

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

Petition No.: 45-030-06-1-5-00003
Petitioners: Frank and Carmen Salomon
Respondent: Lake County Assessor
Parcel No.: 45-12-20-129-005.000-030
Assessment Year: 2006

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 Lake County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 19, 2007.
2. The Petitioners received a letter of recommendation from the PTABOA on January 13, 2009. The PTABOA issued its Form 115, Notification of Final Assessment Determination, on January 30, 2009.
3. The Petitioners filed an appeal to the Board by filing a Form 131 on January 23, 2009.¹ 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 September 10, 2009.
5. The Board held an administrative hearing on October 15, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners: Frank Salomon, Owner,

No one appeared to represent the Respondent.

¹ The Petitioners apparently filed their petition when they received the recommendation letter from the PTABOA because the petition predated the Form 115, Notification of Final Assessment Determination, which was sent on January 30, 2009.

Facts

7. The subject property is a beauty shop located at 2215 W. 78th Avenue, Merrillville, in Lake County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$26,900 for the land and \$136,300 for the improvements, for a total assessed value of \$163,200.
10. The Petitioners requested an assessment of \$10,000 for the land and \$126,000 for the improvements, for a total assessed value of \$136,000.

Issues

11. Summary of the Petitioners' contentions in support of an error in their assessment:
 - a. The Petitioners contend their property's assessment is too high compared to the building's actual cost of construction. *Salomon testimony*. According to Mr. Salomon, the property has a modular residence on it that is used as a beauty shop. *Id.* The Petitioners originally built the home in 1997 at a cost of \$80,000 and when a fire destroyed the building in 2007, the Petitioners replaced the building for \$126,000. *Id.* In support of this contention, Mr. Salomon presented an undated estimate for \$126,324 which he testified was the actual cost to replace the building in 2007. *Petitioner Exhibit 2*. The estimate noted that the costs of foundation, driveway and structural engineering was "to be determined" and the estimate was "preliminary for budgeting purposes." *Id.* Moreover the estimate indicated that a 13% construction management fee would be added. *Id.*
 - b. The Petitioners also contend their property's assessment is too high compared to the building's estimated cost of construction in 2005. *Salomon testimony*. In support of this contention, the Petitioners obtained an estimate that determined the cost to construct the building on September 1, 2005, was \$113,656. *Salomon testimony; Petitioner Exhibit 1*.
 - c. The Petitioners further contend the building's assessment is higher than the structure's 2004 and 2005 replacement costs for insurance purposes. *Salomon testimony*. In 2004, the insurance replacement cost was \$137,800. *Salomon testimony; Petitioner Exhibit 3*. In 2005, the same coverage was \$146,100.

Salomon testimony; Petitioner Exhibit 4. According to Mr. Salomon, the insurance coverage included the contents of the building.² *Salomon testimony.*

- d. Moreover, the Petitioners argue, their assessment is higher than the assessment of comparable properties in their neighborhood. *Salomon testimony.* In support of this contention, the Petitioners submitted assessment information for six properties in close proximity to their property. *Petitioner Exhibits 5-10.* According to Mr. Salomon, one of the properties is a business valued at \$122,900. *Salomon testimony; Petitioner Exhibit 10.* Mr. Salomon testified that the business sits on five acres and the land value is only \$33,800. *Id.* In addition, another nearby commercial property is currently assessed at \$98,200. *Salomon testimony; Petitioner Exhibit 7.*
- e. Finally, the Petitioners contend that if they converted the property to a residence no one would buy it because the taxes are too high. *Salomon testimony.*

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 45-030-06-1-5-00003 Frank and Carmen Salomon,
 - c. Exhibits:
 - Petitioner Exhibit 1 – 2005 estimate of construction costs,
 - Petitioner Exhibit 2 – 2007 estimate of construction costs,
 - Petitioner Exhibit 3 – 2005 insurance policy premium sheet,
 - Petitioner Exhibit 4 – 2004 insurance policy premium sheet,
 - Petitioner Exhibit 5 – Assessment information for 2216 W. 78th Place,
 - Petitioner Exhibit 6 – Assessment information for 2221 W. 78th Place,
 - Petitioner Exhibit 7 – Assessment information for 7726 Taft Street,
 - Petitioner Exhibit 8 – Assessment information for 2225 W. 78th Place,
 - Petitioner Exhibit 9 – Assessment information for 7802 Taft Street,
 - Petitioner Exhibit 10 – Assessment information for 7801 Taft Street,
 - Petitioner Exhibit 11 – Assessment information for the subject property,
- Board Exhibit A – Form 131 petition,
- Board Exhibit B – Notice of Hearing dated September 10, 2009,
- Board Exhibit C – Hearing sign-in sheet,

² The Board notes, however, that the premium sheet charges a separate premium for personal property and that personal property has a separate limit. *Petitioner Exhibits 3 and 4.*

d. These Findings and Conclusions.

Analysis

13. 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.
14. The Petitioners provided 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, however, 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 for the subject property or comparable properties or any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c. Regardless of the method used to rebut the presumption an assessment is correct, the evidence must reflect the value of the property as of the proper valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2006 assessment, that valuation date is January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of the proper valuation date. *Long*, 821 N.E.2d at 471.
- c. Here, the Petitioners contend that their property is over-valued based on the building's construction costs. In support of this contention, Mr. Salomon testified that it cost the Petitioners \$126,324 in 2007 to build the modular home on the site. The Petitioners also offered an estimate from the Given Group in support of Mr. Salomon's testimony. The estimate, however, shows that the amount is a preliminary estimate for budgeting purposes. More importantly, the estimate states that an amount for foundation, driveway and structural engineering was "to be determined" and therefore not included in the estimate. Further, the estimate stated that an additional construction management fee of 13% was not included in the price. If the management fee is added in, the estimate suggests the true cost of the building was in excess of \$142,000 (not including the foundation, driveway and structural engineering) which supports the assessed value of the improvements of \$136,300.³
- d. In response to the PTABOA's instruction that the property's 2006 assessment was based on 2005 values, the Petitioners also submitted a second estimate which determined the cost of construction of the building to be \$113,656 as of September 1, 2005. The document has no notation of a management fee. Nor was there any indication that engineering costs were excluded from the quoted amount like in the 2007 estimate. On its face, therefore, the estimate purports to be complete. While the Petitioners did not trend their September 2005 estimate to the January 1, 2005, valuation date, the Board finds the cost estimate is sufficiently timely to be some evidence of the property's market value-in-use. *See* 50 IAC 21-3-3(a) ("The local assessing official shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date.") Because the Petitioners' estimate was within the time period assessors use to determine the March 1, 2006, assessments, the Board finds that the

³ The Board notes that the Petitioners' insurance information similarly supports the assessed amount. According to the declarations sheet, the building replacement costs are \$137,800 for 2004 and \$146,100 for 2005. Both estimates are higher than the assessed value of the improvements on their property.

Petitioners presented a prima facie case that the improvements on the Petitioners' property were assessed in excess of their market value-in-use.

- e. The Petitioners also sought a reduction in the assessment of their land. The Board, however, finds that the Petitioners presented no probative evidence regarding the value of their land. While Mr. Salomon mentions and nominally discusses property values, the substance of his argument is limited to comparing only the assessed values of the neighboring properties. He does not present sales data or any other form of market value evidence, instead focusing only on comparing assessments. This argument 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 taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- f. 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 the Petitioners' case, the Respondent has the same burden to present probative 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).
- g. Here the Respondent failed to appear in support of its assessment. Had it done so, the Respondent might have argued that the 2005 and 2007 estimates should be viewed together and that the 2005 estimate should have included the same engineering costs and management fees as the 2007 estimate. The Board, however, will not raise those arguments on its own. The assessment may, in fact, have been correct, but the Respondent did not appear and argue that. Therefore the Respondent failed to rebut or impeach the Petitioners' prima facie case.

Conclusion

15. The Petitioners raised a prima facie case that the building on their property is over-valued. The Respondent failed to appear and support its assessment. The Board, therefore, finds the true tax value of the property is \$113,656 for the improvements. The land assessment shall remain the same.

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>>