

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

Petition No.: 32-022-07-1-5-00053
Petitioner: [REDACTED]
Respondent: Hendricks County Assessor
Parcel No.: 12-1-35-61E-366-002
Assessment Year: 2007¹

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Hendricks County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated November 14, 2008.
2. The PTABOA issued notice of its decision on January 26, 2010.
3. The Petitioner filed a Form 131 petition with the Board on February 16, 2010. The Petitioner elected to have his case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated August 19, 2010.
5. The Board held an administrative hearing on October 19, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: [REDACTED], Property Owner
 - b. For Respondent:² Gail L. Brown, Hendricks County Assessor
Lester E. Need, Member of the PTABOA

¹ Mr. [REDACTED] testified he also appealed his 2008 and 2009 assessments to the local officials, which they had not acted upon. [REDACTED] testimony. Mr. [REDACTED] requested that the Board make a ruling upon his 2008 and 2009 assessments, but he admitted that he had not filed a Petition for Review with the Board for those assessment years. Therefore, the only year at issue before the Board is the property's 2007 assessment.

² Mr. Ronald L. Faulkner, Mr. Gordon McIntyre and Mr. M. Allen Parsons were in attendance for the Respondent but were not sworn in as witnesses to give testimony.

Facts

7. The subject property is a single-family residence located at [REDACTED], Avon, Washington Township, in Hendricks County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2007, the PTABOA determined the assessed value of the property to be \$77,100 for the land and \$332,900 for the improvements, for a total assessed value of \$410,000.
10. The Petitioner requested an assessed value of \$58,565 for the land and \$294,865 for the improvements, for a total assessed value of \$353,430.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
 - a. The Petitioner contends that his property is over-valued based on the general decline in property values at the time of the assessment. *[REDACTED] testimony*. According to Mr. [REDACTED], in 2006 and 2007 property values declined significantly in Avon, as well as all over the country. *[REDACTED] testimony*. *[REDACTED] testimony*. In support of this contention, Mr. [REDACTED] presented a website copy of an Indiana Business Review article, dated December 22, 2006, indicating that the median price of new homes sold in September were down 10% from the previous year. *[REDACTED] testimony; Petitioner Exhibit 3 at attachment E*. Similarly, he argues, an article from City-Data.com showed that homes in the Avon area dropped approximately 20% in 2006. *Petitioner Exhibit 3 at attachment F*. According to Mr. [REDACTED], he averaged the 10% and 20% to conclude that his property was over-assessed by 15% in 2007. *[REDACTED] testimony*. Mr. [REDACTED] therefore estimated his property's value to be \$353,430 for the March 1, 2007, assessment date. *Petitioner Exhibit 1*.
 - b. Mr. [REDACTED] also contends that market data shows the county assessor has consistently assessed properties for higher than their sales prices in his neighborhood. *[REDACTED] testimony*. In support of this contention, the Petitioner submitted an analysis showing nine properties that sold between December 13, 2007, and December 15, 2009. *[REDACTED] testimony; Petitioner Exhibits 5 and 9*. According to Mr. [REDACTED], the nine properties sold from 0.30% to 17.40% less than their 2007 assessed values, for an average of 9.24%.³

³ However, Mr. [REDACTED] market data shows that one property located at 1889 Thistle Court was assessed and sold for \$300,000. *[REDACTED] testimony; Petitioner Exhibits 6 and 9*. In addition, the property located at 7452 Hyacinth Drive was assessed for \$320,800 and sold for \$325,000, or 1.30% higher. *Id.*

Id. Therefore, the Petitioner concludes, his 2007 assessed value should be reduced by at least 9.24%.

- c. Similarly, the Petitioner argues, the PTABOA's evidence shows that properties are over-valued based on their sales prices. *[REDACTED] testimony.* According to Mr. *[REDACTED]*, the PTABOA's final determination shows two comparable properties. *[REDACTED] testimony; Petitioner Exhibits 7 and 9.* The property located at 1891 Thistle Court was assessed for \$434,600, but sold on June 29, 2006, for only \$381,000 and the property located at 1918 Thistle Court was assessed for \$479,400, but sold on December 6, 2005, for only \$475,000. *Id.* Thus, the Petitioner argues, this further shows that his 2007 assessment is overstated.
- d. Finally, the Petitioner argues that the PTABOA used flawed data to sustain the County Assessor's 2007 assessed value of his property. *[REDACTED] testimony.* According to Mr. *[REDACTED]*, the PTABOA's final determination contained information from the December 31, 2008, "Home Prices by Metro Area," which the Petitioner contends is outside of the relevant timeframe for the 2006 valuation date. *[REDACTED] testimony; Petitioner Exhibits 7 and 9.* In addition, none of the data collected on the appreciation of home prices was from the Avon area. *Id.* Thus, Mr. *[REDACTED]* argues, the Indiana Board of Tax Review should reverse the PTABOA's decision and grant a reduction in the assessed value of the property under appeal.⁴ *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent's witness contends the property under appeal is correctly assessed at \$410,000 based on the sale prices of comparable properties. *Need testimony.* In support of this position, the Respondent's witness submitted multiple listing sheets (MLS), assessment data and sales information for three properties located on the same street as the Petitioner's property. *Respondent Exhibit 6 and 9.* According to Mr. Need, the sales ratio study shows that the average assessment of the three properties on Cherry Tree Road was \$399,693; whereas the average sale price was \$402,667. *Id.* Similarly, the Respondent's witness submitted MLS sheets, assessment data and sales information on seventeen properties located in the area of the Petitioner's property. *Respondent Exhibits 7 and 9.* According to Mr. Need, the average assessment of the

⁴ The Petitioner contends that he was dissatisfied with the County Assessor's lack of timeliness and "professionalism" in the handling of his appeal and in the PTABOA proceeding. *[REDACTED] testimony.* Once a taxpayer has properly invoked the Board's jurisdiction, however, its proceedings are *de novo*. See Ind. Code § 6-1.1-15-4(k). "A party 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 been previously been introduced at a hearing before the county board." *Id.* Further, the Board owes no deference to the PTABOA determination. Thus, while the Petitioner may be dissatisfied with the County Assessor's handling of his appeal or feel that his PTABOA hearing was somehow deficient, it did not hinder the Petitioner's ability to present his case to the Board.

seventeen properties was \$356,096; whereas the average sales price of the properties was \$373,641. *Id.* Thus, Mr. Need argues that on average the properties in the Petitioner's neighborhood are assessed 3.9% less than their sales prices and therefore, the evidence shows that properties are not over-valued in the Petitioner's neighborhood. *Need testimony.*

- b. The Respondent's witness also argues that the Petitioner's comparable sales analysis is flawed and should be given little weight. *Need testimony.* According to Mr. Need, the property at 1905 Thistle Court was not a valid sale because the property was sold by a title company as a "relocation sale." *Need testimony; Respondent Exhibit 9.* Removing that sale from the Petitioner's comparable sales analysis, Mr. Need argues, results in an average assessed value of \$340,238 and an average sales price of \$327,425, or an overall sales ratio of 104% - which falls within the state proscribed median assessment level. *Need Testimony; Respondent Exhibit 9.* More importantly, Mr. Need argues, the Petitioner failed to show how the 2007, 2008 and 2009 sales in his analysis relate to the January 1, 2006, valuation date for the March 1, 2007, assessment date. *Id.*
- c. Finally, Mr. Need argues that the assessments in the Petitioner's neighborhood were "uniform, equal and just." *Need testimony.* According to Mr. Need, the state requires that the assessment to sales ratio be equivalent to the median assessment level, plus or minus 10%.⁵ *Need testimony; Respondent Exhibit 9.* The county's sales ratio studies show that the assessment of properties on Cherry Tree Road and in the Forest Commons Subdivision are "well within the state requirement" for a proper assessment. *Id.*

Record

13. The official record for this matter is made up of the following:
 - a. The Form 131 petition and related attachments.
 - b. The digital recording of the hearing.

⁵ Mr. Need appears to be referring to the Real Property Assessment Manual which states that "standards for evaluating the accuracy and uniformity of mass appraisal methods have been developed by the assessing community. These standards state the overall level of assessment, as determined by the median assessment ratio, should be within ten percent (10%) of the legal level. In Indiana, this means the median assessment ratio within a jurisdiction should fall between 0.90 (90%) and 1.10 (110%) in order to be considered accurate. This standard of ten percent (10%) on either side of the value provides a reasonable and constructive range for measuring mass appraisal methods." 2002 REAL PROPERTY ASSESSMENT MANUAL at 21.

c. Exhibits:⁶

- Petitioner Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated February 17, 2010, with the following attachments: (a) Access My Library.com article “Housing,” dated November 13, 2008; (b) City-Data.com “resident and real estate info,” dated September 28, 2009; (c) Copy of the PTABOA Final Determination, dated December 7, 2009; and (d) CNN Money.com article “Home prices in record plunge,” dated February 12, 2009,
- Petitioner Exhibit 2 – Notification of Final Assessment Determination – Form 115, dated January 26, 2010,
- Petitioner Exhibit 3 – Petitioner’s presentation of evidence to the PTABOA; Notification of Final Assessment Determination – Form 115, dated July 11, 2007; Hendricks County 2006 pay 2007 and 2007 pay 2008 property tax bills; Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130, dated November 14, 2008; Access My Library.com article “Housing,” dated November 13, 2008; and “Home Sales in Zip Code 46123” graph from City-Data.com, dated September 28, 2009,
- Petitioner Exhibit 4 – Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130, dated November 14, 2008; article “Central Indiana Home Sales Continue to Decline” from Inside Indiana Business with Gerry Dick, dated November 13, 2008; and Access My Library.com article “Housing,” dated November 13, 2008,
- Petitioner Exhibit 5 – The subject property’s assessment history from 2002 through 2009,
- Petitioner Exhibit 6 – Petitioner’s sales and assessment analysis for 1905 Thistle Court, 1716 Belleflower Court, 7400 Hyacinth Drive, 1752 Thistle Court, 1681 Cherry Tree Road, 1626 Cherry Tree Road, 1792 Cherry Tree Road, 1889 Thistle Court and 7452 Hyacinth Drive, Avon,
- Petitioner Exhibit 7 – PTABOA’s Final Assessment Determination, dated December 7, 2009,

⁶ Mr. [REDACTED] objected to the Respondent’s exhibits because the Respondent did not provide a copy of its documentary evidence to him five days prior to the Indiana Board of Tax Review hearing. [REDACTED] testimony. According to the Indiana Board of Tax Review small claims hearing procedures, if requested by any party, the parties shall provide all parties copies of any documentary evidence and names and addresses of all witnesses intended to be present at the hearing at least five business days before the small claims hearing. See 52 IAC 3-1-5. Mr. [REDACTED] testified that he did not request the Respondent’s evidence prior to the hearing. Thus, the Petitioner’s objection is over-ruled.

Petitioner Exhibit 8 – City-Data.com articles “Stats about all US cities – real estate, relocation info, house prices, home value estimator” and “46123 Zip Code Detailed Profile” dated October 5, 2010; and Petitioner’s summary of median home prices for 2006, 2007, 2008 and 2009,

Petitioner Exhibit 9 – Petitioner’s summary of his evidence presentation,

Respondent Exhibit 1 – Aerial map of the Petitioner’s property (front view),

Respondent Exhibit 2 – Aerial map of the Petitioner’s property (rear view),

Respondent Exhibit 3 – Petitioner’s summary of evidence presented at the PTABOA’s hearing,

Respondent Exhibit 4 – Copy of Petitioner’s Access My Library.com article “Housing,” dated November 13, 2008,

Respondent Exhibit 5 – Copy of Petitioner’s Inside Indiana Business with Gerry Dick article “Central Indiana Home Sales Continue Decline,” dated November 13, 2008,

Respondent Exhibit 6 – Respondent’s 2005 and 2006 sales comparison analysis and multiple listing sheet reports for Cherry Tree Road sales,

Respondent Exhibit 7 – Respondent’s 2005 and 2006 sales comparison analysis of Forest Commons Subdivision and multiple listing sheet for [REDACTED], 1891 Thistle Court, 1918 Thistle Court, 1433 Cherry Tree Road, 1852 Cherry Tree Road, 1792 Cherry Tree Road, 7539 Meadow Violet Court, 7523 Meadow Violet Court, 7567 Meadow Violet Court, 1072 Wood Sage Drive, 7648 Buttercup Court, 1428 Forest Commons Drive, 7566 Meadow Violet Court, 1240 North Forest Commons, 7671 Meadow Violet Drive, 1628 Belleflower Court, 1889 Thistle Court and 1371 Forest Commons Drive, Avon and a property record card for 1905 Thistle Court,

Respondent Exhibit 8 – Petitioner’s sales price and assessed value analysis for 1905 Thistle Court, 1716 Belleflower Court, 7400 Hyacinth Drive, 1752 Thistle Court, 1681 Cherry Tree Road, 1626 Cherry Tree Road, 1792 Cherry Tree Road, 1889 Thistle Court and 7452 Hyacinth Drive, Avon,

Respondent Exhibit 9 – Slideshow presentation on the “Hendricks County Assessor’s Position Concerning the State Appeal,”

Respondent Exhibit 10 – 2007 – 2009 Sales Assessment Ratio Study for Forest Commons,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – 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 Bd. of Tax Comm'rs*, 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
- 15. The Petitioner failed to provide sufficient evidence to raise a prima facie case that his property was over-valued. 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.” 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). The appraisal profession traditionally has 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. In 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 (the GUIDELINES).
 - 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 and other information compiled according to generally accepted appraisal principles. 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 subject 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. The Petitioner first argues that property values have significantly declined in Avon and therefore the assessed value of his property should be lowered. [REDACTED] testimony. In support of this contention, Mr. [REDACTED] submitted an article dated December 22, 2006, which reported that "the median price of new homes sold in September was \$217,000, down almost 10 percent from a year earlier" and a print-off of a website entitled "City-Data.com" that reports a "median price" for home sales in 2005, 2006, 2007, 2008 and 2009 by quarter. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *and Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Here, the Petitioner did not write the articles. Nor was the author present. Mr. [REDACTED] submitted no evidence regarding the credibility of the data relied upon by the articles' authors or the accuracy of the conclusions drawn therefrom. Therefore the Board finds the Petitioner's two web articles to be insufficient evidence to support the change he sought in his property's assessment.
- e. Even if the Board gave weight to the Petitioner's website information, the evidence does not support the inference that the Petitioner urges the Board to make. The December 2006 article merely reports that the average new home price fell ten percent. The Petitioner contends that means property values dropped ten percent. However, it is equally possible that builders were choosing to build smaller houses with fewer amenities. Moreover the article refers to national figures released by the U.S. Commerce Department. The Board cannot determine the change in value of a residential property located in Avon, Indiana, based on national housing statistics. On the other hand, the City-data website purports to report the median sales price in Avon. However, the reported value rose from approximately \$125,000 in 2005 to approximately \$195,000 in 2006. Then, according to the website, the median sales price fell from approximately \$195,000 in 2006 to approximately \$175,000 in 2007 before rising again to

approximately \$190,000 by mid-2007. Similarly, the median sales price started 2008 at approximately \$155,000 and ended the year around \$175,000. This pattern of rising and falling median prices continues the entire length of the graph suggesting that the median price varies widely with the mix of properties sold in any given quarter. Thus, the Board cannot glean any trend sufficient to base an assessment decision.⁷

- f. The Petitioner also argues that his evidence shows the county officials have consistently assessed properties over their sales prices and therefore his assessment should be lowered. [REDACTED] testimony. A taxpayer has the right to show that other properties are assessed below their market values and thus the taxpayer's "property taxes were higher than they would have been had other properties been properly assessed." *Indiana Department of Local Government Finance v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). The relief sought in that type of claim is often termed an "equalization adjustment." But the Petitioner did not make that claim. The Petitioner contends that the sale prices of nine properties, on average, were 9.24% below their assessed values. [REDACTED] testimony; Respondent Exhibits 6 and 9. Thus, he appears to make the opposite claim – that properties are assessed for more than their market values.
- g. Even if the Petitioner had properly sought an equalization adjustment, his evidence would not have been sufficient. First, the Petitioner contends that the Board should infer from his comparable sales that *all* properties are over-assessed by 9.24%. However, the Petitioner's evidence only shows nine properties that sold between December of 2007 and November of 2009 for between 1.4% over their assessed values and 17.40% under than their assessed value. Respondent Exhibits 6 and 9. The only inference the Board could draw from the Petitioner's evidence is that some properties are assessed for above their market values during the mass appraisal process and some properties are assessed for below their market values. Second, while the Petitioner offered some evidence to establish the assessed-value to market value-in-use ratios for other properties in his neighborhood, he did not show the ratio for his own property. The only evidence of the property's market value in the record is the property's purchase price of \$410,000 in September 6, 2002. However, the sale date is too far removed from the January 1, 2006, valuation date to be probative of the property's market value-in-use for the March 1, 2007, assessment. Because the Petitioner failed to establish his property's market value-in-use, the Board cannot determine whether his property is over-assessed or under-assessed based on its 2007 assessed value

⁷ Moreover, for the 2007 assessment, the valuation date was January 1, 2006. The City-data website shows that property values sharply rose from 2005 to 2006 from an average of \$125,000 to an average of approximately \$195,000. If the Board accepted the Petitioner's data as evidence of the property's change in value, the result would be a substantial increase in the property's assessed value.

or how his property's assessment to market value compares with the assessment ratio of other comparable properties.

- h. In addition, the assessment/sale ratio analysis that the Petitioner submitted is only based on nine properties – all of which were outside the time for sales that are properly considered in determining assessed values for the 2007 assessment year. *See* 50 IAC 21-3-3. The Petitioner failed to establish that his data constituted a statistically reliable sample or that his assessment/sale ratio analysis was prepared according to professionally acceptable standards. Therefore, the evidence is not sufficient to make any legitimate conclusion about uniformity and equality of assessments in this case. Assuming, *arguendo*, that some sort of adjustment would be appropriate to achieve uniformity and equality for the subject property, the Petitioner also failed to establish that using a simple average of the ratios would be a professionally acceptable basis for change. Furthermore, the limited data that was submitted, its wide range, and apparently random variation make any conclusion about what an appropriate change might be impossible in this case. Thus, the Petitioner failed to prove his property's assessment should be reduced.
- i. Where a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to provide sufficient evidence to support a change in the assessment. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the property's assessment should not be changed for the March 1, 2007, assessment year.

ISSUED: _____

Chairman,
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 pursuant to 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 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/bills/2007/SE0287.1.html>.