

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

Petition #: 71-025-02-1-5-00008
Petitioners: Gerald R. & Irene Darling
Respondent: Portage Township Assessor (St. Joseph County)
Parcel #: 17-1041-1298
Assessment Year: 2002

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 St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130.
2. The Petitioners received notice of the decision of the PTABOA on March 16, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition) with the County Assessor on April 12, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 15, 2004.
5. The Board held an administrative hearing on March 9, 2005, before the duly appointed Administrative Law Judge Dalene McMillen.
6. The following persons were present and sworn in at the hearing:¹
 - a. For Petitioners: Gerald Darling, Owner
Irene Darling, Owner
 - b. For Respondent: Ralph J. Wolfe, PTABOA Member
Ross A. Portolese, PTABOA Member
Terrance F. Wozniak, Deputy County Attorney
Rosemary Mandrici, Portage Township Assessor

¹ Mr. Wozniak was present during the administrative proceedings on behalf of the Respondent but was not sworn.

Facts

7. The property is classified as a one-story frame dwelling located at 55138 Butternut Road, South Bend, Portage Township, St. Joseph County, as is shown on the property record card for parcel #17-1041-1298.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value determined by the St. Joseph County PTABOA:

Land: \$22,200	Improvements: \$67,700	Total: \$89,900
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10. Assessed Value of subject property as requested by the Petitioners at the hearing:

Total: \$80,000

Issue

11. Summary of Petitioners' contentions in support of the alleged error in the assessment:
 - a. The assessed value of the subject property is overstated in comparison to other properties located in the subject neighborhood. The Petitioners requested an assessment of \$80,000. *G. Darling testimony.*
 - b. The Petitioners submitted an appraisal estimating the market value of the subject property to be \$85,000 as of February 18, 2005. *Petitioners Exhibit 3.* The appraiser stated that the 1999 value of the property would be \$80,000 based on an annual appreciation rate of approximately three percent (3%). *G. Darling testimony.*
 - c. Comparable #5 under the appraisal's sales comparison analysis is located in the same neighborhood as the Petitioners' property. *Id.*
 - d. The Petitioners submitted photographs of neighboring properties to demonstrate the neighborhood has declined. The Petitioners contend that, due to the condition of the neighborhood, the subject property is less desirable on the market. *Petitioners Exhibit 4; G. Darling testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Petitioners' appraisal establishes the value of the subject property as of February 18, 2005, but does not address the Petitioners' adjoining vacant parcel. *Mandrici testimony; Petitioners Exhibit 3.*
 - b. Comparable #5 is the most comparable to the subject property because it is located in the same neighborhood as the subject property. The appraisal indicates

that comparable property #5 sold for \$77,000 on December 30, 1997. Assuming that the properties in the area appreciated at the Petitioners' proposed rate of three percent per year, the value of comparable property #5 for 1999 would be approximately \$81,700. *Mandrici testimony.*

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 STB #5169.
- c. Exhibits:

For the Petitioners:

Petitioners Exhibit 1: A copy of the Form 131 petition.

Petitioners Exhibit 2: A copy of the Form 130 petition.

Petitioners Exhibit 3: An appraisal report prepared by Jack J. Kary, dated February 18, 2005.

Petitioners Exhibit 4: Five photographs of comparable properties located in the subject neighborhood.

For the Respondent:

Respondent Exhibit 1: A copy of the Petitioners' 2002 property record card.

For the Board:

Board Exhibit A: Form 131 petition with attachments, including Form 130, Form 115 and Supplement to Form 131.

Board Exhibit B: Notice of Hearing on Petition, dated December 15, 2004.

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 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 support their contentions. This conclusion was arrived at because:
- a. The Petitioners contend that the total assessed value of \$89,900 exceeds the market value of the subject property. *G. Darling testimony*.
 - b. In support of this contention, the Petitioners submitted photographs to demonstrate the subject neighborhood has declined. The Petitioners, however, did not present any evidence to quantify the effect of the condition of the neighboring properties on the market value of the subject property.
 - c. The Petitioners also presented an appraisal estimating value of the property to be \$85,000 as of February 18, 2005. *Petitioners Exhibit 3*.
 - d. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate 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 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through the cost and income capitalization approaches).

- e. The Petitioners' appraiser certified that he performed the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. *Petitioners Exhibit 3*. Moreover, the appraisal utilized two generally recognized approaches to valuation – the cost approach and the sales comparison approach. *Id.*; MANUAL at 13-14. The estimation of value contained in the appraisal therefore constitutes prima facie evidence of the market value of the subject property as of February 18, 2005.
- f. Indiana's assessment regulations, however, provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Id.* at 4. This provision has significant consequences for appraisals performed substantially after that date. In order for such an appraisal to constitute probative evidence of a property's true tax value, there must be some explanation as to how the appraisal relates to the property's market value as of January 1, 1999. *See Long v. Wayne Twp. 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).
- g. Gerald Darling testified that the appraiser told him that the value of the subject property would have been \$80,000 in 2002 based upon an annual rate of appreciation of approximately three percent (3%). *Darling testimony*. Mr. Darling, however, did not provide any information as to the basis for the appraiser's statement. Nonetheless, the appraisal itself addresses the appreciation of real estate in the subject area between 1999 and 2004. According to the appraisal, the average and median sale prices increased by 10% and 9.2%, respectively. *Id.*
- h. Thus, the Petitioners demonstrated a relationship between the estimate of value contained in the appraisal and the market value of the subject property as of January 1, 1999. Moreover, that evidence supports the inference that, as of January 1, 1999, the subject property was worth no more than the \$80,000 requested by the Petitioners.²
- i. Based on the foregoing, the Petitioners established a prima facie case that the assessment is in error, and that the correct assessment should not exceed \$80,000.
- j. The Respondent proposed a value based upon the time adjusted sale price of Comparable #5. The parties agreed that, of all the comparable properties utilized by the appraiser, Comparable # 5 is the most similar to the subject property. The appraiser, however, relied upon the sale prices of several comparable properties

² The Board notes that the Petitioners based their request upon an adjustment of the appraised value to 2002 rather than to January 1, 1999. The Petitioners did not quantify any further reduction. Nonetheless, the evidence supports the inference that the market value of the subject property did not *exceed* the amount of \$80,000 requested by the Petitioners.

reaching his estimate of value – not just upon Comparable #5. *Petitioners Exhibit*
3. The Respondent did not present any probative evidence contesting the appraiser’s qualifications or otherwise casting doubt upon the appraiser’s analysis. The Board therefore finds the Petitioners’ request for a value of \$80,000 to be more persuasive than the value proposed by the Respondent.

- k. Based on the foregoing, the preponderance of the evidence demonstrates that assessment is in error, and that the correct assessment of the subject property should not exceed \$80,000.

Conclusion

- 16. The preponderance of the evidence demonstrates that the assessment is in error and that the subject property should be assessed for a total of \$80,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to \$80,000.

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>.