

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

Petition #: 84-002-02-1-5-00148
Petitioner: Howard Dean Branson
Respondent: Harrison Township Assessor (Vigo County)
Parcel #: 1180633233017
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 Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated October 10, 2003.
2. The PTABOA mailed notice of its decision to the Petitioner on May 28, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the Vigo County Assessor on June 25, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated September 27, 2004.
5. The Board held an administrative hearing on November 4, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick (the “ALJ”).
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Howard Dean Branson, Taxpayer
Rhonda Oldham, Attorney (was not sworn in and gave no testimony)
Bill Strecker Jr., Appraiser
 - b) For Respondent: Gloria Donham, PTABOA member
Robert Walls, PTABOA member
Susan McCarty, Vigo County Assessor’s Office
Larry Auler, Harrison Township Assessor
Richetta J. Hale, Harrison Township Assessor’s Office

Facts

7. The property is classified as residential multi-family, as is shown on the property record card for parcel # 1180633233017.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Vigo County PTABOA:
Land: \$12,700 Improvements: \$101,500 Total: \$114,200
10. Assessed Value requested by Petitioner: Land \$ 10,000, Improvements \$ 65,000, Total: \$75,000.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner contends that the current assessed value is more reflective the value of a single-family home and not a converted multi-family unit such as the subject property. *Board Exhibit A* According to the Petitioner, the value of the latter is more appropriately determined by the income approach. *Id.*
 - b) The subject property, located at 1801 S. 7th St. in Terre Haute, was left to the Petitioner and his brother in 1992 by their parents who kept a life estate. The Petitioner obtained sole ownership on January 22, 2003. *Branson testimony.*
 - c) The Petitioner had Bill Strecker, Jr., a certified, licensed residential real estate appraiser value the subject property in connection with the Petitioner's purchase of his brother's one-half (1/2) interest in the property. *Branson testimony and Petitioner Exhibit 1.* The appraisal is dated October 24, 2002. *Petitioner Exhibit 1.*
 - d) Strecker excluded the cost approach to value from his analysis. *Strecker testimony; Petitioner Exhibit 1.* Strecker testified that he did not consider that approach to be an accurate indicator of the value of the subject property due to the difficulty of accurately calculating physical and functional depreciation. *Id.*
 - e) Strecker further testified that the sales comparison approach and the income approach to value are the methods best suited for determining the value of the subject property. *Strecker testimony; Petitioner Exhibit 1.*
 - g) Strecker testified that his estimate of value was \$81,000 using a gross rent multiplier (GRM), \$78,000 using the sales comparison approach, \$68,630 using the direct capitalization approach based on a 10% return and \$76,255 using the direct capitalization approach based on a 9% return. *Strecker testimony; Petitioner Exhibit 1.* Strecker averaged the values he determined under the sales comparison and direct capitalization approaches to arrive at his final estimate of value in the amount of \$75,000. *Id.*
 - h) Strecker testified that he also looked at information from the multiple listing service (MLS) concerning the sale of additional properties of similar in size and amenities as the subject property. *Strecker testimony.* He testified that the sale

prices of those properties were all within the range of his appraisal of the subject property. *Id.*

- i) Strecker further testified that appraisers typically do not look at the value of land and improvements separately when appraising a property. *Id.* However, Strecker testified that he went back and reviewed information concerning the sale of parcels of vacant land that he considered to be comparable to the subject property. *Id.* According to Strecker, the parcels he considered were of similar size, use and location as the subject land. *Id.* Strecker testified that after adjustments for differences in the size of the comparable lots and the subject land, he arrived at an estimated value of \$10,156, which he rounded down to \$10,000. *Id.; Petitioner Exhibit 7.*
- j) Finally, Strecker testified that the value of property had not changed significantly from 1999 to the date of his appraisal in 2002. *Strecker testimony.* Strecker testified that the events of September 11, 2001 had generally depressed the price of real estate somewhat, but felt that his appraisal was far enough removed from that date that it may no longer have had an effect. *Id.* In addition, Strecker testified that he looked at sales from before and after September 11, 2001 in completing his appraisal, so the result was unlikely to have been skewed. *Id.*
- f) The Petitioner testified that his brother did not contest the fair market value estimated by Strecker and that he did not receive any discount from his brother on the sale price.
Branson testimony.

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

- a) The Respondent questioned the relevance of Strecker's appraisal to the value of the subject property on January 1, 1999, because the sales Strecker used for his comparable sales analysis occurred between the years of 2000 and 2002.
McCarty testimony.
- b) The Respondent also questioned how Strecker arrived at his multiplier in performing his GRM analysis. *Id.* The Respondent testified that its own calculations indicated the use of a different multiplier. *Id.*
- c) In addition, the Respondent questioned Strecker's direct capitalization calculation, because he included property taxes as an expense in determining the net operating income to which he applied a capitalization rate. *Hale testimony.*

Record

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR #6031.
- c) Exhibits:

Petitioner Exhibit 1: Summary Appraisal Report of 1801 S. 7th St. Terre Haute prepared by Bill Strecker, certified residential appraiser.

Petitioner Exhibit 2: Market data comparable property A.

Petitioner Exhibit 3: Market data comparable property B.

Petitioner Exhibit 4: Market data comparable property C.
Petitioner Exhibit 5: Market data comparable property D.
Petitioner Exhibit 6: Market data comparable property E.
Petitioner Exhibit 7: Land sales comparable properties F.
Petitioner Exhibit 8: 3 year expenses for subject property G.

Respondent Exhibit 1: None.

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) A petitioner may offer evidence relevant to the fair market value-in-use of his or her property to rebut an assessment and to establish the actual true tax value of the property. This evidence includes, but is not limited to, actual construction costs, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *See, 2002 REAL PROPERTY ASSESSMENT MANUAL* at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- c) Regardless of the type of evidence offered, a petitioner must explain how each piece of evidence is relevant to the requested assessment. *See, Indianapolis Racquet Club, Inc. v Wash. 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....”).
- d) Once the petitioner has established 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.*

15. The Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) Bill Strecker, Jr., a licensed, certified appraiser, performed a complete analysis of the subject property using market and income information. *Strecker testimony; Petitioner Exhibit 1.* Strecker performed the appraisal using generally recognized appraisal practices in order to establish the fair market value of the subject property in connection with the Petitioner’s purchase of his brother’s one-half (1/2) interest in the property. *Id.* The undisputed evidence supports a finding that the appraisal was intended to reflect the full market value of the property, and that

the Petitioner received no discounts from his brother. *Strecker testimony*;
Branson testimony.

- b) Strecker explained that he used three methods to value the subject property: (1) a sales comparison approach; (2) an income approach using a gross rate multiplier (GRM); and (3) a direct capitalization of income approach. *Strecker testimony*; *Petitioner Exhibit 1*. Strecker explained that he did not believe that a fourth recognized method - the cost approach - would be an accurate indicator of value for the subject property, due to the difficulty in calculating physical and functional depreciation. *Id.*
- c) Strecker provided detailed testimony concerning how he performed his comparable sales analysis, including adjustments he made for differences between the comparable properties and the subject property. *Strecker testimony*.
- d) Strecker likewise explained how he performed both his GRM and direct capitalization analyses, including his choice of multiplier and capitalization rate.
- e) Finally, Strecker testified that he did not believe that the market had changed significantly between January 1, 1999 and the date of his appraisal of the subject property. *Strecker testimony*. Strecker also explained his reasoning for arriving at his final estimate of value in the amount of \$75,000. *Id.*
- f) If not impeached, Strecker's testimony constitutes sufficient evidence to demonstrate the fair market value in use, and hence the true tax value, of the subject property. *See*, 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (identifying sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices as evidence relevant to fair market value-in-use).
- g) Petitioner therefore made a prima facie case both that the assessment of the subject property was incorrect and that the correct assessment should be in the total amount of \$75,000.¹

16. The Respondent did not provide sufficient evidence to rebut the Petitioner's contentions. This conclusion was arrived at because:

- a) The Respondent contended that Strecker erred in his direct capitalization analysis, because he deducted real property taxes as expenses in determining the net operating expenses of the subject property. However, the Respondent did not present any evidence to support a finding that inclusion of real property taxes as an expense in determining net operating income necessarily leads to an erroneous valuation under a direct capitalization approach. Even assuming the Respondent is generally correct in this regard, the Respondent did not present any evidence

¹ Strecker also testified regarding the fair market value of the subject land, by itself. Strecker determined that value based on the sale of purportedly comparable vacant lots. *Strecker testimony*. However, Strecker did not provide information about the geographical features, topography or other distinguishing characteristics of the vacant lots, nor did he explain how those features compared to the subject property. *See, Blackbird Farms Apts., LP v. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax 2002)(discussing the need to address features of land in order to establish comparability). Moreover, Strecker testified that appraisers typically do not attempt to value land and improvements separately. For these reasons, the Board declines to distinguish between land and improvements in issuing its order concerning the value of the subject property.

showing how this alleged error affected Strecker's final estimate of the subject property's value.

- b) Moreover, Strecker supported his appraisal with a sales comparison analysis. The Respondent did not present any evidence to contest the comparability of the properties used by Strecker in his analysis. Instead, the Respondent simply attacked Strecker's use of those sales because they occurred after January 1, 1999. However, Strecker testified that the market had not changed significantly between 1999 and 2002, and the Respondent did not present any evidence to impeach or contradict Strecker's testimony in that regard.
- c) Finally, the Respondent attacked the multiplier used by Strecker in his GRM analysis, stating that its own calculations lead to the use of a different multiplier. Even assuming that the Respondent was correct in this regard, Strecker testified that he viewed the direct capitalization of the subject property's net operating income as being more reflective of the property's value in this instance.
- d) At best, the Respondent cast some small doubt as to the soundness of the methodology used by Strecker concerning a portion of his analysis. However, the Respondent has not shown Strecker's appraisal to be without any evidentiary weight. Respondent has not come forth with any evidence of its own concerning the market value-in-use of the subject property.
- e) The Respondent therefore failed to rebut the Petitioner's prima facie case.

Conclusion

16. The Petitioner made a prima facie case that the assessment of the subject property is incorrect and that the correct assessment is in the amount of \$75,000. The Respondent did not successfully rebut petitioner's evidence. The Board finds in favor of Petitioner. The total assessed value of the subject property should be changed to \$75,000.

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: _____ [date] _____

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.