

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

Petition #: 20-015-06-1-5-00152
Petitioners: Mark & Margaret E. Vukovich
Respondent: Elkhart County Assessor
Parcel #: 20-11-08-327-002.000-015
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. On November 29, 2006, Mark and Margaret E. Vukovich filed a written request asking the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) to review their property’s assessment. On August 17, 2007, the PTABOA mailed the notice of its determination rejecting the Vukoviches’ request.
2. The Vukoviches then timely filed a Form 131 petition with the Board and elected to proceed under the Board’s small-claims rules.
3. On May 28, 2008, the Board held a hearing through its Administrative Law Judge, Patti Kindler (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) For the Vukoviches: Margaret E. Vukovich
 - b) For the Elkhart County Assessor: Cathy S. Searcy, Elkhart County Assessor

Facts

5. The Vukoviches’ property is a single-family residence located at 108 South Wheatland Drive in Goshen, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA’s Form 115 final determination lists the following assessed values:
Land: \$19,300 Improvements: \$119,700 Total: \$139,000.

8. Although the PTABOA made no change to the property's assessment, the Form 115 contains what appears to be a typographical error in listing the value of the Vukoviches' improvements. The parties therefore agreed that the following values listed on the property record card reflect the property's actual assessment:
Land: \$19,300 Improvements: \$119,500 Total: \$138,800.
9. The Vukoviches requested the following values:
Land: \$19,300 Improvements: \$90,700 Total: \$110,000.

Parties' Contentions

10. The Vukoviches offered the following evidence and arguments:
- a) The Vukoviches bought the property for \$100,000 in 1998. The property was on the market for six months before they purchased it. The Vukoviches did not improve or update their house and it has suffered wear and tear since they bought it. *M. Vukovich testimony; Pet'rs Ex. 2.*
 - b) The Vukoviches offered an appraisal prepared by Joseph Briscoe of Bill Briscoe Appraisals. Mr. Briscoe estimated the property's value at \$105,500 as of September 29, 1998. *Pet'rs Ex. 1.*
 - c) Sale prices for properties on Wheatland Drive, the Vukoviches' street, ranged from \$102,000 to \$118,000, with an average price of \$110,250.¹ *M. Vukovich testimony.* The Vukoviches' property should not be valued at nearly \$140,000 just because their home is larger than other Wheatland Drive homes. Those other homes all have usable basements whereas the Vukoviches' home has only a crawl space. *Id. M. Vukovich testimony; Pet'rs Ex. 2.*
 - d) The property next door, which the county did not include in its ratio study, sold for \$104,900 in 2007. It was originally listed for \$140,000 and it had been on the market for over a year. That home is comparable in size to the Vukoviches' home, but unlike the Vukoviches' home, its interior and exterior had been repainted. *M. Vukovich testimony; Pet'rs Exs. 2, 3, 5.*
 - e) Property values in the Vukoviches' neighborhood are stable or declining because of changing demographics. There are two rental units across the street from the Vukoviches home and fourteen rental units in the nearest cul-de-sac. The properties on Silverwood Lane, the street parallel to Wheatland Drive, are all rental units. *M. Vukovich testimony.*

¹ It is unclear where Ms. Vukovich got her numbers. She referred to "Exhibit 3." But Petitioners' Exhibit 3 lists only two sales—one for \$104,900 and another for \$94,000. *Pet'rs Ex. 3.* Respondent's Exhibit 3 lists four sales from Wheatland Drive. But those sale prices ranged from \$102,500 to \$108,900. *Resp't Ex. 3.*

11. The Elkhart County Assessor offered the following evidence and arguments:
- a) The neighborhood sales-ratio study showed that houses were slightly over-assessed for 2006. *Searcy testimony; Resp't Ex. 3*. The Assessor therefore applied a .99 “trending factor” to reduce those assessments. *Searcy testimony*.
 - b) The Vukoviches’ home is larger than most of the homes in the sales-ratio study. So, its overall assessment is higher than other homes in the area. *Searcy testimony; Resp't Ex. 1*.
 - c) Mr. Briscoe’s appraisal is outdated. *Searcy testimony*. The 2006 assessment reflects a valuation date of January 1, 2005. Mr. Briscoe, by contrast, estimated the property’s value as September 29, 1998. And the Vukoviches did not offer any evidence to relate Mr. Briscoe’s appraisal to their property’s value as of January 1, 2005. *Searcy argument*. In fact, the average sale prices for homes in Elkhart Township actually increased between 1999 and 2006. *Searcy testimony; Resp't Ex. 4*.

Record

12. The official record for this matter is made up of the following:
- a) The Form 131 petition,
 - b) A digital recording of the hearing,
 - c) Exhibits
 - Petitioners Exhibit 1: Appraisal of property as of September 29, 1998, prepared by Joseph Briscoe,
 - Petitioners Exhibit 2: Form 131 petition,
 - Petitioners Exhibit 3: Sample sales of two homes on Wheatland Drive,
 - Petitioners Exhibit 4: Overview of residential sales from 1999 to 2006,
 - Petitioners Exhibit 5: Aerial photograph showing the sales prices of adjacent properties,

 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Aerial map of subject neighborhood,
 - Respondent Exhibit 3: Neighborhood sales-ratio study,
 - Respondent Exhibit 4: Overview of residential sales from 1999 to 2006,
 - Respondent Exhibit 5: Sale prices of homes on Wheatland Drive,
 - Respondent Exhibit 6: Photograph of the subject property, front view,

 - 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

Burden of Proof

13. A petitioner 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).
14. In making its case, the petitioner 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”).
15. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner'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 Vukoviches' Case

16. The Vukoviches did not make a prima facie case for lowering their property's assessment. The Board reaches this conclusion because:
 - 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 at 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 value 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) *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 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 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject

or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) The Vukoviches failed to offer any probative evidence to rebut the assessment's presumption of correctness. They did offer Mr. Briscoe's appraisal, which he certified that he performed in conformity with USPAP. And Ms. Vukovich testified that they bought the property for \$100,000. But both those items suffer from the same fatal shortcoming—they do not show the property's value on the relevant valuation date.
- d) In Indiana, each real property assessment is based upon an earlier valuation date. Beginning with the March 1, 2006, assessment, that valuation date is January 1 of the preceding year. IND. ADMIN. CODE tit. 50, r. 21-3-3. Thus, for the March 1, 2006, assessment at issue in this case, the relevant valuation date was January 1, 2005.
- e) When a party relies on evidence showing an appealed property's value as of a date substantially removed from the relevant valuation date, he or she must explain how that evidence relates to the property's value as of that valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *see also O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Here, Mr. Briscoe's appraisal and the Vukoviches purchase both occurred in 1998—more than seven years before the relevant January 1, 2005, valuation date. And the Vukoviches did not offer any evidence to relate either the appraisal or sale price to January 1, 2005.
- f) Ms. Vukovich also pointed to the sale prices of other Wheatland Drive properties. By doing so, Ms. Vukovich at least attempted to use the sales-comparison approach—a generally accepted appraisal technique. But because she ignored that approach's key requirements, those sale prices also lack probative value.
- g) 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 marketplace. 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. *Id.*
- h) Thus, to use the sales-comparison approach as evidence in an assessment appeal, a party first must establish that the properties at issue are comparable to each other. Conclusory statements that a property is “similar” or “comparable” to another property do not suffice; instead, the party must compare the subject property's characteristics to the characteristics of the purportedly comparable

properties. *Long* 821 N.E.2d at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use. *Id.*

- i) Ms. Vukovich’s sales-comparison analysis fails for two reasons. First, she did not adequately explain how the other Wheatland Drive properties compared to the Vukoviches’ property. She simply testified that, while the Vukoviches’ home was larger than the other homes, the other homes had useable basements. True, Respondent’s Exhibits 1 and 3 offered a little more information about the properties. But the Vukoviches needed to explain to the Board how the properties compared to each other; the Board will not sift through the record to do that for them. *See Long*, 821 N.E.2d at 471 (“[I]t was not the Indiana Board’s responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable—that duty rested with the [taxpayers].”). Ms. Vukovich offered a little more detail about how the home next door compared to the Vukoviches’ home, but her analysis still fell short of the type of comparison envisioned by the sales-comparison approach.
- j) Second, Ms. Vukovich did not even attempt to adjust any of the purportedly comparable properties’ sale prices to account for relevant ways in which those properties differed from the Vukoviches property.
- k) Finally, the Vukoviches pointed to their neighborhood’s changing demographics, particularly to the increasing number of rental properties, that they believe have led to declining prices. While those factors might have caused values to decline, the Vukoviches did not offer any market-based evidence to quantify that decline.
- l) Because the Vukoviches offered no probative market-based evidence to rebut the presumption that their property’s current assessment is correct, they failed to make a prima facie case.
- m) Nonetheless, the Assessor agreed that the property’s correct assessment is actually \$200 less than the assessment of record reflected on the PTABOA’s Form 115 determination. While the Board recognizes that the Assessor may already be operating under the lower number, the Form 115 determination is the assessment of record. The Board therefore orders that the assessment be changed to reflect a total value of \$138,800.

Conclusion

- 17. The Vukoviches failed to make a prima facie case of error. The Board therefore finds in favor of the Elkhart County Assessor. The Board, however, orders that the assessment be changed to \$138,800 rather than the \$139,000 reflected on the PTABOA’s Form 115 determination.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment for the property should be changed to \$138,800.

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>