

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

Petition #: 06-019-06-1-5-00369
Petitioners: Thomas D. and Marie A. Nolan
Respondent: Boone County Assessor
Parcel #: 0194992119
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Thomas D. and Marie A. Nolan filed a written request asking the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) to reduce their property’s assessment. On January 3, 2008,¹ the PTABOA issued a determination reducing the property’s assessment, although not to the level that the Nolans requested.
2. The Nolans timely filed a Form 131 petition with the Board. They elected to proceed under the Board’s small-claims rules.
3. On April 29, 2008, the Board held an administrative hearing through its Administrative Law Judge, Alyson Kunack (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) For the Nolans: Tom Nolan
 - b) For the Boone County Assessor: Lisa Garoffolo, Boone County Assessor

Facts

5. The property is a single-family residence located at 4440 Fullcry Circle, Zionsville, Indiana.
6. Neither the Board nor the ALJ inspected the property.

¹ The Form 115 presented by the Nolans erroneously shows that it was mailed January 3, 2007. The PTABOA, however, held its hearing on January 3, 2008 and the Form 115 was signed on that date. The Assessor offered a corrected Form 115 that lists January 3, 2008, as its mailing date.

7. The PTABOA valued the property's land at \$54,100 and its improvements at \$264,800 for a total assessment of \$318,900.
8. On their Form 131 petition, the Nolans request values of \$54,100 for their land and \$225,900 for their improvements for a total assessment of \$280,000.
9. At the hearing, Mr. Nolan requested a total value of \$272,030.

Parties' Contentions

10. The Nolans offered the following evidence and arguments:
 - a) The Assessor used incorrect measurements in assessing the Nolans' house. The property record card lists the combined area for the first and second stories as 3,137 square feet. *Nolan testimony*. Mr. Nolan, however, measured the house "sheathing to sheathing" along its exterior walls and found that it had 2,569 square feet. He also asked a "construction job estimator" to calculate the house's living area using interior measurements from the house's original construction plans. The estimator found that the house had 1,136 square feet on the main level and 1,336 square feet on the upper level, for a total of 2,473 square feet. The stairwell area and open foyer space weren't included in the measurement because they didn't add to the house's living space. *Nolan testimony; Pet'rs Ex. 5*. The plans themselves list the house's total area as 2,777 square feet, although they don't indicate whether that calculation was based on interior or exterior measurements. *Pet'rs Ex. 5*.
 - b) Mr. Nolan also offered a "Comparative Market Analysis" of sales from Brittany Chase (the Nolans' neighborhood) during 2005. The analysis shows that, on average, properties sold for \$110 per square foot of living space. *Nolan testimony; Pet'rs Ex. 4*. Mr. Nolan multiplied the subject house's interior living space (2,473 square feet) by that average sale price to arrive at the Nolans' requested value of \$272,030. *Nolan testimony; Pet'rs Ex. 1*.
 - c) The Nolans bought their home for \$249,000 in 1997. While homes in Zionsville generally have appreciated, homes in Brittany Chase have not. Mold problems have devastated the market for Brittany Chase homes. Brittany Chase's builder, Trinity Homes, had to buy back 55 of the neighborhood's 127 homes. That has lowered values for all of the neighborhood's homes. *Nolan testimony; Pet'rs Exs. 2, 6*.
11. The Boone County Assessor offered the following evidence and arguments:
 - a) The Assessor and her staff spent a lot of time working on assessments in Brittany Chase. Due to the number of appeals from Brittany Chase homeowners, the Assessor lowered the quality grades assigned to many of the neighborhood's homes. The average grade for the custom homes is now "B-." *Garoffolo testimony; Resp't Ex. 16*.

- b) The Assessor used the state’s guidelines to measure the area of the Nolans’ house. While the property record card makes it look like she assessed the Nolans’ house as having 3,137 square feet, she actually assessed it as having only 2,752 square feet. The confusion stems from the fact that she assessed part of the house’s upper level as a half story. *Garoffolo testimony*. Thus, she assessed the Nolans’ house as having less area than the 2,777 square feet listed on a 1997 appraisal of the Nolans’ property. *Id.*; *Resp’t Ex. 1*.
- c) The Assessor took a closer look at the Sales Comparison Analysis offered by the Nolans. Many of the houses are “cookie cutter homes,” but the area where the Nolans are located consists of custom homes. Homes between 2,600 and 2,900 square feet sold for amounts ranging from \$105 per square foot to \$120 per square foot. The average sale price was \$112 per square foot. *Garoffolo testimony*.
- d) The Assessor did not consider the “mold homes” in either her assessment calculations or her sales analysis. *Garoffolo testimony*.

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:
 - Petitioners Exhibit 1: Measurements and Value Estimate
 - Petitioners Exhibit 2: Article from Indystar.com about Mold in Brittany Chase
 - Petitioners Exhibit 3: Subject Property Record Card (“PRC”)
 - Petitioners Exhibit 4: Comparative Market Analysis
 - Petitioners Exhibit 5: Subject Property’s Floor Plans
 - Petitioners Exhibit 6: Article from the “Privatopia Papers”

 - Respondent Exhibit 1: Subject Property Appraisal dated July 24, 1997
 - Respondent Exhibit 2: Subject PRCs for 2001, 2003, and 2006
 - Respondent Exhibit 3: Boone County Appeal Worksheet dated November 26, 2007
 - Respondent Exhibit 4: PTABOA Notice of Hearing
 - Respondent Exhibit 5: New Construction Sheet on House in Brittany Chase
 - Respondent Exhibit 6: Boone County Appeal Worksheet with Assessor’s recommendations
 - Respondent Exhibit 7: Form 115 Determination
 - Respondent Exhibit 8: Subject PRC Showing PTABOA’s Changes
 - Respondent Exhibit 9: List of Neighboring Properties’ Grades
 - Respondent Exhibit 10: Form 131 Petition

Respondent Exhibit 11: Petitioners' List of Comparable Sales in Subdivision for 2005 and 2006

Respondent Exhibit 12: 2006 pay 2007 Subject Tax Bill

Respondent Exhibit 13: Photograph of Subject Property

Respondent Exhibit 14: Additional Boone County Appeal Worksheet

Respondent Exhibit 15: Subject House Plans

Respondent Exhibit 16: Plat Map of Subdivision Showing Grades

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

Burden of Proof

13. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should 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).
14. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington 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”).
15. Once the taxpayer establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

The Nolans' Case

16. The Nolans did not offer sufficient evidence to support their claims. The Board reaches this conclusion for the following reasons:

The assessment's rebuttable presumption of accuracy

- 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 at 2 (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, sales-comparison, and

income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally value 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) *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 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) By contrast, a taxpayer does not rebut the presumption that an assessment is accurate simply by contesting how the assessor computed that assessment. See *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 doesn’t accurately reflect his or her property’s market value-in-use. *Id.* And the taxpayer cannot make the required showing simply by strictly applying the Guidelines. *Id.*; see also *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006).
- d) Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an assessment appeal must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell* 854 N.E.2d at 95; see also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006 assessment, that valuation date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.

The Assessor’s alleged errors in measuring the house

- e) The Nolans claim that the Assessor erred in measuring their house. That claim, by itself, amounts to little more than an attack on the methodology that the Assessor used to compute their property’s assessment. Thus, even if true, the Nolans’ allegation wouldn’t rebut the presumption that the assessment accurately reflects their property’s market value-in-use.
- f) Regardless, the Nolans didn’t support their claim that the assessor should have assessed their house as having only 2,437 square feet. The Nolans contend that the Assessor should have measured the house’s interior rather than its exterior. The Guidelines, however, direct assessors to “measure the *exterior* of each full or partial floor.” GUIDELINES, ch. 2 at 9 (emphasis added). Plus, to support their interior measurements, the Nolans offered only Mr. Nolan’s hearsay testimony about

measurements performed by a person identified only as a “construction job estimator.”

- g) The Nolans’ arguably did offer at least some evidence to prove that their house contained less than the 3,137 square feet listed on its property record card, even if measured along its exterior. That evidence, however, was not Mr. Nolan’s testimony that he calculated the house’s area at only 2,569 square feet when using exterior measurements. Indeed, the construction plans that the Nolans submitted contradict Mr. Nolan’s testimony by listing a total area of 2,777 square feet. *Pet’rs Ex. 5*. Of course, that is still less than what the Assessor used. So if the total area listed in those plans was derived from exterior measurements, the plans would tend to show that the Assessor erred in calculating the house’s total area.
- h) But that still wouldn’t entitle the Nolans’ to the relief they ask for. The Assessor divided the house into three distinct portions—a first story, a full second story, and a half story. *Resp’t Exs. 2, 8*. She therefore valued each portion using a different base price. *Id.*; see also GUIDELINES, app. C at schedule A. To correct any measurement errors, the Board would have to determine which portion(s) of the house the Assessor measured incorrectly. The Nolans, however, didn’t specify where the Assessor erred in her measurements. And the house’s layout is too complex for the Board to make that determination simply by looking at the construction plans.

The Nolans’ market-based evidence

- i) The Nolans, however, didn’t solely attack how the Assessor applied the Guidelines; they also offered two pieces of market-based evidence.
- j) First, Mr. Nolan estimated the subject property’s value using a “Comparative Market Analysis” that listed information for all nine Brittany Chase properties that sold in 2005. In doing so, Mr. Nolan apparently recognized that one can estimate a given property’s market value by comparing it to similar properties that have sold in the marketplace. See MANUAL at 13. Indeed, that is precisely the theory behind the sales-comparison approach to value. *Id.*
- k) But to apply that approach, a party to an assessment appeal must establish that the purportedly comparable properties sufficiently resemble the appealed property. Conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *Long*, 821 N.E.2d at 470. Instead, the party must explain how the properties’ relevant characteristics compare to each other. See *Id.* at 470-71. He or she must also explain how any relevant differences between the properties affect their relative market values-in-use. *Id.*
- l) Mr. Nolan didn’t follow those basic requirements. For example, he didn’t explain how the Nolans’ property compared to any of the properties listed in the Comparative Market Analysis. The mere fact that properties are located in the same neighborhood does not make them comparable. Indeed, the broad range of sale prices per square

foot of living area (\$79 to \$142) illustrates that point. Plus, by simply using the average sale price for the nine sold properties (\$110 per sq. ft.) and multiplying it by what he claimed was the correct size of the Nolans' house (2473 sq. ft.), Mr. Nolan completely failed to account for any differences between the properties that might have affected their relative market values-in-use.

- m) Second, Mr. Nolan testified that the Nolans bought their property for \$249,000 in 1997. As the Manual recognizes, a property's sale price often presents compelling evidence of its market value-in-use. But the sale in this case occurred at least seven years before the relevant January 1, 2005, valuation date. And Mr. Nolan didn't really attempt to relate the sale price to the property's value as of that valuation date. At most, he testified that the well-publicized mold problems in Brittany Chase caused all of the neighborhood's properties to appreciate at a lower rate than other Zionsville properties. Mr. Nolan, however, didn't identify either the general Zionsville appreciation rate or the purportedly lower Brittany Chase rate. The property's 1997 sale price therefore lacks probative value. *See O'Donnell* 854 N.E.2d at 95 (holding that construction costs and appraisal lacked probative value where taxpayers didn't explain how they related to the property's value as of the relevant valuation date).

Conclusion

17. The Nolans didn't offer any probative market-based evidence to rebut the presumption that their property was accurately assessed. They therefore failed to make a prima facie case for changing its assessment. The Board finds in favor of the Boone County 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: July 23, 2008

Commissioner,
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>