

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

Petition #: 84-002-03-1-5-00190
Petitioners: Ronald E. & Susie E. Sharp
Respondent: Harrison Township Assessor (Vigo County)
Parcel #: 118-06-10-177-002
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 Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated August 6, 2004.
2. The PTABOA mailed notice of its decision on June 10, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Vigo county Assessor on June 14, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 10, 2006.
5. The Board held an administrative hearing on June 22, 2006, before the duly appointed Administrative Law Judge (the ALJ) Joan L. Rennick.
6. Ronald E. & Susie E. Sharp, property owners, and Richetta Hale, Harrison Township Deputy Assessor, appeared at the hearing and were sworn as witnesses.

Facts

7. The subject property is a single-family residential dwelling on a platted lot, as shown on the property record card for parcel 118-06-10-177-002. The property is located at 2722 North 11th Street, Terre Haute, Vigo County, in Harrison Township.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The PTABOA determined that the assessed value of the subject property is \$14,000 for the land and \$85,800 for the improvements, for a total assessed value of \$99,800.

10. The Petitioners requested an assessed value of \$10,000 for the land and \$70,000 for the improvements, for a total assessed value of \$80,000.

Issues

11. Summary of Petitioners' contentions in support of alleged error in the assessment:
- a) The Petitioners submitted an appraisal report performed by Gregory Scott Rusk, a certified residential appraiser. *Pet'rs Ex. 1*. Mr. Rusk estimates that the market value of the subject property is \$77,500 as of March 28, 2000. *Id.*
 - b) The Petitioners allege that property owners always carry more insurance for a house than it is actually worth, because rebuilding costs would exceed the house's market value. *R. Sharp argument*. Therefore, the Petitioners contend that the fact they have insured the subject improvements for \$105,000 does not demonstrate that the subject property is worth \$105,000. *Id.*
 - c) The Petitioners contend that corner lots are worth more than other lots. *R. Sharp argument*. The Petitioners claim that their land is worth less than the corner lot at North 11th Street and Delaware Avenue, which sold for \$12,000, because the subject lot is located in the middle of the block. *R. Sharp testimony, argument*.
12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent contends that the assessment of the subject property is correct. According to the Respondent, a comparable property containing a dwelling built in 1992 and located within a three-block radius of the subject property sold for \$84,000 in 1999. *Hale testimony*. The Respondent also submitted property record cards (PRCs) and sales information concerning six (6) other purportedly comparable properties, although the Respondent acknowledges that one of those parcels consists of several vacant platted lots. *Hale testimony; Resp't Exs. 1-7*.
 - b) The Respondent claims that the real estate market in the area in question did not change much between January 1, 1999, and March 28, 2000. *Hale testimony*. The Respondent further contends that property values have increased since March 28, 2000, because there has been a lot of new construction near the area. *Id.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition.
 - b) The tape recording of the hearing labeled IBTR-6238.¹

¹ The Board also has a digital recording of the hearing.

c) Exhibits:

Petitioners' Exhibit 1: Appraisal dated March 28, 2000.

Respondent's Exhibit 1: Property Record Card (PRC) for 3105 N 10th St.

Respondent's Exhibit 2: PRC for 2623 N 10th St.

Respondent's Exhibit 3: PRC for 2424 N. 11th St.

Respondent's Exhibit 4: PRC for 2400 N. 11th St.

Respondent's Exhibit 5: PRC for 3127 N. 10th St.

Respondent's Exhibit 6: PRC for 3100 N. 12th St. (Lots only)

Respondent's Exhibit 7: PRC for 3021 N. 11th St.

Board Exhibit 1: The 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 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 Insurance Company 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 provided sufficient evidence to establish a prima facie case for a reduction in assessment. The board reaches this decision for the following reasons:

- a) Real Property in Indiana is assessed based on its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c). 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.
- 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 [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.
- 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, 8. Consequently, a party relying on an appraisal performed substantially after that date must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s market value-in-use as of January 1, 1999. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471-472 (Ind. Tax Ct. 2005).
- d) Here, the Petitioners submitted what appear to be portions of an appraisal performed by a licensed appraiser that values the subject property at \$77,500 as of March 28, 2000. *Pet’rs Ex. 1*. It is not entirely clear what, if any, pages are missing from the appraisal, but the documents submitted appear to contain most, if not all, of the appraiser’s analysis. *See Id.* Those documents also contain the appraiser’s signature. *Id.* Moreover, although the appraisal does not contain a certification that it was prepared in accordance with USPAP, the appraiser clearly based his decision on the cost and sales comparison approaches to value. *Id.* Thus, the Petitioners provided at least some evidence of market value-in-use of

the subject property that was complied in accordance with generally accepted appraisal principles.

- e) In addition, the appraisal estimates the market value of the subject property as of a date only fifteen (15) months after the January 1, 1999, valuation date. *Pet'rs Ex. 1*. The Respondent admitted that the real estate market in the area changed very little between January 1, 1999, and March 28, 2000, and that property values have increased in the subject neighborhood since March 28, 2000. *Hale testimony*. Thus, the appraisal constitutes probative of evidence that the subject property's market value in use did not exceed \$77,500 as of January 1, 1999. The Petitioners therefore established a prima facie case that the current assessment is in error and that the property should be assessed for no more than \$77,500.
- f) The burden therefore shifts to the Respondent to rebut the Petitioners' evidence. *American United Life Insurance Company*, 803 N.E.2d at 281. The Board must hold the Respondent to the same standards to which it holds a taxpayer seeking to establish a prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) ("Time and time again, this Court has reminded taxpayers that as part of making a prima facie case, 'it is the taxpayer's duty to walk the [Board] through every element of [its] analysis.'... These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case."). Therefore, when seeking to rebut a petitioner's case through evidence of the sale prices of purportedly comparable properties, a respondent "is responsible for explaining to the Board the characteristics of [the subject] property, how those characteristics compare[] to those of the purportedly comparable properties and how any differences affect[] the relevant market value-in-use of the properties." *Long*, 821 N.E.2d at 471.
- g) Here, the Respondent submitted PRCs for several properties that are located within a three-block area surrounding the subject property. *Resp't Exs. 1-7*. The Respondent, however, did not identify relevant characteristics of those purportedly comparable properties or explain how those characteristics compare to the characteristics of the subject property. The Respondent also failed to identify or explain how any differences between the purportedly comparable properties and the subject property affect the relative market values-in-use of those respective properties. *Resp't Exs. 1-7*. Although the PRCs may contain some information regarding the characteristics of the properties at issue, it is not the Board's responsibility to review all of the documents submitted by Respondent to determine whether the properties at issue are comparable. That duty rests with the Respondent. *Long*, 821 N.E.2d at 471. The Respondent's failure to carry its burden in that regard renders its evidence concerning the sale prices of purportedly comparable properties insufficient to rebut the appraisal submitted by the Petitioners.
- h) Accordingly, the Board finds for the Petitioners and concludes that the assessed value of the subject property should be changed to \$77,500.

Conclusion

16. The Petitioners provided sufficient evidence to establish a prima facie case that the assessment should be changed to \$77,500. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of Petitioners.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment shall be changed to \$77,500.

ISSUED: September 14, 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>.