

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

Petition Nos.: 37-033-08-1-5-00001
37-033-09-1-5-00001
Petitioners: Louis J., Jr. and Patricia Polus
Respondent: Jasper County Assessor
Parcel No.: 014-00929-00
Assessment Years: 2008 and 2009

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Jasper County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 28, 2009.
2. The PTABOA issued a notice of its decision on October 2, 2009.¹
3. The Petitioners filed a Form 131 petition with the Board on October 29, 2009. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 24, 2009.
5. The Board held an administrative hearing on January 13, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners:² Patricia Polus, Taxpayer
Louis J. Polus, Jr., Taxpayer

¹ The Petitioners filed to appeal their 2008 assessment. The PTABOA determination, however, purported to determine the Petitioners' 2009 assessment. In filing their appeal to the Board, the Petitioners sought to appeal both their 2008 and 2009 assessments. The Respondent agreed that, while the Petitioners did not specifically file again at the county level to appeal their 2009 assessment, the county had no objection to the Board issuing a determination on both the 2008 and 2009 assessments because of the confusion in the PTABOA determination.

² The Petitioners were represented by attorney Gordon A. Etzler in these proceedings.

For Respondent: Richard Potts, Jasper County Assessor
Earl D. Walton, PTABOA Chairman
Donna Wiseman, Deputy Assessor.

Facts

7. The subject property is a residential property located at 12301 West Stalbaum Lane, Wheatfield, in Jasper County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2009, the PTABOA determined the assessed value of the subject property to be \$139,900.³
10. The Petitioners requested an assessment of \$130,000.

Issues

11. Summary of the Petitioners' contentions in support of an error in their assessment:
 - a. The Petitioners contend that their house is over-assessed compared to similar properties in their neighborhood. *P. Polus and L. Polus testimony*. In support of their contention, the Petitioners presented photographs and assessment information for their property and five other houses in their neighborhood. *Petitioner Exhibits 4-8*. According to Mr. and Mrs. Polus, the five comparable properties are all bi-level homes in the Scully Square subdivision. *P. Polus and L. Polus testimony*. Mrs. Polus testified that Comparable A is very similar to their house and is assessed at only \$126,300. *Id.*; *Petitioner Exhibit 4*. Likewise, Comparable B is similar in size and layout to their house but has a large pole barn and is assessed at \$130,000. *P. Polus and L. Polus testimony*; *Petitioner Exhibit 5*. Additionally, the Petitioners contend, Comparable C is similar in size but has a finished basement and is assessed at only \$131,400, while their basement is only about one-third finished. *P. Polus and L. Polus testimony*; *Petitioner Exhibit 6*. Finally, the Petitioners argue, Comparable E is a little larger than their property but is assessed at only \$138,800. *P. Polus testimony*; *Petitioner Exhibit 8*. While the average of the five assessments is \$132,500, the Petitioners argue their assessment should be \$130,000 because the two homes most similar to theirs are assessed at \$130,000 and \$126,300 respectively. *L. Polus testimony*; *Petitioner Exhibit 2*.
 - b. The Petitioners further contend they were not given a fair hearing at the local level. *P. Polus and L. Polus testimony*. According to the Petitioners, the Assessor told them they did not have to attend the PTABOA hearing because

³ The Form 115R does not show how the \$139,900 is allocated.

the PTABOA had already made its decision. *P. Polus and L. Polus testimony*. In support of this contention, the Petitioners offered the envelope in which the Assessor mailed the notification of assessment determination, showing a date of September 30, 2009, which is the day before the PTABOA hearing. *Id.*; *Petitioner Exhibit 9*. Additionally, the Petitioners claim, there is no notification date on the Form 115 and the prior assessed value of \$148,800 shown on the Form 115 is incorrect. *P. Polus testimony*. Finally, the Petitioners argued that Mr. Walton asked them for sales information, although Mr. Potts had told them that assessments are based on the cost approach. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Assessor contends that, although errors were made in failing to date the Form 115 and recording the original assessed value as \$148,800 instead of \$154,900, the Petitioners had a fair hearing before the PTABOA. *Potts testimony*. According to Mr. Potts, the PTABOA had not made any decision on the Petitioners' assessment prior to their hearing. *Potts testimony*. Further, while the postmark on the envelope suggested a mailing date of September 30, 2009, the Respondent argues, the postage label was "stale" postage. *Potts testimony*. According to Mr. Potts, the September 30, 2009, postmark was because the Assessor's office had printed too many labels on the postage meter that day and had to use them at a later date. *Potts testimony*. The Respondent's witness, Ms. Wiseman, testified that the PTABOA determination was actually mailed on October 2, 2009, which is the day after the hearing. *Wiseman testimony; Respondent Exhibit A4*.
 - b. Further, the Respondent argues that sales information is relevant to the Petitioners' assessment. *Potts testimony*. According to Mr. Potts, the cost approach is just the starting point for assessments. *Potts testimony*. Mr. Potts testified that he must also compare sales to assessed values to calculate the neighborhood factors that are applied to adjust values determined under the cost approach to reflect market values. *Id.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 37-033-08-1-5-00001 Polus,
 - c. Exhibits:

Petitioner Exhibit 1 – Form 130 petition,
Petitioner Exhibit 2 – Form 131 petition,

Petitioner Exhibit 3 – Assessment information on the appealed property,
Petitioner Exhibit 4 – Assessment information for Comparable Property A,
Petitioner Exhibit 5 – Assessment information for Comparable Property B,
Petitioner Exhibit 6 – Assessment information for Comparable Property C,
Petitioner Exhibit 7 – Assessment information for Comparable Property D,
Petitioner Exhibit 8 – Assessment information for Comparable Property E,
Petitioner Exhibit 9 – Form 115R, Notification of Final Assessment
Determination,

Respondent Exhibit A – Time line of appeal,
Respondent Exhibit A1 – Petitioners’ Form 130 petition for March 1,
2008,
Respondent Exhibit A2 – Notice of PTABOA hearing,
Respondent Exhibit A3 – Extension of hearing date,
Respondent Exhibit A4 – Form 115R,
Respondent Exhibit B1 – Assessor’s response to the Petitioners’
contentions,
Respondent Exhibit B2 – Copy of the envelope showing the September
30, 2009, postmark,
Respondent Exhibit B3 – Example of “stale postage”,
Respondent Exhibit B4 – Property record card for the subject property,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing, dated November 24, 2009,
Board Exhibit C – Waiver of Notice,
Board Exhibit D – 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 Board of Tax Commissioners*, 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 Petitioners failed to provide sufficient evidence to establish an error in their assessment. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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). Appraisers traditionally have used three methods to determine a property’s market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. 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 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, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3. And for the March 1, 2009, assessment, the valuation date was January 1, 2008. *Id.*
 - d. Here, the Petitioners first argue that their property is over-valued based on the assessed values of other properties in their neighborhood. *L. Polus and P. Polus testimony*. In support of this contention, the Petitioners provided assessment information for five improved properties in their subdivision. *Petitioner Exhibits 3-8*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf*

Practice Center, LLC v. Washington Township Assessor, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer’s lack of uniformity and equality claim where the taxpayer showed neither its own property’s market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property’s market value-in-use. *Id.*

- e. Further, the Petitioners failed to show the comparability of those neighboring properties. By comparing their assessed values to the assessed values of other comparable properties, the Petitioners essentially rely on a “sales comparison” method of establishing the market value of the property. 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 properties. *Long*, 821 N.E.2d at 470. 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. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioners offered the property record cards and photographs for the neighboring properties and merely argued that all five properties are bi-level homes in the same neighborhood. *P. Polus testimony; Petitioner Exhibits 3-8*. Further, they admitted the properties differed in living area and features. *Id.* The Petitioners, however, made no attempt to value the differences between the properties. This falls far short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).
- f. The Petitioners also contend that their hearing before the PTABOA was flawed. *L. Polus and P. Polus testimony*. In support of this contention, the Petitioners argued that the PTABOA had reached a decision on their property prior to their hearing and cited errors on their Form 115. Once a taxpayer properly invokes the Board’s jurisdiction, however, the proceedings are *de novo*. The taxpayer is not limited to evidence offered at the PTABOA hearing. *See Ind. Code § 6-1.1-15-4(k)* (A party participating in the hearing...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 board.) And the Board owes the PTABOA determination no deference. Thus, even if the PTABOA reached its decision prior to hearing and deprived the Petitioners of the ability to present evidence or arguments to the PTABOA, it did not hinder their ability to present their case to the Board. *Id.* The same is true for the Petitioners’ claim

that the assessed value was incorrect on the notice and that the notice had no notification date. While these errors should be avoided, they have no impact on the outcome of the Board's determination.

- g. The Board therefore finds that the Petitioners failed to raise a prima facie case. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioners failed to establish a prima facie case that their property is over-valued. 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: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>