

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

Petition #: 06-007-06-1-5-00326
Petitioners: Ernest and Janet Truax
Respondent: Boone County Assessor
Parcel #: 0070216001
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. On November 20, 2007, Ernest and Janet Truax filed a written request asking the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) to reduce their property’s assessment. On January 4, 2008, the PTABOA issued its determination reducing the assessment to \$185,800. The Truaxes appealed that determination by filing a Form 131 petition with the Board on January 31, 2008. The PTABOA then issued an amended determination further reducing the assessment to \$165,400.
2. The Truaxes elected to proceed under the Board’s small-claims rules.
3. The Board held an administrative hearing on April 29, 2008, before its duly appointed Administrative Law Judge Alyson Kunack.
4. Persons present and sworn in at hearing:
 - a) For the Truaxes: Ernest and Janet Truax
 - b) For the Assessor: Lisa Garoffolo, Boone County Assessor
Jeff Wolfe, PTABOA member

Facts

5. The Truaxes’ property is a single-family residence located at 4856 North 900E, Whitestown.
6. The Administrative Law Judge did not inspect the property.
7. The PTABOA determined the assessed value of Truaxes’ property to be:

Land: \$42,000 Improvements: \$123,400 Total: \$165,400

8. The Truaxes request a total assessment of \$132,000.

Parties' Contentions

9. The Truaxes offered the following evidence and arguments:
- a) The Truaxes's home is a manufactured home. They upgraded the home with better carpet, a reinforced steel frame for the basement, and a steeper roof pitch; everything else on the home is standard. It has no wood—even the trim is fake wood—or tile floors. *E. Truax testimony; Pet'rs Ex. 14.*
 - b) Based on a professional appraisal and his own research, Mr. Truax believes that the Truaxes' property would sell for \$132,000. *E. Truax testimony.*
 - c) The appraisal estimated the property's value at \$132,000 as of January 21, 2003. While Mr. Truax acknowledged that the appraisal was one year earlier than the 2004-2005 period that assessors used in valuing properties for the 2006 assessment, he contended that property values "don't change that fast." *E. Truax testimony; Pet'rs Ex. 5.*
 - d) For his own analysis, Mr. Truax researched property sales from 2004 to 2007. He chose that timeframe because there had been "little or no growth" in the area's housing market. *E. Truax testimony.* He focused on sales from four townships: Marion, Worth, Union and Clinton and further narrowed his search to properties containing manufactured or modular homes with sale prices between \$100,000 and \$500,000. He found four sales within those parameters. *E. Truax testimony; Pet'rs Ex. 1-4, 14.*
 - e) Mr. Truax then adjusted each property's sale price to account for differences between that property and the subject property, including differences in:
 - the homes' relative sizes and conditions;
 - the presence or absence of various features, including attached garages, extra rooms, and basements;
 - the properties' relative lot sizes;
 - the presence or absence of unique land features such as ponds; and
 - the presence or absence of outbuildings.*E. Truax testimony; Pet'rs Ex. 1-4, 14.*
 - f) Because Mr. Truax didn't visit any of the properties, he determined each home's relative condition from information contained on MIBOR sheets. *E. Truax testimony.* To quantify his adjustments for condition and other items, he used numbers provided by a "real estate guy" who worked for his custom concrete business, although Mr. Truax didn't ask the "real estate guy" what he based those

numbers on. *Id.* For other adjustments, such as his adjustments for the presence of an attached garage and differences in home and lot sizes, he used information from the appraisal. *Id.*; see also *Pet'rs Exs. 5, 14*. And he used his own knowledge about the cost difference between pouring a concrete basement and pouring a crawl space to quantify his adjustment for the lack of a basement. *E. Truax testimony.*

- g) Property #1 sold for \$103,000 on May 2, 2004. It had a modular home situated on 5 acres. Mr. Truax made the following adjustments to its sale price:

+ \$10,000 (condition)
+10,000 (no basement)
+ \$6,100 (436 fewer square feet)
-\$2,000 (attached garage)

\$127,100 (adjusted sale price)

E. Truax testimony; Pet'rs. Exs. 1, 14.

- h) Property #2 sold for \$120,000 on May 7, 2004. It had a modular home situated on 3.31 acres. Mr. Truax made the following adjustments to its sale price:

+ \$10,000 (no basement)
+ \$5,000 (age and condition)
+ \$5,000 (1.69 fewer acres)
+ \$5,000 (346 fewer square feet)
+ \$1,000 (1 fewer bathrooms)
- \$20,000 (4-car detached garage with water, electric and 2 horse stalls)
- \$2,000 (attached garage)

\$134,000 (adjusted sale price)

E. Truax testimony; Pet'rs. Exs. 2, 14.

- i) Property # 3 sold for \$125,000 on March 7, 2007. It contained a modular home situated on 3 acres. Mr. Truax made the following adjustments to its sale price:

+ \$5,000 (2 fewer acres)
+ \$10,000 (no basement)
- \$2,000 (attached garage)
-\$3,000 (extra bedroom, bathroom, and office)
-\$3,920 (additional 280 square feet)

\$131,000 (adjusted sale price)

E. Truax testimony; Pet'rs. Exs. 3, 14.

- j) Property # 4 sold for \$156,900 on June 20, 2007. It had a modular home situated on 5.66 acres. Mr. Truax made the following adjustments to its sale price:

+ \$15,000 (condition)
+ \$10,000 (no basement)
- \$5,880 (420 additional square feet and an extra room)

- \$3,000 (additional $\frac{3}{4}$ of an acre)
- \$40,000 (horse barn)

\$133,000 (adjusted sale price).

E. Truax testimony; Pet'rs. Exs. 4, 14.

- k) Mr. Truax also offered information about two sales of the same property that contained a “stick-built” home. He admitted that the property didn’t truly compare to the Truaxes’ property. Because stick-built homes typically sell for \$20,000 to \$30,000 more than modular homes, however, he felt that the property’s \$164,000 sale price showed that the Truaxes’ \$165,400 assessment was too high. *E. Truax testimony; Pet'rs. Exs. 6-7.*
 - l) He also researched modular-home sales throughout Boone County, and he found six properties that sold for prices within the \$100,000 to \$500,000 range. Once again, he acknowledged that those properties weren’t comparable to Truaxes’ property, but he felt that they illustrated the Truaxes’ position. The most expensive property sold for \$315,000 and the next most expensive one sold for \$183,000. They all were far superior to the Truaxes’ property. *E. Truax testimony; Pet'rs. Exs. 12-14*
10. Summary of the Assessor’s evidence and arguments:
- a) The PTABOA initially changed the grade of the Truaxes’s home to a “C-” then later revised it to a “D++”. The PTABOA also changed the garage’s construction type and gave it a “D+” quality grade. Those changes lowered the property’s assessment to \$165,400. *Wolfe testimony; Resp't Exs. 13, 17.*
 - b) Of the four sales that Mr. Truax offered, three properties were either bank-owned or had been subjected to foreclosure actions. *Wolfe testimony.*
 - c) The Truaxes’ appraisal didn’t include their garage. In light of the garage’s value (\$16,800) and the property’s likely 2% - 3%, annual appreciation, the assessment is fair. *Wolfe testimony; Resp't Exs. 2, 11.*

Record

11. The official record for this matter is made up of the following:
- a) The Truaxes’ Form 131 petition.
 - b) A digital recording of the hearing.
 - c) Exhibits:
 - Petitioners Exhibit 1: Search results and information sheet for comparable Sale #1

Petitioners Exhibit 2: Information sheet for comparable Sale #2
Petitioners Exhibit 3: Information sheet for comparable Sale #3
Petitioners Exhibit 4: Information sheet for comparable Sale #4
Petitioners Exhibit 5: Appraisal of subject property
Petitioners Exhibit 6: Information sheet for 2004 sale of 8650 E 900N
Petitioners Exhibit 7: Information sheet for 2005 sale of 8650 E 900N
Petitioners Exhibit 8: Copy of photograph showing basement frame
Petitioners Exhibit 9: Initial Form 115 determination
Petitioners Exhibit 10: Form 131 Petition
Petitioners Exhibit 11: Amended Form 115 determination
Petitioners Exhibit 12: Boone County sales search results and information sheets
Petitioners Exhibit 13: Form 133 Petition for Correction of Error
Petitioners Exhibit 14: Case summary

Respondent Exhibit 1: Appeal worksheet dated November 20, 2007
Respondent Exhibit 2: Subject Property Record Cards ("PRCs") for 2004 and 2005
Respondent Exhibit 3: Reassessment survey from 2001
Respondent Exhibit 4: Subject PRC for 2002
Respondent Exhibit 5: Form 133 Petition for Correction of an Error filed on September 14, 2004
Respondent Exhibit 6: Form 133 Petition for Correction of an Error filed on September 14, 2004
Respondent Exhibit 7: Petitioners' comparable sales analysis
Respondent Exhibit 8: Photographs of neighboring properties
Respondent Exhibit 9: Photographs of steel frame in basement
Respondent Exhibit 10: Aerial view of subject property
Respondent Exhibit 11: Appraisal of subject property dated January 21, 2003
Respondent Exhibit 12: Petitioners' comparable property information
Respondent Exhibit 13: Initial Form 115 determination
Respondent Exhibit 14: PTABOA Notice of Hearing
Respondent Exhibit 15: Letter accompanying PTABOA hearing notice
Respondent Exhibit 16: Appeal worksheet
Respondent Exhibit 17: Amended Form 115 determination

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

Burden of Proof

12. A taxpayer 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).
13. In making its case, the taxpayer 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”).
14. Once the taxpayer establishes a prima facie case, the burden shifts to the assessor to impeach or rebut the taxpayer'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.

The Petitioners' Case

15. The Truaxes did not make a prima facie case rebutting their property's assessment. 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 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 use 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 2006). But a taxpayer may rebut that presumption using 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 sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. *MANUAL* at 5.

- c) The Truaxes relied on two things to support their claim for reducing their property's assessment to \$132,000—a professional appraisal of their property and Mr. Truaxes' valuation opinion based on his own sales-comparison analysis. As explained below, each item suffers from problems that deprive it of probative value.
- d) The appraisal generally complies with what the Manual and Tax court describe as being necessary to show a property's market value-in-use. The appraiser applied a generally accepted valuation methodology—the sales-comparison approach—and he certified that he complied with the Uniform Standards of Professional Appraisal Practice. *See Pet'rs Ex. 5; Kooshtard Property VI*, 836 N.E.2d at 506 n.1.
- e) But that appraisal estimates the property's value as of January 21, 2003. The relevant valuation date for the March 1, 2006, assessment is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3. Thus, the Truaxes needed to explain how that 2003 estimate related to their property's value as of January 1, 2005. *See Long* 821 N.E.2d at 471; *see also O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). At most, Mr. Truax baldly asserted that property values were not increasing in Marion Township due to a lack of growth and development. *See E. Truax testimony*. That entirely conclusory assertion was insufficient to relate the appraisal to the appropriate valuation date.
- f) Mr. Truax's own sales-comparison analysis partly suffers from the same problem. Of the four purportedly comparable property sales he identified, two occurred in 2007. *E. Truax testimony; Pet'rs Exs. 3-4, 14*. Once again, he offered only conclusory assertions that prices had remained stable from 2004 through 2008.
- g) Valuation-date issues aside, Mr. Truax's analysis is too flawed for the Board to give it any probative weight. The sales-comparison approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute property that already exists in the market place. MANUAL at 13-14. A person applying the sales-comparison approach must first identify comparable improved properties that have sold. *Id.* He or she must then adjust those properties' sale prices to reflect the subject property's total value. *Id.* The adjustments reflect differences between the subject and comparable properties that affect value. And those adjustments must be identified using objectively verifiable market evidence. *Id.*
- h) Thus, in order to use the sales-comparison approach as evidence in a property assessment appeal, the person who performed the analysis must explain how the properties at issue compare to the subject property. 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent of the analysis must identify relevant characteristics of the subject property and

explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. He must also explain how any relevant differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71.

- i) Mr. Truax followed the sales-comparison approach's form admirably. He looked for nearby properties with similarly constructed homes and roughly comparable lots. And he diligently adjusted the comparable properties' sale prices to reflect several relevant ways in which they differed from the subject property.
- j) The substance of Mr. Truax's analysis, however, strayed too far from generally accepted appraisal principles for the Board to ultimately give it any weight. Specifically, he failed to offer objectively verifiable evidence to support many of the adjustments he made to the comparable properties' sale prices. While that isn't uniformly true—he pointed to sources for several adjustments—it applies to some of the most significant, and largest, adjustments that he made. Thus, he adjusted one property's sale price by \$40,000 because it had a horse barn, another property's sale price by \$20,000 because it had a four-car detached garage, and all four properties' sale prices by \$10,000 - \$15,000 for their respective conditions. And he used numbers provided by his "real estate guy" without asking where those numbers came from. In fact, he quantified his adjustments for condition without even having seen the properties.
- k) In finding Mr. Truax's sales-comparison analysis too unreliable, the Board recognizes that many appraisal reports don't reveal the underlying bases for the appraiser's adjustments to comparable properties' sale prices. But unlike Mr. Truax's unsupported adjustments, the appraiser typically certifies that he complied with USPAP. Thus, the Board can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training, and experience to estimate a reliable quantification. Absent impeachment or rebuttal, that inference often will be enough for the Board to assign at least some probative weight to the appraisal. The Board, however, can't draw that same inference from Mr. Truax's lay opinion.
- l) Finally, Mr. Truax pointed to four sales of three other properties (two involved the same property). But he acknowledged that those properties did not compare to the Truax's property, and he did not attempt to adjust their sale prices. The Board therefore gives those sales no weight. Even if, as Mr. Truax argued, the sales tended to show that the Truax's assessment was too high, they did not support the \$132,000 assessment the Truax's requested, or any other particular amount for that matter.

Conclusion

16. The Truaxes failed to make a prima facie case. The Board finds in favor of the Boone County Assessor.

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: _____

Commissioner,
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>