

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

Petition No.: 08-011-10-1-5-00007
Petitioner: Richard G. Robinson Irrevocable Family Trust
Respondent: Carroll County Assessor
Parcel: 08-04-10-000-240.000-011
Assessment Year: 2010

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

Procedural History

1. The Richard G. Robinson Irrevocable Family Trust (“the Trust”), through Trustee Ralph Richard Robinson, filed a Form 130 petition contesting the subject property’s March 1, 2010 assessment. On April 15, 2011, the Carroll County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering the assessment, but not to the level that the Trust had requested.
2. The Trust then timely filed a Form 131 petition with the Board. It elected to have the appeal heard under the Board’s small claims procedures.
3. On May 10, 2012, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”). Ralph Robinson, Carroll County Assessor Neda K. Duff, and County Representative Brian Thomas were sworn in and testified.

Facts

4. The subject property contains a single-family home located on a bayou of Lake Freeman at 11239 North Lower Lakeshore Drive, in Monticello, Indiana.
5. Neither the Board nor the ALJ inspected the subject property.
6. The PTABOA determined the following assessment:
Land: \$71,700 Improvements: \$143,800 Total: \$215,500
7. The Trust listed the following assessment request on its Form 131 petition:
Land: \$45,000 Improvements: \$100,000 Total: \$145,000

Summary of the Parties' Contentions

8. The Trust's evidence and contentions:

- a) The subject property's assessment is too high in light of the sale prices for three other homes in its neighborhood—a Lake Freeman bayou. The homes sold in 2007 and 2008¹ for an average selling price of \$128,666. Two of the three homes are larger than the subject home, and all three are newer. *Robinson testimony; Pet'r Exs. 4-7.*
- b) The Trust specifically pointed to the following information obtained from Multiple Listing Service ("MLS") sales sheets for the three comparable homes:
 - **11235 North Lower Lakeshore Drive.** This home, located directly across the road from the subject property, sold for \$147,000 on May 23, 2007. It has 40 more square feet than the subject home and is 12 years newer.
 - **11028 North Landings Road.** This home, built in 1972, has 912 more square feet of living area than the subject home. It sold for \$95,000 on January 28, 2008.
 - **11002 Quiet Water Circle.** This home is located across the bayou from the subject property's access road, and it is 11 years newer than the subject home. It sold for \$144,000 on June 12, 2008.

Robinson testimony; Pet'r Exs. 4-7.

- c) Additionally, the subject property's record card indicates that the subject home has a basement when it really sits on a crawl space. And the two utility sheds listed on the record card, which are assessed for \$300 and \$500, are both "junk" and need to be removed from the property. *Robinson testimony.*

9. The Assessor's evidence and contentions:

- a) Because Mr. Robinson did not thoroughly explain how the three sold properties compared to the subject property, their sale prices do not show that the subject property's assessment was wrong. For example, the subject property has amenities such as a pool, utility sheds, and a boathouse that the other properties do not have. Furthermore, each property later re-sold for a higher price. As shown by the Trust's own evidence, 11028 North Landings Road sold for \$95,000 on January 28, 2008 as a bank sale and resold for 158,000 on May 28, 2009. Thus, the market was actually increasing. *Thomas testimony; Pet'r Exs. 5, 7.*

¹ Mr. Robinson actually testified that the sales occurred in 2008 and 2009, but the listing sheets he offered had sale dates from 2007 and 2008. *See Robinson testimony; Pet'r Exs. 4-6.*

- b) The PTABOA lowered the subject property's 2010 assessment from \$264,100 to \$215,500 by applying a 62% negative influence factor to the land, which is located on a bayou rather than directly on Lake Freeman. The PTABOA also changed the home's quality grade and changed what had been assessed as detached garage to an attached garage. *Thomas testimony.*
- c) The Board's hearing was the first time that the Assessor heard about the Trust's claim that the subject property's crawl space had been assessed as a basement. The Assessor agreed to inspect the property and to change the assessment if there is no basement. *Duff testimony; Thomas testimony*

Record

10. The official record contains the following:

- a) The Form 131 petition
- b) A digital recording of the hearing
- c) Exhibits:

- Petitioner Exhibit 1: Form 131 petition
- Petitioner Exhibit 2: Form 115
- Petitioner Exhibit 3: Subject property record card
- Petitioner Exhibit 3A: Form 130 petition
- Petitioner Exhibit 3B: Form 11, PTABOA's Notice of Assessment
- Petitioner Exhibit 4: MLS sales sheet for 11235 North Lower Lakeshore Drive Monticello
- Petitioner Exhibit 5: MLS sheet for January, 28, 2008 sale of 11028 North Landings Road, Monticello
- Petitioner Exhibit 6: MLS sheet for June 12, 2008 sale of 11002 Quiet Water Circle, Monticello
- Petitioner Exhibit 7: MLS sheet for May 28, 2009 sale of 11028 North Landings Road, Monticello

Respondent Exhibit 1: Subject property record card

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Hearing notice
- Board Exhibit C: Hearing sign-in sheet

- d) These Findings and Conclusions.

Analysis

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and 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).
12. 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 a taxpayers, duty to walk the Indiana Board...through every element of the analysis”).
13. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence 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.

Discussion

14. The Trust failed to make a prima facie case for reducing the subject property's assessment. 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 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. *See id.*; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) *reh'g den. sub nom.* A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
 - b) Regardless of the method used to challenge an assessment's presumed 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. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *See id.* For March 1, 2010 assessments, the valuation date was March 1, 2010. *See Ind. Code* § 6-1.1-4-4.5(f).
 - c) Here, the Trust relied primarily on sales information for properties located in the subject property's neighborhood. Of course, sale prices for other properties do not, by themselves, show the value of a given property. But when one analyzes those

sales prices using generally accepted appraisal principles, such as the sales-comparison approach, that raw data can be transformed into a reliable value indicator. See *generally*, MANUAL at 13-14 (describing the sales-comparison approach).

- d) In order to effectively use a sales-comparison approach as evidence in an assessment appeal, one must first show that the properties being examined are comparable to each other. Conclusory statements that a property is “similar” or “comparable” to another property are not probative of the properties’ comparability. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e) The Trust did not offer the type of analysis contemplated by the Indiana Tax Court in *Long*. At most, Mr. Robinson testified that two of the homes are bigger than the subject home, and that all three are newer. But as the Assessor explained, Mr. Robinson ignored other relevant characteristics, including relevant differences between the properties in condition, lot size, and amenities.
- f) Even if the Trust had offered a more reasoned analysis of its purportedly comparable sales, only one sale bears any relationship to the March 1, 2010 valuation date—the second sale of 11028 North Landings Road. The remaining sales occurred between 21 and 34 months before March 1, 2010. Mr. Robinson, however, did not even attempt to explain how the sale prices from 2007 and 2008 relate to the subject property’s market value-in-use as of March 1, 2010.
- g) The Trust also claimed that the Assessor erred in assessing the subject home for a basement when it really sits on a crawl space. But as the Assessor pointed out, the Trust did not raise that issue in front of the PTABOA² or even on its Form 131 petition to the Board. Although the Assessor did not use the word “objection,” the record shows that she did not consent to try that issue. Given the lack of notice to the Assessor, the issue of whether the home is incorrectly assessed as having a basement is not before the Board. Nonetheless, in light of the Assessor’s agreement to do so, the Board orders her to inspect the property to determine if it has a basement or crawl space and to make corrections if appropriate.

Conclusion

15. Because the Trust did not offer any probative evidence to show the subject property’s market value-in-use, it failed to make a prima facie case for changing the property’s assessment. The Board therefore finds for the Assessor.

² By electing to proceed in small claims, the parties agreed that the issues were substantially the same as those presented to the PTABOA and that no new issues would be raised before the Board. 52 IAC 3-1-2(b).

Final Determination

There is no change to the assessment, but the Assessor will inspect the property to determine if it has a basement or crawl space.

ISSUED: August 6, 2012

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>.