

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

Petition No.: 65-018-07-1-5-00001
Petitioners: Andrei and Tatiana Sharygin
Respondent: Posey County Assessor
Parcel No.: 009-02174-00
Assessment Year: 2007

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 Posey County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 5, 2008.
2. The PTABOA issued its Form 115 Notification of Final Assessment Determination dated December 19, 2008.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 dated January 20, 2009. The Petitioners elected to have the case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 7, 2009.
5. The Board held an administrative hearing on August 5, 2009, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner:¹ Andrei Sharygin, Petitioner,
 - b. For Respondent: Kristi Carroll, Posey County Assessor,
Debra Eads, contractor for Posey County Assessor,

FACTS

7. The property under appeal is an improved residential parcel located at 115 N. Elm Street, Black Township, Posey County, in Mount Vernon, Indiana.

¹ Krista B. Lockyear appeared as the Attorney for the Petitioners.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$6,700 for the land and \$19,600 for the improvements, for a total assessed value of \$26,300.
10. The Petitioners requested a total assessed value of \$11,100 for 2007.

ISSUES

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a. The Petitioners contend the property's 2007 assessed value is higher than the property's market value-in-use based on their September 12, 2007, purchase of the property for \$11,100. *Petitioner Exhibit 1*. In support of their contention, the Petitioners entered into evidence documentation to show they purchased the property from Federal Home Loan Mortgage Corporation (more commonly known as Freddie Mac) in a competitive and open market under all of the conditions required for a fair sale. *Id.* According to the Petitioners, there was and is no relationship between the seller and buyers and the negotiations and transactions were all handled by Indiana-licensed real estate agents. *Id.* The property was advertised beginning January 24, 2007, on a multiple listing (MLS) real estate system which is available to all real estate agents and the general public. *Id.; Petitioner Exhibit 5*. Prior to the sale, the property was first listed for \$43,000, and then taken off the market before being relisted for \$28,000 on June 27, 2007, and lowered to \$19,900 on August 15, 2007. *Sharygin testimony*. The Petitioners' counsel argued that "in markets where there are regular sales, the purchase price represents the true market value-in-use." *Lockyear argument (citing Hurricane Food Inc., v. White River Twp. Assessor, 836 N.E.2d 1069 (Ind. Tax Ct. 2005))*.
 - b. The Petitioners further contend the property is over-valued based on the sales prices of other properties in the area over a three-year period from 2005 to 2007. *Lockyear argument*. In support of their contention the Petitioners submitted a list of properties located in the same general area as the appealed property and MLS data sheets showing the properties' list and sale prices. *Petitioner Exhibit 6*. According to the Petitioners' counsel, this shows the low sales prices of properties in the same general area as the subject property. *Id.; Lockyear argument*.
 - c. Finally, the Petitioners contend that the Posey County PTABOA and the neighboring Vanderburgh County PTABOA have reduced the assessed values of other properties to at or below their sales prices as the result of county-level appeals. *Lockyear argument*. In support of their contention, the Petitioners offered a list of nine properties in the two counties showing the purchase price, the assessed value and the

changes made by the PTABOA, as well as the county notices of assessment changes and the revised property record cards (PRCs). *Petitioner Exhibit 7.*

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

- a. The Respondent contends the 2007 assessed value is correct based on the purchase of the property by the Federal National Mortgage Association on March 19, 2007, for \$55,549. *Carroll testimony.*
- b. The Respondent also contends the 2007 assessed value is correct based on the sales of three comparable properties in Mount Vernon. *Carroll testimony; Respondent Exhibits 1 and 2.* In support of her contention, the Respondent entered into evidence sales disclosure forms and property record cards for Parcel No. 009-00528-00, which was assessed for \$38,600 and sold for \$66,900 on January 5, 2007; Parcel No. 009-02608-00, which was assessed for \$26,000 and sold for \$67,500 on November 29, 2007; and Parcel No. 009-01705-00, which was assessed for \$25,600 and sold for \$38,730 on June 27, 2007. *Id.* The Assessor admitted that the comparable properties were not located in the Petitioners' property's neighborhood, but argues that they are all located in "similar" neighborhoods. *Carroll testimony.*
- c. Finally, the Respondent argues, the Petitioners' purchase price of \$11,100 does not represent an arms-length transaction because it would be considered a distress sale. *Eads argument.* According to Ms. Eads, the property is an income-producing property that was unoccupied and not producing income at the time of the Petitioners' purchase. *Id.*

RECORD

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Copy of Form 130 and attachments,
Petitioner Exhibit 2 – Copy of Form 131 and attachments,
Petitioner Exhibit 3 – Property Record Card (PRC) for the subject property,
Petitioner Exhibit 4 – Letter from the Posey County Assessor dated June 4, 2009,
Petitioner Exhibit 5 – MLS listing of the subject property,
Petitioner Exhibit 6 – MLS listing of comparable sales,
Petitioner Exhibit 7 – List of nine recent PTABOA decisions and a PRC for each,
Petitioner Exhibit 8 – Hurricane Foods Inc. v. White River Twp. Assessor, 836
N.E. 2d 1069 (Ind. Tax Ct. 2005),

Respondent Exhibit 1 – Sales disclosure and PRC for Parcel No. 009-00528-00,
Respondent Exhibit 2 – Sales disclosure and PRC for Parcel No. 009-02608-00,
Respondent Exhibit 2 – Sales disclosure and PRC for Parcel No. 009-01705-00,

Board Exhibit A – Form 131 petition and its related attachments,
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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in their assessed value. The Board reached this decision 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 (MANUAL) (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. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).

- 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); and *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 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 to an appeal must explain how his or her 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); see also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, that valuation date is January 1, 2006. 50 IAC 21-3-3.
- d. Here the Petitioners presented undisputed evidence that they purchased the subject property for \$11,100. *Sharygin testimony; Petitioner Exhibit 1*. The property had been offered on the open market for approximately nine months and their purchase of the property was based on negotiations performed by real estate agents on behalf of both the buyer and seller. *Id.* The seller, Freddie Mac, first listed the property for \$43,000 in January of 2007 and then reduced it to \$28,000 and again to \$19,900. *Id.* The Petitioners' additional evidence shows sales in a similar price range for a variety of homes of various sizes and ages in Mount Vernon. *Petitioner Exhibit 6*. This demonstrates that the sale of the property under appeal reflects a pattern in the community and is not an anomaly. *Id.* Thus, the Petitioners presented some evidence that their purchase of the subject property, although from a bank, represented a market sale.²
- e. The Petitioners fell short of raising a prima facie case, however, when they neglected to address the appropriate time frame for the appeal at bar. The Petitioners are appealing their property's 2007 assessment. The valuation date for the March 1, 2007, assessment is January 1, 2006. 50 IAC 21-3-3. The Petitioners' purchase of the subject property in September of 2007 falls more than twenty-one months beyond the valuation date required to prove the property's 2007 value. In order for their

² The Respondent's representative argues that the sale was a "distress sale." *Eads argument*. Ms. Eads, however, provided no evidence of that contention other than arguing that the property was vacant. *Id.* The mere fact that the property was vacant prior to the Petitioners' purchase is insufficient to rebut the Petitioners' evidence that they purchased their property from an unrelated entity, that the property was listed and offered for sale for a sufficient amount of time and with wide exposure to the public, and that the sale price represented the market in that neighborhood. See *Damon Corporation v. Indiana State Board of Tax Commissioners*, 738 N.E.2d 1102 (Ind. Tax 2000) (unsupported allegation that the property was vacant prior to its purchase is not probative that the property suffered a loss in value). Thus, barring probative evidence to the contrary, the Board will not simply assume that the bank sold its property at a price below its market value.

- purchase of the subject property to be probative of the property's market value-in-use, their purchase price would have had to have been adjusted back to the January 1, 2006, valuation date and the Petitioners made no effort to do so. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006) (parties must explain how their evidence relates to the property's market value-in-use as of the relevant valuation date).
- f. The Petitioners also contend that the value of their property is too high based on the sales of other local properties. *Lockyear argument*. In support of this contention, the Petitioners submitted a list of properties that sold between 2005 and 2007 and MLS data sheets showing the list prices and the sale prices. *Petitioner Exhibit 6*. In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value in use of their property. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, 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 two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Petitioners presented no evidence to show that the offered properties were comparable to the subject property. Nor did they value any differences between the properties. Thus, the Petitioners' comparable sales data is not probative of the subject property's market value-in-use.³
- g. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

16. The Petitioners failed to raise a prima facie case that their property was over-valued in its 2007 assessment. The Board finds in favor of the Respondent.

³ The Petitioners also contend that the Assessor and the PTABOA have accepted sale prices to make changes to other properties. However, the Petitioners have not shown how those properties are comparable or how those determinations had any precedential value. The sale of a property may be probative of a property's value or not probative of a property's value for many reasons. Without more, the Board has no basis to make a determination based on the Assessor's or the PTABOA's actions on other properties. *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").

FINAL DETERMINATION

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

ISSUED: _____

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>.