

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

Petition No.: 09-008-10-1-5-00002
Petitioners: Justin Michael Stratton and Stephanie Rose Alberding
Respondent: Cass County Assessor
Parcel No.: 09-13-13-400-013.001-008
Assessment Year: 2010

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 Cass County Property Tax Assessment Board of Appeals (the PTABOA) by written document.
2. The PTABOA issued notice of its decision on May 11, 2011.
3. The Petitioners filed a Form 131 petition with the Board on June 27, 2011. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated August 26, 2011.
5. The Board held an administrative hearing on November 17, 2011, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Justin Stratton, property owner
 - b. For Respondent:¹ Cathy Isaacs, Cass County Assessor
Brian Thomas, Ad Valorem Solutions

¹ Ms. Isaacs was sworn in as witness but did not present any testimony.

Facts

7. The subject property consists of a 1,804 square foot, single-family home and utility shed on 5.779 acres located at 792 East County Road 1050 South, Galveston, Deer Creek Township, in Cass County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2010, the PTABOA determined the assessed value of the Petitioners' property to be \$36,500 for land and \$121,800 for the improvements, for a total assessed value of \$158,300.
10. The Petitioners requested an assessed value of \$36,500 for the land and \$100,400 for the improvements, for a total assessed value of \$136,900.

Issue

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
 - a. The Petitioners contend that their property was assessed for more than its market value-in-use for the March 1, 2010, assessment date based on the property's appraised value of \$136,900. *Stratton testimony*. In support of their position, the Petitioners submitted an appraisal report prepared by Kenneth A. LoCoco of NCI Appraisal Company. *Petitioner Exhibit 5*. Mr. LoCoco is an Indiana Licensed Residential Appraiser who certified that he prepared his appraisal in conformance with the Uniform Standards of Appraisal Practices (USPAP). *Id.* In his appraisal report, Mr. LoCoco estimated the property's value to be \$136,900 as of April 8, 2010, based on a sales comparison analysis and a cost approach valuation. *Id.*
 - b. The Petitioners also contend that their property's assessed value was over-stated in 2010 compared to the assessed values of other properties in the area. *Stratton testimony*. In support of the Petitioners' position, Mr. Stratton submitted a comparable analysis and multiple listing sheets and DLGF property detail sheets for two nearby properties. *Petitioner Exhibits 1 – 4 and 7*. Mr. Stratton argues that the first property, located at 2265 North 275 East, is superior to the property under appeal because the house is newer construction, it is substantially larger and it has a three car garage and 2 ½ baths. *Id.; Petitioner Exhibits 1 and 7*. Similarly, Mr. Stratton argues, the second property, located at 4801 East 225 North, is superior to the Petitioners' property because the house is newer and larger, it has 2 ½ baths and it sits on twice the acreage. *Id.; Petitioner Exhibit 3 and 7*. Despite the substantial differences between the Petitioners' property and the comparable properties, Mr. Stratton argues, the properties are all assessed very similarly. *Id.*

Thus, the Petitioners conclude, their property's assessed value was over-stated in 2010 based on the assessed value of other properties in the area. *Id.*

- c. Finally, in response to questioning, Mr. Stratton testified that the Petitioners purchased their property for \$136,900 on April 2, 2010. *Stratton testimony; Petitioner Exhibit 5.* While Mr. Stratton admitted that the property was only listed for a few days, he argues that the sale was an arms' length transaction and the property owner received more than one offer on the house. *Stratton testimony.* Moreover, Mr. Stratton testified that, prior to their purchase of the house, the property sold on August 28, 2009, for \$120,000. *Id.* According to Mr. Stratton, the previous owner made several improvements to the property, including adding hardwood floors in the kitchen and dining areas, replacing the hot water heater and updating the bathrooms, before putting the property back on the market in 2010. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent's representative contends that the Petitioners' appraisal should be given little weight. *Thomas testimony.* According to Mr. Thomas, the appraiser valued the Petitioners' property at the exact price that the Petitioners paid for the property under appeal. *Id.* Moreover, Mr. Thomas argues, the Petitioners' appraiser was not made available to the county to answer questions about his opinion of value. *Id.* For example, Mr. Thomas argues, the record contains no explanation as to why the property under appeal sold after only a few days on the market, when the appraiser stated that the typical property takes 90 to 180 days to sell in the Petitioners' property's neighborhood. *Id.; Respondent Exhibit A.*
 - b. The Respondent's representative also argues that the Petitioners' sales comparison analysis was flawed. *Thomas testimony.* According to Mr. Thomas, the Petitioners' comparable properties are located ten to fifteen miles from the property under appeal. *Id.* In addition, Mr. Thomas argues, the Petitioners failed to make adjustments to account for the differences between the subject property and the comparable properties. *Id.* Thus, the Respondent's representative argues, the Petitioners' comparable analysis fails to show the property under appeal was over-valued in 2010. *Id.*
 - c. Finally, Mr. Thomas contends that the Petitioners' property's assessment was correct for the March 1, 2010, assessment date. *Thomas testimony.* Mr. Thomas testified that the accuracy of the county's 2010 assessments was measured using aggregate data by comparing properties' assessments to their sales prices to determine the median assessment ratio for defined areas in Cass County. *Thomas testimony.* According to Mr. Thomas, the county's sales ratio study shows the assessments for properties in the Petitioners' area were within the state requirements for a proper assessment. *Id.*

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Multiple listing sheet for 2265 North 275 East,
Petitioner Exhibit 2 – DLGF property detail sheet for 2265 North 275
East,

Petitioner Exhibit 3 – Multiple listing sheet for 4801 East 225 North,
Petitioner Exhibit 4 – DLGF property detail sheet for 4801 East 225
North,

Petitioner Exhibit 5 – Residential appraisal report prepared by Kenneth A.
LoCoco, dated April 13, 2010,

Petitioner Exhibit 6 – DLGF “Property Tax Assessment Appeals Fact
Sheet,” dated September 2010,

Petitioner Exhibit 7 – Petitioners’ comparative market analysis,

Respondent Exhibit A – Respondent’s written summary,

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

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 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 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 for a reduction in the assessed value of their property for 2010. 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 have traditionally 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 FOR 2002 – 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); *PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 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 (USPAP) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer evidence of actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c. Regardless of the method used to rebut an assessment’s presumed accuracy, a party must explain how its 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 2010 assessment, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - d. Here, the Petitioners contend that their property was over-valued in 2010 based on the property’s purchase price and its appraised value. *Stratton testimony*.

According to Mr. Stratton, the Petitioners purchased the property under appeal on April 2, 2010, for \$136,900. *Id.* Mr. Stratton admitted that the property was only on the market for a short period of time. *Id.* However, Mr. Stratton testified that there was no relationship between the Petitioners and the seller of the property and, in fact, the property owner received other offers on the property in addition to the Petitioners' offer. *Id.* Moreover, Mr. Stratton testified, the Petitioners' property sold prior to the Petitioners' purchase of the property for \$120,000, on August 28, 2009. *Stratton testimony; Petitioner Exhibit 5.* The sale of a property is often the best evidence of the property's market value-in-use. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence).

- e. In addition, the property appraised for \$136,900 as of April 8, 2010. *Petitioner Exhibit 5.* The appraiser is an Indiana Certified Appraiser who certified that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* The appraiser used the sales comparison approach and cost approach to value the property. *Id.* An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479.
- f. Both the sale of the subject property and its appraised value were sufficiently contemporaneous with the statutory valuation date to be probative of the property's market value-in-use for the 2010 assessment year. Therefore, the Board finds that the Petitioners raised a prima facie case that their property was over-valued for the March 1, 2010, assessment date.
- g. Once the Petitioner raises a prima facie case that its property was over-valued, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- h. Here, the Respondent's representative did not dispute that the Petitioners purchased the property in 2010 for \$136,900. *Thomas testimony.* Mr. Thomas merely argued that, because the property under appeal sold within days of being put on the market, the county would "question" the motivation of the seller and whether the sale was truly an arms' length transaction. *Id.* The Respondent, however, presented no evidence to support its contention that the Petitioners' purchase price was somehow not a valid sale. Similarly, Mr. Thomas testified

that he had a number of “questions” for the appraiser regarding how the appraiser estimated the property’s value. However, Mr. Thomas failed to present any evidence that the appraiser was biased or that the appraisal was flawed.² “Open-ended questions” and “conclusory statements” are not sufficient to rebut the Petitioners case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) (“In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Rassel's calculations. Rather, he merely asked open-ended questions or made conclusory statements”). The Respondent, therefore, failed to rebut or impeach the Petitioners’ evidence that their property was over-valued for the 2010 assessment year.

- i. Mr. Thomas also argues that the county’s ratio study shows that its assessments were within the range of values the state requires for a proper assessment. *Thomas testimony*. Mr. Thomas appears to be referring to the Real Property Assessment Manual which states that “standards for evaluating the accuracy and uniformity of mass appraisal methods have been developed by the assessing community. These standards state the overall level of assessment, as determined by the median assessment ratio, should be within ten percent (10%) of the legal level. In Indiana, this means the median assessment ratio within a jurisdiction should fall between 0.90 (90%) and 1.10 (110%) in order to be considered accurate. This standard of ten percent (10%) on either side of the value provides a reasonable and constructive range for measuring mass appraisal methods.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 21. This provision, however, clearly refers to standards for evaluating the overall accuracy and uniformity of mass appraisal methods during the equalization process. It does not authorize any “range” for an individual assessment where there is probative evidence of a value that is more precise for that particular property. *See generally* 50 IAC 14 *et al.* (regarding the equalization process). The Board reminds Mr. Thomas that it has repeatedly rejected similar claims that a property’s assessment is correct because it falls within the statistical measures of uniformity.

Conclusion

16. The Petitioners raised a prima facie case that their property was over-valued for the 2010 assessment year. The Respondent failed to rebut or impeach the Petitioners’ evidence. The Board finds in favor of the Petitioners and holds that the value of the subject property is \$136,900 for the March 1, 2010, assessment date.

² To the extent that the Respondent had “questions” for the appraiser, the Board’s rules have several mechanisms for the Assessor to obtain that information – including serving discovery on the Petitioners pursuant to 52 IAC 2-8-3 or serving a subpoena on the appraiser to appear at hearing and testify under 52 IAC 2-8-4. However, taking advantage of either of these rules required the Respondent to remove the Petitioners’ appeal from the Board’s small claims docket. *See* 52 IAC 3-1-3. That the Respondent failed to take advantage of any of the Board’s rules in preparing its case for hearing, is not evidence that the Board should now disregard the Petitioners’ evidence.

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 lowered to \$136,900 for 2010.

ISSUED: _____

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 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>.