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

Petition #: **32-012-04-1-5-00015**
Petitioner: **Linda DuPré**
Respondent: **Guilford Township Assessor (Hendricks County)**
Parcel #: **2112751E488013**
Assessment Year: **2004**

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 Petitioner initiated an assessment appeal with the Hendricks County Property Tax Assessment Board of Appeals ("PTABOA") by written document dated March 1, 2005.

2. The Petitioner received notice of the decision of the PTABOA on April 15, 2005.

3. The Petitioner filed an appeal to the Board by filing a Form 131 petition with the Hendricks County Assessor on April 25, 2005. The Petitioner elected to have this case heard in small claims.

4. The Board issued a notice of hearing to the parties dated February 17, 2006.

5. The Board held an administrative hearing on April 6, 2006, before the duly appointed Administrative Law Judge Alyson Kunack.

6. Persons present and sworn in at hearing:

    a) For Petitioner: Linda DuPré, Petitioner

    b) For Respondent: Ronald Faulkner, PTABOA member
    Lester Need, PTABOA member

Gordon McIntyre, PTABOA member
Gail Brown, Hendricks County Assessor[1]

Tina Stoutenour, deputy county assessor, was present and observed the hearing.

Facts

7. The subject property is located at 232 Elm Street, Plainfield. The property is classified as a residential lot with a detached garage, as is shown on the property record card for parcel #2112751E488013.

8. The Administrative Law Judge ("ALJ") did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the PTABOA:
Land $4,000 Improvements $10,400 Total $14,400.

10. Assessed Value requested by Petitioner on Form 131 petition:
Land $500 Improvements $2,000 Total $2,500.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:

a) The subject property is a rear lot with a detached garage. The Petitioner purchased the subject property and the adjoining parcel containing a house with an attached garage as part of a single transaction. At the time of purchase, the Petitioner believed the subject property and adjoining property to be a single parcel. *DuPré testimony.*

b) The Petitioner purchased the property pursuant to a "HUD sale." The house was in poor condition at the time of purchase. The Petitioner has repaired the house and leased it to tenants. It is currently a rental property that the Petitioner plans to use for retirement income. *DuPré testimony.*

c) The Petitioner submitted five (5) pages from an appraisal performed by Gerald R. Cox, a certified residential appraiser. Mr. Cox valued the subject property and the adjoining parcel as a single property. Mr. Cox estimated the market value of the

[1] The Guilford Township Assessor is the proper Respondent in this case because she made the original assessment determination. *See* Ind. Code § 6-1.1-15-3. The Guilford Township Assessor did not appear at the hearing, nor did she provide written authorization for any other local governmental officials to represent her. *See* Ind. Admin. Code tit. 52, r. 3-1-4 (allowing a party to appear before the Board on his or her own behalf or by a representative that is expressly authorized by the party in writing to appear on the party's behalf). Thus, the Hendricks County Assessor and the three members of the PTABOA were not authorized to appear on behalf of the Respondent. The Hendricks County Assessor was statutorily authorized to appear as an additional party by filing a notice of appearance prior to the hearing. Ind. Code § 6-1.1-15-3(p); see also, Ind. Admin. Code tit. 52, r. 2-6-6(b). The County Assessor, however, did not file such an appearance. Nonetheless, given that this issue was not raised prior to or at the hearing, the Board will consider the arguments of the County Assessor and PTABOA members as if they had properly appeared on behalf of the Respondent.

combined parcels to be $103,000 as of October 6, 2004. *DuPré testimony; Pet'r Ex. 1.*

d) The former owner built the subject garage in 1999. The Petitioner presented an advertisement for a garage package that is similar to the subject garage. The advertisement lists the price as $3,836. The Petitioner believes the advertisement was from March 2005. Because the former owner built the garage himself, there were no labor costs. *DuPré testimony; Pet'r Ex. 2.*

e) The Petitioner contends that there should be some way to change the assessment of the subject property so that it is in line with the appraised value of the combined parcels. *DuPré testimony.*

12. Summary of Respondent's contentions in support of the assessment:

a) The subject land is a 66' by 85' rear lot. The PTABOA applied a negative 30% influence factor and reduced the land value from $16,600 to $4,000. *Need testimony; Resp't Ex. 1 at 8-9.*

b) The advertisement cost for the garage presented by the Petitioner does not include labor, foundation, or electricity. The value should include all necessary labor and expenses even if built by the property owner. *Need testimony.*

c) The PTABOA estimated the value of the garage using an economy kit from Menards, plus costs for a foundation, labor, and electricity to arrive at an estimated value of $10,808. The PTABOA also obtained an estimate of $11,400 to construct a similar building. *Need testimony; Resp't Exs. 1 at 10, 14-15.*

d) The Respondent presented a copy of the building permit for the subject garage. The building permit is dated December 17, 1998, and shows a value of $13,000. *Need testimony; Resp't Ex. 1 at 11.*

e) The Petitioner bought the subject property and an adjoining property pursuant to a "HUD sale," which is not an arms length transaction. *Need testimony.*

f) The Petitioner's appraisal for the combined properties used comparables sales consisting of a HUD property, a VA property, and an agent-owned property. The Respondent does not consider those sales to be reliable comparables. *Brown testimony.*

Record

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

a) The Petition.

b) The recording of the hearing.

c) Exhibits:

Petitioner Exhibit 1: Pages from Appraisal for combined property as of October 6, 2004
Petitioner Exhibit 3: Photographs of neighborhood

Respondent Exhibit 1: PowerPoint presentation including original building permit and construction estimates
Respondent Exhibit 3[2]: Form 115
Respondent Exhibit 4: Subject Property Record Card ("PRC")

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

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 Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

[2] The Respondent labeled its exhibits prior to the hearing. The Respondent did not submit anything labeled as "Exhibit 2" at the hearing.

a) The Petitioner contends that the assessment of the subject property exceeds its market value. The Petitioner bases her contention on excerpts from an appraisal of the subject property and an adjoining property and upon an advertisement for a garage package. *DuPré testimony; Pet'r Exs. 1, 2.*

b) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real property 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). As set forth in the Manual, 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. *Id*. at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A ("Guidelines"), to assess real property.

c) A property's market value-in-use, as ascertained through application of the Guidelines' cost approach, 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) *reh'g den. sub nom. P/A Builders & Developers, LLC,* 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual's definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id*.; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 ("[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with [USPAP]."). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

d) The Manual further provides that for the 2002 general reassessment a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. That is also true for succeeding assessment years between 2002 and 2005. *See* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002 through March 1, 2005, assessment dates); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the Department of Local Government Finance to adopt rules for annually adjusting assessments to account for changes to value in years since general reassessment, with such adjustments to begin in 2006). Consequently, in order to present evidence probative of a property's true tax value for the 2002 through 2005 assessment years, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates the property's market value-in-use as of January 1, 1999. *See Long v. Wayne Township Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

e) The excerpts from Mr. Cox's appraisal report are insufficient to establish a prima facie case of error in assessment. The Petitioner submitted only isolated portions of the appraisal report that do not reveal the basis underlying Mr. Cox's opinion of value. *See Pet'r Ex. 1*. Moreover, Mr. Cox did not purport to value the subject property separately from the adjoining parcel containing the dwelling. *Id.* Consequently, while a complete version of Mr. Cox's appraisal report might have shown that, taken together, the assessments of the two properties exceeds their combined market value, it still would not have demonstrated what the correct assessment of the subject property should be. Had the Petitioner appealed the adjoining parcel, her failure to isolate the value of the subject property might not have been fatal to her claim. Under those circumstances, the Board could have issued an order directing the Respondent to change the assessed values of the two properties so that the aggregate assessment would not exceed the appraised value of the properties. Absent an appeal of the adjoining parcel, however, the Board does not have that flexibility.

f) Even if the Board were to find that excerpts from Mr. Cox's appraisal report were otherwise sufficient to establish a prima facie case of error in the assessment of the subject property, Mr. Cox valued the properties as of October 6, 2004, more than five years after the relevant valuation date of January 1, 1999. *Pet'r Ex. 1.* The Petitioner did not explain how the appraised value relates to the market value of the properties as of January 1, 1999. The appraisal therefore lacks probative value. *See Long, supra*, 821 N.E.2d at 471.

g) The advertisement presented by the Petitioner is similarly insufficient to demonstrate an error in the assessment of the subject property. The Guidelines provide, "the cost to be estimated by the assessor is made up of all direct labor and material costs plus the indirect expenses required to construct an improvement." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, intro at 1 (incorporated by reference at 50 IAC 2.3-1-2). The advertisement submitted by the Petitioner shows the price of a garage package. The advertised price, however, includes only the materials for the garage; it does not include the labor to build the garage or the costs of installing a foundation or electricity.

h) Based on the foregoing, the Petitioner failed to present sufficient evidence to establish either that the current assessment is incorrect or what the correct assessment should be. *See Meridian Towers*, 805 N.E.2d at 478.

Conclusion

16. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

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

ISSUED: **August 29, 2006**

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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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.