

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

| | | |
|-------------------------|---|----------------------------|
| Petition Nos.: | 49-447-02-1-5-08972 | 49-447-02-1-5-08978 |
| | 49-447-02-1-5-08973 | 49-447-02-1-5-08979 |
| | 49-447-02-1-5-08974 | 49-447-02-1-5-08980 |
| | 49-447-02-1-5-08975 | 49-447-02-1-5-08981 |
| | 49-447-02-1-5-08976 | 49-447-02-1-5-08982 |
| | 49-447-02-1-5-08977 | 49-447-02-1-5-08983 |
| Petitioners: | Kevin K. and Jane Kirkpatrick¹ | |
| Respondent: | Lawrence Township Assessor (Marion County) | |
| Parcel Nos.: | 4039001 | 4038991 |
| | 4039000 | 4038990 |
| | 4038998 | 4038989 |
| | 4038997 | 4038988 |
| | 4038993 | 4038987 |
| | 4038992 | 4038986 |
| Assessment Year: | 2002 | |

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

Procedural History

1. The Petitioners initiated assessment appeals with the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) by written documents dated October 20, 2003.
2. The Petitioners received notice of the decisions of the PTABOA on September 24, 2004.
3. The Petitioners initiated appeals to the Board by filing twelve (12) Form 131 Petitions with the county assessor on November 7, 2004. The Petitioners elected to have those petitions heard in small claims.
4. The Board issued notices of hearing to the parties dated December 19, 2005.
5. The Board held a consolidated administrative hearing regarding the above referenced petitions on January 26, 2006, before the duly appointed Administrative Law Judge Alyson Kunack.

¹ Kevin K. Kirkpatrick is listed as the sole petitioner on Petition Nos. 49-447-02-1-5-08972 through 49-447-02-1-5-08976 and 40-447-02-1-5-08983.

6. John Johantges, tax representative for the Petitioners, and Beth Brown, Lawrence Township Assessor's Office, appeared at the hearing and were sworn as witnesses.

Facts

7. The subject properties are located at the following street addresses in Lawrence Township, Indianapolis, Indiana: 8424 E. 56th St.; 8428 E. 56th St.; 8436 E. 56th St.; 8440 E. 56th St.; 8514 E. 56th St.; 8518 E. 56th St.; 8522 E. 56th St.; 8526 E. 56th St.; 8530 E. 56th St.; 8534 E. 56th St.; 8538 E. 56th St.; and 8604 E. 56th St.. All of the subject properties are classified as residential.
8. The Administrative Law Judge ("ALJ") did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Marion County PTABOA:

| | | |
|-------------|---------|--|
| Parcel No.: | 4039001 | Land \$ 21,500, Improvements \$ 102,200; |
| | 4038991 | Land \$ 22,000, Improvements \$ 102,000; |
| | 4039000 | Land \$ 21,500, Improvements \$ 102,200; |
| | 4038990 | Land \$ 22,000, Improvements \$ 102,000; |
| | 4038998 | Land \$ 21,500, Improvements \$ 102,200; |
| | 4038989 | Land \$ 22,000, Improvements \$ 102,000; |
| | 4038997 | Land \$ 21,500, Improvements \$ 102,200; |
| | 4038988 | Land \$ 22,000, Improvements \$ 102,000; |
| | 4038993 | Land \$ 22,000, Improvements \$ 102,000; |
| | 4038987 | Land \$ 22,000, Improvements \$ 102,000; |
| | 4038992 | Land \$ 22,000, Improvements \$ 102,000; |
| | 4038986 | Land \$ 23,800, Improvements \$ 102,000. |
10. The Petitioners requested a total assessed value of \$94,000 for each of the properties under appeal.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) A petitioner before the Board must prove two points: that the assessed values are incorrect, and what the correct values should be. *Johantges argument.*
 - b) The Petitioners contend that the current assessed values of the subject properties are incorrect because the Respondent did not use actual sale data for the properties in determining their assessments. *Id.* The Petitioners submitted copies of a purchase agreement and a U.S. Department of Housing and Urban Development Settlement Statement (HUD statement) to show that the Petitioners bought fourteen (14) properties for a total of \$1,400,000 on or about July 2, 2001.

Pet'rs Exs. A-B. Included in that purchase were the twelve (12) properties that are the subjects of the instant appeals. According to the Petitioners, the sale price equaled \$100,000 for each property. The Petitioners used a factor of 3% per year to trend that amount to a 1999 value of \$94,000 per property. *Johantges testimony.*

- c) The subject properties were exposed to the open market. The fact that the Petitioners bought the subject properties as part of a transaction involving fourteen (14) properties does not make the sale a non-arms length transaction. *Id.* The International Association of Assessing Officers (IAAO) does not view such transactions as not being at arms length. *Id.; Pet'rs Ex. L.*
- d) The Board has previously stated that the sale price for a subject property is the best indication of its value, and HUD statements are an appropriate method by which to demonstrate a property's sale price. *Johantges testimony.* To illustrate those points, the Petitioners submitted documents from two unrelated appeals in which the Marion County PTABOA ultimately agreed to value the properties under appeal based upon their respective sale prices. *Id.; Pet'rs Exs. C-K.*
- e) The properties identified in Respondent's Exhibit 3 were ready to be occupied at the time of sale. *Brown testimony.* The subject properties, by contrast, were "rough" and were not ready to be occupied at the time the Petitioners purchased them. *Johantges testimony.*

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

- a) The subject properties are virtually identical units within the same subdivision. There are some differences between units in the subdivision, but "for the most part they are the same." *Brown testimony; Resp't Ex. 3.* The Respondent submitted sales disclosure statements for several other properties in the subdivision, which sold for prices ranging from \$125,000 to \$140,000. *Id.* Both the properties identified by the Respondent and the subject properties were purchased from the developer, Harrison Development. *Id.*
- b) The Respondent's representative "made some calls," and only two of the sales by the developer involved units that were not ready for occupancy. *Brown testimony.* One of the sales involved the Petitioners' soon to be daughter-in-law. *Id.* The Respondent did not include sales disclosure statements from those sales, but the sale prices were in the \$90,000 to \$100,000 range. *Id.*
- c) According to appraisers consulted by the Respondent, "allocation sales," where values are allocated to individual properties purchased in a group, are not arms-length transactions. *Brown testimony.*

Record

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

- a) The Petition.
- b) The digital recording of the hearing.
- c) Exhibits:

Petitioners Exhibit A: HUD statement for sale of subject properties
Petitioners Exhibit B: Purchase agreement for 14 property “package”
Petitioners Exhibit C: Hearing notes from county hearing for petition 49-801-02-1-5-08729

Petitioners Exhibit D: HUD statement for the property related to petition No. 49-801-02-1-5-08729

Petitioners Exhibit E: Appraisal report for the property related to petition No. 49-801-02-1-5-08729

Petitioners Exhibit F: E-mail containing recommendation to PTABOA for the property related to petition No. 49-801-02-1-5-08729

Petitioners Exhibit G: HUD statement for the property related to petition No. 49-801-02-1-5-08726

Petitioners Exhibit H: Sales disclosure for HUD statement for the property related to petition No. 49-801-02-1-5-08726

Petitioners Exhibit I: Form 130 Appeal for the property related to petition No. 49-801-02-1-5-08726

Petitioners Exhibit J: Stipulation agreement concerning the property related to petition No. 49-801-02-1-5-08729

Petitioners Exhibit K: Notice of Stipulated Agreement, Order of Dismissal for the property related to petition No. 49-801-02-1-5-08726

Petitioners Exhibit L: International Association of Appraising Officers (IAAO) manual on Mass Appraisal of Real Property, pages 53-54.

Respondent Exhibit 1: Map showing subject properties,

Respondent Exhibit 2: Aerial Photograph of subject properties,

Respondent Exhibit 3: Sales disclosures for comparable properties.

Board Exhibit A: Form 131 petitions,

Board Exhibit B: Notices 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) 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).
 - b) A property’s market value-in-use, as ascertained through application of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A (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) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 824 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, such as sales information regarding the subject property and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5. In fact, where the sale of a subject property is conducted under circumstances indicative of a market transaction, the sale price of the subject property is often the best evidence of that property’s market value-in-use.
 - c) Mr. Johantges testified that the Petitioners bought fourteen (14) properties, including the twelve (12) subject properties, for \$1,400,000 in July 2001.

Johantges testimony; Pet'rs Exs. A-B. According to the Petitioners, this demonstrates that the market value of each property as of the date of sale was \$100,000. *Johantges testimony.*

- d) The Petitioners, however, did not present any evidence to demonstrate how they and the seller allocated the overall sale price between the individual properties. If the properties were identically situated, splitting the sale price evenly between the properties arguably might constitute at least some evidence of the market value of the individual properties, even absent evidence as to how the parties to the sale allocated the sale price. The Petitioners, however, did not present evidence to establish that the properties to the sale were identically situated. In fact, the Petitioners presented no evidence whatsoever concerning the characteristics of the subject properties. While the Respondent's representative made the general statement that the properties in the subdivision were basically identical, the plat map submitted by the Respondent shows variations between the relative sizes of the subject lots. In fact, the subject lot located at 8604 E. 56th Street is listed as containing 6884 square feet, which is over 900 square feet larger than are several of the other subject lots. *See Resp't Exs. 1-2.*
- e) Based on the foregoing, the Petitioner failed to make a prima facie case of error in assessment.
- f) Even if the Board were to view the record as establishing that properties within the subdivision were sufficiently similar to support a uniform allocation of the July 2001 consolidated sale price, the Respondent successfully rebutted the probative value of that sale price as evidence of the market value of the component properties.
- g) The Respondent contended that consolidated sales, such as the one at issue in this case, are not arms length transactions. *Brown testimony.* According to the Respondent, such a sale is not indicative of the market value of the component properties if they were sold individually. *Id.*
- h) As an initial matter, the Respondent is mistaken in its characterization of the sale as something other than an arms length transaction. Whether or not a given transaction occurs at "arms length" depends upon the relationship between the parties to the transaction. Thus, an "arm's-length" transaction relates to dealings between two parties who are not related, not on close terms, and not in a confidential relationship. They presumably have roughly equal bargaining power. BLACK'S LAW DICTIONARY 116 (8th ed. 1999). The fact that the properties were purchased in bulk does nothing to show that the parties to the transaction were so closely related as to render their dealings not at arms length.
- i) Nonetheless, the Respondent's imprecise use of terminology does not detract from its general point that the sale of a group of similar properties results in a market discount that would not be available if those properties were sold

individually. In support of its position, the Respondent submitted several disclosure statements relating to sales of other properties within the same subdivision as the subject property. Those sales occurred between July 24, 1998, and October 13, 2000. The disclosure statements reflect sale prices ranging from \$125,000 to \$140,000. Ordinarily, the Board would place little weight on sales disclosure statements absent evidence demonstrating the comparability of the properties at issue. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005)(holding that the petitioners failed to explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use). In the instant case, however, one must assume that properties throughout the subdivision are virtually identical in order for the sale price relied upon by the Petitioner to have any probative value in the first place.

- j) Mr. Johantges sought to counter the Respondent's evidence by testifying that, unlike the properties reflected on the disclosure statements submitted by the Respondent, the subject properties were in "rough" condition and were not ready for occupancy at the time of purchase. *Johantges testimony*. Ms. Brown, however, testified that she "made some calls" and determined that only two units were not "fixed-up" at the time of sale. Absent more specific evidence concerning the allegedly "rough" condition of the subject properties at the time of purchase, the Board credits the Respondent's evidence as demonstrating that the bulk purchase of the subject properties likely involved a discount of the sale price that would not have been available had the properties been purchased individually.
- k) Consequently, the Petitioner failed to prove by a preponderance of the evidence that the Respondent erred in assessing the subject properties.

Conclusion

- 16. The Petitioners failed to establish a prima facie case. Even if the Petitioners had established a prima facie case, the Respondent successfully rebutted the Petitioners' evidence. The Board finds in favor of the Respondent.

Final Determination

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

ISSUED: **April 27, 2006**

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>.