

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

Petition No.: 53-017-08-1-5-00001
Petitioners: Calvin L. and Susan A. Roop
Respondent: Monroe County Assessor
Parcel No.: 53-02-28-102-009.000-017 (011-06500-29)
Assessment Year: 2008

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 Petitioners initiated an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 23, 2008.
2. The PTABOA issued its decision on February 19, 2009.
3. The Petitioners filed a Form 131 petition with the Board on April 3, 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 January 13, 2010.
5. The Board held an administrative hearing on March 30, 2010, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Calvin Roop, Petitioner
 - b) For Respondent: Judith Sharp, Monroe County Assessor¹

Facts

7. The property is an improved residential parcel located at 7831 North Thames Drive in the city of Bloomington, Washington Township in Monroe County.

¹ Marilyn Meighen appeared as counsel for the Respondent.

8. The Administrative Law Judge (ALJ) did not inspect the property.
9. For 2008, the PTABOA determined the assessed value of the subject property to be \$55,000 for the land and \$534,700 for the house, for a total assessed value of \$589,700.
10. The Petitioners request an assessed value of \$50,000 for the land and \$468,000 for the house, for a total assessed value of \$518,000.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a) The Petitioners contend that their property's assessed value is too high based on its market value. *Roop testimony*. In support of their contention, the Petitioners submitted a comparative market analysis prepared by a licensed realtor, who estimated their property's value at \$456,333, and an appraisal of the subject property performed by Trenton Jones, a certified Indiana appraiser. *Petitioners Exhibits 4 and 6*. According to the appraisal report, Mr. Jones estimated the value of the Petitioners' property to be \$518,000 as of January 1, 2007, based on the sales comparison approach. *Id.*
 - b) Further, the Petitioners argue, the Board should disregard the cost of their property. *Roop testimony*. Mr. Roop testified that he bought the parcel in the early 1990s for approximately \$32,000 and paid for clearing the land. *Roop testimony*. He further testified that the Petitioners attempted to start building the home in the fall of 2005, but were unable to acquire financing for the home until April of 2006, so construction did not begin until June of that year. *Id.* According to Mr. Roop, the price of building the house was \$680,000, but, he argues, the contract was written in 2005 when prices were high. *Id.* Therefore, he argues that basing the assessed value on the construction cost unfairly penalizes him. *Id.*
 - c) Finally, the Petitioners argue that the Respondent acted unfairly in the assessment and PTABOA appeal of their property. *Roop testimony*. According to Mr. Roop, the Petitioners received a Form 11 Notice of Assessment for 2008, showing an increase of over \$125,000 in their assessed value from 2007. *Roop testimony; Petitioners Exhibit 1*. Mr. Roop testified that the Petitioners then appealed their assessment to the PTABOA, who discounted the CMA report and "effectively demanded" an appraisal. *Roop testimony*. In addition, Mr. Roop testified that the Assessor refused to provide him with the basis for the assessment, despite his request at the PTABOA hearing.² *Id.*

² While the Petitioners may have been unhappy with the actions of the Assessor or the PTABOA at their hearing, once a taxpayer properly invokes the Board's jurisdiction, 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 Assessor or PTABOA acted improperly in denying the Petitioners' claim, it did not hinder their ability to present their case to the Board. *Id.*

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

- a) The Respondent contends the property's assessed value is correct based on the Petitioners' construction costs. *Meighen argument*. According to Ms. Sharp, the property's assessment increased from 2007 to 2008 because the house was assessed as 80% complete in 2007, but in 2008 it was assessed as 100% complete. *Sharp testimony; Respondent Exhibit 1*. Further, Ms. Sharp testified that the market in Monroe County did not decline like other locations. *Sharp testimony*.
- b) In addition, Ms Sharp testified, in Indiana, property is assessed based on market value-in-use. *Sharp testimony*. According to Ms. Sharp, the 2002 REAL PROPERTY ASSESSMENT MANUAL specifies that newly constructed properties are to be valued based on their construction costs. *Id*. Thus, the Respondent concludes, the Petitioners' property is under-assessed, because the property's assessed value is far less than its construction cost of \$680,000 – which does not even include the cost of purchasing and clearing the land. *Id*.
- c) The Respondent also argues that the Petitioners' appraisal should be given little weight. *Sharp testimony*. According to Ms. Sharp, the appraiser provided no explanation as to how he determined the amount of adjustments used on the comparable properties. *Sharp testimony; Petitioners Exhibit 4*. Further, she argues, the appraiser's total adjustments were too high. *Id*. According to Ms. Sharp, this indicates that the "comparable" properties were not actually comparable to the Petitioners' property. *Id*.
- d) Similarly, the Respondent argues, the CMA report offered by the Petitioners carries little probative value. *Meighen argument*. According to the Respondent, the realtor made no adjustments for any differences between the Petitioners' property and the three properties chosen as comparables, yet there are significant differences in the sales and properties. *Sharp testimony; Petitioners Exhibit 4*. For example, Ms. Sharp testified that to determine the 2008 assessment, assessors were required to use sales data from 2007 and half of 2006, yet one of the comparable sales in the CMA report is from 2003. *Id*. In addition, there were significant differences in the total living area of the properties when compared to the Petitioners' property, according to Ms. Sharp, but again, no adjustments were made for that disparity. *Sharp testimony; Respondent Exhibits A through D; Petitioners Exhibit 4*.

Record

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

- a. The Petition.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioners Exhibit 1: Form 11 Notice of Assessment dated November 14, 2008,

Petitioners Exhibit 2: Facsimile requesting a hearing before the PTABOA, dated December 23, 2008,

Petitioners Exhibit 3: Property Tax Assessment Appeals Fact Sheet, September 2008, from the Department of Local Government Finance,

Petitioners Exhibit 4: Comparative Market Analysis report prepared by Tammy Druckemiller,

Petitioners Exhibit 5: Form 115 Notification of Final Assessment Determination dated February 19, 2009,

Petitioners Exhibit 6: Appraisal of the subject property as of January 1, 2007,³

Petitioner Exhibit 7: Form 131 Petition,

Respondent Exhibit A: Property record card (PRC) for the Petitioners' property,

Respondent Exhibit B: PRC for 7424 Canyon Court,

Respondent Exhibit C: PRC for 7886 North Thames Drive,

Respondent Exhibit D: PRC for 5139 Muirfield Drive,

Respondent Exhibit E: Request, dated April 13, 2009, from the Respondent's counsel to the Petitioners for the full appraisal,

Board Exhibit A: Form 131 Petition,

³ The Respondent's counsel, Ms. Meighen, objected to the admission of the appraisal offered by the Petitioners because they failed to provide the entire document. *Meighen argument; Petitioners' Exhibit 6*. Mr. Roop testified that he assumed he could just bring his evidence to the hearing. *Roop testimony*. He further argued that the remaining pages of the appraisal were "just extra verbiage" that appraisers were required to include and that pages two and three were the "meat" of the appraisal. *Id.* Under the Board's procedural rules for small claims, if a party requests the opposing party's evidence, it is required to be submitted to the requesting party. 52 IAC 3-1-5(d). Here the Board has clear evidence of such a request, and Mr. Roop admitted he did not provide the requested information. However, the two pages he provided to the Respondent included the comparable sales, relative and adjusted sales values, as well as the effective date of the appraisal. While the Respondent is correct in her argument that exhibits which were not provided to the Respondent when requested prior to hearing are generally excluded under objection, the Board here finds there was no prejudice to the Respondent because the portion of the appraisal provided to the Respondent consisted of the most pertinent information. The Petitioner is admonished to comply fully with the Board's rules in future hearings, but the Respondent's objection is over-ruled.

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 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 taxpayer must explain how each piece of evidence is relevant to the 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 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 Petitioners raised a prima facie case that their property was over-valued. The Respondent, however, rebutted that evidence. 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). 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.
 - b) A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 2006). 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 505, 506 n.1. A taxpayer may also offer construction costs, sales information for 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, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
- d) Here the Petitioners contend their property is over-valued based on the property's appraised value. *Roop testimony; Petitioners Exhibit 6*. In support of this contention, the Petitioners presented an appraisal report prepared by Trenton Jones, an Indiana licensed appraiser, who estimated the property's value to be \$518,000 as of January 1, 2007.⁴ *Id.* The appraisal conforms to the correct valuation date and otherwise provides probative evidence of the estimated value of the property. An appraisal performed in accordance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the Petitioners raised a prima facie case that their property is over-assessed.⁵
- e) Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E. 2d 276 (Ind. Tax Ct. 2004). To rebut or impeach a petitioner's case, the Respondent has the same burden to present probative

⁴ The Petitioners also presented a comparative market analysis prepared by a licensed realtor. *Petitioner Exhibit 4*. In the report, the realtor determined a value of \$456,333 for the Petitioners' property based on the sales of three purportedly comparable properties. *Id.* While the report contains information on the number of rooms, the size of the living area, year of construction, heating type, and exterior construction, the realtor made no attempt to account for the differences in those characteristics between the properties. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (A 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. Further, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*) Thus, the CMA report is not probative of the property's market value in use.

⁵ The Petitioner further argued that the increase in the assessed value of the subject property from 2007 to 2008 was excessive because their assessment increased from \$464,000 in 2007 to \$589,700. *Petitioner Exhibit 1; Roop testimony*. The Respondent, however, testified that only 80% of the construction was complete on March 1, 2007. Thus, the property's 2007 assessment was only based on 80% of the full construction costs of the subject property. *Respondent Exhibit A; Sharp testimony*.

evidence that the Petitioners faced to raise a prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E. 2d 1075, 1082 (Ind. Tax Ct. 2005).

- f) Here, the Respondent argues that the Board should give little weight to the Petitioners' appraisal because the appraiser used properties that were not comparable to the Petitioners' property in his analysis. *Sharp testimony; Petitioners Exhibit 6*. According to Ms. Sharp, the appraiser adjusted the "comparable" properties' sale prices 20.7%, 24.6%, and 29.8% respectively, which shows that the sales were not good for comparison. *Id.* Further, the adjustments made by the appraiser are not consistent. *Id.* For example, the appraiser valued living area at \$6.33 per square foot for the first comparable property, \$8.46 per square foot for the second comparable property, and only \$1.97 per square foot for the third comparable property. *Id.* Moreover, Ms. Sharp argues, the appraiser chose not to value the property under the cost approach, despite the fact that the home was newly built – and therefore most suited to the cost approach. *Id.*
- g) Further, the Respondent argues that the property is properly assessed based on the construction costs of the Petitioners' home. *Sharp testimony*. Ms. Sharp argued that the home cost \$680,000 to build and was constructed between June 2006 and August of 2007 – which is within the timeframe used by assessors to determine the 2008 assessment. *Id.* Mr. Roop confirmed the construction costs and, in fact, testified that he purchased the land for \$32,000 and paid for the site clearing – which increased the cost of the property to over \$700,000. *Roop testimony*. Based on this information, the Board finds the Respondent successfully rebutted the Petitioners' case.⁶
- h) The actual construction cost of a property and an appraisal are both acceptable alternative approaches to determine a property's market value-in-use. Further, both the appraisal's valuation date and the construction of the Petitioners' home occurred contemporaneously with the statutory valuation date to be probative. The Board must, therefore, weigh the evidence presented by both parties and determine the most persuasive evidence of the property's value.
- i) The Indiana Tax Court has often said that "the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *See generally Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct.

⁶ Mr. Roop argues that the contract was signed in 2005 – when the market was at its highest, but the Respondent testified that the market did not decline subsequent to 2006 and the Petitioners' own appraisal stated that market values were increasing in 2006 and 2007. Thus, there is no evidence that the cost of construction for the Petitioners' property would have been lower if they had signed the contract in 2007. Further, the Petitioners did not construct the property until the middle of 2006 and into 2007. Thus, the construction costs reflect the proper valuation time for the 2008 assessment date.

2005). The Tax Court, however, has not addressed the situation where a party has submitted evidence of the actual cost to build the property that occurred within the relevant valuation date that rebuts the appraised value.

- j) An appraisal represents an estimate of a property's value based on the opinion of an appraiser. The construction cost of a property is not an estimate, but rather is direct evidence of how much a willing buyer paid for the property. Therefore, the Board finds that the actual construction cost of the Petitioners' property, as opposed to the property's appraised value, is the better evidence of the property's value when both the sale and the appraisal are sufficiently related to an assessment's valuation date to be probative. Therefore, the Board finds in favor of the Respondent.

Conclusion

- 14. The Petitioners established a prima facie case, which was successfully rebutted by the Respondent. The Board finds the weight of the evidence supports the assessment.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: June 21, 2010

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 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>.