

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

Petition #: 46-065-02-1-5-00020
Petitioner: John H. & Carol L. Laun
Respondent: Union Township Assessor (LaPorte County)
Parcel #: 751518307002
Assessment Year: 2002

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

Procedural History

1. The Petitioners filed an appeal with the LaPorte County Property Tax Assessment Board of Appeals (“PTABOA”) on January 23, 2004.
2. The PTABOA mailed notice of its determination on November 8, 2004.
3. The Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment on December 6, 2004. They elected to have their appeal heard under the Board’s procedures for small claims.
4. On September 12, 2007, Jennifer Bippus, the Board’s duly appointed Administrative Law Judge (“ALJ”), held an administrative hearing on the Petitioners’ Form 131 petition.
5. Marilyn Meighen of Meighen & Associates appeared as counsel for the Respondent. The following persons were present and sworn in at hearing:
 - a) For Petitioners: John Laun, Owner
Mike Laun, Witness
 - b) For Respondent: Carol McDaniel, LaPorte County Assessor
Joshua D. Pettit, LaPorte County Technical Advisor

Facts

6. The subject property is located at 3503 Chatfield Road, Kingsford Heights. It is classified as a single-family residential property.
7. The ALJ did not inspect the subject property.

8. The PTABOA determined the assessed value of the subject property to be:
Land \$3,200 Improvements \$5,800 Total \$9,000.
9. The Petitioners requested the following assessed value on their Form 131 petition:
Land \$1,000 Improvements \$4,000 Total \$5,000.

Parties' Contentions

10. Summary of Petitioners' contentions:
- a) The Petitioners identified several reasons why they believe that the Respondent over-assessed the subject property. First, the subject house has only 480 square feet. And it has two bedrooms, a kitchen and a bathroom within that limited space. Mike Laun testified that he could not sleep in the bedrooms, because he is longer than the rooms. *M. Laun testimony.*
 - b) Second, the subject house is poorly constructed and lacks interior finish. Contrary to what the Respondent indicated, its walls not drywall and it has no floor coverings, bathroom fixtures, kitchen sink, or furnace. *J. Laun testimony.* It also lacks appliances. *M. Laun testimony.* In addition, the house sits on concrete pillars rather than a foundation, and the walls are only three-inches thick. *M. Laun testimony.*
 - c) Third, the subject property's location detracts from its value. The house sits under a water tower. And people hit golf balls at the house from a playground behind the subject property. *Id.* Also, the property line runs one-foot from the steps along the house's side. And a fire hydrant prevents people from parking in front of the house. *M. Laun testimony; Pet'rs Ex. 5.*
 - d) Finally, comparable properties' sale prices and assessments show that the subject property is over-assessed. To support that claim, the Petitioners offered information for several purportedly comparable properties contained in a report prepared by Ronald H. Nowak, a certified appraiser. *Pet'rs Ex. 2, 4.* In that report, Mr. Nowak estimated market values for several properties owned by Ann A. Laun's estate. *Id.* But Mr. Nowak did not specifically identify or describe the properties that he valued. And the Petitioners did not assert that subject property was included in Mr. Nowak's report.
 - e) The Petitioners pointed out that the comparable properties referenced in Mr. Nowak's report contained houses that were larger than the subject house. And unlike the subject house, the comparable houses were habitable. *M. Laun testimony; Pet'rs Ex. 4.*
 - f) The Petitioners also pointed to a property located at 121 Vernon Court, which they asserted was the most comparable to the subject property. The Vernon Court property contained a house with the same floor plan as the subject house. Unlike the

subject house, however, it had normal features and was being lived in. And the Vernon Court property was in a more desirable location than the subject property. *M. Laun testimony; Pet'rs Ex. 3.*

11. Summary of Respondent's contentions:

- a) The Petitioners did not meet their burden of providing specific evidence to prove the subject property's market value-in-use. *Meighen argument.*
- b) Some of the comparable sales in Mr. Nowak's report occurred in 1994 and 1997, which is outside the relevant time frame for establishing true tax value for the 2002 reassessment. And those sale prices ranged from \$6,000 to \$11,500. The subject property is assessed for \$9,000, which is the middle of that range. *Meighen argument; Pet'rs Ex. 4.*
- c) In fact, the property that the Petitioners described as the most comparable to the subject property—121 Vernon Court—was assessed for \$14,400 in 2002. *Meighen argument; Pet'rs Ex. 3.*
- d) While Mike Laun testified that nobody could park in front of the subject property, the photographs included in Respondent's Exhibit A show a truck parked in front of the property. *Meighen argument; Resp't Ex. A.*
- e) The PTABOA hired a local appraiser to review the subject property's assessment. *Pettit testimony; Resp't Ex. C.* He identified properties that were comparable to the subject property in location and size, and that sold between 1998 and 1999. He computed a price per square foot for each property and determined that the subject property was slightly over-assessed. The PTABOA therefore lowered the property's assessment to \$9,000. *Pettit testimony; Resp't Ex. C.*
- f) The Respondent submitted property record cards for each of the purportedly comparable properties that its appraiser examined. *Resp't Exs. D – L.* Like the subject house, the comparable houses have wood-frame-with-sheeting construction and are one story. Plus, the subject house and all but one of the comparables were built in 1942. *Pettit testimony; Resp't Exs. D – L.* The houses all have quality grades in the D range. And all of the houses have one bathroom. *Pettit testimony; Resp't Exs. D – L.*

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: Copy of appeal forms,
 - Petitioners Exhibit 2: Letter from Ronald H. Nowak noting zoning regulations for frontage,
 - Petitioners Exhibit 3: Photograph and assessment information for 121 Vernon Ct.,
 - Petitioners Exhibit 4: Pages 3-5 of report prepared by Ronald H. Nowak and photographs of comparable properties
 - Petitioners Exhibit 5: Photograph of subject property,
 - Petitioners Exhibit 6: Witness name and address sheet,
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- Respondent Exhibit A: Four photographs of subject property,
 - Respondent Exhibit B: Property record card for subject property,
 - Respondent Exhibit C: AI Landing Field Review,
 - Respondent Exhibits D thru L: Corresponding property record cards for Field Review,
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- 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

13. Cases governing Administrative Rule and Petitioner's Burden:

- a) A taxpayer challenging an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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 relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. 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) If the taxpayer establishes a prima facie case, the burden shifts to the assessing official to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

14. The Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:
- a) Real property is assessed based on its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c). The Department of Local Government Finance’s regulations, in turn, define “true tax value” as “[t]he 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). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Because of time and resource constraints, Indiana assessors primarily use a mass-appraisal version of the cost approach contained in the Real Property Assessment Guidelines for 2002 – Version A. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006).
 - 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) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 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. Market value-in-use appraisals conforming to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) By contrast, a taxpayer does not rebut the presumption that an assessment is correct simply by contesting the methodology the assessor used to compute the assessment. *Eckerling*, 841 N.E.2d at 678. Thus, strictly applying the Guidelines is not sufficient. Instead, the taxpayer must show that the assessor’s methodology yielded an assessment that does not accurately reflect its property’s market value-in-use. *Id.*
 - d) The Petitioners failed to rebut the assessment’s presumption of accuracy. They relied, in part, on evidence about the subject property’s location and zoning restrictions as well as evidence about the subject house’s size and condition. While all of those factors likely affect the subject property’s market value, they do not, by themselves, quantify that value.
 - e) In making that finding, the Board recognizes John Laun’s testimony that the Respondent valued the subject house as having bathroom fixtures, drywall, and a kitchen sink that it did actually not have.¹ As explained above, however, a taxpayer cannot rebut an assessment’s presumption of correctness by simply attacking the

¹ He also testified that the Respondent assessed the subject house as having a furnace. *J. Laun testimony*. The subject property’s record card, however, shows that the Respondent subtracted \$1,300 for the house not having heat. *Resp’t Ex. B*.

assessor's methodology or strictly applying the Guidelines. *Eckerling*, 841 N.E.2d at 678.

- f) In rare cases, *Eckerling* and its progeny might allow a taxpayer to make a prima facie case through identifying and correcting an assessor's non-discretionary errors in applying the Guidelines. But this is not such a case. At most, the Petitioners identified a few minor elements of cost that the Respondent incorrectly assessed.
- g) Nonetheless, the problems with the subject property that the Petitioners identified are relevant to generally accepted appraisal methods that may be used to quantify the property's value. And the Petitioners attempted to use one of those methods—the sales-comparison approach. Thus, they pointed to information about five purportedly comparable properties contained in Mr. Nowak's report. And by comparing those properties to the subject property, they sought to quantify the subject property's value.
- h) The sales-comparison approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute improved property already existing in the market place. MANUAL at 13. An appraiser applying that approach locates sales of comparable improved properties and adjusts their selling prices to reflect the subject property's total value. *Id.* Those adjustments are designed to quantify property characteristics that cause sale prices to vary. *Id.* Thus, using objectively verifiable evidence, the appraiser examines all possible differences between the subject property and the comparable properties. The appraiser then isolates the items that influence market value. *Id.* Finally, the appraiser quantifies the relevant items' contributory values and uses those contributory values to adjust the comparable properties' sale prices. *Id.*
- i) Thus, in order to use the sales-comparison approach as evidence in an assessment appeal, the proponent must establish that the properties being examined are comparable. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must compare the subject property's characteristics to the characteristics of the purportedly comparable properties. *Id.* at 471. And the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- j) Here, the Petitioners did little more than present sales information, noting each property's house size, lot size, and sale price. The Petitioners did not meaningfully compare the subject property's relevant characteristics to those of the purportedly comparable properties. While the Petitioners' evidence may contain some information from which such a comparison could be made, a party must do more than simply present raw data. Instead, it must explain how that data relates to its contentions. See *Indianapolis Racquet Club*, 802 N.E.2d at 1022 ("[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis"). And even if the Petitioners' evidence showed that the properties at issue were

generally comparable to the subject property, the Petitioners did not adjust the 'comparable' properties' sale prices to reflect any relevant differences.

Conclusion

15. The Petitioners failed to make a prima facie case. The Board finds in the Respondent's favor.

Final Determination

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

ISSUED: _____

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>>