

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

Petition No.: 06-019-07-1-5-00683
Petitioner: Melinda L. Simon
Respondent: Boone County Assessor
Parcel No.: 019-06520-00
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 Petitioner initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 17, 2008.
2. The PTABOA issued notice of its decision on April 22, 2009.
3. The Petitioner filed a Form 131 petition with the Board on May 20, 2009. The Petitioner elected to have her case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated March 17, 2010.
5. The Board held an administrative hearing on June 8, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Melinda L. Simon, property owner
 - b. For Respondent: Lisa C. Garoffolo, Boone County Assessor
Charles T. Ewing, PTABOA Member

Facts

7. The subject property consists of a single-family residence with a swimming pool and gazebo located at 665 Sugarbush Drive, Zionsville, Eagle Township, in Boone County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2007, the PTABOA determined the assessed value of the property to be \$74,300 for land and \$208,500 for the improvements, for a total assessed value of \$282,800.¹
10. The Petitioner requested an assessed value of \$51,000 for the land and \$204,000 for the improvements, for a total assessed value of \$255,000.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in her assessment:
 - a. The Petitioner contends that the subject property is assessed in excess of its market value-in-use. *Simon testimony*. In support of her position, Ms. Simon submitted a residential appraisal report prepared by Stacie Johnting of Appraisal Sources, Inc., on March 31, 2009. *Petitioner Exhibit 2*. Ms. Johnting is an Indiana Certified Real Estate Appraiser. *Id.* In her appraisal report, Ms. Johnting estimated the property's value to be \$255,000 as of January 1, 2006. *Id.*
 - b. The Petitioner also contends the value of her property is overstated compared to the market value of properties in the surrounding area. *Simon testimony*. In support of her position, the Petitioner submitted a comparative market analysis prepared by Barbara Kiernan of Century 21 Realty Group I. *Petitioner Exhibit 4*. In addition, Ms. Simon presented multiple listing sheets (MLS), exterior photographs and property record cards for seven properties in the area and for the four properties in the Petitioner's appraisal. *Petitioner Exhibit 5*. According to Ms. Simon, the comparable properties are superior to the property under appeal in size, condition, and amenities, but are selling for an average of \$135 per square foot of living area; whereas the Petitioner's property, which is inferior to the comparable properties, is assessed for \$137.84 per square foot. *Simon testimony; Petitioner Exhibit 4*.
 - c. Finally, the Petitioner contends, her home is in below average condition and is out of date cosmetically. *Simon testimony*. In support of this contention, the

¹After the PTABOA issued its Notification of Final Assessment Determination – Form 115 (Form 115) and prior to the Board's hearing, the County Assessor did an "added assessment" whereby she increased the Petitioner's total assessed value to \$306,000. *Petitioner Exhibits 7 and 8; Respondent Exhibit 2; Simon and Garoffolo testimony*. The Petitioner argued, however, that the county failed to notify her that her property's assessment was increased or allow her an appeal hearing on the change. *Simon testimony*.

Petitioner submitted nine interior photographs and a narrative description of each room's condition. *Petitioner Exhibit 6*. Ms. Simon argues that the property's deteriorated condition and outdated fixtures and finishes adversely impact the property's value. *Simon testimony*.

- d. In response to the Respondent's comparable sales analysis, the Petitioner argued that the county omitted from its analysis the property located at 725 Sugarbush Drive that sold on October 31, 2006. *Simon testimony*. According to Ms. Simon, omitting a single sale from the county's analysis resulted in a higher price per square foot of living area. *Id.*

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

- a. The Respondent contends the property under appeal is correctly assessed. *Garoffolo testimony*. The Respondent's witness testified that seven properties in the Petitioner's neighborhood sold with prices ranging from \$310,000 to \$469,000, or an average price per square foot of living area of \$138.² *Ewing testimony; Respondent Exhibit 6*. Thus, Mr. Ewing argues, the property is currently assessed at slightly below average for the Sugarbush Drive area. *Ewing testimony*.
- b. The Respondent further argues the Petitioner's appraisal is flawed and should be given no weight. *Ewing testimony*. According to the Respondent's witness, the property located at 705 Sugarbush Drive was sold in a foreclosure sale. *Id.* Similarly, Mr. Ewing argues, the Petitioner's evidence identified the sale of the property at 725 Sugarbush Drive as a short sale. *Ewing testimony; Petitioner Exhibit 5*. Because of the circumstances surrounding foreclosure and short sales, such as highly motivated sellers, Mr. Ewing argues, properties normally sell for a much lower price. *Ewing testimony*. Thus, he concludes, foreclosures and short sales do not represent a property's market value and should not be used in an appraisal. *Id.*
- c. Mr. Ewing also argues that the Petitioner's comparative market analysis supports the Respondent's argument that a short sale property sells for a lower price than other properties in an area. *Ewing testimony; Petitioner Exhibit 4*. According to Mr. Ewing, the Petitioner's comparable sales all sold for between \$118 and \$166 per square foot of living area; whereas 725 Sugarbush Drive sold for only \$111 per square foot of living area. *Id.*
- d. Finally, the Respondent's witness argues that the Petitioner's appraiser only used two sales from the Petitioner's neighborhood despite the fact that seven sales occurred between January 1, 2005, and December 31, 2006. *Ewing testimony*;

² In response to the Petitioner's argument that all of the homes used in the Respondent's comparative analysis have more square feet of living area than the subject property, Ms. Garoffolo testified that normally the more living area a home has, the lower it costs per square foot to build. *Garoffolo testimony*.

Respondent Exhibit 6. Mr. Ewing testified that, based on the two sales in the appraisal report that are not foreclosures or from outside of the Petitioner's subdivision, the subject property is assessed only \$20,000 to \$30,000 higher than the comparable sales, which, Mr. Ewing argues, is insufficient to show the property's value should be lowered. *Ewing testimony; Respondent Exhibit 8.*

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 – Invoice from Stacie Johnting, Appraisal Sources, Inc., dated March 31, 2009,

Petitioner Exhibit 2 – Summary Appraisal Report prepared by Stacie Johnting, dated March 31, 2009,

Petitioner Exhibit 3 – Comparative market analysis prepared by Jeff Wolfe, Wolfe Appraisals, dated August 19, 2008,

Petitioner Exhibit 4 – Comparative market analysis prepared by Barbara Kiernan, Century 21 Realty Group I, dated October 6, 2008,

Petitioner Exhibit 5 – Multiple listing sheets, property record cards and exterior photographs for 845 Sugarbush Drive, 675 Sugarbush Drive, 725 Sugarbush Drive, 705 Sugarbush Drive, 667 Morningside Court, 650 Morningside Court, 697 Morningside Court, 647 Morningside Court, 685 Morningside Drive, 600 Morningside Drive and 30 Williamsburg Court, Zionsville,

Petitioner Exhibit 6 – Interior photographs and a description of the condition of each room in the Petitioner's home,

Petitioner Exhibit 7 – Letter from Melinda Simon to the Indiana Board of Tax Review, dated June 1, 2009; Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131; letter from Melinda Simon to Lisa Garoffolo, Boone County Assessor, dated March 27, 2009; electronic mail messages between Melinda Simon and Lisa Garoffolo; Notice of Hearing on Petition – Real Property by County Property Tax Assessment Board of Appeals – Form 114, dated April 7, 2009; and Notification of Final

- Assessment Determination – Form 115, dated April 22, 2009,
- Petitioner Exhibit 8 – Letter from Melinda Simon to the Boone County PTABOA, dated October 17, 2008; Boone County appeal worksheet, dated October 17, 2008; exterior photographs of the property under appeal; sketches of the home under appeal; and a Surveyor Location Report prepared by Kirby Bros. Surveying Co., dated February 14, 1989,
- Respondent Exhibit 1 – Boone County appeal worksheet, dated October 17, 2008; letter from Melinda Simon to the Boone County PTABOA, dated October 17, 2008; Boone County appeal worksheet, dated December 13, 2007; Memorandum from Sally Plummer, Eagle Township assessor’s office, to Mindy Simon, dated November 2, 2007; exterior photographs of the subject property; sketches of the home under appeal; and a Surveyor Location Report prepared by Kirby Bros. Surveying Co., dated February 14, 1989,
- Respondent Exhibit 2 – Boone County appeal worksheet, dated March 11, 2009, and property record card for 665 Sugarbush Drive, Zionsville,
- Respondent Exhibit 3 – Notice of Hearing on Petition – Real Property by County Property Tax Assessment Board of Appeals – Form 114, dated April 7, 2009,
- Respondent Exhibit 4 – Old property record card for 665 Sugarbush Drive, Zionsville,
- Respondent Exhibit 5 – New property record card for 665 Sugarbush Drive, Zionsville,
- Respondent Exhibit 6 – Comparative market analysis prepared by Jeff Wolfe, Wolfe Appraisals, dated August 19, 2008,
- Respondent Exhibit 7 – Property record card for 665 Sugarbush Drive, Zionsville,
- Respondent Exhibit 8 – Petitioner’s Summary Appraisal Report, prepared by Stacie Johnting, Appraisal Source, Inc., dated March 31, 2009,
- Respondent Exhibit 9 – Notification of Final Assessment Determination – Form 115, dated April 22, 2009,
- Respondent Exhibit 10 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated May 21, 2009,

Respondent Exhibit 11 – Indiana Board of Tax Review Notice of Hearing on Petition, dated March 17, 2010,
Respondent Exhibit 12 – Exterior photograph of Parcel No. 019-06520-00, dated December 2, 2002,

Board Exhibit A – Form 131 petition with 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 Township 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 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 case. *Id.; Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in the assessed value of her property. 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. In 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 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. Here, the Petitioner presented an appraisal report dated March 31, 2009, prepared by Stacie Johnting, that estimated the value of the property to be \$255,000 as of January 1, 2006. *Petitioner Exhibit 2; Simon testimony*. The appraiser is an Indiana Certified Real Estate Appraiser who prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices. (USPAP). *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 sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the Petitioner raised a prima facie case that her property is over-assessed.³
- 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 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*

³ The Petitioner also submitted additional evidence regarding the condition of her home and a market analysis of comparable properties. *Petitioner Exhibits 4 and 6*. The Board finds, however, that neither the comparable sales analysis, nor the Petitioner's evidence on the condition of her home is sufficient to warrant a further reduction from the Petitioner's appraised value.

Savings & Loan v. Jennings County Assessor, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

- f. Here, the Respondent presented a comparative market analysis in support of its assessment. *Respondent Exhibit 6; Ewing testimony*. In making this argument, the Respondent essentially relies on a sales comparison approach to establish the market value in use of the subject 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.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). 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 comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* In his analysis, Mr. Wolfe identified the number of bedrooms, baths and fireplaces in each home. *Respondent Exhibit 6*. In addition, the analysis identified the size of garage and the living area in each house. *Id.* However, the Respondent failed to identify the similarities in the properties. Nor did the Respondent attempt to value the differences between the subject property and the comparable sales. Thus, the Respondent’s evidence is not probative of the market value-in-use of the property under appeal.
- g. The Respondent also argues that the Board should give little weight to the Petitioner’s appraisal because the appraiser used a short sale and a foreclosure sale in her valuation. In addition, although six sales occurred in the Petitioner’s neighborhood, the Respondent argues, the Petitioner’s appraiser only used two sales from the Sugarbush area. The Board, however, finds this argument similarly unpersuasive. It is well within an appraiser’s expertise to choose the sales he or she deems most comparable to the subject property and apply adjustments to those comparable properties to value the differences between them. Absent evidence to the contrary, the comparable properties chosen by the appraiser, the weight given to the sales, or the adjustments made by an appraiser in a USPAP-compliant appraisal are deemed to be reasonable.⁴

⁴ The Board notes that the appraiser acknowledged in her appraisal that she used a foreclosure sale to compare the subject property’s below average condition. *Petitioner Exhibit 2*. But, the appraiser stated, little weight was given to the foreclosure sale. *Id.*

Conclusion

16. The Petitioner raised a prima facie case that the subject property is over-valued. The Respondent failed to rebut or impeach the Petitioner’s evidence. Thus, the Board finds in favor of the Petitioner and holds that the market value-in-use of the property is \$255,000 for the March 1, 2007, assessment date.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the Petitioner’s assessment should 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 pursuant to 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 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/bills/2007/SE0287.1.html>.