

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

Petition No.: 64-025-07-1-5-00008
Petitioners: Karen A. Love and Terrence E. Kiwala
Respondent: Porter County Assessor
Parcel No.: 64-03-22-226-003.000-025
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 Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 13, 2009.
2. The Petitioners received notice of the PTABOA's decision on April 12, 2010.
3. The Petitioners filed an appeal to the Board by filing a Form 131 on May 27, 2010. 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 May 31, 2011.
5. The Board held an administrative hearing on July 12, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:¹

For Petitioners: Terrence E. Kiwala, property owner,

For Respondent: Jon Snyder, Porter County Assessor.

¹ Michael C. Harris appeared as counsel for the Petitioners and Christopher Buckley appeared as counsel for the Respondent.

Facts

7. The subject property is a house located at 20 West Road, Dune Acres, in Porter County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$274,200 for the land and \$549,900 for the improvements, for a total assessed value of \$824,100.
10. The Petitioners requested an assessed value of \$646,883.

Issues

11. Summary of the Petitioners' contentions in support of an error in their property's assessment:
 - a. The Petitioner's counsel argues that the Petitioners' property's assessment is over-valued based on the assessment to sales ratios of other properties in the area. *Harris argument*. In support of their contention, the Petitioners presented a spreadsheet showing the sales prices and assessed values for seven properties that sold in Dune Acres in 2005 and 2006, assessment information for each of the properties, and a sales disclosure form for each sale. *Petitioner Exhibit 1*. According to Mr. Kiwala, the seven sales presented to the Board were the only sales that occurred in Dune Acres during the relevant time period. *Kiwala testimony*. In addition, Mr. Kiwala testified, Dune Acres is a town and therefore a "taxing district." *Id.* Based on those sales, Mr. Kiwala calculated the average ratio of assessed value to sales price to be 78.41% for 2007; whereas the subject property was assessed at 99.89% of its purchase price.² *Id.*; *Petitioner Exhibit 1*. Thus, the Petitioners argue, their property's assessed value should receive an equalization adjustment of 21.59% or be reduced to 78.41% of its sale price, or \$646,883.
 - b. In response to the Respondent's arguments, the Petitioners' counsel argues that the Petitioners did not have to show that the sales were of "comparable" properties, because the Petitioners were raising an issue with the rate of assessment of properties in their taxing district, rather than trying to show the market value of their property. *Harris argument*. According to Mr. Harris, the Petitioners presented a ratio study comparing the assessed values of properties within a taxing jurisdiction with the sales prices, which is objectively verifiable data, as instructed by the Indiana Tax Court in the *Westfield Golf* case. *Id.*; *Petitioner Exhibit 4*.

² The Respondent's counsel objected to Mr. Kiwala's testimony regarding Petitioner Exhibit 1 because the Petitioners had not established that Mr. Kiwala was an expert in valuation or was an appraiser. The Petitioners' counsel argued that, as one of the property owners, Mr. Kiwala had the right to testify on any matter germane to the Petitioners' appeal. The ALJ over-ruled the objection on the grounds that the objection went to the weight and credibility of the testimony, rather than its admissibility.

12. Summary of the Respondent’s contentions in support of the assessment:
- a. The Respondent’s counsel argues that the Petitioners’ ratio study is insufficient to demonstrate disparate treatment. *Buckley argument*. According to Mr. Buckley, the Petitioners failed to show comparability between the properties in the ratio study and the Petitioners’ property. *Id.* Further, Mr. Buckley argues that there is no evidence that the values on the sales disclosure forms reflect the properties’ market values-in-use. *Id.*
 - b. The Respondent’s counsel also argues that, although Petitioners’ counsel correctly states that a ratio study is one of the means by which a taxpayer can challenge the constitutionality of his assessment, ratio studies involve relatively sophisticated statistical comparisons that meet professionally accepted standards. *Buckley argument*. According to Mr. Buckley, the criteria, as set forth in *Kemp v. State*, 726 N.E. 2d 395 at 404, states that the studies must be based on a statistically reliable sample of properties that actually sold. *Id.* Mr. Buckley argues that the Petitioners have offered no evidence to establish that their chart of “sales price to assessment ratio for 2007” met that criterion. *Id.* However, the Respondent, Mr. Snyder, testified that the Petitioners’ analysis might be a good example of a ratio study. *Snyder testimony*. According to Mr. Snyder, seven sales could be considered adequate. *Id.* But when there are few sales, he argues, neighborhoods should be combined for a better analysis. *Id.*
 - c. Finally, Mr. Buckley argues that the 2002 Real Property Assessment Manual governs the code of conduct for the assessor’s office. *Buckley argument*. According to Mr. Buckley, the assessor followed the procedures in the Guidelines when he assessed the Petitioners’ property and, therefore, he did not violate the Petitioners’ equality of assessment as required by Article 1, Section 10, of the Indiana Constitution. *Id.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The compact disk recording of the hearing labeled 64-025-07-1-5-00008,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Town of Dune Acres sales price to assessment ratio spreadsheet with parcel identification records and sales disclosure forms,
 - Petitioner Exhibit 2 – Parcel identification record and sales disclosure form for the subject property,
 - Petitioner Exhibit 3 – Copy of Article 10, Section 1, Indiana Constitution,

Petitioner Exhibit 4 – Copy of *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax 2007)

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated May 31, 2011,
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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners provided sufficient evidence to establish a prima facie case that their property was entitled to receive an equalization adjustment. 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). Appraisers traditionally have 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 assess real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines – Version A.

- b. A property's market value-in-use as determined using the Guidelines is presumed to be accurate. *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 Ct. 2006). A taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. Taxpayers may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. 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, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. Here the Petitioners do not argue that the 2007 assessed value of their property does not reflect the property's market value-in-use.³ Instead, the Petitioners claim that their property's assessment lacks uniformity and equality as required under the Indiana Constitution. *Harris argument*. In support of their position, the Petitioners presented evidence that seven properties in the Petitioners' neighborhood were assessed lower than the Petitioners' property's sale to assessment ratio. *Petitioner Exhibit 1*. Mr. Kiwala testified that the seven sales represented all the sales in Dune Acres in 2005 and 2006. *Kiwala testimony*. Further, Mr. Kiwala testified that Dune Acres was a town and therefore a "taxing district." *Id.*
- e. A lack of uniformity and equality in a mass-appraisal assessment for a class or stratum of properties may be inferred from analyzing the ratio of assessment to sale prices for a subgroup of properties within that class or stratum. *See* MANUAL at 20 (Explaining that a ratio study "statistically measures the accuracy and uniformity of the assessments produced by the mass appraisal method."). Where a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been had other properties in Lake County been properly assessed). *See also Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) ("when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which

³ Both parties agree that the Petitioners purchased the property for \$825,000 in September of 2005, which is sufficiently related to the January 1, 2006, valuation date for the March 1, 2007, assessment to be probative of the property's market value-in-use for the 2007 assessment year.

compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.”)

- f. A “Ratio study” is “a study of the relationship between appraised or assessed values and market value-in-use as reflected by sales or other information.” 50 IAC 27-2-10. A ratio study is valid “to the extent that the sample is sufficiently representative of the population.” 50 IAC 27-5-3(a). “To be a representative sample, the sample must proportionally reflect major property characteristics, for example, property class, type, location, size, and age, present in the population of sold and unsold properties.” 50 IAC 27-5-3(b). However, “A study sample with fewer than five (5) sales shall not be used due its exceptionally poor reliability.” 50 IAC 27-5-3(c).
- g. Here, the Petitioners’ undisputed evidence shows that seven properties sold in Dune Acres during the relevant time period and those properties were assessed at a level between 72.3% and 85.4% of their sale prices; whereas the Petitioners’ property, which sold in the same time period, was assessed at 99.9% of its sale price. While the Board notes that the Petitioners presented little evidence to show that a sample size of seven sales out of approximately 150 parcels was a statistically reliable sample, the Respondent agreed that seven sales can constitute an adequate ratio study “depending on the sales.” Moreover, in response to the question “so that if you get in any market place with sales of 5% or there about in any two year period, you’ve got a pretty relatively sizable sample of the market, don’t you?” Mr. Snyder said “Sometimes, yeah... Most of the time, yes.” In fact, Mr. Snyder testified that the county has ratio studies where there are less than seven sales, although they are “looking at combining and things like that to try to have a better analysis for the ratio study.” Because the Petitioners showed that the seven sales they presented represented the universe of sales in the Dune Acres taxing district and because the Respondent agreed that seven sales can be a sufficient sample in a ratio study, the Board finds that the Petitioners raised a prima facie case that properties in Dune Acres were under-assessed for the 2007 assessment year and that the Petitioners were entitled to an equalization adjustment on their property for that year.
- h. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioners’ evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners’ case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Here the Respondent argues that it followed the requirements of the Guidelines when it assessed the Petitioners’ property and other properties in Dune Acres. However, in order to carry its burden, the Respondent must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm’rs*, 694 N.E.d2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (finding that the State Board’s recitation of its expertise was insufficient to rebut a taxpayer’s prima facie case).

- i. The Respondent's counsel also argues that the Petitioners failed to show that the seven sales they presented were "comparable" to their property. However, the Board notes that the Petitioners were not presenting sales of neighboring properties to prove the market value of their 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."); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). To the contrary, the Petitioners presented the seven sales to show the median level of assessment in the Dune Acres neighborhood. Thus, while the sales must be "representative" of the neighborhood, the Board is unaware of any requirement that the sales be "comparable" to the Petitioners' property to show that properties in general are under-assessed in a taxing district. See 50 IAC 27-5-3(a) (A ratio study is valid "to the extent that the sample is sufficiently representative of the population.")
- j. Finally, the Respondent's counsel argues that the Petitioners' evidence was not based "on a statistically reliable sample of properties that actually sold." However, as the Board noted above, the Respondent testified that seven sales might be considered adequate. While a ratio study involving a larger number of properties may have been preferable, the Respondent failed to show that the Petitioners' evidence was insufficient or based on inaccurate data. Nor did the Respondent present a ratio study of its own to rebut the Petitioners' evidence. Mr. Snyder merely testified that he "assumed the ratio study that we have from our office [was] not going to match [the Petitioners'] ratio study" because more sales would have been "pulled in." Thus the Board finds that the Respondent failed to rebut or impeach the Petitioners' prima facie case that they were entitled to an equalization adjustment on their property's 2007 assessment.

Conclusion

16. The Petitioners presented a prima facie case that their property's level of assessment was not uniform and equal with other properties in their neighborhood for the 2007 assessment. The Respondent failed to rebut or impeach the Petitioners' evidence. The Board finds in favor of the Petitioners and determines that the subject property's assessed value should be reduced to 78.41% of its \$825,000 sale price, or \$646,883, based on the average ratio of assessed value to sales price of properties that have sold in the neighborhood.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioners' property should be reduced to \$646,883 for the March 1, 2007, assessment.

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>>