcel information for 1653 Jade Blvd.
 - Petitioner Exhibit 6 – Photograph and parcel information for 1652 Jade Blvd.
 - Petitioner Exhibit 7 – Parcel information for 4201 Onyx Court

Petitioner Exhibit 8 – Parcel information for 1656 Jade Blvd.

Petitioner Exhibit 9 – MLS information for seven properties

Petitioner Exhibit 10 – Photograph, assessment and tax information for 4103
Winter Lane

Petitioner Exhibit 11 – Property record cards for 17 properties, including the
subject property

Petitioner Exhibit 12 – Three photographs showing two-story foyer and vaulted
ceiling

Petitioner Exhibit 13 – Three photographs showing loft and access to attic

Petitioner Exhibit 14 – Stamped envelope from the PTABOA

7. The Respondent offered the following exhibits, none of which are admitted as evidence:

Respondent Exhibit 1 – Form 114 Notice of Hearing on Petition

Respondent Exhibit A –Form 131 petition for subject property

Respondent Exhibit B –Notice of Hearing on Petition issued by the Board

Respondent Exhibit C – Property record card for the subject property

Respondent Exhibit D – Map of lots on Onyx Court

Respondent Exhibit E – February 10, 2008, article by Jeanne Sommer with
handwritten notes

Respondent Exhibit F –“Packet for PTABOA Hearing on February 21, 2008”¹

Respondent Exhibit G – “Copies, of e-mails, corrections, etc.”²

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition

Board Exhibit B – Notice of Hearing dated July 21, 2008

¹ That packet includes an exhibit cover sheet listing eight exhibits and a number of tabbed documents that appear to correspond to those exhibits.

² Respondent’s Exhibit G contains 31 pages, many of which represent completely independent documents. The Respondent did not separately describe those documents and it is unduly burdensome for the Board to do so without the Respondent’s help. In the future, the Respondent should separately identify documents, preferably as individual exhibits.

Board Exhibit C – Sign-in sheet

Board Exhibit D – Letter from the Porter County Assessor authorizing Susan Larson to “be the respondent” at the Board’s hearing

9. The subject property is a residential dwelling located at 4207 Onyx Court, Valparaiso.
10. The ALJ did not inspect the subject property.
11. For 2006, the PTABOA determined the assessed value of the property to be:
Land: \$55,400 Improvements: \$333,800 Total: \$389,200.
12. The Petitioner contends that the property should be assessed for \$345,000.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

OBJECTION

14. The Petitioner objected to all of the Respondent’s exhibits on grounds that he did not receive either those exhibits, or the Respondent’s witness and exhibit lists, before the hearing. The ALJ took the Petitioner’s objection under advisement.

15. The Board sustains the Petitioner's objection. The Board's procedural rules require a party to provide all other parties with a list of witnesses and exhibits at least 15 business days before the hearing. 52 IAC 2-1-7(b)(2). Those rules also require a party to provide all other parties with copies of its documentary evidence at least five business days before the hearing. 52 IAC 2-1-7(b)(1). The Respondent's representative did not contend that she had complied with either of those deadlines, nor did she offer any reason why the Board should not strictly enforce its rule in this instance.
16. In reaching that conclusion, the Board recognizes that Respondent's Exhibit G appears to contain documents that were submitted at the PTABOA hearing. And the Board's procedural rules say that it may waive its pre-hearing exchange deadlines for materials that were submitted at a PTABOA hearing. 52 IAC 2-7-1(d). But the Petitioner claimed that he did not receive notice of the PTABOA hearing and therefore did not attend that hearing. Under those circumstances, the Board will not waive 52 IAC 2-1-7(b)'s exchange deadlines.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

17. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. 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).
18. 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. Wash. 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”).

19. 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.

FACTS AND CONTENTIONS

20. The Petitioner made the following contentions:
 - A. Thomas R. Laird, an Indiana certified appraiser, appraised the subject property and estimated its value at \$345,000 as of April 25, 2005. *Pet’r Ex. 1.*
 - B. Mr. Laird may have overestimated the property’s value. The Petitioner bought the subject property for \$340,000 in late August or early September of 2003. *A. Naggatz testimony.* The builder was supposed to return to finish the basement and the areas above the garage, but he never did. *N. Naggatz testimony.* The Petitioner had to price drywall for the basement, which he believed was several thousand dollars. *Id.*
 - C. Properties in the Petitioner’s subdivision recently have been listed for sale for prices ranging from \$279,900 to \$369,900. The most expensive listing was for an all brick ranch-style house. *A. Naggatz testimony; Pet’r Ex. 9.* According to the Petitioner, the listed properties are similar to the subject property in terms of house size, number of bedrooms and bathrooms, and lot size. *Id.*
 - D. The subject property is also assessed for more than similar neighboring properties. *A. Naggatz testimony.* To support that claim, the Petitioner

offered property record cards for 16 other properties. *Pet'r Ex. 11*. The 2006 assessments for those properties ranged from \$246,600 to \$347,200. *Id.* The subject property, by contrast, was assessed for \$389,200. *Id.*

- E. The Petitioner additionally identified what he believed were errors in the subject property's assessment. *A. Naggatz testimony*. For example, the subject house is assessed as having two stories, but it really has 1 ½ stories, or more accurately, one story with a loft. *N. Naggatz; Pet'r Exs. 1, 12-13*. And the area over the garage is unfinished and unheated. *A. Naggatz*.
 - F. The subject property is also assessed for a swimming pool that was not installed until after January 1, 2005. *A. Naggatz testimony*. Even if the pool should have been included in the property's 2006 assessment, it did not add to the property's market value. *A. Naggatz argument*. Ms. Naggatz, who is a realtor, testified that pools do not add to a property's market value. In fact, realtors do not assign them any value when preparing market analyses. Some people prefer pools; but pools discourage many other potential buyers. *N. Naggatz testimony*.
 - G. Finally, the Petitioner did not receive advance notice of the PTABOA's hearing. *A. Naggatz testimony*. He therefore did not have the opportunity to appear at that hearing and present his case. *Id.*
21. The Respondent made the following contentions:
- A. The Respondent corrected the errors that the Petitioner raised on his Form 130 petition. *Larson testimony*. Thus, the Respondent changed the garage from a detached to an attached garage, corrected the number of square feet contained in the loft area, and removed the value assigned for heat and air-conditioning from the area over the garage. *Id.*

- B. The appraisal does not show the property's true tax value because it was prepared for refinancing purposes rather than to show the "true value to the assessor." *Larson testimony*. Also, the subject property did not have a swimming pool when Mr. Laird appraised it. But that swimming pool was complete on the March 1, 2006, assessment date and therefore must be included in the property's assessment. *Id.*
- C. The Respondent mailed notice of the PTABOA's hearing to the same address that it mailed notice of the PTABOA's determination. And the Petitioner testified that he received notice of that determination. *LaFever testimony*.

ANALYSIS

22. Real property is assessed based on its "true tax value," which does not mean fair market value. It instead means the "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use—the cost, sales-comparison and income approaches. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3.
23. Indiana promulgated a series of guidelines that explain how to apply the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). But the value established using those Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5. The most effective method to show that the

- value assigned by the assessor is incorrect is often through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
24. A taxpayer, however, cannot rebut an assessment’s presumed accuracy simply by contesting the methodology that the assessor used to compute that assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor’s methodology yielded an assessment that does not accurately reflect its property’s market value-in-use. *Id.*
25. 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. 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 March 1, 2006, assessments, that valuation date was January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.
26. With that guidance in mind, the Board finds that the Petitioner made a prima facie case. He offered a Uniform Residential Appraisal Report in which Thomas Laird, a certified appraiser, estimated the subject property’s value at \$345,000. *Pet’r Ex. 1*. Mr. Laird prepared the appraisal in accordance with USPAP. *Id.* And he estimated the subject property’s value as of April 25, 2005—less than four months from the relevant January 1, 2005, valuation date. Indeed, the appraisal date was squarely within the time window used by assessors in performing ratio studies for the March 1, 2006, assessment date. *See* 50 IAC 21-3-3(a) (directing assessors to use sales occurring between January 1, 2004, and December 31, 2005).

27. Although the Petitioner relied on Mr. Laird's appraisal, he offered other evidence to show that Mr. Laird may have overestimated the subject property's value. None of that other evidence, however, was probative.
28. For example, the Petitioner pointed to the fact that his builder did not finish either the subject house's basement or the area above its garage. According to the Petitioner, the \$340,000 sale price pre-supposed those areas being finished. But while the Petitioner testified that the sale price was \$340,000, he told the appraiser that it was \$355,000. *Pet'r Ex. 1 at Addendum*. More importantly, that sale occurred more than a year before the January 1, 2005, valuation date. Mr. Laird's appraisal, by contrast, valued the property as of a date within four months of the January 1, 2005, valuation date. And Mr. Laird considered the house as it existed with the basement and area above the garage unfinished.
29. The Petitioner's other non-appraisal evidence was similarly unpersuasive. He provided assessment information for a number of properties from his neighborhood. He also provided sales or listing information for some of those properties. But he did not meaningfully compare any of those properties to the subject property. At best, he testified that many of the properties were similar to the subject property in terms of house size, number of rooms, and lot size. While the Petitioner arguably offered documents from which a meaningful comparison could be made, he—not the Board—was responsible for explaining how the properties were comparable. *See Long*, 821 N.E.2d at 471 ([I]t was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers].”).
30. Even if those other properties were generally comparable to the subject property, the Petitioner did not adjust their sale prices, list prices, or assessments to account for relevant ways in which they differed from the subject property. *See Long*, 821 N.E.2d at 470-71 (finding that taxpayers' comparable-sales evidence lacked probative value where they did not show how properties were comparable or

explain how any differences affected the properties' values). Also, the list prices were all from 2008, more than three years after the January 1, 2005, valuation date.

31. The Petitioner also pointed to what he claimed were errors made by the township assessor. For example, he believed that the assessor valued the subject house as having two stories rather than as having either 1 ½ stories or one story with a loft, both of which more accurately describe the house. Those claims, however, simply attack the assessor's methodology; they do not independently show the subject property's actual market value-in-use.
32. In any event, the value that Mr. Laird estimated in his appraisal was the best evidence of the subject property's true tax value. The burden therefore shifted to the Respondent to impeach or rebut Mr. Laird's appraisal. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
33. Most of the Respondent's efforts to do so were unpersuasive. As already explained, the Board sustains the Petitioner's objection to all of the Respondent's exhibits. So the Respondent found no help on that front. And while the Respondent's witnesses testified without objection, those witnesses did not even attempt to use generally accepted appraisal principles to support the subject property's assessment. Ms. Larson did testify to her belief that Mr. Laird's appraisal lacked value because he prepared it for lending purposes. But she did not explain how that fact made the appraisal any less reliable an indicator of the property's market value-in-use.
34. Ms. Larson, however, did raise one important point—Mr. Laird appraised the subject property before the Petitioner had a swimming pool installed. The Petitioner countered that the pool did not exist on January 1, 2005. In doing so, however, the Petitioner misunderstood the relevance of the January 1, 2005, valuation date. Real property must be assessed as it physically existed on the assessment date, which in this case was March 1, 2006. The value of that

- property, however, must be determined as of an earlier valuation date, which for the March 1, 2006, assessment was January 1, 2005.
35. Thus, the fact that a property significantly changed in its physical makeup between the date it was appraised and the relevant assessment date tends to weigh against relying on the appraisal as proof of the property's market value-in-use. In this case, however, the Board does not think that simply adding a swimming pool changed the property so significantly as to render Mr. Laird's appraisal worthless. Indeed, Ms. Naggatz testified that, in her experience as a realtor, a swimming pool does not add to a property's marketability.
36. The Board, however, does not go so far as Ms. Naggatz and assume that the property's value was unaffected by the pool. In fact, Mr. Laird apparently thought that a pool might affect the property's value given that his sales-comparison grid included a category for "Fence, Pool, etc." as one possible ground for adjusting his comparable properties' sale prices. *Pet'r Ex. 1*. Nonetheless, based on Ms. Naggatz's testimony, the Board doubts that the pool would have caused Mr. Laird to increase his overall valuation opinion beyond the amount that it cost the Petitioner to install the pool.
37. The Board therefore finds that the subject property's true tax value was \$364,500—Mr. Laird's \$345,000 estimate plus the \$19,500 that the Petitioner paid for the pool.
38. Finally, the Petitioner testified that he did not receive notice of the PTABOA's hearing. But he did not explain what, if any, remedy he sought for that procedural failure. In any event, that lack of notice did not affect the Petitioner's appeal to the Board. Once a taxpayer has properly invoked the Board's jurisdiction, its proceedings are *de novo*. The taxpayer is not limited to evidence offered at the

PTABOA hearing. *See* Ind. Code § 6-1.1-15-4(m).³ Thus, while the lack of notice may have deprived the Petitioner of the ability to present evidence or arguments to the PTABOA, it did not hinder his ability to present his case to the Board. *Id.*

SUMMARY OF FINAL DETERMINATION

39. The weight of the evidence shows that the subject property's March 1, 2006, assessment was inaccurate. Based on Mr. Laird's appraisal and the cost of the later-installed swimming pool, the subject property's market value-in-use was no more than \$364,500. The Board therefore finds in favor of the Petitioner and determines that the subject property's March 1, 2006, assessment should be reduced to \$364,500.

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

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

³ "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." Ind. Code § 6-1.1-15-4(m).

- 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>>