

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

Petition: 84-002-08-1-5-00287
Petitioners: Calvin D. and Diana L. Wieghmink
Respondent: Vigo County Assessor
Parcel: 84-06-25-376-046.000-002
Assessment Year: 2008

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated July 30, 2009.
2. The PTABOA mailed its decision for the 2008 assessment on September 14, 2010.
3. The Petitioners appealed to the Board by filing a Form 131 petition on October 18, 2010. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing dated March 23, 2012.
5. Administrative Law Judge Paul Stultz held the hearing on May 22, 2012. He did not inspect the property.
6. Petitioner Calvin Wieghmink, County Assessor Deborah Lewis and Chief Deputy Assessor Susan McCarty were sworn as witnesses at the hearing.

Facts

7. The property is a single family residence located at 1959 Jared Street, Terre Haute.
8. The assessed value determined by the PTABOA is \$12,300 for land and \$190,300 for improvements (total \$202,600).
9. The Petitioners claim the total assessed value should be \$178,700.

Record

10. The official record for this matter contains the following:
 - a. Petition for Review of Assessment (Form 131);
 - b. Notice of Hearing;
 - c. Hearing Sign-in Sheet;
 - d. Digital recording of the hearing;
 - e. Petitioners Exhibit 1 - Statement “Contract sales price of our home & a comparable property,” settlement statement, real property maintenance report, Beacon report detailing assessment and tax data of the subject property at 1959 Jared Street, and Beacon report detailing assessment and tax data for 2071 Jared Street;
Petitioners Exhibit 2 - Fruitridge Park home prices, purchase agreement;
Petitioners Exhibit 3 - Statement “List of additional options for our home ... base price comparison of our homes” and list of builder options with prices;
Petitioners Exhibit 4 - Statement about “PTABOA findings” and letter from the Harrison Township Assessor dated March 30, 2010;
Petitioners Exhibit 5 - Statement “Snapshot of our subdivision at Fruitridge Park,” three photographs (one marked “our home”), map of subdivision, sales data for the subdivision;
Petitioners Exhibit 6 – Statement about “Home sold on 11/05/2008,” realtor listing for 1974 Jasper Street, Beacon report detailing assessment and tax data for 1974 Jared Street;
Petitioners Exhibit 7 – Statement about “Home for sale in another Terre Haute neighborhood” (4477 Cart Path in Idle Creek subdivision), realtor’s advertisement, Beacon report detailing assessment and tax data for 4477 Cart Path;
Petitioners Exhibit 8 - Closing arguments;
Respondent Exhibit 1 - Property record card;
Respondent Exhibit 2 - Sales disclosure form;
Respondent Exhibit 3 - 2008 Harrison Township trending factors;
Board Exhibit A - Form 131;
Board Exhibit B - Notice of Hearing;
Board Exhibit C - Sign In Sheet;
 - f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

- a. The Petitioners purchased the property in Fruitridge Park subdivision for \$201,057 on March 16, 2006. "That cost includes the new home construction and the parcel of land that it sits on." *Wieghmink testimony; Pet'rs Ex. 1 at 1*. The original 2008 assessment was \$208,500 and subsequently was reduced to \$202,600 to correct an error in square footage. *Wieghmink testimony*.
- b. The base price of the Petitioners' home with a walk-out basement was \$157,900. The Petitioners selected a finished basement and a three-season room as additional options. These features increased the total cost of the Petitioners' house to \$180,700. *Wieghmink testimony; Pet'rs Ex. 3 at 1*.
- c. A comparable property at 2071 Jared Street in Fruitridge Park subdivision sold for \$184,243 on February 25, 2008. With a walk-out basement, the base price of this comparable was \$163,900. The higher base price is because of a bonus room that allows a fourth bedroom. *Wieghmink testimony; Pet'rs Ex. 2 at 1; Pet'rs Ex. 3 at 1*. This property is assessed at \$161,900. *Wieghmink testimony; Pet'rs Ex. 1 at 9, 10*.
- d. The difference in the current assessments of these two properties is \$40,700. But the difference in construction cost was only \$16,800 (\$180,700 compared to \$163,900). Adding the \$16,800 additional construction cost to the current \$161,900 assessment of the comparable property results in the Petitioners' requested assessment of \$178,700. The difference in the assessments of these properties would then be identical to the difference in their construction costs. This result would be a fair and equal assessment. *Wieghmink testimony; Pet'rs Ex. 3 at 1, 2*.
- e. The letter from the Harrison Township Assessor actually supports the Petitioners' position about the comparison with 2071 Jared Street. According to that letter, "the reason these two homes differ in value are [sic.] Mr. Wieghminks home has a finished basement and a sun room (EFP). If these two items were removed, the total cost of Mr. Wieghminks property would be at \$180,900 total, which is within 1.00% of Mr. Wieghminks desired assessment of 178,700. Also note that his home has 58 more Sq. Ft. of living space, remove that, and these two homes are virtually the same." But the difference between that amount and the comparable's assessment of \$161,900 is still \$19,000. And 2071 Jared Street has a fourth bedroom, while the subject property has only three. *Wieghmink testimony; Pet'rs Ex. 4*.
- f. The Petitioners propose starting with the comparable property's assessment of \$161,900 and then adding the two items the township assessor claimed add \$21,700 to the improvement. Then deduct \$6,000 for the extra bedroom in the

comparable. The total would be \$177,600. This figure is \$1,100 less than the amount requested by the Petitioners. *Wieghmink testimony; Pet'rs Ex. 4 at 2.*

- g. The neighborhood is a modest, middle class, cookie cutter type subdivision where all of the homes have comparable ranch style floor plans. *Wieghmink testimony; Pet'rs Ex. 2 at 1; Pet'rs Ex. 5 at 1, 2.*
- h. Property values are declining in the Fruitridge Park subdivision. On October 31, 2006, the property at 1974 Jasper Street was purchased for \$165,194. On November 5, 2008, it sold for \$137,500—a loss of 16.76% of its value in about two years. “The 2008 assessment on this home was an unbelievable \$217,600 which represents a property tax assessment that’s over 158% of its selling price, and ... even more amazing over 131% of its building cost.” There are hundreds of cases in Terre Haute where homes are assessed in excess of 100% of their selling price. “Most of those homes are located in very moderate middleclass neighborhoods.” *Wieghmink testimony; Pet'rs Ex. 6 at 1.*
- i. Idle Creek is a neighborhood where the homes are huge. It has large lots and the homes all have different designs. “[N]one of the homes look alike. Also, the added options are too many to list...” A few years back the home located at 4477 Cart Path in the Idle Creek subdivision was listed for sale at \$525,000. It did not sell. Its 2008 assessment is \$270,000. To assess the Petitioners’ property in a manner comparable to this property the assessment should be \$90,000. *Wieghmink testimony; Pet'rs Ex. 7 at 1.*
- j. For property located in upper scale neighborhoods, the asking price is almost always higher than the assessed value. For property located in modest, middle class neighborhoods, the asking price is almost always lower than the assessed value. “Is that fair and equal treatment?” *Wieghmink testimony; Pet'rs Ex. 7 at 1.*

12. Summary of the Respondent’s case:

- a. The original 2008 assessment was \$208,500. Subsequently that amount was corrected to \$202,600. The property record card still shows the \$208,500 figure because the computer system will not permit going back to show that correction. *McCarty testimony; Resp't Ex. 1.*
- b. The market value is usually determined from sales. The Petitioners purchased the property for \$201,057 on March 16, 2006. *McCarty testimony; Resp't Ex. 2.* This purchase occurred during the time used to trend assessments and this transaction was one of those used in the trending process. *McCarty testimony; Resp't Ex. 3.*
- c. For a 2008 assessment the valuation date was January 1, 2007. Based on Harrison Township sales data, assessing officials used a 3% trending factor for the 2008 assessments in this neighborhood. *McCarty testimony; Resp't Ex. 3 at 30.*

Analysis

13. Taxpayers generally have the burden to establish a prima facie case by proving the current assessment is incorrect and proving 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). In this appeal, the parties agreed the Petitioners have the burden of proof.
14. In making a case, a party 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”).
15. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Then the assessing official must offer evidence that impeaches or rebuts the Petitioners’ evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
16. Regardless of the method used to rebut an assessment’s presumed accuracy, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2008 assessments, that valuation date was January 1, 2007. 50 IAC 21-3-3(2009).
17. The Petitioners did not prove their claim for any assessment change.
 - 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, 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). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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. It has frequently been recognized that the sale price of the subject property can provide some of the most convincing proof of its market value-in-use. Here there is no dispute that on March 16, 2006, the Petitioners bought the subject property for \$201,057. The date of sale is a little less than 9 months before the required valuation date and no evidence or argument was presented about circumstances that would make the sale price an unreliable indicator of value. This purchase price is very close to the disputed assessment of \$202,600. It provides substantial evidence about the market value-in-use of the subject property for a relevant time. It does not support the reduction sought by the Petitioners.
- c. According to the Petitioners, they are in a “cookie cutter subdivision” where all the homes have comparable ranch style floor plans. Sales information from the builder, however, shows there are five floor plans for two bedroom homes and four floor plans for three bedroom homes in the subdivision. Multiple options were available. Seven homes, including that of the Petitioners, in the 51-home subdivision have the walk-out basement option—only those lots have the required topography. The lots also have various shapes and sizes. The 2005-2007 sales information shows purchase prices in the neighborhood ranged from \$111,500 to \$201,056 (ignoring the condominiums), suggesting significant variations in those homes. On Jared Street purchase prices varied from \$143,128 to \$201,056 (the Petitioners paid the top price). Conclusory statements that properties are “similar” or “comparable” do not constitute probative evidence of actual comparability. *See Long*, 821 N.E.2d at 470. In relying on a comparison approach to prove a value one must explain the characteristics of the subject property and how they compare to the purportedly comparable properties. One must also explain how any differences between the properties affect their relative market value-in-use. *See Id.* at 470-471. In this case, the Petitioners failed to provide the kind of facts or analysis that would be required for any meaningful, relevant conclusions based on other sales in Fruitridge Park. While paying much more than the average price¹ for a home in this neighborhood might not have been the best investment, that point does not prove a more accurate market value-in-use.
- d. The Petitioners focused on the property at 2071 Jared Street, describing that comparable as “the cornerstone of our appeal.” The Petitioners paid \$201,057 for their property and the purchase price for 2071 Jared was \$184,243.² They also compared the builder’s list price for their house (\$180,700) to the builder’s list price for 2071 Jared (\$163,900). The price difference stems from different base models as well as the Petitioners’ extra options. A letter from the Harrison Township Assessor describes 2071 Jared as “virtually the same” as the Petitioners’ home after adjustments for square footage, the sun room, and the finished basement. The Petitioners attempted to diminish those differences by

¹ The Petitioners calculated that during 2005-2007 the average price for new homes in Fruitridge Park was \$135,231.74.

² Although nobody presented evidence about lot prices, it appears that both lots must have been slightly more than \$20,000.

speculating the owners of 2071 Jared finished the basement after buying the property, but they did not prove it. The record does not support any kind of adjustment based on the purportedly finished basement at 2071 Jared. Nevertheless, both the house prices and purchase prices show the overall difference between those properties is approximately \$16,800.

- e. Adding the \$16,800 difference ($\$184,200 + \$16,800 = \$201,000$) to the purchase price for 2071 Jared gives an amount that is very close to the disputed assessment. Perhaps it might roughly support the assessment. Our determination, however, does not rest on that point because nobody really established how the value on February 25, 2008, relates to the required valuation date, January 1, 2007. *See Long, 821 N.E.2d at 471.* (According to some of the evidence the Petitioners presented, sale prices were declining during this time.)
- f. The Petitioners presented evidence relating to one other sale in the Fruitridge Park subdivision. It was the property at 1974 Jasper Street. They offered evidence that 1974 Jasper sold for \$165,194 in October 2006 and sold again in November 2008 for only \$137,500. The Petitioners made no substantial attempt to demonstrate comparability of the subject property and 1974 Jasper. They relied on the 1974 Jasper sales to prove “collapsing” home prices in Fruitridge Park. According to the Petitioners this property suffered a 16.76% loss in value in approximately two years. No evidence of the circumstances related to the second 1974 Jasper sale was presented.³ Therefore, it is impossible to draw any legitimate conclusion about the cause for that big loss. This bare-bones evidence does not prove all the properties in Fruitridge Park suffered that same loss from 2006 to 2008. To a limited extent, this evidence might help show some sort of decline in value over that period.
- g. The Petitioners did not prove a more accurate market value-in-use for the subject property based on their purchase price or any comparable sale, but that point is not what this case is all about. Their case really rests on a claim for uniformity and equality, which they allege to be lacking.
- h. According to the Tax Court, “when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). Such studies must be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994).

³ For example, was it an arms-length transaction? Or was it a forced sale?

- i. The Petitioners' case does not meet that standard. The Petitioners did not present such a study or similar evidence. They simply argued that their property is over-assessed based on the assessed value of 2071 Jared. More specifically, they argued that because the value of the subject property is only \$16,800 more than 2071 Jared, then their assessment should only be \$16,800 more than the assessment for 2071 Jared. Their proposed figure is \$178,700.⁴ Their approach assumes the 2071 Jared assessment to be a valid starting point, but the Petitioners failed to prove it is. From the record in this case it would be just as possible to conclude the assessment for 2071 Jared should be raised so it is only \$16,800 less than the Petitioners' current assessment. That dilemma is the reason a statistically reliable sample of data is important, but it was not presented in this case. Therefore, even though the Petitioners presented evidence and calculations that come up with a much lower assessment for their property, they failed to establish that their proposed number would actually lead to better uniformity and equality for anything except (perhaps) 1959 and 2071 Jared. That reason does not support the Petitioners' claim.
- j. The Petitioners also argued that in upper scale neighborhoods the asking price is almost always higher than the assessed value, while property in middle class neighborhoods almost always has an asking price lower than the assessed value. The Petitioners presented no probative evidence in support of this contention. They merely relied on a single property in Idle Creek, 4477 Cart Path, to show how upper scale neighborhoods are assessed. Drawing any kind of conclusion based on a sample of one, however, is extremely unreliable. *See Kemp*, 726 N.E.2d at 404; *Bishop*, 743 N.E.2d at 813. Their analysis, however, suffers from additional serious problems. The evidence only establishes an *asking price* for 4477 Cart Path, *not a selling price*. Furthermore, identifying the time that property was offered as "a few years back" is insufficient. Accordingly, the conclusory statements that were offered do not constitute probative evidence of any kind of unacceptable distinction between neighborhoods. *Whitley*, 704 N.E.2d at 1119.⁵
- k. The price-related differential (PRD) is a statistical measure that determines whether there is an assessment bias between higher and lower priced properties, as the Petitioners claimed. To conform to generally accepted standards, the PRD must be between 0.98 and 1.03. 50 IAC 27-4-5(d). The Respondent introduced evidence, supported by thirty pages of sales data for more than 1,300 sold properties, that the PRD in Harrison Township was 1.02. This number is within the statistically acceptable range, and to the extent it might have been necessary to do so, it serves to rebut the Petitioners' claim about more expensive properties getting favorable assessments in comparison to less expensive properties.

⁴ The Petitioners did present evidence comparing the sale price and assessment of another property, 1974 Jasper. It shows a situation where the assessment greatly exceeds selling price.

⁵ To the extent that the Petitioners presented evidence that might suggest the assessment for 4477 Cart Path is too low, that question is not before us.

18. The Petitioners failed to make a case. Therefore, the Respondent's duty to support the assessment with substantial evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

19. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessed value will not be changed.

ISSUED: August 20, 2012

Commissioner, Indiana Board of Tax Review

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- 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>