

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

Petition #: 18-003-06-1-5-00287
Petitioners: Ervil & Linda L Cooper
Respondent: Delaware County Assessor
Parcel #: 18-07-33-354-005.000-003
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 April 16, 2007, the Coopers appealed the subject property’s March 1, 2006, assessment. On February 22, 2008, the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination upholding the property’s assessment.
2. On March 18, 2008, the Coopers filed a Form 131 petition with the Board. They elected to have this case heard according to the Board’s small claims procedures.
3. On September 17, 2008, the Board issued a notice of hearing to the parties.
4. On December 3, 2008, the Board held an administrative hearing before its duly appointed Administrative Law Judge, Jennifer Bippus (“ALJ”).
5. The following people were sworn in and testified at the hearing:
 - a) For the Coopers: Ervil Cooper, owner
Linda Cooper, owner
 - b) For the Assessor: Kelly Hisle, Deputy Center Township Assessor
Charles Ward, witness

Facts

6. The subject property contains a single-family home with an attached garage. It is located at 3504 N. Janney Avenue in Muncie.
7. The ALJ did not inspect the property.

8. For March 1, 2006, the subject property was assessed at \$82,300—\$11,800 for land and \$70,500 for improvements.
9. The Coopers requested a total assessment of \$74,000—\$11,800 for land and \$62,200 for improvements.

Contentions

10. Summary of the Coopers' contentions:
 - a) Sale and listing prices for nearby homes show that the subject property is over-assessed. The Coopers offered sale and listing information for a number of homes. In her testimony, Ms. Cooper focused on seven of those homes:
 - 3411 N. Janney Drive—a 2,000-square-foot, all brick home with mother-in-law quarters, that sold for \$50,000 at auction in the fall of 2006;
 - 3500 N. Janney Drive—an 1,100-square-foot home, with two bedrooms, a basement, and a two-car garage, that sold for \$65,000 in 2006;
 - 4004 N. New York Ave.—a home that recently sold for \$60,000;
 - 3505 N. Linden St.—a home that recently sold for \$43,680;
 - 901 W. Berkley St.—a home that sold for \$52,000 at auction in 2008;
 - 4309 N. Rosewood St.—a home that was listed for \$79,900; and
 - 3509 N. New York Ave.—a home that was listed at \$74,000 before being taken off of the market. *Linda Cooper Testimony; Pet'rs Ex. 5.*

The Coopers used sales and listings from 2006-2008. Although the Assessor argued that the Coopers should have used sales from 2004 and 2005, they could not have found comparable properties from that long ago. *Ervil Cooper testimony.*

 - b) The Coopers also identified several problems with the surrounding neighborhood that they believed hurt the subject property's value:
 - Homes in the area were built in the late 1940s and early 1950s.
 - Two homes located on the subject property's block have been vacant for four to five years and have seriously deteriorated.
 - Other homes in the neighborhood are poorly maintained. Some neighbors park cars, boats, and campers in their yards. Others do not consistently mow their lawns. And many homes have weed-damaged driveways and unkempt gutters.
 - The subject property sits within one block of a fireworks store and an adult-toy store.
 - A nearby gas station closed in 2005; the property was unkempt until it was recently converted into a Baskin Robbins.

- The neighborhood floods during heavy rainfalls. The flooding contaminates the water supply with chemicals from nearby properties. *Linda Cooper Testimony; Pet'rs Exs. 6–9.*
- c) Many of those factors also show that property values in the Coopers' neighborhood have been decreasing over time. The fact that the subject property's assessments have been increasing during that same period makes those assessments arbitrary. *Linda Cooper Testimony.*
11. Summary of the Assessor's contentions:
- a) The Coopers used sales and listing information from 2006–2008. Those dates are inconsistent with the January 1, 2005, valuation date used for 2006 assessments. The Coopers' failure to reconcile that inconsistency is particularly significant because property values have declined since January 1, 2005. *Ward testimony.*
- b) Also, the Coopers used unsound data in their analysis. First, they understated the sale prices for two of their purportedly comparable properties: they said that 3411 N. Janney Drive sold for \$50,000 when it actually sold for \$52,000, and that 3500 N. Janney Drive sold for \$65,000 instead of its actual sale price of \$73,400. *Ward testimony.* Second, two of the properties were sold at auction. When assessors perform a sales-comparison analysis, they do not use information from auctions or other distressed sales, because a distressed sale does not show a property's market value-in-use. *Ward testimony.*
- c) The Assessor gathered her own sales information for four homes located near the subject property. But unlike the Coopers, the Assessor used only properties that had sold within nine months of January 1, 2005. *Hisle testimony; Resp't Exs. 4–11.* The Assessor compared those four properties to the subject property and adjusted their sale prices to reflect various ways in which they differed from the subject property. *Hisle testimony; Resp't Ex. 1.* Those adjusted sale prices ranged from \$66,400 to \$94,900. *Hisle testimony; Resp't Ex. 1.* And the subject property's \$82,300 assessment fell within that range. In fact, the subject property's assessment of \$55.87 per-square-foot was lower than the adjusted per-square-foot sale prices for the four comparable properties. *Hisle testimony; Resp't Ex. 1.*

Record

12. The official record for this matter is made up of the following:
- a) The Form 131 petition
- b) A digital recording of the hearing

c) Exhibits:

Petitioners Exhibit 1: Form 131¹
Petitioners Exhibit 2: Form 115
Petitioners Exhibit 3: Form 130 petition
Petitioners Exhibit 4: Aerial view of subject property and surrounding area
Petitioners Exhibit 5: Property listings and sales
Petitioners Exhibit 6: Photographs of properties in subject property's neighborhood
Petitioners Exhibit 7: Letter from a near-by neighbor regarding water drainage
Petitioners Exhibit 8: Two letters and a field report from the Indiana Department of Environmental Management; a map from the Indiana Geological Survey; and a June 30, 2008, article from "the Muncie newspaper"

Respondent Exhibit 1: Four comparable property sales with adjustments
Respondent Exhibit 2: Property sales in the subject property's neighborhood
Respondent Exhibit 3: Property record card for subject property
Respondent Exhibit 4: Property record card for 4001 N. New York
Respondent Exhibit 5: Property record card for 3713 N. Glenwood
Respondent Exhibit 6: Property record card for 3909 N. Janney
Respondent Exhibit 7: Property record card for 4011 N. Janney
Respondent Exhibit 8: Sales disclosure for 4001 N. New York
Respondent Exhibit 9: Sales disclosure for 4001 N. New York (page 2)
Respondent Exhibit 10: Sales disclosure for 3909 N. Janney
Respondent Exhibit 11: Sales disclosure for 3909 N. Janney (page 2)
Respondent Exhibit 12: Sales disclosure for 4011 N. Janney

Board Exhibit A: Form 131 petition
Board Exhibit B: Notice of hearing
Board Exhibit C:

Board Exhibit D: 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 &*

¹ The exhibit contains two different versions of the petition's first page. The actual Form 131 petition filed in this case can be found in Board Exhibit A.

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 petitioner 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.

14. The Coopers failed to make a prima facie case for lowering the subject property’s assessment. We reach this conclusion 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 Twp. 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.
- b) Whatever method taxpayers use to rebut an assessment’s presumed accuracy, they must explain how their 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, 2006, assessment, that valuation date was January 1, 2005. 50 IAC 21-3-3.
- c) The Coopers attempted to rebut the subject property’s assessment in two ways: (1) by offering sale and list prices for nearby properties, and (2) by providing information about the declining quality of their neighborhood. As explained below, neither of those approaches was probative of the property’s market value-in-use as of January 1, 2005.
- d) The first claim recognizes that a given property’s value can be estimated by comparing it to similar properties that have sold in the market. In fact, that is

- precisely what the sales-comparison approach does. MANUAL at 3. The Coopers, however, did not follow the sales-comparison approach's basic requirements.
- e) A taxpayer applying the sales-comparison approach must identify comparable properties that have sold. MANUAL at 13-14. The taxpayer must then adjust those properties' sales prices to reflect the subject property's total value. *Id.* Those adjustments need to reflect differences between the subject and comparable properties that affect value. *Id.* Thus, when offering sales-comparison evidence in an assessment appeal, a taxpayer must explain "the characteristics of [the subject] property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Long*, 821 N.E.2d at 471. Conclusory statements that a property is "comparable" to another property do not suffice. *Id.* at 470.
 - f) Here, Ms. Cooper did little to compare the subject property to the properties for which she offered sale and listing information. She identified a few characteristics, such as the number of bedrooms and the existence of "mother-in-law" quarters, for two properties. For the others, she focused exclusively on their proximity to the subject property. That falls well short of the type of comparison described by the Manual and Tax Court. True, for several of the properties, the Coopers offered exhibits with information from which a more detailed comparison arguably could be made. But it was the Coopers' responsibility—not the Board's—to explain how the properties compared to each other. *See Long*, 821 N.E.2d at 471.² Even if the Coopers had shown general comparability, they did not adjust any sale prices to reflect relevant ways in which the purportedly comparable properties differed from the subject property.
 - g) The Coopers' sales-comparison evidence fails for another reason. The Coopers relied on sales from 2006–2008 without explaining how those sale prices related to the subject property's market value-in-use as of the relevant January 1, 2005, valuation date. Absent such an explanation, those sale prices lack probative value. *See Long*, 821 N.E.2d at 471 (holding that an appraisal lacked probative value where the taxpayers did not explain how it related to the property's market value-in-use as of the relevant valuation date).
 - h) The Coopers second broad contention—that various problems with their neighborhood impair the subject property's market value—also fails. The Coopers simply asserted that those problems affected the subject property's market value-in-use, without offering any probative evidence to quantify that effect.

² ("[I]t was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers].").

Conclusion

15. Because the Coopers offered no probative market-value-in-use evidence to rebut the presumption that the subject property’s assessment was accurate, they failed to make a prima facie case. The Board therefore finds for the Delaware County Assessor.

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.

ISSUED: _____

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>>