

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

Petition No.: 91-010-06-1-5-00111
Petitioner: Allen S. Turoski
Respondent: White County Assessor
Parcel No.: 007-97360-00
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 Petitioner initiated an assessment appeal with the White County Property Tax Assessment Board of Appeals (the PTABOA) by written document on December 27, 2006.
2. The PTABOA issued notice of its decision on December 21, 2007.
3. The Petitioner filed a Form 131 petition with the Board on February 1, 2008. The Petitioner elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated December 10, 2008.
5. The Board held an administrative hearing on February 17, 2009, 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: Allen S. Turoski, property owner
Luke E. Kelly, witness

- b. For Respondent: Scott Potts, County Representative¹

Facts

7. The property consists of a single-family residence located at 8516 North Kiger Drive, Monticello, Liberty Township, in White County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2006, the PTABOA determined the assessed value of the property to be \$36,900 for land and \$167,800 for the improvements, for a total assessed value of \$204,700.
10. On the Form 131 the Petitioner requested the assessed value to be \$23,250 for the land and \$131,750 for the improvements, for a total assessed value of \$155,000.

Issue

11. Summary of the Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner mainly argues that the property's assessment should not have been changed for the 2006 assessment. *Turoski argument*. Mr. Turoski testified that in 2004 the PTABOA sent a representative to measure the subject property, which resulted in a reduction in the assessed value to \$173,000. *Id.* According to the Petitioner, the property has not changed since 2004 and therefore the assessed value should be no more than \$173,000 for 2006. *Id.*
 - b. The Petitioner also argues that the house's measurements still are not correct. *Turoski argument*. According to the property record card, the combined area for the home's first floor and loft area are 1,579 square feet (1,103 square feet on the first floor and 476 square feet on the loft). *Respondent Exhibit 2*. Mr. Turoski testified that the first floor is approximately 1,000 square feet and the loft square foot area is approximately one-fourth of the first floor area. *Turoski testimony*.
 - c. The Petitioner further contends that property values have declined in White County, as well as all over the country. *Turoski testimony*. According to Mr.

¹The only authorized representatives in a Board hearing are "(1) a permanent full-time employee of the owner of a property; (2) assessing officials and permanent, full-time employees of local units of government appearing on behalf of the unit or as the authorized representative of another unit; (3) a tax representative as defined in 52 IAC 1-1-6; (4) a representative of a minor or incapacitated party as defined in 52 IAC 1-2-1.1; (5) a local government representative as defined in 52 IAC 1-1-3.5; (6) a certified public accountant when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or (7) an attorney who is a member in good standing of the Indiana bar..." 52 IAC 2-2-4. Mr. Potts is neither the assessor, nor a permanent full time employee of the assessor's office. He could have filed to represent the Respondent as a local government representative under 52 IAC 1-1-3.5, but he failed to file a written verification that he is a "professional appraiser" approved by the Department of Local Government Finance as required by 52 IAC 1-1-3.5 and he failed to file a power of attorney with the Board as required by 52 IAC 2-3-2. Thus, Mr. Potts was not properly representing the Respondent. The Board is aware that Mr. Potts has frequently appeared before it as a Representative of White County and notes that the Petitioners here did not object to Mr. Potts' participation. Mr. Potts, however, is admonished that he must comply with the Board's representation rules in any future proceedings.

Turoski, the country's real estate market is down approximately 18%. *Id.* In support of this contention, the Petitioner submitted the White County Market Place newspaper. *Petitioner Exhibit 10.* Mr. Turoski argues that, in these economic conditions, it is inconceivable that the value of the property under appeal would increase from \$173,000 in 2004 and 2005 to \$204,700 in 2006. *Turoski testimony.* Mr. Turoski also argues that, for the 2008 assessment year, his land value increased from \$36,900 to \$85,000, without any justification given by the county assessor. *Id.*

- d. Finally, the Petitioner contends the value of the property under appeal is overstated compared to properties in the surrounding area. *Turoski testimony.* In support of his position, the Petitioner submitted the multiple listing sheets (MLS) for eight properties that listed or sold in 2007 for prices ranging from \$128,750 to \$178,900. *Petitioner Exhibits 1 – 8.* The Petitioner argues that the MLS properties were similar in location, size and lake frontage to the subject property. *Turoski testimony.* In addition, the Petitioner submitted the White County sales ratio study on ten properties in the surrounding area. *Petitioner Exhibit 11.* Mr. Turoski identified two properties from the sales ratio study that sold for \$139,900 and \$149,000, on September 2, 2004, and May 24, 2005, respectively. *Turoski testimony.* According to the Petitioner, the two properties from the sales ratio study are superior to the property under appeal because the houses have more square footage, they can walk-out to the water, the water frontage is level and they have seawalls. *Id.* Thus, the Petitioner concludes, the current assessment is excessive. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent contends the property's assessment is correct based on the property's market value. *Potts testimony.* In support of this contention, the Respondent submitted sale and assessment information for a comparable property located at 8741 North Kiger Drive that sold for \$215,000 on March 30, 2005. *Respondent Exhibit 1; Potts testimony.* Mr. Potts testified that the comparable property is located on the Tippecanoe River. The land has a higher bank, with a lot that is deeper but the same width as the property under appeal. The dwelling square footage is slightly bigger and the dwelling is older than the property under appeal. *Id.* Thus, the Respondent concludes, the sale supports the property's assessed value. *Potts testimony.*
 - b. The Respondent's witness further testified that as a result of an appeal filed by the Petitioner on the March 1, 2005, assessment, he conducted a review and re-measured the improvements of the property under appeal. *Potts testimony.* According to Mr. Potts, he corrected the first floor measurements to 1,103 square feet and changed the loft area to 476 square feet as a result of this review. *Id.* Mr. Potts testified that the Petitioner's dwelling area was corrected for the March 1,

2005, assessment. *Id.* Therefore the measurements accurately reflected the structure on the property for the March 1, 2006, assessment. *Id.*

- c. Finally, the Respondent contends that assessments prior to March 1, 2006, were valued based on sales which occurred in 1999 and 2000. *Potts testimony.* However, for the March 1, 2006, assessment, values were based on sales that occurred in 2004 and 2005. *Id.* According to Mr. Potts, while values of non-water properties in White County were stagnate, sales of properties located on the water continued to increase up through 2007. *Id.* Thus, the Respondent contends the change in the Petitioner's March 1, 2005, assessment of \$173,900 to the March 1, 2006, assessment of \$204,700 was necessary to adequately reflect the property's fair market value. *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 – Multiple listing sheet for 5056 East Quietwater Court, Monticello,
Petitioner Exhibit 2 – Multiple listing sheet for 5692 East Bass Center, Monticello,
Petitioner Exhibit 3 – Multiple listing sheet for 3964 North Lake Road 2.4 East, Monticello,
Petitioner Exhibit 4 – Multiple listing sheet for 3426 East 425 North, Monticello,
Petitioner Exhibit 5 – Multiple listing sheet for 5255 North West Shafer Drive, Monticello,
Petitioner Exhibit 6 – Multiple listing sheet for 8719 North Kiger Drive, Monticello,
Petitioner Exhibit 7 – Multiple listing sheet for 3888 East Forest Lodge Loop, Monticello,
Petitioner Exhibit 8 – Multiple listing sheet for 4868 East Harbor Court, Monticello,
Petitioner Exhibit 9 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
Petitioner Exhibit 10 – White County's Trading Zone Market Place newspaper, dated December 19, 2006,

Petitioner Exhibit 11 – White County sales ratio study, prepared by Scott Potts, dated March 27, 2007,

Petitioner Exhibit 12 – Exterior photograph of the land of 8516 North Kiger Drive, Monticello,

Petitioner Exhibit 13 – Exterior photograph of the land of 8516 North Kiger Drive, Monticello,²

Respondent Exhibit 1 – Property record card for 8741 North Kiger Drive, Monticello,

Respondent Exhibit 2 – Property record card for 8516 North Kiger Drive, Monticello,

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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

² At the hearing, Mr. Turoski testified about several photographs of neighboring properties but he did not submit those photographs as evidence.

- a. Real property is assessed based on its “true tax value,” which means “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, for the property.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
- b. 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 March 1, 2006, assessments, the valuation date was January 1, 2005. 50 IAC 21-3-3.
- c. Here, the Petitioner claims that the property’s assessment should not have changed for the 2006 assessment because in 2004 the PTABOA sent a representative to measure the subject property and the assessed value was reduced to \$173,000. *Turoski testimony*. According the Petitioner, the property has not changed since 2004 and therefore the assessed value should be no more than \$173,000 for 2006.³ *Id.* Further, Mr. Turoski argues, the correction to his 2004 assessment came just before the property was reassessed for 2006. *Id.* Thus, he argues, the value of the property could not have increased that much in such a short period of time and, in fact, should not have increased at all due to the decline in the market. *Id.*
- d. While the Petitioner’s 2004 and 2006 assessments may have appeared to have occurred in close proximity in time, the valuation dates for those two assessments were years apart. For the March 1, 2004, assessment, the valuation date was January 1, 1999. MANUAL at 4. For the March 1, 2006, assessment, however, trending was applied and the valuation date was January 1, 2005. 50 IAC 21-3-3. Although the change in assessments may have appeared to have occurred in a relatively short period of time, the 2006 assessment reflected six years of appreciation in the property’s value. Therefore, the increase in assessment alone

³ Mr. Turoski also testified he was frustrated by the unfair treatment and lack of consideration given to his evidence at the PTABOA hearing. *Petitioner Exhibit 9; Turoski testimony*. Mr. Turoski did not explain what, if any, remedy he wanted from the PTABOA hearing. In any event, none of that affects Mr. Turoski’s appeal to the Board. Once a taxpayer has properly invoked the Board’s jurisdiction, its proceedings are *de novo*. The parties are not limited to evidence offered as a result of the PTABOA hearing. *See* Ind. Code § 6-1.1-15-4 (m) (A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.) And the Board owes the PTABOA determination no deference. Thus, while the Petitioner may feel he was deprived a fair PTABOA hearing, it does not hinder his ability to present his case to the Board.

is insufficient to show an error in the property's valuation. Moreover, each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Evidence of a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*⁴

- e. The Petitioner also contends that, although the Respondent came out and measured his house in 2004, the property record card still reflected errors in the structure's measurements. *Turoski argument*. According to Mr. Turoski, his house has approximately 1,000 square feet of living space on its first floor and the loft area is approximately one-fourth of the first floor area. *Id.* Mr. Turoski presented no evidence to support his measurements and did not, in fact, testify that he had measured his home. He merely concludes that the area of the house is approximately 1,250 sq. ft. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).⁵
- f. Further, even if the Petitioner had shown that the house's living area was incorrect— which he did not – the Petitioner failed to show that the assessment did not accurately reflect the market value of the property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).
- g. Finally, the Petitioner contends that his property is over-valued based on eight multiple listing sheets and the White County sales ratio study of comparable properties. *Petitioner Exhibits 1 – 8 and 11*. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the

⁴ Mr. Turoski also testified that for the 2008 assessment year his land value experienced another increase from \$36,900 to \$85,000, without any justification given by the county assessor. *Turoski testimony*. While the Petitioner discussed changes to his 2008 assessment, he failed to show how it is relevant to the 2006 assessment year.

⁵ Contrary to Mr. Turoski's estimate, Mr. Potts testified that he was the individual that measured the property and that the property's property record card accurately reflects the measurements he made. The Board finds Mr. Potts' personal knowledge of the measurements and confirmation of the accuracy of those measurements more credible than Mr. Turoski's belief or estimate that the first floor of his home is approximately 1,000 square feet and the loft area is approximately one-fourth of that area. Thus, to the extent Mr. Turoski's testimony may have raised a prima facie case, that evidence was sufficiently rebutted by the Respondent here.

market value-in-use of the property under appeal. *See* MANUAL at 13. 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 being examined. *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 also explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, the Petitioner merely contended that the eight MLS “comparable” properties are similar in location, size and lake frontage and the two “comparables” from the sales ratio study are superior in size, lake level frontage and amenities. Further, Mr. Turoski made no attempt to value the differences in 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).

- h. Therefore, the Petitioner failed to raise a prima facie case that his assessment should be lowered. Where the 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*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to raise a prima facie case that his property was over-valued. The Board finds in favor of the Respondent

Final Determination

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

ISSUED: **May 13, 2009**

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>.