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

Petition No.: **41-015-06-1-5-00004**
Petitioners: **Albert H. Jr. and Maria Wopshall**
Respondent: **Boone County Assessor**
Parcel No.: **019-49920-78**
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 December 15, 2007, the Petitioners appealed the subject property's March 1, 2006, assessment. On March 6, 2008, the Boone County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination upholding the property's assessment.

2. The Petitioners filed a Form 131 petition with the Board on April 8, 2008. They elected to have this case heard according to the Board's small claims procedures.

3. The Board issued a notice of hearing to the parties. dated September 23, 2008.

4. On October 28, 2008, the Board held an administrative hearing before its duly appointed Administrative Law Judge, Dalene McMillen ("ALJ").

5. The following people were present and sworn in at hearing:

   a. For Petitioners: Albert H. Wopshall, Jr., Owner
      Maria Wopshall, Owner

   b. For Respondent: Lisa C. Garoffolo, Boone County Assessor
      Jeffrey B. Wolfe, PTABOA President

Facts

6. The subject property contains a single-family home with an attached garage located at 4171 Field Master Drive in Zionsville.

7. The ALJ did not inspect the property.

8. For March 1, 2006, the subject property was assessed at $270,000—$46,500 for land and $224,200 for improvements.

9. The Petitioners request a total assessment of $252,500—$46,500 for land and $206,000 for improvements.

Contentions

10. Summary of Petitioners' contentions:

    a. The neighborhood factor for Brittany Chase—the Petitioners' subdivision—is wrong. The Eagle Township Assessor used flawed data to compute that neighborhood factor. Because of lawsuits alleging construction defects and mold problems, Brittany Chase's developer, Trinity Homes, bought back 54 homes within the subdivision. Trinity bought those homes at 5% to 20% above their market values and offered a number of undisclosed buyer incentives. *Pet'r Ex. 5; A. Wopshall testimony.* Because of financial difficulties, Trinity was sold to Crosswinds Homes and then to Beazer Homes. *A. Wopshall testimony.* Beazer resold many of the 54 homes that Trinity had bought at prices ranging from $30,000 to $70,000 less than Trinity had paid for them. *Id.* And those sales included large purchase allowances that were not reflected in the sale prices. The Trinity buy-backs and the Beazer re-sales were not market sales. By including those sales in his computations, the assessor came up with an inflated neighborhood factor. *Id*.

    b. Also, Brittany Chase's 1.27 neighborhood factor is out of line with the factors for surrounding neighborhoods that are more desirable. For example, Austin Oaks and Cobblestone Lakes are nicer neighborhoods than Brittany Chase, with larger and better-constructed houses, larger lots, and higher sale prices. Yet those two subdivisions have neighborhood factors of 1.11 and 1.14, respectively. *Id.* Likewise, Spring Knoll has more upscale construction and higher sale prices than Brittany Chase, yet its neighborhood factor is only .98. *Id.* Based on the neighborhood factors applied to those surrounding neighborhoods, Brittany Chase's neighborhood factor should be no more than 1.0. *Id.*

    c. The Petitioners also argue that the subject property's assessment should be returned to $233,600—the value shown on the property's September 4, 2006, record card. *Pet'r Ex. 4; A. Wopshall testimony.* The Eagle Township Assessor came up with that value in 2005 in response to a Form 133 petition that the Petitioners had filed. *A. Wopshall testimony, Pet'r*

Ex. 2. The earlier assessment is more in line with sale prices. In 2006, Brittany Chase homes were selling for no more than approximately $100 per square foot. *A. Wopshall testimony*. One property, lot 64, recently sold for $250,000. It had a finished bonus room with a large bath, a large wooded lot, and "deluxe appointments." *Pet'r Ex. 7*. Another ranch-style home that had a finished basement with a full bath was listed for $250,000 but had not sold. *Id.*

d. The Petitioners believe that the increase in assessment may have stemmed from the assessor raising their house's quality grade to "C+." *See A. Wopshall testimony*. The house had been valued at $176,500, but that value was increased by 27% to $224,000 for the March 1, 2006, assessment. *Id.; Pet'r Ex. 3*. That increase was too much for one year. The Petitioners would accept a 10% increase, which would raise the house's value to $206,000.[1] *A. Wopshall testimony*.

e. Also, the subject house's grade should not have been changed for the March 1, 2006, assessment date. The PTABOA ordered no change for the March 1, 2006, assessment, although it did reference changing the house's grade to "C+," for "07-08." *Id.; Pet'r Ex.6.* In any event, the house did not merit a grade increase. It is a basic house with vinyl floors. And it does not have upgrades such as window casings, wood doors, or crown molding. *Pet'r Ex. 7; A. Wopshall testimony.*

f. Finally, the Petitioners argue that several factors decrease the subject property's market value, including the presence of a sewer easement, water intrusion issues, inferior construction specifications, and an increased noise level caused by a change in the Indianapolis Executive Airport's flight path. *A. Wopshall testimony.*

11. Summary of Respondent's contentions:

a. The Respondent contends that the subject property is correctly assessed at $270,700. *Wolfe testimony.* The county followed Indiana law by using 2004 and 2005 sales from Brittany Chase to determine the March 1, 2006, assessments for that subdivision's homes. *Wolfe testimony.* In 2005, homes with less than 2,700 square feet sold for an average of $122 per square foot—slightly more than the subject property's $121.28-per-square-foot assessment. *Resp't Ex. 10; Wolfe testimony.* Those sales excluded the Trinity buy-backs and Beazer re-sales. Instead, the county looked only at sales of properties that had been listed by the board of realtors. *Id*.

[1] Although Mr. Wopshall described the $29,500 increase as "10%," it is almost 17% of the house's previous value of $176,500.

b. The Petitioners misunderstand what a neighborhood factor is. A neighborhood factor is not based on how nice a neighborhood is; rather, it is determined by evaluating the differences between the sale prices of homes and their assessed values. *Wolfe testimony.* If the assessments differ from those sale prices, assessors apply a multiplier to bring the two in line with each other. *Id*. Mr. Wolfe admitted that Brittany Chase homeowners had received an e-mail saying that their neighborhood factor would be reduced to 1.06. *Id*. But the county later determined that the factor should remain at 1.27. *Id.*

c. The quality grades for all homes in Brittany Chase were re-evaluated to ensure uniformity. *Wolfe testimony*. Because the homes were constructed by the same builder, were the same style, and were similar sizes, the county determined that they all fell within a "C+" to a "B" grade category. *Id.* Some custom-built homes received "B" grades, while most of the others received grades of either "C+" or "B-." *Id.*

d. Finally, the Petitioners bought the subject property for $257,000 in April of 2003. *A. Wopshall testimony*. If one assumes only modest appreciation of 3% per year—which is within the 2% - 5% range for Zionsville during the relevant time period—that sale price supports the property's 2006 assessment of $270,700. *Wolfe testimony.*

Record

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

a. The Form 131 petition and attachments.

b. The digital recording of the hearing.

c. Exhibits:

Petitioner Exhibit 1 – Exterior photograph of the subject property, dated August 4, 2003,
Petitioner Exhibit 2 – Petition for Correction of an Error – Form 133 for the March 1, 2003, assessment, dated March 15, 2005 ("Form 133"),
Petitioner Exhibit 3 – The subject property's original and corrected 2003 property record cards,
Petitioner Exhibit 4 – The subject property's property record card dated September 4, 2006,

Petitioner Exhibit 5 – Boone County appeal worksheet for 4171 Field Master Drive ("Appeal Worksheet"), and "Addendum to Property Tax Appeal of Albert and Maria Wopshall,"
Petitioner Exhibit 6 – Notification of Final Assessment Determination – Form 115, dated March 6, 2008, ("Form 115"),
Petitioner Exhibit 7 – Form 131 petition; Appeal Worksheet; "Addendum 1 Petition to the Indiana Board of Tax Review for Review of Assessment" ("Addendum 1"); "Addendum to Property Tax Appeal of Albert and Maria Wopshall" ("Addendum 2"); Form 115,
Petitioner Exhibit 8 – Notice of Hearing, dated September 23, 2008,

Respondent Exhibit 1 – Exterior photograph of the subject property, dated August 4, 2003,
Respondent Exhibit 2 –Form 133,
Respondent Exhibit 3 – The subject property's original and corrected 2003 property record cards,
Respondent Exhibit 4 – The subject property's property record card dated September 4, 2006,
Respondent Exhibit 5 –Appeal Worksheet; Addendum 1,
Respondent Exhibit 6 – Form 115,
Respondent Exhibit 7 –Form 131 petition; Appeal Worksheet; Addendum 1; Addendum 2; Form 115,
Respondent Exhibit 8 – Hearing Notice,
Respondent Exhibit 9 – GIS plat map of the Brittany Chase, dated January 29, 2008,
Respondent Exhibit 10 – Comparative Market Analysis of five properties sold in 2005 from the Brittany Chase Subdivision,

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

13. The most applicable governing cases are:

    a. A petitioner seeking review of an assessing official's determination 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 Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

    b. In making its case, the petitioner 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 evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

14. The Petitioners failed to make a prima facie case for lowering the subject property's assessment. The Board reached this decision for the following reasons:

    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). In conducting mass appraisals, assessors normally use the Real Property Assessment Guidelines for 2002-Version A. And a property's market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate. *Eckerling v. Wayne Township Assessor,* 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006). To rebut that presumption, a taxpayer may use relevant evidence that is consistent with the Manual's definition of true tax value, such as actual construction costs, appraisals, sales information regarding the subject property or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.* at 678*; see also* MANUAL at 5. By contrast, a taxpayer does not rebut an assessment's presumed accuracy simply by contesting the methodology that the assessor used to compute it. *Eckerling*, 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an

assessment that does not accurately reflect the property's market value-in-use. *Id.*

b. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject 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, 2006, assessment, that valuation date was January 1, 2005. 50 IAC 21-3-3.

c. The Petitioners mainly contested the neighborhood factor and quality grade that were used to compute the subject property's assessment. Those claims, however, merely attack the assessor's methodology. As the Tax Court explained in *Eckerling*, that is not enough—the Petitioners needed to offer relevant market value-in-use evidence.

d. The Petitioners did offer some evidence that was not solely aimed at contesting the assessor's methodology. They pointed to the average per-square-foot sale price for other Brittany Chase properties, and to various problems with their house and neighborhood that they felt lowered their property's market value. Mr. Wopshall also testified on cross examination that the Petitioners bought the property for $257,000 in April of 2003. But none of those things were probative of the subject property's true tax value for the March 1, 2006, assessment date.

e. True, one may estimate a property's market value-in-use by comparing it to similar properties that have sold and then adjusting those sale prices to account for relevant ways in which the properties differ. Indeed, that is what one generally accepted approach for valuing real property—sales-comparison approach—does. *See* MANUAL at 13; *see also Long*, 821 N.E.2d at 470-71. But the Petitioners did not follow that approach. Mr. Wopshall simply asserted that homes in Brittany Chase sold for about $100 per square foot. He did not point to any specific properties, although Petitioners' Exhibit 7 referred to a property that sold for $250,000 and another that was listed for that price. Even then, Mr. Wopshall did little to explain how those properties compared to the subject property or how any differences affected the properties' relative values. Similarly, while the problems that Mr. Wopshall identified, such as the mold claims against Trinity, the subject property's sewer easement, water intrusion issues, and the subject house's lack of amenities might have affected the property's market value, the Petitioners offered no evidence to quantify that effect.

f. By contrast, the subject property's sale price was at least probative of the property's value as of April 2003. But the Petitioners offered no evidence to explain how that sale price related to the property's value as of January 1, 2005. Indeed, Mr. Wolfe was the only witness who attempted to relate the subject property's sale price to the property's value as of that relevant valuation date. And he placed the property's time-adjusted sale price at or near its assessment.

g. Finally, the Petitioners pointed to what they felt was an unfair 27% increase between their house's previous assessment and the March 1, 2006, assessment at issue in this appeal. The Petitioners, however, incorrectly viewed that as a one-year increase. In reality, that increase purportedly reflected the change in the property's value over six years. That is because the house's March 1, 2005, assessment was designed to reflect its value as of January 1, 1999.[2] And as already explained, the March 1, 2006, assessment reflected the property's value as of January 1, 2005.

h. More importantly, each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001). Thus, evidence as to the subject property's assessment in one tax year is not probative of its true tax value in a later year. *See, id.* ("[E]vidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later."). In any event, the Petitioners did not offer any probative evidence to show whether either of the assessments at issue actually reflected the subject property's true tax value.

Conclusion

15. Because the Petitioners largely contested the methodology used to compute their property's assessment and offered no probative independent evidence to show the property's true tax value, they failed to make a prima facie case. The Board therefore finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the subject property's March 1, 2006, assessment should not be changed.

[2] *See Long*, 821 N.E.2d at 471(citing to the Manual and holding that for the 2002 general reassessment, a property's assessment was to reflect its value as of January 1, 1999); *see also* MANUAL at 2, 4 (stating that the Manual provides the rules for assessments from the March 1, 2002, assessment date through the March 1, 2005, assessment date).

ISSUED: _____

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Chairman,
Indiana Board of Tax Review

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Commissioner,
Indiana Board of Tax Review

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Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html**.**