

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

Petition #: 83-002-06-1-5-00156
Petitioners: Patricia L. Pastori, Sandi Stafford, and Miranda Sparks
Respondent: Vermillion County Assessor
Parcel #: 002016001600
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. On May 30, 2007, the Petitioners appealed their property’s assessment to the Vermillion County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA mailed notice of its determination on August 28, 2007.
2. The Petitioners then timely filed a Form 131 petition with the Indiana Board of Tax Review for Review. They elected to proceed under the Board’s small claims rules.
3. On January 29, 2008, the Board held an administrative hearing before its administrative law judge, Alyson Kunack (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) For Petitioners: Patricia L. Pastori, property owner
 - b) For Respondent: Patricia Richey, Vermillion County Assessor
 - c) Sandra Stafford, one of the Petitioners, observed the hearing but was not sworn in as a witness.

Facts

5. The subject property is a single-family residence located at 935 Walnut Street, Clinton, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.

7. The PTABOA determined the subject property's assessed value to be:
Land \$6,500 Improvements \$37,300 Total \$43,800.
8. While the Petitioners contend the subject property is over-assessed, they did not request a specific value either on their Form 131 petition or at the administrative hearing.

Contentions

9. Summary of the Petitioners' contentions:
 - a) The subject property's assessment does not reflect its market value because the assessment fails to account for the property's obsolescence. *Pastori argument.*
 - b) Much of the subject house's obsolescence stems from its age. It was built in the early 20th century, and it did not originally have a bathroom. In 1946, sewers were installed and a bathroom was added off the kitchen. The bathroom is only 27 square feet and cannot be expanded. *Pastori testimony.*
 - c) The house has three types of heating—central heat in the original structure, and stove and baseboard heating in two rooms that were added in the 1970s. The baseboard heating cannot be changed. Similarly, the kitchen cannot be modernized because it has five door openings. The house also has issues with its hand-dug basement, custom-built doors, high ceilings and narrow hallways. *Pastori testimony.*
 - d) The house's exterior also contributes to its obsolescence. It has wide-board siding, unlike any other home in the neighborhood. It also has original windows, which would be cost-prohibitive to replace. The garage also has wide hardboard siding that must be painted every two years. Plus, it sits behind the house, and it can only be accessed via a utility right-of-way. *Pastori testimony.*
 - e) No neighborhood properties have sold for as much as the subject property's assessment. In fact, many properties in the area have been repossessed. The Petitioners offered photographs, property record cards, and sales information for six neighborhood properties. The sale prices ranged from \$22,500 to \$38,500, with some of the sales apparently coming after the properties had been repossessed. *Pastori testimony; Pet'rs Exs. 1-6.*
 - f) In the mid-1990s, Ms. Pastori offered to sell the subject property to "a couple of people" and \$35,500 was the highest offer she received. *Pastori testimony.* None of the properties in the area has appreciated since then. *Id.*
10. Summary of the Respondent's contentions:
 - a) The Respondent considered all of the Petitioners' evidence, but noted that repossessions cannot be used in the ratio studies. *Richey testimony.*

- b) One of the recent sales that the Petitioners relied upon—846 Elm Street—was an arms-length transaction. *Richey testimony*.

Record

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

- a) The Form 131 petition,
- b) The digital recording of the hearing.
- c) Exhibits:
 - Petitioners Exhibit 1A: Seven photographs of the subject property and property record card (“PRC”)
 - Petitioners Exhibit 1: Two photographs and PRC for 925 Walnut Street
 - Petitioners Exhibit 2: One photograph and PRC for 939 Walnut Street
 - Petitioners Exhibit 3: PRC for 920 Walnut Street
 - Petitioners Exhibit 4: Two photographs, PRC, and sales information for 946 Walnut Street
 - Petitioners Exhibit 5: One photograph and PRC for 940 Walnut Street
 - Petitioners Exhibit 6: PRC for 846 Elm Street

 - 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

- 12. A petitioner 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).
- 13. In making its case, the petitioner 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”).

14. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner'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 Petitioners' Case

15. The Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion 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 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 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 sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) The Petitioners failed to offer any probative evidence to rebut the assessment's presumption of correctness. They relied, in the first instance, on Ms. Pastori's testimony about various factors that she believed rendered the subject property obsolete. Assuming that Ms. Pastori is correct and that all those factors caused the property to experience at least some obsolescence, the Petitioners claims would still fail, because they did not offer any market-based evidence to quantify that obsolescence.
 - d) Second, the Petitioners pointed to the sale prices for six neighborhood properties, all of which sold for less than the subject property's current assessment. By doing so, the Petitioners at least attempted to use the sales-comparison approach—a generally accepted appraisal technique. But because they ignored several of that approach's key requirements, their comparative sales information lacks probative value.

- e) The sales-comparison approach assumes that potential buyers value a property based on what it would cost them to buy an equally desirable existing property. MANUAL at 13. A person applying the sale-comparison approach must first identify comparable improved properties that have sold. *Id.* The person must then adjust those properties' sale prices to reflect the subject property's total value. *Id.* The adjustments reflect differences between the subject and comparable properties that affect the value. And those adjustments must be quantified using objectively verifiable market evidence. *Id.*
- f) Thus, in order to use the sales-comparison approach as evidence in a property assessment appeal, a party must show that the properties being examined are comparable to each other. Conclusory statements that two properties are "similar" or "comparable" to each other are not probative. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party must identify the subject property's relevant characteristics and explain how those characteristics compare to each purportedly comparable property's characteristics. *Id.* at 471. Similarly, the party must explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-471.
- g) Here, beyond describing each property's location, the Petitioners did little to compare the subject property to the six purportedly comparable neighboring properties. The Petitioners did submit property record cards containing information from which such a comparison arguably could be made. But it was the Petitioners' duty to walk the Board through their sales comparison analysis. *See Long*, 821 N.E.2d 471 (finding that the Board was not required to review the taxpayer's documents to determine if properties were comparable). More importantly, the Petitioners made no attempt to adjust the neighboring properties' sale prices to reflect relevant ways in which they differed from the subject property.
- h) Finally, Ms. Pastori testified about her unsuccessful attempt to sell the subject property in the mid-1990s. A seller's unsuccessful attempt to sell a property at a given price might, under some circumstances, show that the property is worth something less than that asking price. But Ms. Pastori did not identify her asking price. Instead, she testified that the highest offer she received was \$35,500. If anything, that shows that Ms. Pastori valued the property at some undisclosed higher amount.
- i) Plus, to give any weight to an unsuccessful attempt to sell a property, the Board would need evidence describing the extent to which the seller marketed the property. The Petitioners offered almost no evidence about their marketing attempts. At best, Ms. Pastori testified that she offered to sell the property to "a couple of people."

- j) Also, for evidence to carry any probative value in an assessment appeal, it must relate to the appealed 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 the March 1, 2006 assessment at issue in this case, that valuation date was January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3. Ms. Pastori's bald statement that neighborhood properties have not appreciated did not suffice to bridge the gap between the property's mid-1990s list price and its market value-in-use some ten years later.
- k) Because they offered no probative market-based evidence to rebut the presumption that the subject property's current assessment is correct, the Petitioners failed to make a prima facie case. While the Respondent did nothing to defend its assessment, it had no burden to do so. The Respondent, however, should not view this statement as an endorsement of its strategy. Had the Petitioners come forward with probative evidence, the Board might well have reached a different result.

Conclusion

16. The Petitioners failed to make 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 that the assessment should not be changed.

ISSUED: April 14, 2008

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>