

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

Petition: 06-019-07-1-5-00494
Petitioners: Kevin & Kellie Walbridge
Respondent: Boone County Assessor
Parcel: 019-18250-06
Assessment Year: 2007

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated October 17, 2008.
2. The PTABOA issued notice of its decision on December 19, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 on January 20, 2009, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 16, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 17, 2009.
6. Vickie Norman, Attorney, represented the Petitioners. The following persons were present and sworn as witnesses:
For the Petitioners – Geoffrey Lady,
For the Respondent – Lisa Garoffolo, County Assessor, and Clifford Hardy.

Facts

7. The property is a single family residence at 6 Woodward Place in Zionsville.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$687,000 for land and \$1,541,000 for improvements (total \$2,228,000).
10. The Petitioners requested a total assessed value of \$1,950,000.

Record

11. The official record for this matter is made up of the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Notice of Hearing,
 - c. Hearing Sign-In Sheet,
 - d. Digital recording of the hearing,
 - e. Petitioner Exhibit 1 – Brief,
Petitioner Exhibit 2 – Subject property record card (PRC),
Petitioner Exhibit 3 – Residential Appraisal Report,
Petitioner Exhibit 4 – Residential Sale Statistics for 2004, 2005, 2006, 2007, 2008
from Metropolitan Indianapolis Board of Realtors
(MIBOR),
Petitioner Exhibit 5 – Sales data for the property located at 3065 S. 975 East
(Comp 1),
Petitioner Exhibit 6 – Sales data for the property located at 42 Monahan Road
(Comp 2),
Petitioner Exhibit 7 – Sales data for the property located at 11542 Willow Springs
Drive (Comp 3),
Petitioner Exhibit 8 – Sales data for the property located at 9601 E. 300 S. (Comp
4),
Petitioner Exhibit 9 – Equity Comparison-Assessments,
Respondent Exhibits – None,
 - f. These Findings and Conclusions.

Contentions

12. Summary of the Petitioners' case:
 - a. Real property is assessed based on its true tax value which is defined as the market value of the property in its current use as reflected by the utility received by the owner or a similar user. In assessment appeals, a taxpayer is allowed to offer evidence relevant to the fair market value of the property such as an appraisal using the three approaches to value under the generally accepted appraisal principles. *Norman argument.*
 - b. The subject property is one of two homes in the Lost Run Farms Subdivision. The subject property was custom-built in 2006. There have not been any sales in Lost Run Farms since it was built. *Norman argument.*

- c. Geoffrey Lady, an Indiana Certified Appraiser, prepared a Residential Appraisal Report regarding the subject property. The appraiser considered all three approaches to value, but he relied on the sales comparison approach as the best approach because it reflects the market conditions as of January 1, 2006. The appraisal report estimates the subject property's value was \$1,950,000 as of January 1, 2006. *Norman argument; Lady testimony; Pet'r Ex. 3.*
- d. Comp 1 sold in April 2006 for \$1,900,600. Compared to the subject property, it has a smaller basement area (500 square feet), more land (13.14 acres), more gross living area (8,992 square feet), and is older (15 years old). Comp 2 sold in June 2005 for \$1,825,000. Comp 2 is the most comparable to the subject property with similar characteristics and located in a similar neighborhood. Compared to the subject property, Comp 2 has less gross living area (5,850 square feet), one less bath, and the same number of bedrooms. Comp 3 sold in June 2006 for \$1,599,000. Compared to the subject, Comp 3 is the same age (newly constructed) and is architecturally similar, but has less gross living area and better finish in the basement. Comp 4 sold in February 2006 for \$1,600,000. Compared to the subject, Comp 4 has similar gross living area, but is older and is not of equal quality construction. *Lady testimony; Pet'r Ex. 1, 3, 5, 6, 7, 8.*
- e. An analysis of the sales data between 2004 and 2008 shows that in this area, Eagle Township, only one property sold for more than \$2,000,000. *Norman argument; Pet'r Ex. 4.*
- f. The assessments of the four comparables used in the appraisal are all under \$2,000,000. Those assessments are all less than the subject property's current assessment. *Norman argument; Pet'r Ex. 9.*

13. Summary of the Respondent's case:

- a. The subject property is in Lost Run Farms Subdivision, which is the only gated community in Boone County. There are no properties or neighborhoods comparable to it. *Garoffolo testimony.*
- b. The properties used as comparables in the appraisal are not comparable to the subject property. *Garoffolo testimony.*
- c. The cost approach is the best method to value the subject property. The land cost plus the construction cost of the home would probably exceed the current assessed value. *Garoffolo testimony.*
- d. The subject property is worth the current assessed value. *Garoffolo testimony.*

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 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).
 - 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 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”).
 - 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 assessment of the subject property must be changed.
 - a. Real property is assessed based on its "true tax value," which does not mean fair market value. It 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, from 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 offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. A 2007 assessment must reflect value as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, that valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. An appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice, is often the most effective method to rebut the presumption that an assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The Petitioners supported their claim

with such an appraisal and Mr. Lady's testimony. Although he considered the three standard approaches (cost, comparable sales and income) only the cost and comparable sales approaches were developed by the appraiser. The cost approach in the appraisal indicated a value of \$2,006,000. The comparable sales approach indicated a value of \$1,950,000. The final reconciliation and conclusion relied on the comparable sales data for the opinion that as of January 1, 2006, the value of the subject property was \$1,950,000. The record contains substantial, detailed evidence that supports this conclusion. Therefore, the Petitioners made a prima facie case.

- d. The Respondent identified no specific errors in the appraisal. The Respondent merely stated that the comparables used in the appraisal are not comparable to the subject property and there are no comparables to the subject property in Boone County. The Respondent failed to offer any probative evidence to support that position—the Assessor's conclusory statements about lack of comparability do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- e. The Respondent failed to present any substantial reason to doubt the credibility of the appraiser, Mr. Lady, or his work in appraising the subject property. To the extent that the Respondent attempted to dispute the appraiser's choice of comparable properties, this unsupported argument is not persuasive. It is well within an appraiser's expertise to choose the sales he deems most comparable to the subject property and apply adjustments to those comparable properties to account for the differences between them. Without any probative evidence to the contrary, the appraiser's comparables and the adjustments appear to be reasonable.
- f. The Respondent also attempted to argue that what the Petitioners paid for the subject property was more than the current assessment. This argument, however, was based on nothing but speculation. The record contains no evidence regarding what the Petitioners actually paid to buy their lot and build their house. Again, the Assessor's conclusory statements about what the Petitioners paid are not probative evidence. *Whitley Products*, 704 N.E.2d at 1119.
- g. The totality of the Respondent's case fails to impeach or rebut the appraisal that is the heart of the Petitioners' case.

Conclusion

16. The Board finds in favor of the Petitioners.

Final Determination

In accordance with the above findings and conclusions the assessment must be changed to \$1,950,000.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>