

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

Petition No.: 41-015-07-1-5-00082
Petitioners: Richard A. and Doris J. Wacker
Respondent: Johnson County Assessor
Parcel No.: 41-10-34-013-032.000-015
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 Petitioners initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The PTABOA issued its decision on July 8, 2009.
3. The Petitioners filed a Form 131 petition with the Board on August 20, 2009. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 10, 2009.
5. The Board held an administrative hearing on October 20, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Larry Dawson, Dawson Property Tax Consulting
Richard A. Wacker, Petitioner
 - b) For Respondent: Michael Watkins, appraiser for the Johnson County Assessor¹

Facts

7. The property is a single-family residence located at 4520 Jurists Court in the city of Trafalgar, in Johnson County.

¹ Mr. Watkins is a full-time employee of the Johnson County Assessor's office.

8. The Administrative Law Judge (ALJ) did not inspect the property.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$292,500 for the land and \$158,700 for the improvements, for a total assessed value of \$451,200.
10. The Petitioners request an assessed value of \$242,500 for the land and \$158,700 for the improvements, for a total assessed value of \$401,200.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a) The Petitioners contend that the assessed value of their property is excessive based on the assessments of five other properties located on Lamb Lake. *Dawson testimony*. In support of this contention, the Petitioners' representative presented assessment information showing the comparable properties' assessed values ranged from \$220,200 to \$444,300 and only one property had a significant increase in assessment from 2006 to 2007. *Id.*; *Petitioners Exhibit 2*. Specifically, Mr. Dawson focused on the Petitioners' neighboring property located at 4500 Callon Road. *Dawson testimony*. According to Mr. Dawson, the neighboring house is slightly larger, and there is a difference in the lot size and grade, but both properties have water frontage and were built around the same time, so he concludes they are somewhat comparable. *Id.*; *Petitioners Exhibit 2-4*. Nevertheless, Mr. Dawson argues, the subject property's land value alone exceeds the total assessed value of the neighboring property. *Id.* Mr. Dawson admitted, however, that the Callon Road property's assessed value had been reduced through appeal. *Id.*
 - b) The Petitioners further argue that homes comparable to their property are currently listed for sale for \$339,000 to \$389,000, but they are not selling. *Wacker testimony*. Moreover, Mr. Wacker argues, while some homes on Lamb Lake have little or no height difference between the house and the lakefront, the Petitioners' property has a 30-foot drop from the house to the lake. *Id.*
12. The Respondent's representative declined to offer any evidence in support of the assessment.

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:

Petitioners Exhibit 1: Form 131 petition,
Petitioners Exhibit 2: Summary sheet and assessment information for the
Petitioners' five comparable properties,
Petitioners Exhibit 3: Photographs of the subject property,
Petitioners Exhibit 4: Photographs of 4500 Callon Road,
Petitioners Exhibit 5: Copy of the Power of Attorney form,

Board Exhibit A: Form 131 Petitions,
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 Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. 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). 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 must explain how its evidence relates to the subject 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 the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d) Here the Petitioners contend their property is inequitably assessed based on a comparison of the assessed values of other properties, including the house next door.² *Dawson testimony; Petitioners Exhibit 2*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Indiana Tax Court held that under the prior assessment system, "true tax value" was determined by Indiana's assessment regulations and "bore no relation to any external, objectively verifiable standard of measure." 859 N.E.2d at 398. Therefore, "the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties." *Id.* Presently, "Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use." 859 N.E.2d at 399. "As a result, the new system shifts the focus from examining how the regulations

² The Petitioners ask for a reduction in the assessment of the land, but they argue that the assessed value of the subject property exceeds the total assessed values of the purportedly comparable properties. Thus, the Board focuses its analysis on the property as a whole. To the extent that the Petitioners contend their land is over-valued compared to the neighboring properties, the Board notes that the assessment information provided by the Petitioners shows that the base value of an acre of land for each property was the same - \$130,000. *Petitioners Exhibit 2*.

were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use.” *Id.*

- e) Thus, the Tax Court held, it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Westfield Golf Practice Center*, 859 at 399. Instead, the taxpayer must present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property’s market value-in-use. *Id.*; *see also P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor’s technical failure to comply strictly with the Guidelines). Like the petitioner in *Westfield Golf*, the Petitioners here only argued that the method of the Petitioners’ assessment was not uniform. Mr. Dawson failed to offer any evidence to show that the Petitioners’ assessment exceeded their property’s market value-in-use.³ Thus, the Petitioner failed to raise a prima facie case.
- f) Moreover, the Petitioners’ representative failed to show the comparability of those neighboring properties. By comparing the Petitioners’ assessed value to the assessed values of other comparable properties, Mr. Dawson essentially relies on a “sales comparison” method of establishing the market value-in-use of his property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, Mr. Dawson merely offered assessment information for the neighboring properties and only attempted to show the comparability of the neighboring property. Further, for the Callon Road property, Mr. Dawson merely testified that “the subject property’s square footage is slightly larger, but the homes are somewhat comparable.” Moreover, Mr. Dawson admitted the “lot size is different” but the lots “sit next to each other [and] have water frontage.” This falls far short of the burden to prove comparability of the properties. Thus, the Petitioners failed to raise a prima facie case that their property was assessed in error.
- g) When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent’s duty to support the assessment with substantial

³ To the extent that Mr. Wacker’s testimony that comparable houses are for sale for \$339,000 to \$389,000 can be seen as market value evidence, the testimony is unsupported and far too conclusory to be probative. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

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 Petitioners 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 assessments should not be changed.

ISSUED: January 14, 2010

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>.