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

Petition No.: **45-001-07-1-5-00010**
Petitioner: **Gloria Seed**
Respondent: **Lake County Assessor**
Parcel No.: **45-05-33-205-022.000-004**
Assessment Year: **2007**

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated February 9, 2009.

2. The PTABOA failed to hold a hearing on the Petitioner's appeal within the statutory time frame of 180 days.[1] *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")

3. The Petitioner filed an appeal to the Board by filing a Form 131 on October 14, 2009. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.") The Petitioner elected to have her case heard pursuant to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated January 29, 2010.

5. The Board held an administrative hearing on March 19, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.

[1] The Petitioner had an informal hearing with the Calumet Township Assessor and received the Assessor's decision on June 9, 2009.

6. Persons present and sworn in at hearing:

For Petitioner: Gloria Seed, Taxpayer

For Respondent: Danny Cruz, Residential Supervisor, Calumet Township.

Facts

7. The subject property is a residential property located at 1216 N. Warren Street, Gary, in Lake County.

8. The ALJ did not conduct an on-site visit of the property.

9. For 2007, the Calumet Township Assessor determined the assessed value of the subject property to be $36,800 for the land and $143,200 for the improvements, for a total assessed value of $180,000.

10. The Petitioner requested an assessment of $36,000 for the land and $104,800 for the improvements for a total assessed value of $140,800.

Issues

11. Summary of the Petitioner's contentions in support of an error in her assessment:

a. The Petitioner contends that her house is over-assessed compared to similar properties in her neighborhood. *Seed testimony*. In support of her contention, the Petitioner presented photographs and assessment information for her property and five other neighboring homes. *Petitioner Exhibits 1 and 10*. According to Mrs. Seed, her home is inferior to her neighbors' houses but the neighboring homes are assessed from $30 to $61 per square foot; whereas her home is assessed for $80 per square foot.[2] *Id.; Seed testimony*.

b. Mrs. Seed testified that she was unable to determine the market value of the neighboring homes. *Seed testimony*. Instead, she used sales information for townhomes in the neighborhood. *Id.* According to Mrs. Seed, one townhome that sold for $397,000 within five days of her purchase was assessed at 85% assessment ratio for 2007. *Id*.; *Petitioner Exhibit 7*. Subsequently, the townhome's assessment was reduced to 63% of its purchase price, which is in line with the other five townhomes in that development. *Id*. While the Petitioner contends that the assessment of the other five townhomes should

[2] According to Mrs. Seed, Calumet Township corrected some of the errors in the assessment, which resulted in a reduced value of $164,900 for her house, or $72 per square foot of living area, but she believes that value is still unfair when compared to the neighboring properties. *Id.*

have been revised upwards, she argues, the townhomes' assessments were intentionally kept low for political reasons. *Id*.

c. The Petitioner admits that she purchased the property in April 2006 for $200,000. *Seed testimony; Petitioner Exhibit 4*. But, the Petitioner contends, her assessment is not uniform, equal, and just, because Calumet Township engaged in "sales chasing." *Seed testimony*. According to Mrs. Seed, Indiana Code defines "sales chasing" as "the practice of adjusting the value on properties that sold without regard to the market analysis performed in setting values for the population…. Sales chasing causes inequitable treatment of taxpayers by shifting the tax burden to taxpayers who have recently bought property." *Id.; Petitioner Exhibit 4*.

d. Mrs. Seed acknowledged that "trending" started in 2006, but she contends that from 2006 to 2007, her property's assessment increased from $96,300 to $180,000, or 87%, with no changes to the improvements. *Seed testimony; Petitioner Exhibit 1*. During the same time period, the neighbors' assessments increased 12.88% to 14.57%. *Id*.

e. Finally, the Petitioner contends that real estate values have declined since she purchased her home. *Seed testimony*. In support of this contention, the Petitioner presented a 2009 appraisal and a Standard and Poor/Case-Shiller Homes Indices report. *Petitioner Exhibits 8 and 9*. The appraisal estimated the value to be $175,000 in April 2009, which is $25,000 less than her original purchase price. *Seed testimony; Petitioner Exhibit 9*.

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

a. The Respondent's witness, Mr. Cruz, contends that the Petitioner purchased her property in 2006 for $200,000 and, for 2007, it was assessed for only $180,000. *Cruz testimony*. According to Mr. Cruz, as a result of the Petitioner's appeal, he inspected her property and corrected the assessment based on information contained in her appraisal and survey report. *Id*. Mr. Cruz contends the correct assessment of the Petitioner's property is $164,900. *Id*.

b. Further, Mr. Cruz contends that the neighboring properties shown in the Petitioner's exhibits are incorrectly assessed. *Cruz testimony*. In support of this contention, Mr. Cruz submitted property record cards for 1128 N. Warren Street, 1220 N. Warren Street, and 1137 N. Warren Street. *Respondent Exhibits 1-3*. According to Mr. Cruz, 1128 N. Warren is assessed as a 1-story with an attic and a basement, but the Petitioner's photograph shows that it is a 2-story with an attic. *Cruz testimony; Respondent Exhibit1; Petitioner Exhibit 10*. Mr. Cruz argues that the Assessor has been making corrections to assessments since the last general reassessment, but the Assessor's office

cannot go back and do a reassessment of the whole township. *Cruz testimony*. According to Mr. Cruz, "we just haven't had time to go in and start changing everything that we are seeing is wrong." *Id.*

c. Finally, Mr. Cruz contends the townhomes cited by the Petitioner were assessed at different values, so they came up with a median value because they are all the same. *Cruz testimony*. According to Mr. Cruz, the townhome purchased at $399,000 would be considered an outlier and therefore the Assessor would not assess it for its market price. *Id*.

Record

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

a. The Petition,

b. The compact disk recording of the hearing labeled 45-001-07-1-5-00010 Seed,

c. Exhibits:

Petitioner Exhibit 1 – Petitioner's issues,
Petitioner Exhibit 2 – Form 131 petition,
Petitioner Exhibit 3 – Tax statement for 2007,
Petitioner Exhibit 4 – Definition of sales chasing and a copy of the Sales Disclosure Form for Petitioner's property,
Petitioner Exhibit 5 – Form 134,
Petitioner Exhibit 6 – Surveys of the subject property dated April 1954 and March 2006,
Petitioner Exhibit 7 – Notes and charts showing assessment ratios,
Petitioner Exhibit 8 – Standard and Poor's/Case-Shiller Home Price Indices 2008,
Petitioner Exhibit 9 – Appraisal by American Internet Mortgage,
Petitioner Exhibit 10 – 2007 assessed values and photographs of adjacent properties,

Respondent Exhibit 1 – Property record card for 1128 N. Warren Street,
Respondent Exhibit 2 – Property record card for 1220 N. Warren Street,
Respondent Exhibit 3 – Property record card for 1137-41 N. Warren Street,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing, dated January 29, 2010,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Notice of Township Representation,

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 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.

15. The Petitioner failed to provide sufficient evidence to establish an error in her 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 use 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 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 actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. 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 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. Here, the Petitioner argues that the assessing officials' actions amounted to sales chasing, which the Petitioner claims is prohibited by this state's laws and assessing guidelines.[3] In *Big Foot Stores, LLC v. Franklin Twp. Assessor*, 919 N.E.2d 621 (Ind. Tax Ct. 2009), Judge Fisher stated that "sales chasing" or "selective reappraisal" is the "practice of selectively changing values for properties that have been sold, while leaving other values alone." 919 N.E.2d at 623 fn. 5 (citing *County of Douglas v. Nebraska Tax Equalization and Review Comm'n*, 635 N.W.2d 413, 419 (Neb. 2001)). Here, the assessing officials' actions do not meet that definition, because, according to the Petitioner's evidence, the officials changed the values for all the Petitioner's "comparable" properties between 2006 and 2007, albeit some more than others.

e. The IAAO, by contrast, defines sales chasing as "the practice of using the sale of a property to trigger a reappraisal of that property at or near the selling price." International Association of Assessing Officers' *Standard on Ratio Studies* (approved 1999) (incorporated by reference in 50 IAC 14-2-1) at 40. If one assumes that local officials systematically assessed recently sold properties at or near their respective sale prices, those actions would arguably meet the IAAO's definition of sales chasing. But those actions would not, by themselves, entitle the Petitioner to the relief she requested. In *Westfield Golf*

[3] The Petitioner cites to 50 IAC 27-11-2 stating "sales chasing is the practice of adjusting the value on properties that sold without regard to the market analysis performed in setting values for the population. Sales chasing can occur on an individual basis or done systematically. First, on an individual basis, it may occur when individual sales are reviewed with focus on the assessed value to the sales price. In such a situation, the assessor changes characteristics of the property in order for the value to come in line with the sales price." However, this regulation was not promulgated until April 8, 2010, and therefore could not have governed the Petitioner's 2007 assessment. Further, while it is clear from the regulation that an assessor should not engage in "sales chasing" in the performance of his or her assessing duties, it is not clear that the remedy for such an action is to invalidate an otherwise valid or accurate assessment.

Practice Center v. Washington Twp. Assessor, 859 N.E.2d 396 (Ind. Tax Ct. 2007), the Tax Court addressed a claim that an assessment of a golf driving range violated Article X Section 1 of the Indiana Constitution, which requires "[t]he General Assembly [to] provide, by law, for a uniform and equal rate of property taxation of all property, both real and personal." IND. CONST. ART. 10 § 1. The taxpayer claimed that its golf course driving range had been assessed using a different base rate than the base rate used to assess other driving ranges. *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 397-98 (Ind. Tax Ct. 2007).

f. In rejecting the taxpayer's claim, the court explained that, before the switch to our current system, true tax value was determined under Indiana's own assessment regulations and bore no relation to any external, objectively verifiable measurement standard. *Id*. at 398. Properties within the same neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id*. That changed under the new system, which incorporates market value-in-use as its external, objectively verifiable benchmark. *Id.* The focus shifted from examining how assessment regulations were applied to examining whether a property's assessed value actually reflects that external benchmark. *Id*. at 399. Thus, the taxpayer lost its "lack of uniformity and equality" claim because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id*.

g. The Petitioner's claim fails for similar reasons. Like the taxpayer in *Westfield Golf*, the Petitioner argues that the Assessor used a different methodology to assess the subject property and other neighboring properties. While the Petitioner showed the ratio between her property's assessment and its sale price, she did not show that ratio for the neighboring properties. Instead, she focused on the degree to which assessments increased between 2006 and 2007. But the fact that one property's assessment increased by 12% while another property's assessment increased by a much greater percentage does little to show whether either property was assessed at or near its market value-in-use. The property with the bigger increase may simply have been undervalued to begin with, while the property with the smaller increase may have been assessed at or near its market value.

h. That is not to say that a taxpayer is barred from obtaining relief based on a lack of uniformity and equality in assessments. A lack of uniformity and equality in a mass-appraisal assessment for a class or stratum of properties may be inferred from analyzing the ratios of assessment to sale price for a subgroup of properties within that class or stratum. *See* MANUAL at 20 (Explaining that a ratio study "statistically measures the accuracy and

uniformity of the assessments produced by the mass appraisal method."). Where a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been had other property in Lake County been properly assessed).

i. But ratio studies involve relatively sophisticated statistical comparisons that meet professionally accepted standards. *See Kemp v. State,* 726 N.E.2d 395,404 (Ind. Tax. Ct. 2000) ("A sales ratio study, prepared using professionally acceptable standards, would measure the uniformity of assessments under a market based assessment system."); *see also, IAAO Standard, passim* (describing the statistical analyses used in ratio studies). The Petitioner did not offer that type of analysis for her class of property. Instead, she presented evidence that certain townhomes located on Lake Michigan were assessed at a much lower assessment ratio, in fact, ratios that range from 62% to 69% of the most recent sale of $397,000. However, the Petitioner's home is not in that complex. In fact, it is not a townhouse at all. And while the townhomes may be under-assessed, there is no reason to compound assessment errors by applying those incorrect assessment ratios to other properties.

j. There is no question that the Petitioner bought the property for $200,000 within four months of the January 1, 2006, valuation date for the March 1, 2007, assessment. Therefore, under Indiana's current market value-in-use system, the value of her property for the 2007 assessment is $200,000. Despite that purchase price, the Petitioner's property was assessed for only $180,000 in 2007. To support a finding that the Board should further reduce her assessment, Mrs. Seed presented assessment information for five neighboring houses. The Board, however, can glean nothing from these properties. Five properties on one street do not show a systematic underassessment of residential property in a taxing district.[4] Moreover, the five properties are all markedly different houses assessed in different

[4] *See Moffett v. Ind. Dep't of Local Gov't Fin.*, 2009 Ind. Tax LEXIS 60 (Ind. Tax Ct. Dec. 16, 2009) (unpublished decision) ("Article 10, § 1 of the Indiana Constitution – the Property Taxation Clause – provides that "[t]he General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal." IND. CONST. art. 10, § 1(a). *See also* IND. CODE ANN. § 6-1.1-2-2 (West 2008) ("All tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner"). This provision "'deals with the uniformity and equal rate of assessment and taxation of property *within the taxing district or locality in which the particular tax is levied.'" Dep't of Local Gov't Fin. v. Griffin*, 784 N.E.2d 448, 453 (Ind. 2003) (citation omitted) (emphasis added).")

manners.[5] While Mrs. Seed may be frustrated with the quality of assessments in her neighborhood, she has not given the Board the kind of evidence it needs to make a change in her assessment. And making a change to an assessment resulting in an assessment that is *less* accurate than it presently is – exacerbating the inaccuracy in assessments in the Petitioner's neighborhood – is not a change the Board makes lightly.

k. The Board therefore finds that the Petitioner failed to raise a prima facie case. Where a petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Despite having no duty to support the assessment, however, the Respondent's witness testified that, after he reviewed the Petitioner's property, he corrected some errors on the property record card, resulting in an assessment of $164,900. The Board accepts the Respondent's recommendation and finds that the assessment should be reduced to $164,900.

Conclusion

16. The Petitioner failed to establish a prima facie case that her property is over-valued, but the Respondent admitted there were errors in her assessment. The Board therefore finds the assessed value of the Petitioner's property is $164,900.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review determines that the assessment should be changed.

[5] To compare the Petitioner's property's assessed value to the assessed values of other properties is essentially a "sales comparison" method of establishing the market value of her property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the 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. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, the Petitioner offered assessment information and photographs for the neighboring properties and noted the differences in living area and lot size. *Seed testimony; Petitioner Exhibit 10.* The Petitioner, however, made no attempt to value the differences between the properties. This falls far short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).

ISSUED: _____

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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.