

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

Petition No.: 06-011-07-1-5-00178
Petitioner: Riley L. Wilson
Respondent: Boone County Assessor
Parcel No.: 011-04590-00
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 Boone County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 16, 2008.
2. The PTABOA issued its decision on October 3, 2008.
3. The Petitioner filed a Form 131 petition with the Board on October 20, 2008. 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 12, 2009.
5. The Board held an administrative hearing on July 16, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Riley L. Wilson, Petitioner
 - b) For Respondent: Lisa Garaffolo, Boone County Assessor
Cliff Hardy, county vendor and witness

Facts

7. The property is a single family residence located at 9421 North State Road 39, in the city of Lebanon, Washington Township in Boone County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

9. For 2007, the PTABOA determined the assessed value of the subject property to be \$22,800 for the land and \$53,800 for the improvements, for a total assessed value of \$76,600.
10. The Petitioner requests an assessed value of \$10,000 for the land and \$53,800 for the improvements, for a total assessed value of \$63,800.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his assessment:
 - a) The Petitioner contends the assessed value of his property is excessive, particularly the assessed value of the land. *Wilson testimony*. According to Mr. Wilson, his property is located next to a creek and in a floodplain. *Id.* When it rains heavily, the land floods, sometimes severely. *Id.* Mr. Wilson argues he is not permitted to build anything else on the property because of its location. *Id.*
 - b) The Petitioner further contends the land is over-valued based on his purchase of additional land adjacent to the subject property. *Wilson testimony*. According to Mr. Wilson, the original lot was only about a third of an acre in size and he bought extra land in 2006 or 2007 to alleviate problems, such as septic system issues. *Id.* Mr. Wilson testified he paid between \$7,000 and \$9,000 for the additional seven-tenths of an acre. *Id.*
 - c) Finally, the Petitioner contends the property is over-valued based on its market value. *Wilson testimony*. According to the Petitioner, he had Richard Hamerin of Carpenter Realtors prepare a Comparative Market Analysis of his home. *Wilson testimony; Petitioner Exhibit 1*. Mr. Hamerin's September 11, 2008, analysis concluded that properties similar to the Petitioner's property were selling in the price range of \$36,400 to \$72,500, with an average adjusted sale price of \$61,700. *Petitioner Exhibit 1*. The analysis was based on the Petitioner's purchase of the subject property in 1999 for \$42,500 and sales information from five properties which sold between October of 2006 and May of 2008 for prices from \$39,900 to \$80,000. *Id.* In response to the Respondent's contention that the analysis primarily used properties located in town, instead of rural properties like the subject property, the Petitioner argued that properties in town are valued higher than rural properties. *Wilson testimony; Petitioner Exhibit 1*.
12. Summary of the Respondent's contentions in support of the assessment:
 - a) The Respondent contends the Petitioner's property was properly assessed based on a comparative market analysis prepared by Jeff Wolfe, the former PTABOA president. *Hardy testimony; Garaffolo testimony; Respondent Exhibit 5*. According to Ms. Garaffolo, the Respondent's analysis is based on sales data from 2005 and 2006, which are the years the state mandated as the basis for the 2007 assessment. *Garaffolo testimony*. The Respondent's analysis used eight

similar properties in the same area as the Petitioner's property. *Graffolo testimony; Respondent Exhibit 5*. According to the Respondent's market analysis, the comparable properties sold for prices ranging from \$72,500 to \$119,500 and the average sale price was \$97,225, or \$82 per square foot. *Id.*

- b) The Respondent also argues that the Board should give little weight to the Petitioner's analysis. *Garaffolo testimony*. According to Ms. Garaffolo, Mr. Wilson's Comparative Market Analysis primarily used properties located in the city, whereas the subject property is rural. *Garaffolo testimony; Hardy testimony*.

Record

13. The official record for this matter is made up of the following:

- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1: Comparative Market Analysis prepared by Richard Hamerin of Carpenter Realtors,

Respondent Exhibit 1: Appeal Worksheet,

Respondent Exhibit 2: Comparative Market Analysis provided by the Petitioner,

Respondent Exhibit 3: PTABOA Notice of Hearing,

Respondent Exhibit 4: Property Record Card,

Respondent Exhibit 5: Respondent's Comparative Market Analysis,

Respondent Exhibit 6: Photograph of the subject property,

Respondent Exhibit 7: Subject property's MIBOR information sheet,

Respondent Exhibit 8: Form 115 Final Assessment Determination,

Respondent Exhibit 9: Form 131 Petition,

Respondent Exhibit 10: IBTR Notice of Hearing,

Board Exhibit A: Form 131 Petition,

Board Exhibit B: Notice of Hearing,

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 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 Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. 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). The appraisal profession traditionally has 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 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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 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 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his evidence relates to the property’s market value-in-use as of the relevant valuation date. *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). For the March 1, 2007, assessment, that valuation date is January 1, 2006. 50 IAC 21-3-3.

- d) The Petitioner first argues that his land is over-valued based on the property's location in a floodplain. *Wilson testimony*. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *Talesnick*, 756 N.E.2d at 1108. While flooding may negatively impact a property's value, the Petitioner failed to show specifically what impact such flooding has on the market value of his property.
- e) Further, the Petitioner contends the land is over-valued based on his purchase of additional land for the subject property. *Wilson testimony*. Mr. Wilson testified that he bought additional land to add to the subject property sometime around 2006 or 2007, and that he paid somewhere between \$7,000 and \$9,000 for it. *Id.* As stated above, sales information can be an effective method of showing an error in the assessment. MANUAL at 5; *See also Long*, 821 N.E.2d at 470. The Petitioner, however, must still support any claim with probative evidence. Vague, unsupported statements about a sale or purchase do not constitute probative evidence of an error in the assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- f) Finally, the Petitioner contends that the value of his property is too high based on a Comparative Market Analysis prepared by Richard Hamerin of Carpenter Realtors. *Wilson testimony; Petitioner Exhibit 1*. The analysis, dated September 11, 2008, finds that comparable properties are selling in the price range of \$36,400 to \$72,500, with an average adjusted sale price of \$61,700. *Petitioner Exhibit 1*. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of her property. *See MANUAL* at 3 (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 two 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.*

- g) Here, Mr. Hamerin provided an adjustment for the living area, the number of baths and the size of the garage. While the adjustments in the comparative market analysis may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. There is no evidence, however, that Mr. Hamerin is a licensed appraiser in Indiana. Further, he did not certify that he complied with USPAP in performing his valuation analysis. In fact the analysis does not purport to value the Petitioner's property. The CMA merely calculates the "average adjusted sold price" of five properties. Mr. Hamerin did not appear to testify as to the basis for his adjustments. Nor did his report identify the data upon which such adjustments were made. The Board therefore finds that the Petitioner's sales comparable analysis is insufficiently reliable to be probative of the property's market value-in-use. Further, the analysis determines its "suggested listing price" as of September 11, 2008. The relevant valuation date for the March 1, 2007, assessment year is January 1, 2006. Thus, to the extent that the CMA can be seen to provide evidence of the subject property's market value, the 2008 estimate is too far removed from the January 1, 2006, valuation date to be probative. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- h) The Petitioner failed to raise a prima facie case that the subject property was assessed in excess of its market value-in-use for the March 1, 2007, assessment date. Where a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Chairman,
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>.