

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

Petition No.: 37-027-10-1-5-00001
Petitioner: B. Gregory Whaley
Respondent: Jasper County Assessor
Parcel No.: 18-1575
Assessment Year: 2010

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 Jasper County Property Tax Assessment Board of Appeals (the PTABOA) by written document.
2. The PTABOA issued a notice of its decision on June 25, 2010.
3. The Petitioner filed a Form 131 petition with the Board on July 30, 2010. 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 January 6, 2011.
5. The Board held an administrative hearing on February 9, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: B. Gregory Whaley, Taxpayer

For Respondent: Dawn Hoffman, Jasper County Assessor.

Facts

7. The subject property is a residential property located at 946 Milroy Avenue, Rensselaer, in Jasper County.
8. The ALJ did not conduct an on-site visit of the property.

9. For 2010, the PTABOA determined the assessed value of the subject property to be \$35,300 for the land, and \$34,700 for the improvements, for a total assessed value of \$70,000.
10. The Petitioner requested an assessment of \$10,000 for the land, and \$7,000 for the improvements, for a total assessed value of \$17,000.

Issues

11. Summary of the Petitioner's contentions in support of an error in his property's assessment:
 - a. The Petitioner contends that his property is over-assessed based on the property's purchase price of \$17,000. *Whaley testimony*. In support of his contention, the Petitioner presented a settlement statement for the property dated June 19, 2009. *Attachment to Board Exhibit A*. According to Mr. Whaley, the house was full of mold and all the drywall had to be removed as well as some of the cabinets. *Whaley testimony*. In addition, Mr. Whaley testified, he had to install a pumping system and a dehumidifier system at a cost of \$8,000 to prevent the mold from recurring. *Id.* Mr. Whaley testified that the work on the property was not finished until June of 2010. *Id.*
 - b. In response to the Respondent's case, the Petitioner contends the property located at 515 S. College Avenue is on a main street and has commercial value. *Whaley testimony*. Further, Mr. Whaley argues the property located at 534 E. Angelica Street is not comparable to the subject property because it has a semi-finished basement. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Assessor contends that the Petitioner's property is assessed correctly based on the sales of comparable properties in the area. *Hoffman testimony*. In support of this contention, Ms. Hoffman presented sales information and photographs of three properties. *Respondent Exhibits 1, 5-7*. According to Ms. Hoffman, after adjusting the sale prices of the comparable properties, the average price per square foot of living area was \$97.52, which would make the subject property's market value \$81,916. *Hoffman testimony; Respondent Exhibit 1*.
 - b. Even if the house was infested with mold, the Respondent argues, it was worth more than \$17,000. *Hoffman testimony*. According to Ms. Hoffman, she contacted a mold remediation company and she was told that it would cost approximately \$1,916 to treat the basement for mold. *Id.; Respondent Exhibit 2*. Because the house is assessed at \$69,000, which is \$12,000 below the average selling price for similarly situated homes, Ms. Hoffman argues, the

assessed value of the subject property sufficiently adjusts for any damage from the mold. *Hoffman testimony*.

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 37-027-10-1-5-00001 Whaley,
 - c. Exhibits:

Petitioner Exhibit 1 – Settlement statement dated June 19, 2009,¹

Respondent Exhibit 1 – Market comparison of the subject property with three comparable properties,

Respondent Exhibit 2 – Mold remediation costs,

Respondent Exhibit 3 – Photograph of the subject property on February 7, 2011,

Respondent Exhibit 4 – Photograph of the subject property in 2005,

Respondent Exhibit 5 – Photograph of the property located at 515 S. College Avenue,

Respondent Exhibit 6 – Photograph of the property located at 534 E. Angelica Street,

Respondent Exhibit 7 – Photograph of the property located at 720 W. Clark Street,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing, dated January 6, 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).

¹ The Petitioner's settlement statement is attached to Board Exhibit A.

- 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 479.
15. The Petitioner provided sufficient evidence to establish an error in his property’s assessment. 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. 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. A taxpayer 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 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 assessment dates after December 31, 2009, “an adjustment

in the assessed value of real property under this section shall be based on the estimated true tax value of the property on the assessment date that is the basis for taxes payable on that real property.” Ind. Code § 6-1.1-4-4.5(f) (2010). Thus, the valuation date for a March 1, 2010, assessment is March 1, 2010. *Id.*

- d. Here, the Petitioner presented undisputed evidence that he purchased the property for \$17,000 on June 29, 2009. *Whaley testimony; Attachment to Board Exhibit A.* While the valuation date for the March 1, 2010, assessment is March 1, 2010, “county assessors shall use sales of properties occurring after January 1 of the calendar year immediately preceding the March 1 assessment date in performing value calibration analysis and sales ratio studies ... For example, sales beginning on January 1, 2009, shall be used for the March 1, 2010, assessment date.” 50 IAC 27-3-2(a). Because the Petitioner purchased the property within the time period assessors use to determine the March 1, 2010, assessments, the Board finds that the Petitioner presented a prima facie case that the subject property was over-assessed. Further, the Petitioner testified that at the time that he purchased the property, the house was not habitable because it was full of mold. *Whaley testimony.* According to Mr. Whaley, he installed new drywall, carpeting, and a pumping and dehumidifier system. *Id.* Mr. Whaley testified that the property was not rentable until June of 2010. *Id.* Thus, the Petitioner presented sufficient evidence that the condition of the house on the March 1, 2010, assessment date was similar to the condition of the house at the time that he purchased the property.
- e. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioners’ evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner’s case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005). Here, Ms. Hoffman argued that the property was correctly assessed based on comparable sales in the area. *Hoffman testimony; Respondent Exhibit 1.* 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. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Assessor purported to adjust her comparable sales for attic space, garage space and for the existence of a basement. Ms. Hoffman,

however, provided no support for the value of the adjustments. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the testimony. 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 Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Further, Ms. Hoffman made no adjustment for the differences in living area and lot size between the properties. Thus, the Respondent's evidence falls short of showing that her comparable sales support the Petitioner's property's assessed value.²

Conclusion

16. The Petitioner raised a prima facie case that his property was over-valued for the March 1, 2010, assessment. The Respondent failed to provide sufficient evidence to rebut or impeach the Petitioner's case. The Board finds in favor of the Petitioner and holds that his property's market value-in-use is \$17,000 for the 2010 assessment year.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property should be changed.

ISSUED: _____

² The Respondent also presented evidence that it would only cost approximately \$2,000 to remediate the mold in the Petitioner's basement and double that cost if there were spots of mold throughout the home. However, Ms. Hoffman's testimony was based on a purported phone conversation with an unidentified sales person for Porters Eco Care. The Board gives little weight to such hearsay testimony.

Chairman, 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>>