

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

Petition #: 37-032-03-1-5-00001
Petitioner: Charles J. Wiers
Respondent: Walker Township Assessor (Jasper County)
Parcel #: 0130107400
Assessment Year: 2003

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 Jasper County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 2, 2004.
2. The PTABOA mailed notice of its decision on July 9, 2004.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Jasper County Assessor on July 16, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of rehearing to the parties dated May 10, 2006.
5. The Board held an administrative hearing on August 9, 2006, before the duly appointed Administrative Law Judge, Joan Rennick.
6. Persons present and sworn in at hearing:

For Petitioner: Charles Wiers, Taxpayer
Roy Gouwens, Appraiser

For Respondent: Eldon (Butch) Jeffries, Walker Township Assessor
Earl D. Walton, PTABOA chairman
William L. Wood, PTABOA member
George W. Brook, PTABOA member
Marvin Miller, PTABOA member

Facts

7. The property is classified as a single-family residential dwelling located at 10732 Bunker Drive, Demotte, as is shown on the property record card for parcel # 0130107400.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Jasper County PTABOA:
Land: \$38,100 Improvements: \$217,300 Total: \$255,400.
10. Assessed Value requested by the Petitioner on the Form 131 petition:
Land: \$38,100 Improvements: \$169,900 Total: \$208,000.

Issues

11. Summary of the Petitioner’s contentions in support of alleged error in assessment:
 - a) The Petitioner contends that the subject property is assessed in excess of its market value as demonstrated by an appraisal of the subject property. *Pet’r Ex. 1*. Mr. Roy Gouwens, a licensed appraiser, prepared the appraisal. *Gouwens testimony; Pet’r Ex. 1*. At the time of the appraisal, Mr. Gouwens had been an appraiser for eleven (11) years. *Gouwens testimony*. Mr. Gouwens certified that he performed the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP). *Pet’r Ex. 1*. Mr. Gouwens estimated the market value of the subject property to be \$208,000 as of December 8, 2003. *Weirs testimony; Pet’r Ex. 1*.
 - b) Mr. Gouwens based his opinion of value primarily upon the sales comparison approach to value. *Gouwens testimony; Pet’r Ex. 1*. Mr. Gouwens also estimated the value of the subject property under the cost approach, and he found that the value derived under that approach supported his conclusions under the sales comparison approach. *Id.* Mr. Gouwens considered the income approach to value, but did not use that approach due to the lack of rental data. *Pet’r Ex. 1*.
 - c) In performing his sales comparison analysis, Mr. Gouwens chose three comparable properties from the same subdivision as the subject property. *Gouwens testimony*. The comparables are located within blocks of the subject property. *Id.* Comparable 1, located at 10752 Dogleg Drive, sold for \$207,000 in September 2003. *Id.; Pet’r Ex. 1*. Comparable 2, located at 10687 Dogleg Drive, sold for \$209,000 in August 2003. *Id.* Comparable 3, located at 10905 Dogleg Drive, sold for \$182,000 in October 2002. *Id.* Mr. Gouwens adjusted the sale prices of the comparable properties to reflect differences between those properties and the subject property in terms of their relative size and age, as well as other factors, such as whether the comparable properties had garages similar to the subject property and whether they had basements of comparable size and finish. *Gouwens testimony; Pet’r Ex. 1*.

- d) Of the three comparable properties examined by Mr. Gouwens, Comparable 1 is most similar to the subject property. *Gouwens testimony*. Comparable 1 is a new home with roof line cuts that are somewhat architecturally attractive and a 3-car garage, and it is in a location similar to that of the subject property. *Gouwens testimony*. The adjusted sale price of Comparable 1 is \$210,000. *Id.*; *Pet'r Ex. 1*. Comparable 3 has more of a flat roof and less architectural design than the subject property. *Id.* The adjusted sale price for Comparable 3 is \$199,000. *Id.* Based on his sales comparison analysis, Mr. Gouwens estimated the market value of the subject property to be \$208,000.
- e) In applying the cost approach, Mr. Gouwens first determined the reproduction cost of the subject improvements. *Id.* Based on his estimate of the effective age of the improvements, Mr. Gouwens then reduced the reproduction cost by twenty-five percent (25%) to account for depreciation. *Id.* Under his cost analysis, Mr. Gouwens estimated the market value of the subject property to be \$208,830. *Pet'r Ex. 1*.
- f) Although Mr. Gouwens estimates the market value of the subject property as of December 8, 2003, he testified that property values had increased since 1999. *Gouwens testimony*. Thus, according to Mr. Gouwens, the subject property would have been worth less than \$208,000 on January 1, 1999. *Id.*

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

- a) The subject home was the first home in the subdivision, and it is the best in the subdivision. *Walton testimony*. An architect designed the subject home specifically for Mr. Wiers. The home is an A-frame with a bedroom wing on one side and a kitchen wing on the other side. *Id.* When one enters through the front door, he or she has a dramatic, impressive view with glass from the floor to peak. *Id.* The great room is sunken to enhance this effect. *Id.* The finest materials were used to construct the home in 1977. *Id.* While the home currently suffers from a lack of maintenance, it is still in above-average condition. *Id.* The home has two (2) furnaces and two (2) air conditioning systems. *Id.*
- b) The subject lot is high and rolling, and it commands a good view of the subdivision's golf course. *Walton testimony*. The other lots in the subdivision are flat. *Id.*
- c) Upon inspecting the property, the Respondent found a 10' x 10' loft area that is not reflected on the property record card for the subject property. *Jeffries testimony*. Mr. Gouwens refers to that area as a den. *Id.*; *Pet'r Ex. 1*. The loft area would add another \$3,400 to the assessment. *Jeffries testimony*. The Respondent also discovered that the subject home has a basement. *Id.* The basement is eight hundred and forty eight (848) square feet with finished floors, walls, ceiling, and some partitions. *Id.* After viewing the basement, Mr. Jeffries considers the basement finish to be a "Rec Room 2." *Id.* The presence of a Rec Room 2 would increase the assessment. *Id.*

- d) The Respondent changed the quality grade assigned to the subject home from “B+2” to “B+1” in 2001. The home has characteristics of a “B” grade home including unusual shapes, additional rooflines and angles, higher than normal roof pitch, generous overhangs, good quality interior finish, abundant built-in features, and good grade lighting and plumbing. *Jeffries testimony; Resp’t Ex. 2.*
- e) Mr. Walton read into the record the definition of “effective age” from the Real Property Assessment Guidelines for 2002 – Version A (Guidelines). *Walton testimony.* According to Mr. Walton, the condition rating applied to a home will reflect the effective age of the structure. *Walton testimony.*
- f) None of the comparable properties used in the appraisal submitted by the Petitioner are actually comparable to the subject property. *Jeffries testimony.* The subject property has more amenities and is in a better location than the comparable properties. *Id.* In support of its contention, the Respondent presented photographs and property record cards for the subject property and for each of the comparable properties used in the appraisal. *Id.; Resp’t Exs. 3-4.*

Record

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

- a) The Form 131 petition.
- b) The recording of the hearing.
- c) Exhibits:

Petitioner Exhibit 1: Appraisal of the subject property

Respondent Exhibit 1: Form 115

Respondent Exhibit 2: Real Property Assessment Guidelines for 2002 – Version A, Book 1 pages 11-14, Grading Specification Table

Respondent Exhibit 3: Eight photographs and a property record card (“PRC”) of the subject property

Respondent Exhibit 4: Photographs and PRCs of comparables used in the Petitioner’s appraisal

Board Exhibit 1: Form 131 petition with attachments

Board Exhibit 2: Notice of Hearing

Board Exhibit 3: 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 a 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 provided sufficient evidence to support his contentions. The Board reaches this conclusion for the following reasons:
- a) In Indiana, real property is assessed based upon its “true tax value.” 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. 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.
 - b) 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 the Uniform Standards of Professional Appraisal Practice (USPAP).”).

- c) 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. Consequently, in order to present evidence probative of a property’s true tax value, a party relying on an appraisal valuing a property as of a date substantially removed from the relevant valuation date must explain how the value estimated by that appraisal relates to the property’s value 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 the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
- d) Here, the Petitioner submitted a Uniform Residential Appraisal Report prepared by Mr. Gouwens, a licensed residential appraiser. *Pet’r Ex. 1*. Mr. Gouwens certified that he prepared the appraisal in conformity with USPAP. *Pet’r Ex. 1*. Moreover, Mr. Gouwens utilized two generally accepted appraisal methods – the sales comparison and cost approaches to value. *Gouwens testimony; Pet’r Ex. 1*. Mr. Gouwens’ conclusions under each approach supported his estimate that the market value of the subject property was \$208,000 as of December 8, 2003. *Id.* Mr. Gouwens, who had eleven years of experience as a residential appraiser at the time he prepared the appraisal at issue in this case, testified that property values had been increasing and that the subject property would have been worth no more than \$208,000 as of January 1, 1999. *See Gouwens testimony*. Thus, Mr. Gouwens’ appraisal is precisely the type of evidence contemplated by the Tax Court and the Manual as relevant to rebut the presumption that the Respondent’s assessment under the Guidelines is correct.
- e) Mr. Gouwens’ opinion of value as expressed in the appraisal constitutes probative evidence that the current assessment is incorrect and that the correct assessment should not exceed \$208,000. Thus, the Petitioner established a prima facie case for a change in assessment.
- f) The burden therefore shifted to the Respondent to impeach or rebut the Petitioner’s evidence. *See Meridian Towers*, 805 N.E.2d at 479.
- g) The Respondent attempted to impeach Mr. Gouwens’ opinion of value on grounds that the purportedly comparable properties upon which he relied in forming his opinion are not actually comparable to the subject property. According to Mr. Walton, an architect designed the subject home specifically for Mr. Wiers, while the comparable homes were not custom designed. *Walton testimony*. Mr. Walton further testified that the subject home is situated on the best lot in the subdivision because the lot is high and rolling, and commands a good view of the subdivision’s golf course. *Id.* Mr. Walton further testified that the subject home was built from the “finest materials,” although he did not elaborate on those materials or explain how they compared to the materials used to construct the comparable homes relied upon

- by Mr. Gouwens in his appraisal. *See id.* The Respondent also offered photographs both of the subject home and of the comparable homes relied upon by Mr. Gouwens in his appraisal. *See Resp't Ex. 3, 4.* According to the Respondent, those photographs illustrate the superiority of the subject home. *Jeffries testimony.*
- h) The testimony of Messrs. Walton and Jeffries regarding the quality of the subject property as compared to the quality of the comparable properties relied upon by Mr. Gouwens in his appraisal is largely conclusory. For example, simply stating that the subject property is the “best” property in the subdivision or that the subject lot commands the best view does little to detract from the credibility of Mr. Gouwens’ appraisal. Mr. Walton’s testimony that the subject home was constructed of the “finest” materials likewise does little to impeach the reliability of Mr. Gouwens’ valuation opinion absent a comparison of the materials in question or a quantification of their effect on the relative market values of the properties in question.
- i) Although the photographs and property record cards submitted by the Respondent constitute at least some objective evidence comparing the subject home to the comparable homes identified by Mr. Gouwens, the Respondent provided little explanation as to how those documents demonstrate the lack of similarity between the homes. The Respondent bore the burden of explaining to the Board how those documents support its case. *See Long*, 821 N.E.2d at 471 ([I]t was not the Indiana Board’s responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers].”). The Respondent did not meet that burden.
- j) The Respondent also questioned the effective age used by Mr. Gouwens in determining that the reproduction cost new of the subject home should be reduced by 25% to account for depreciation. *See Jeffries testimony.* According to Mr. Jeffries, the subject home has suffered depreciation of only fifteen percent (15%) under the Guidelines. *Id.* Mr. Jeffries, however, based his calculation of depreciation on schedules contained in the Guidelines. By contrast, Mr. Gouwens testified that he based his calculation of depreciation by dividing the subject home’s total economic life by his estimate of the home’s effective age. *See Gouwens testimony.* As discussed below, proof that an assessor followed the Guidelines is not sufficient to rebut probative market-based evidence of a property’s market value-in-use. Regardless, even if the Board were to find that the Respondent significantly impeached the reliability of Mr. Gouwens’ application of the cost approach to value, Mr. Gouwens testified that he gave the greatest weight to his analysis under the sales comparison approach in reaching his final opinion of value. *See Gouwens testimony; see also, Pet’r Ex. 1.*
- k) Based on the foregoing, the Board finds that the Respondent did not impeach the reliability of Mr. Gouwens’ opinion regarding the market value of the subject property.

- l) The Respondent also devoted considerable time to discussing the quality grade assigned to the subject home in computing the current assessment. Issues regarding the grade assigned to the subject home, however, relate only to whether the Respondent correctly applied the Guidelines in assessing the subject property. Once the Petitioner presented probative market-based evidence of the subject property's market value-in-use, it was incumbent upon the Respondent either to impeach the reliability or credibility of the Petitioner's evidence or to come forward with probative market-based evidence of its own. Even if the Respondent correctly applied the Guidelines in assessing the subject property, that fact would be insufficient to outweigh the Petitioner's appraisal.
- m) Finally, Mr. Jeffries identified various features, such as a loft and a "Rec Room 2" that are not reflected on the property record card for the subject property. *Jeffries testimony*. According to the Respondent, those features should increase the subject property's assessment. Once again, Mr. Jeffries' testimony misses the mark. At most, his testimony relates to what a proper assessment would be under the Guidelines. It does nothing to impeach or rebut Mr. Gouwens' opinion of value.
- n) Based on the foregoing, the Petitioner established by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment is \$208,000.

Conclusion

- o) The Petitioner made a prima facie case. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

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>>.