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

Petition No.: **45-026-07-1-5-00031**
Petitioner: **Raymond S. Vance**
Respondent: **Lake County Assessor**
Parcel No.: **45-07-19-279-037.000-027**
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 Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated March 3, 2009.

2. The PTABOA failed to hold a hearing on the Petitioner's appeal within the statutory time frame of 180 days. *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 petition on December 29, 2010. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under a 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.")[1] The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated May 20, 2011.

5. The Board held an administrative hearing on June 20, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.

6. Persons present and sworn in at hearing:

[1] The Petitioner's evidence suggests that the PTABOA held a hearing on April 29, 2011, and issued its decision on the Petitioner's appeal some time thereafter. *Petitioner Exhibit 8.* The Form 115, however, is undated. *Id.* Regardless, the hearing occurred and the PTABOA issued its determination well after its statutory deadline and some time after the Petitioner had already filed his appeal with the Board.

For Petitioner: Raymond S. Vance, property owner,

For Respondent: Robert W. Metz, Lake County hearing officer.

Facts

7. The subject property is a house located at 8426 White Oak Avenue, Munster, Indiana.

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

9. For 2007, the North Township Assessor determined the assessed value of the subject property to be $25,300 for the land and $168,600 for the improvements, for a total assessed value of $193,900.

10. The Petitioner requested an assessment of $140,000.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:

    a. The Petitioner contends that his property is over-assessed based on its appraised value. *Vance testimony*. In support of this contention, Mr. Vance presented an appraisal prepared by Paul M. Bochnowski, an Indiana certified appraiser, who attested he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Petitioner Exhibit 1*. Mr. Bochnowski valued the property at $140,000 as of June 10, 2011. *Id.*

    b. The Petitioner also contends his property is over-assessed based on an opinion of value from a real estate agent. *Vance testimony*. In support of this contention, Mr. Vance submitted a letter from a Re/Max agent with MLS listings for five properties that sold from August 2009 and March 2010 for between $98,000 and $149,900. *Petitioner Exhibit 3*. According to the agent, based on the sales, the Petitioner's property has a market value of $140,000 "in today's market."[2] *Id.*

    c. In addition, the Petitioner argues that the property's assessment was improperly raised by the assessor. *Vance argument.* According to Mr. Vance, the property was assessed at $188,800 with an erroneous address in 2007 and the assessor raised the property's valuation to $194,500 in 2010 and then to $217,400. *Id.; Petitioner Exhibit 7*. Because assessments are capped at 3% per year on rental property according to Indiana law, Mr. Vance argues, the 12.5% increase in his property's

[2] Mr. Vance also submitted the 2007 assessed value of two properties on the subject property's street that are assessed for $133,200 and $168,400, respectively. *Petitioner Exhibit 6*.

assessed value was improper. *Vance argument*. Thus, Mr. Vance contends, the value of his property should be reduced to the appraised value for all four years and taxes on the property should be recalculated with any difference refunded or credited to him. *Id.*

d. Finally, the Petitioner contends that the PTABOA refused to review his documentation without an appraisal of the property. *Vance testimony*. Mr. Vance therefore argues that he should be reimbursed $200 for the cost of the appraisal and also for the fifty hours he spent gathering the data to correct the assessor's error. *Id.*

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

a. The Respondent's representative, Mr. Metz, contends that the assessor's office does not dispute or object to the Petitioner's property's appraised value. *Metz testimony*. However, he argues, because the appraisal values the property as of June 10, 2011, the value would have to be trended back to January 1, 2006, for the 2007 assessment year. *Id*.

b. Mr. Metz further contends that neither he nor the assessor's office demanded an appraisal from the Petitioner. *Metz testimony*. According to Mr. Metz, there are three ways of accumulating information he typically suggests to taxpayers: providing sales disclosures, comparable sales, or an appraisal. *Id*. In fact, Mr. Metz contends, he tells taxpayers that an appraisal is the last option they should pursue because of the out-of-pocket expense of obtaining an appraisal. *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 Vance Part I and Vance Part II,

c. Exhibits:[3]

Petitioner Exhibit 1 – Appraisal by Landmark Appraisal Services,
Petitioner Exhibit 2 – Form 131 petition,
Petitioner Exhibit 3 – Realtor's Opinion of Value letter,
Petitioner Exhibit 4 – Tax bill with the incorrect address,
Petitioner Exhibit 5 – Copies of four requests for preliminary conference Mr. Vance sent to the assessor's office over a two-year period,
Petitioner Exhibit 6 – Two property record cards for properties in the subject property's immediate area,

[3] The Respondent did not submit any exhibits in this matter.

Petitioner Exhibit 7 – Assessed value of the subject property between 2007 and 2011,
Petitioner Exhibit 8 – PTABOA findings,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated May 20, 2011,
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 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 case. *Id.; Meridian Towers*, 805 N.E.2d at 478.

15. The Petitioner failed to provide sufficient evidence to establish a prima facie case that his property was over-valued for the March 1, 2007, assessment date. 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. Taxpayers 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. The Petitioner first contends that his property's assessed value is over-stated based on the property's appraised value. *Vance testimony.* In support of his contention, the Petitioner offered an appraisal report prepared by Paul M. Bochnowski, an Indiana certified appraiser, in which the appraiser valued his property at $140,000 as of June 10, 2011. *Petitioner Exhibit 1.* An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the appraiser estimated the property's value more than five years after the relevant valuation date. While the Respondent did not object to the appraised value, Mr. Metz argued that the property's 2011 appraised value must be trended to 2006. Because the Petitioner did not relate his property's June 10, 2011, appraised value to the property's value as of the January 1, 2006, valuation date, the appraisal fails to show that the Petitioner's property was over-assessed for the March 1, 2007, assessment year.[4] *See Long*, 821 N.E.2d at 471 (holding that an appraisal estimating a property's value as of December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date.)

[4] While it is unfortunate that the Petitioner's appraisal did not estimate the value of the property as of the correct valuation date, the Board notes that the hearing instructions provided to Mr. Vance specifically stated that "you must explain how your evidence relates to the appealed property's value as of the appropriate valuation date. The valuation date will differ depending upon the assessment year under appeal. … For assessment years 2006-2009, the valuation date is 'January 1 of the year preceding the year of the assessment date.' 50 IAC 21-3-3 (2006). Thus, for a March 1, 2006, assessment, the valuation date is January 1, 2005; while the valuation date for a March 1, 2007, assessment is January 1, 2006…" *Board Exhibit B.*

e. The Petitioner also contends that the value of his property is over-stated based on the sales of other nearby properties. *Vance testimony*. In support of this contention, the Petitioner submitted a broker's opinion of value and Multiple Listing Service (MLS) information on five properties that sold in 2009 and 2010. *Petitioner Exhibit 3*. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the property under appeal. *See* MANUAL at 13 (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 properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the 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 presented no evidence to show that the offered properties were comparable to the subject property. Moreover, the sales occurred years after the relevant valuation date. Therefore, like the Petitioner's appraisal, the agent's opinion of value is not sufficiently timely to be probative of the subject property's market value-in-use.[5]

f. Finally, the Petitioner contends that the 12.5% increase in his property's valuation is illegal because the law caps taxes at 3% for rental properties. The Petitioner appears to be referring to Indiana Code § 6-1.1-20.6-7.5(a) which states that "A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's: (1) homestead exceeds one percent (1%); (2) residential property exceeds two percent (2%); (3) long term care property exceeds two percent (2%); (4) agricultural land exceeds two percent (2%); (5) nonresidential real property exceeds three percent (3%); or (6) personal property exceeds three percent (3%); of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year." However, under that statute, the caps apply to the taxes that an individual is required to pay on the assessed value of its property, rather than on the assessed value of the property itself. More importantly the tax caps do not apply until the 2008 and 2009 assessment years. Ind.

[5] The Petitioner also offered property record cards for two properties on the subject property's street that are assessed at $133,200 and $168,400, respectively. *Petitioner Exhibit 6*. To the extent that the Petitioner can be seen as arguing that his property is over-valued based on the assessed value of those two properties, this is insufficient to show an error in his property's assessment. *Petitioner Exhibit 6*. According to the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor,* 859 N.E.2d 396 (Ind. Tax Ct. 2007), it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. Instead, the taxpayer must present probative evidence to show that the property's assessed value does not accurately reflect the property's market value-in-use. *Id.*

Code § 6-1.1-20.6-7 and Ind. Code § 6-1.1-20.6-7.5. Thus, even if Indiana Code § 6-1.1-20.6-7 and Indiana Code § 6-1.1-20.6-7.5 could be interpreted as imposing a limit on the amount an assessed value could increase between assessment years, the Board does not have an appeal of the Petitioner's property's 2008 or 2009 assessments before it.[6]

g. The Petitioner failed to establish a prima facie case that his property was over-valued for the March 1, 2007, assessment year. Where the Petitioner has not supported his 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).

Conclusion

16. The Petitioner failed to raise a prima facie case that his property was over-valued for the 2007 assessment year. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the Petitioner's property's assessed value should not be changed.

ISSUED: _____

[6] The Petitioner also contends that the Respondent should somehow be responsible for compensating him for the costs he incurred in bringing his appeal. The Petitioner, however, cites no rule or statute that would allow such shifting of a party's costs – particularly given that Mr. Vancee is the party that brought the appeal. Nor is the Board aware of any such rule. *See Indiana Dep't of Nat. Res. v. Hoosier Environmental Counsel, Inc.,* 831 N.E.2d 804 (Ind. Ct. App. 2005) ("Generally, awards of fees are governed by the American Rule, under which each party bears its own costs**.** *Rogers Group Inc. v. Diamond Builders LLC,* 816 N.E.2d 415, 420 (Ind. Ct. App. 2004), *trans. denied*. However, exceptions to the American Rule exist where certain fee-shifting statutes give a court or agency discretion to order one party to pay another party's reasonable attorney fees. *See, e.g., Buckhannon Bd. & Care Home v. West Virginia Dep't of Health & Human Res.,* 532 U.S. 598, 603-04, 149 L. Ed. 2d 855, 121 S. Ct. 1835 (2001) (interpreting Fair Housing Amendments Act and Americans with Disabilities Act). Even under fee-shifting statutes, however, an award of attorney fees may be proper only if the requesting party obtained "some degree of success on the merits." *Ruckelshaus v. Sierra Club,* 463 U.S. 680, 694, 77 L. Ed. 2d 938, 103 S. Ct. 3274 (1983).")

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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>