

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

Petition: 43-021-06-1-5-00025
Petitioner: Donn R. & Jeanne E. Pierce
Respondent: Kosciusko County Assessor
Parcel: 25-707004-10
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 November 7, 2007, Donn R. & Jeanne E. Pierce appealed their property’s assessment to the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”). On March 12, 2008, the PTABOA issued its determination reducing the property’s assessment, although not by as much as the Pierces had requested.
2. The Pierces then timely filed a Form 131 petition with the Board. They elected to have their appeal heard according to the Board’s small claims procedures.
3. On January 27, 2009, the Board held an administrative hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. People present and sworn in at hearing:
 - a) Donn R. & Jeanne Pierce
 - b) For the Assessor: Laurie Renier, County Assessor
Jennifer Streeter, Appeals Secretary
Jake Bitner, PTABOA Member
Susan Myrick, PTABOA Member
Richard Shipley, PTABOA Member
Brock V. Ostrom, PTABOA Member

Facts

5. The Pierces’ property is located at 5492 West Swan Court, near Claypool, on Palestine Lake.

6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA assessed the Pierces' land at \$22,500 and their improvements at \$133,400, for a total assessment of \$155,900.
8. The Pierces requested a total assessment of \$120,000.

Parties' Contentions

9. The Pierces offered the following evidence and arguments:
 - a) In 2006, the Assessor increased the Pierces' assessment from \$113,300 to \$191,200. That caused their tax bill to increase by 227%. *D. Pierce testimony.*
 - b) The Pierces disagreed with that assessment, so they hired Hannah R. Railey to appraise their property. *D. Pierce testimony.* Ms. Railey estimated the value of the Pierces' property at \$120,000 as of December 31, 2005. *Pet'rs Ex. 1.* The Pierces then appealed their property's assessment to the PTABOA and submitted Ms. Railey's appraisal as evidence. *D. Pierce testimony.* The PTABOA only reduced the property's assessment to \$155,900. *Id.; Pet'r Exs. 3, 5.* The Pierces, however, contend that their property should be assessed for \$120,000, as shown in Ms. Railey's appraisal.
 - c) In any event, the Pierces contend that they could not sell their property for \$155,900. In fact, they claim that no properties in their neighborhood are worth that much. *D. Pierce testimony.* The county does not maintain the road leading to the Pierces' property; the Pierces must spend their own money to maintain the road and to remove snow from it. *Id.; Pet'rs Ex. 6.* Those added costs affect the value of the Pierce's property and of the five other homes served by that road. *D. Pierce testimony.*
 - d) To comply with changes to the law governing the minimum lot size for building homes, some of the Pierces' neighbors had to buy additional vacant lots. *D. Pierce testimony.* Because they were acting under duress, the neighbors paid "exorbitant" amounts for those lots. *Id.* Thus, in the Pierces' view, those sales should not have been considered when valuing property in their neighborhood. *Id.*
 - e) Finally, the Pierces fear that they will lose their "over-65 credit" within two years if their property's assessment continues to increase.
10. The Assessor offered the following evidence and arguments:
 - a) Two of the four comparable sales that Ms. Railey used in her appraisal were from outside the two-year period that assessors used in determining March 1, 2006,

assessments. *Renier testimony*. Assessors had to look at sales from 2004 and 2005. *Id.* Ms. Railey, by contrast, used two sales that occurred in 2002. *Id.*; *Resp't Ex. 1B*. And she did not adjust those two sale prices to reflect time-related value differences. *Id.* If Ms. Railey was unable to find enough sales within the appropriate period, she should have looked to other neighborhoods for more timely sales. *Renier testimony*.

- b) The Assessor also pointed to “trending” information for the Pierces’ neighborhood. *Renier testimony*; *Resp't Exs. 3D, 3E*. Because sales for properties in the neighborhood were “way low,” the Assessor had to apply a higher market adjustment to bring the properties to market value. *Id.*
- c) Also, three timely sales of vacant land fronting Palestine Lake support the Pierces’ land assessment. *Renier argument*. A lot in Oak Grove Beach sold for \$11,482 on September 12, 2004. *Resp't Ex. 3B at 2*. A lot in Shirley’s Viewpoint Addition sold for \$23,000 on June 30, 2005. *Id. at 3*. And another lot sold for \$22,500 on June 29, 2005. *Id. at 4*. The Assessor also monitors land sales around other lakes in the area. *Renier testimony*; *See Resp't Ex. 3C*.
- d) Although the Pierces claimed that they might lose an age-based deduction if their property’s assessment continues to increase, the legislature, not the Assessor, determines the income and assessed-value thresholds for that deduction. An assessor cannot change a property’s assessment simply to make it eligible for a deduction. *Renier testimony*.

Record

11. 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:

Petitioner’s Exhibit 1 – Appraisal of the Pierces’ property as of December 31, 2005,

Petitioner’s Exhibit 2 – The Form 131 petition,

Petitioner’s Exhibit 3 – Form 11R/A, Notice of Assessment of Land and Structures,

Petitioner’s Exhibit 4 – Form 130 petition,

Petitioner’s Exhibit 5 – Form 115, Notice of Final Assessment Determination,

Petitioner’s Exhibit 6 – Document entitled “Road Maintenance,” single page with copies of two invoices from G&C Hauling & Excavating, Inc, single page with copies of two photographs,

- Respondent's Exhibit 1A – Form 130 petition,
- Respondent's Exhibit 1B – Appraisal of the Pierce's property as of December 31, 2005,
- Respondent's Exhibit 1C – Form 115, Notification of Final Assessment Determination,
- Respondent's Exhibit 1D – Form 131 petition,
- Respondent's Exhibit 2A – Photograph of the Pierces' property,
- Respondent's Exhibit 2B – Plat map,
- Respondent's Exhibit 2C – The Pierces' property record card ("PRC"),
- Respondent's Exhibit 3A – Parcel Characteristics Report by Neighborhood (3 pages); plat map (1 page); PRCs and listing information for the following properties: 1401 Ranch Rd., 4126 Lake Shore Dr., 4308 Lake Shore Dr., and 5652 W. Partridge Dr.; PRC for property owned by Gary & Jancie Spang,
- Respondent's Exhibit 3B – Plat map (4 pages) showing the Pierces' property and three vacant lots that sold,
- Respondent's Exhibit 3C – Document entitled "Southern Lake Land Sales,"
- Respondent's Exhibit 3D – PRCs for properties owned by Steininger Family Trust and Lyle Enyeart,
- Respondent's Exhibit 3E – Map with the Pierce, Steininger, and Enyeart properties highlighted,

- Board Exhibit A – The Form 131 petition,
- Board Exhibit B – Notice of hearing,
- Board Exhibit C – Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

12. The following describes the parties' respective burdens:
- a) 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).
 - b) 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").

- c) Once the petitioner establishes a prima facie case, the burden shifts to the respondent to 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.
13. The Pierces' proved that their property's assessment should be reduced to \$120,000. The Board reaches that 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." 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 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 assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *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. PA 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 ("USPAP") often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) Regardless of the method used to rebut the 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 the March 1, 2006, assessment, that valuation date was January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.
- d) The Pierces offered precisely the type of market-based evidence contemplated by the Manual and Tax Court. They offered an appraisal prepared by Hannah R. Railey, an Indiana licensed appraiser. Ms. Railey used two generally accepted valuation methods—the cost and sales-comparison approaches—and she certified that she prepared her appraisal in conformity with USPAP. Also Ms. Railey's appraisal bears at least some inherent relationship to the subject property's market value-in-use as of the relevant January 1, 2005, valuation date. Granted, that relationship is not precise—Ms. Railey estimated the property's value as of December 31, 2005. But the Department of Local Government Finance's rules

for annual adjustments instruct assessors to use sales from January 1, 2004 through December 31, 2005, in performing ratio studies for the March 1, 2006, assessment date. 50 IAC 21-3-3(a). Because Ms. Railey estimated the subject property's value as of a date within that one-year window on either side of the valuation date, her appraisal was sufficiently related to the relevant valuation date to make a prima facie case. Thus, by offering Ms. Railey's appraisal, the Petitioners made a prima facie case that the subject property's true tax value for the March 1, 2006, assessment date was \$120,000.

- e) The burden therefore shifted to the Assessor to impeach or rebut Ms. Railey's valuation opinion. *Meridian Towers*, 805 N.E.2d at 479.
- f) The Assessor tried to impeach Ms. Railey's appraisal by pointing out that two of the four sales that Ms. Railey used in her sales-comparison analysis were from 2002 and that Ms. Railey did not adjust those sale prices to account for time-related value differences. More importantly, Ms. Railey did not explain why she failed to adjust those sale prices from 2002.
- g) That omission, however, does not significantly detract from the reliability of Ms. Railey's valuation opinion. First, there is no evidence to suggest that values appreciated significantly between 2002, when the two properties at issue sold, and the relevant valuation date. Although the Assessor offered "trending" reports, she did not explain how those reports related to appreciation in property values between 2002 and 2005. Second, two of the four properties that Ms. Railey used in her analysis sold in 2005, much closer to both her December 31, 2005, appraisal date and the relevant January 1, 2005, valuation date. Third, Ms. Railey's cost-approach estimate (\$123,000) closely supported her final value conclusion, making any error under her sales-comparison analysis less troubling.
- h) The Assessor, however, did not merely try to impeach Ms. Railey's appraisal; she also offered her own market evidence to support the property's assessment. More specifically, the Assessor offered sale and listing information for both improved and unimproved properties. *See Resp't Exs. 3A, 3C*. The Board therefore must weigh the Assessor's evidence against Ms. Railey's valuation opinion to see which of the two is more persuasive.
- i) In a broad sense, the Assessor's position, like Ms. Railey's, correctly recognizes that one can estimate a property's market value-in-use 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. *Id.* But to apply that approach, a party must show that the purportedly comparable properties sufficiently resemble the appealed property. *See Long*, 821 N.E.2d 470. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *See Id.* at 470-71. Equally important, a party applying the sales-comparison approach must explain how any relevant differences between the properties affect their relative market values-in-use. *See id.*

- j) Ms. Railey’s appraisal included that type of analysis; the Assessor’s evidence did not. While the sales that the Assessor relied on may have been from the Pierces’ neighborhood, the Assessor failed to explore other ways in which the sold properties compared to the Pierces’ property. She likewise failed to adjust the properties’ sale prices to reflect relevant ways in which they differed from the Pierces’ property. Thus, the Board finds Ms. Railey’s USPAP-compliant appraisal more persuasive than the Assessor’s sales-comparison evidence.¹

Conclusion

14. The Pierces made a prima facie case for changing their property’s 2006 assessment. The Assessor failed to significantly impeach or rebut the Pierces’ evidence. The Board therefore finds for the Pierces.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the Pierces’ assessment should be changed to \$120,000.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

¹ While the Pierces referred to other factors that they believed affected their property’s value, they did not separately quantify those effects. Instead, they argued that those factors supported Ms. Railey’s appraisal. Therefore, the Board does not separately address those factors. The Board also notes that, while the Pierces referred to the possible consequences for what Mr. Pierce described as their “over-65 credit,” the Pierces did not appeal from the denial of any credit or deduction. In fact, there is no evidence in the record that the Pierces were ever denied a credit or deduction or that the PTABOA addressed such an issue. Thus, the question of whether the Pierces qualify for any specific credit or deduction is not before the Board.

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>