

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

Petition #: 43-014-06-1-5-00014
Petitioners: Terry R. & Connie S. Rouse
Respondent: Kosciusko County Assessor
Parcel #: 1871350082
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. Terry and Connie Rouse filed a written request asking the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) to reduce their property’s assessment. The PTABOA made changes to the Rouses’ assessment and issued its determination on December 10, 2007.
2. The Rouses disagreed with the PTABOA’s determination and timely filed a Form 131 petition with the Board. They elected to proceed under the Board’s small-claims rules.
3. On May 8, 2008, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) For the Rouses: Terry R. Rouse
Connie S. Rouse
 - b) For the Kosciusko County Assessor: Laurie Renier, County Assessor
Jan Chiddister, Deputy County Assessor
Richard Shipley, PTABOA member
Susan Myrick, PTABOA member
Brock Ostrom, PTABOA member
Gerald Bitner, PTABOA president

Facts

5. The Rouses' property is a single-family residence located at 3496 W. Neher Road, Silver Lake, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA valued the Rouses' land at \$26,900 and their improvements at \$76,700 for a total assessment of \$103,600.
8. On their Form 131 petition, the Rouses requested values of \$26,900 for their land and \$55,460 for their improvements for a total assessment of \$82,360.

Parties' Contentions

9. The Rouses offered the following evidence and arguments:
 - a) The Rouses' home is over-assessed when compared to other homes in their neighborhood. The Rouses don't contest their property's land value because everyone who owned property along the lake saw his or her land assessment increase. The Rouses, however, do contest the value assigned to their modular home. *T. Rouse testimony.*
 - b) The Rouses' taxes originally increased by 92.51%. That increase abated somewhat after the PTABOA lowered their property's assessment by \$10,000. Nonetheless, the Rouses' 2006 pay 2007 taxes were still 62.37% more than they had been for 2005 pay 2006. And the Rouses' taxes increased far more than did the taxes for anyone else in the neighborhood. *T. Rouse testimony; Pet'rs Ex. 3.*
 - c) The Rouses compared their assessment and taxes to the assessments and taxes for three manufactured homes in the same neighborhood. *T. Rouse testimony; Pet'rs Ex. 3.* One home, owned by the Suttons, is a new, high-quality modular home that is larger than the Rouses' home. Yet the Suttons' home was assessed for much less than the Rouses'. *T. Rouse testimony; Pet'rs Exs. 2-3, 7-8.* A second home, owned by the Sniders, is roughly the same size as the Rouses', but it sits on a much larger lot. Once again, the Sniders' property was assessed for less than half of what the Rouses' property was assessed for. *T. Rouse testimony; Pet'rs Exs. 2-6.* And the Sniders' taxes increased by only 46%—much less than the Rouses' 62.37% increase. *Id.* The third home, owned by the Arnetts, is also roughly the same size as the Rouses' home. But the Arnetts' assessment increased by only 6.72% and their taxes increased by a mere 4%. *T. Rouse testimony; Pet'rs Exs. 2-3, 9-11.*
 - d) The Rouses also compared their assessment to the assessments for seven frame-constructed homes. The assessments for those frame-constructed homes didn't increase nearly as much as the assessment for the Rouses' modular home did. In fact, several decreased. *T. Rouse testimony; Pet'rs Exs. 1-29.* Similarly, none of those

homeowners saw their taxes increase by as much as the Rouses' taxes did. *Id.* Once again, some of those owners actually saw their taxes decrease. *Id.*

- e) The Rouses found the Assessor's explanation for why the assessments for frame-constructed homes decreased while those for modular homes increased troubling. According to the Assessor, she did not "trend" modular homes' assessments because there were no modular-home sales during the trending period. *T. Rouse testimony.* In the Rouses' view, that led to modular homes inequitably being assessed at 100% of their value while frame-constructed homes were not. *T. Rouse testimony.*
 - f) Based on the average changes to the assessments of other homes, the Rouses believe that their home should be assessed for \$55,460. That would make their total assessment \$82,360, which would represent a 19.36% increase over their 2005 assessment. *T. Rouse testimony; Board Ex. 1, Form 131 petition at 2.*
10. The Kosciusko County Assessor offered the following evidence and arguments:
- a) Sale prices and assessments for comparable properties in the Rouses' neighborhood support the Rouses' assessment. Two neighborhood properties sold in 2005 for \$100,000 and \$125,000, respectively. *Renier testimony; Resp't Exs. 1-3.* Similarly, the Booths' property was assessed for \$118,000. Like the Rouses' property, the Booths' property contains a modular home and has lake frontage, although it has 121 more feet of lake frontage than does the Rouses' property. *Renier testimony; Resp't Ex. 4.*
 - b) Also, the Rouses bought their property in 1996 for \$80,000. Assuming a modest 4% increase per year, it would have been worth between \$115,000 and \$120,000 in 2005. That is close to its current assessment. *Ostrom testimony.*
 - c) Assessing officials cannot "trend" values or change a property's assessment without sales. They need verifiable, arms-length transactions to show what has happened in the market place. The Assessor believes that properties in the area were fairly and consistently assessed. The main value of a lakefront property is in the land, not the structure that sits on it. Buyers pay based on whether they can swim or fish, not on whether the home is modular or "stick-built." *Renier testimony.*
 - d) Finally, while the Rouses complained about their taxes, it is difficult to compare taxes for different properties. The properties may have different exemptions and credits. Also, some of the properties that the Rouses identified were in Lake Township, not Silver Lake. *Renier testimony.* For 2006 pay 2007, Silver Lake had a net tax rate of 1.95925 while Lake Township had a net rate of only .99994. *Renier testimony; Resp't Ex. 7.*

Record

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

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

Petitioners Exhibit 1: Form 131 petition,
Petitioners Exhibit 2 - 3: Residential mobile/manufactured home comparison,
Petitioners Exhibit 4 - 11: Supporting documents,
Petitioners Exhibit 12 - 14: Framed structure comparison,
Petitioners Exhibit 15 - 32: Supporting documents,

Respondent Exhibit 1: GIS map of neighborhood,
Respondent Exhibit 2: Sales disclosure for Lance Bertolli,
Respondent Exhibit 3: Sales disclosure for William Jagger,
Respondent Exhibit 4: Property record card (“PRC”) for Larry Booth,
Respondent Exhibit 5: PRC for Terry Rouse,
Respondent Exhibit 6: 2002 Annexation for the Town of Silver Lake,
Respondent Exhibit 7: 2006-pay-2007 net tax rates for Kosciusko County,

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

- d) These Findings and Conclusions.

Analysis

12. The most applicable governing cases are:

- 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 impeach or 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 Rouses did not provide sufficient evidence to support their contentions. 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 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, 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 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) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) The Rouses failed to offer any market-based evidence to rebut the presumption that their property’s assessment accurately reflects its true tax value. At best, they compared their home’s assessment to the cost-based assessments of other homes in the same area. In doing so, however, they improperly mixed the cost and sales-comparison approaches to value. And they neither adequately explained how relevant features of the purportedly comparable homes compared to their home’s features nor adjusted the comparable properties’ assessments to account for any relevant differences. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005) (rejecting taxpayers’ sales-comparison evidence where taxpayers failed to explain how properties were comparable or how any relevant differences affected their relative market values-in-use).
 - d) Indeed, the Rouses didn’t clearly argue that their home was assessed for more than its market value-in-use. They argued instead that their home’s assessment increased far more than did the assessments of other homes in the same area, particularly the frame-constructed ones. And they asked the Board to reduce their home’s assessment to make its increase from 2005 to 2006 correspond to the average increase in other homes’ assessments during that same period.
 - e) The Board cannot grant that request. A taxpayer has the right to show that its “property taxes were higher than they would have been had other property been properly assessed.” *Indiana Dep’t of Local Gov. Fin. 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 such a claim depends on comparing assessments to the objectively verifiable benchmark of market value-in-use. And the Rouses didn’t show the market values-in-use of their own property or of any property that they claimed was more favorably assessed. *See Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (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).

- f) Finally, to the extent that the Rouses contest their taxes—as opposed to their property’s assessment—the Board lacks jurisdiction to hear their claim. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001)(citing *Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). The Board therefore must address appeals from determinations made by local assessing officials or county PTABOs that concern property valuations, property tax deductions, or property tax exemptions. Ind. Code § 6-1.5-4-1. By contrast, no statute authorizes the Board to review the propriety of local tax rates.¹
- g) Even if the Board had jurisdiction to decide the Rouses’ claim about the increase in their taxes, they did not provide sufficient evidence from which to compare the taxes assessed to their property and those assessed to the other properties in question. Various factors can affect a property’s tax burden, such as whether it receives deductions and credits and which taxing unit it is located in. The Rouses, however, supplied information about only one of the relevant factors affecting the properties’ respective tax burdens—the properties’ assessments.

Conclusion

- 14. The Rouses failed to make a prima facie case. The Board therefore finds in favor of the Kosciusko County Assessor.

Final Determination

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

¹ That is not to say that the Board lacks jurisdiction simply because a taxpayer’s claim implicates a local tax rate. In a budget driven taxation system, the Board may have jurisdiction over claims that implicate or affect tax rates, provided the claims concern assessed value. *See U.S. Steel Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 785 N.E.2d 1209, 1212-13 (Ind. Tax Ct. 2003) *aff’d in part and rev’d in part on other grounds, Lake County Property Tax Assessment Bd. of Appeals v. U.S. Steel Corp.*, 820 N.E.2d 1237 (Ind. 2005). The Board, however, has separately dealt with the Rouses’ claims about their assessment.

ISSUED: **July 15, 2008**

Commissioner, Betsy Brand

Commissioner, Terry Duga

Chairperson, Robert Wente

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>