

REPRESENTATIVE FOR PETITIONERS:
John Martin Smith, Thompson Smith, P.C.

REPRESENTATIVE FOR RESPONDENT:
F. John Rogers, Thompson & Rogers

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Jesse and Amanda Lengacher ,	)	Petition No.:	02-062-06-1-5-02240
)		
Petitioners,	)	Parcel No.:	02-04-20-400-001.000-062
)		
v.	)	County:	Allen
)		
Allen County Assessor,	)	Township:	Springfield
)		
Respondent.	)	Assessment Year:	2006

Appeal from the Final Determination of the
Allen County Property Tax Assessment Board of Appeals

April 22, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Although the parties spent significant time arguing about how to assess Amish-style homes, this appeal boils down to one simple question—who offered the best evidence of

the subject property's market value-in-use? The Board finds that it was the taxpayers, Jesse and Amanda Lengacher, who offered an appraisal completed by a certified appraiser in accordance with the Uniform Standards of Professional Appraisal Practice.

PROCEDURAL HISTORY

2. On April 9, 2007, the Lengachers filed notice with the Allen County Assessor contesting the subject property's 2006 assessment. On March 10, 2008, the Allen County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Lengachers relief. As a result, on April 28, 2008, the Lengachers filed a Form 131 petition with Board. The Board has jurisdiction over the Lengachers' appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On November 24, 2009, the Board's Administrative Law Judge ("ALJ"), Joseph Stanford, held a hearing on the Lengachers' appeal.¹ Neither the Board nor the ALJ inspected the subject property.

4. The following people testified under oath:

For the Lengachers:

Jesse L. Lengacher
Eli Lengacher
Thomas Mack, certified residential appraiser²

For the Assessor:

Eric Smith, Deputy Allen County Assessor

5. The Lengachers submitted the following exhibits:

¹ At the hearing, the parties addressed four appeals dealing with four separate properties, including the subject property. The other properties were owned by John and Lizzie Lengacher, Eli and Anna Lengacher, and Lewis and Loretta Lengacher, respectively. The Board issues separate findings and conclusions for each appeal.

² Lewis Lengacher and Melvin Schmucker took an oath but did not testify.

- Petitioners Exhibit 1: Certified appraisal of Jesse and Amanda Lengacher's property by Thomas F. Mack
- Petitioners Exhibit 2: Picture and original sketch of the property owned by Jesse and Amanda Lengacher
- Petitioners Exhibit 3: Informational packet for the property owned by Jesse and Amanda Lengacher
- Petitioners Exhibit 4: Informational packet for the property owned by John and Lizzie Lengacher
- Petitioners Exhibit 5: Informational packet for the property owned by Eli and Anna Lengacher
- Petitioners Exhibit 6: Informational packet for the property owned by Lewis and Loretta Lengacher
- Petitioners Exhibit 7: Response to the Assessor's revised assessment computations for properties owned by John and Lizzie Lengacher, Eli and Anna Lengacher, and Lewis and Loretta Lengacher

6. The Assessor submitted the following exhibits:

- Respondent Exhibit: 1: Photographs, property record card, and value calculation for Jesse and Amanda Lengacher's property, and a map of the area
- Respondent Exhibit: 2: Revised value calculation for properties owned by John and Lizzie Lengacher, Eli and Anna Lengacher, and Lewis and Loretta Lengacher³

7. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A: The Form 131 petition
- Board Exhibit B: Notice of hearing
- Board Exhibit C: Hearing sign-in sheet

8. The subject property is an Amish-style home, located at 16635 Grabill Road in Grabill, Indiana.

9. The PTABOA determined the following values for the subject property:

Land: \$28,300 Improvements: \$179,400 Total: \$207,700

³ The parties agreed to allow the Assessor to offer revised calculations for those three properties after the hearing. The Lengachers' response to this evidence is labeled Petitioners' Exhibit 7.

10. On their Form 131 petition, the Lengachers requested values of \$28,300 for land and \$75,000 for improvements, for a total assessment of \$103,300. At hearing, the Lengachers requested a total assessment of \$135,000.

ADMINISTRATIVE REVIEW AND THE PARTIES' BURDENS

11. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its 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").
13. If the taxpayer establishes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Parties' Contentions

A. The Lengachers' contentions

14. The Lengachers are Amish. As a part of their faith and their desire to be a self-sufficient people, the Amish live without amenities found in "English-style" homes, such as electricity, heating and cooling ventilation, modern plumbing, and modern sewage and sanitation systems. *E. Lengacher; Mack testimony*. Because of the lack of amenities, and because Amish families build their homes to live in rather than to sell, there is little

demand for Amish-style homes. So those homes are heavily discounted on the market.
Id.

15. Amish families also frequently design and build their own homes with the help of friends. Thus, except for hiring contractors to help with pouring concrete and insulating the exterior walls, the Lengachers built their home with the help of family and friends who they did not pay. *J. Lengacher testimony*. The Lengachers spent a total of \$62,428.18 for materials and supplies to build the subject home.⁴ *J. Lengacher testimony*.
16. Yet the subject house was assessed for roughly three times what it cost to build. *Pet'rs Ex. 3 at 2*. Assessing Amish homes for so much more than what it costs to build them infringes on Amish people's personal freedoms. *J. Lengacher argument; Pet'rs Ex. 3*. The Department of Local Government Finance ("DLGF") therefore should develop a tool for assessing Amish-style homes that does not include things such as labor and profit. *Mack testimony*. That tool similarly should call for assessors to build costs from the ground up rather than to price Amish-style homes as if they were built with modern amenities and then deduct the costs for those amenities. The market reflects a steeper discount than that. *Id.*
17. To illustrate the severity of that discount, the Lengachers offered an appraisal report from Thomas F. Mack, a certified residential appraiser. *Pet'rs Ex. 1*. The report was reviewed by John Good, a certified general appraiser and MAI. *Id.; Mack testimony*.
18. Mr. Mack used two generally accepted valuation methods—the sales-comparison and cost approaches. *Mack testimony; Pet'rs Ex. 1*. In his sales-comparison analysis, Mr. Mack looked for Amish-style homes that sold in Allen County from 2004 to 2008 and found three sales. *Id.* He compared those three properties to the subject property along several lines, including parcel size, location, construction quality, age, condition, and various physical features, and he adjusted each property's sale price accordingly. *Id.*

⁴ The Lengachers offered an exhibit in which they said that the total cost of building their home was \$60,501.30. *Pet'rs Ex. 3*. After they had calculated that amount, however, the Lengachers incurred nearly \$2,000 in additional costs. *J. Lengacher testimony*.

Based on those adjusted sale prices, Mr. Mack estimated the subject property's market value at \$135,000. *Id.*

19. Mr. Mack also looked at three "English style" homes that were comparable to the subject property except for the presence of modern amenities. Those homes sold between January 31, 2007, and October 10, 2007, for prices ranging from \$197,900 to \$253,000. *Mack testimony; Pet'rs Ex. 1.* Mr. Mack adjusted those sale prices to account for ways in which the three properties differed from the subject property other than the presence of amenities. *Id.* Those adjusted sale prices ranged from \$218,620 to \$229,700. *Id.*
20. In Mr. Mack's view, the adjusted sale prices showed that the subject property would have been worth \$220,000 if it had been built in the English style with modern amenities. *Id.* He therefore attributed the 40% difference between the subject property's value as an Amish-style home and as an English-style home to obsolescence, and he concluded that "the most appropriate method to assess an Amish home would be to apply an obsolescence factor of 40% to the depreciated cost of the home in conducting the assessment analysis." *Id.* But he emphasized that, in performing such an analysis, the replacement cost new should not be adjusted for the lack of electricity, heating or plumbing. *Id.* At the hearing, Mr. Mack departed from his appraisal and said that a property containing an Amish-style home should be assessed by applying 40% obsolescence to the property's total assessment.
21. For his analysis under the cost approach, Mr. Mack relied on a combination of actual construction costs for comparable properties in the local marketplace and the Marshall & Swift Cost Index. *Pet'rs Ex. 1 at 5.* From those sources he estimated a replacement cost new of \$120,716 for the house and \$138,176 for all the improvements combined. He then deducted \$12,609 for physical depreciation and \$27,743 for functional depreciation and added the value of the site and site improvements to reach a total estimate of \$135,364. *Id.*
22. Mr. Mack determined that the sales-comparison approach yielded the most reliable conclusion and therefore estimated the subject property's market value at \$135,000 as of

March 1, 2008. *Mack testimony; Pet'rs Ex. 1* He looked at trending studies dating back to 2004 or 2005 and found that the market was stable until the fall of 2008, when it started to decline. *Mack testimony*. While Mr. Mack based his estimate on market value-in-exchange, he felt that the property's market value-in-use might have been even less. *Id.*

B. The Assessor's Contentions

23. On behalf of the Assessor, Mr. Smith offered his own revised computation of the subject property's market value-in-use. *Resp't Ex. 1*. In that revised assessment, Mr. Smith valued the subject house at \$149,000 and its one-acre homesite at \$20,000 for a total of \$169,000. When he added back in values for the subject property's excess land and outbuildings, he arrived at a total value of \$196,200. That was \$11,500 less than the property's assessment of record. *Id; E. Smith testimony*. The difference came from Mr. Smith's revised improvement value. But he did not explain exactly where he made those revisions. *See id.*
24. Mr. Smith then found a June 2009 sale of a property that he viewed as comparable to the subject property except for the presence of modern amenities. *See Smith testimony; Rep't Ex.1*. He used what he described as the "HPI calculator" from the internet to adjust the sale price to a January 1, 2005, value. *Id.* Mr. Smith then isolated the value of the comparable house and one-acre homesite by deducting the assessments for excess land and outbuildings. He also adjusted for differences between the comparable house and the subject house by deducting amounts for the comparable house's wood deck, enclosed porch, larger living area, superior quality grade, and modern amenities. *Id.* Mr. Smith took the base values for his adjustments from cost tables supplied by the DLGF and multiplied them by 1.22—the trending factor used for March 1, 2006, assessments. The adjusted sale price for the comparable house and one-acre homesite was \$175,600. *Id.*
25. The method and values used to assess the subject property were consistent with guidelines provided by the DLGF. *E. Smith testimony and argument*. While

obsolescence adjustments are available, there must be a basis for applying them. Without any sales, the Assessor had no basis for an obsolescence adjustment. *Id.*

26. Mr. Smith conceded that, while Mr. Mack may have computed the subject property's market value-in-exchange rather than its market value-in-use, he completed his appraisal in a professional manner. *E. Smith testimony.* The differences between Mr. Mack's valuation opinion and Mr. Smith's opinion stemmed from how they calculated their adjustments. *Id.*

Discussion

27. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use the mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
28. A property's market value-in-use, as determined using the 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*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

29. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2006, assessments, that valuation date was January 1, 2005. 50 IAC 21-3-3.
30. The Lengachers offered Mr. Mack's appraisal, in which he estimated the subject property's market value at \$135,000. Mr. Mack is a certified residential appraiser, and he performed his appraisal in accordance with USPAP using two generally accepted valuation approaches. Thus, his appraisal was probative of the subject property's market value-in-use. Of course, Mr. Mack estimated the property's value as of March 1, 2008—more than three years after the relevant January 1, 2005, valuation date. Indeed, Mr. Mack acknowledged that he used sales from March 2006 to October 2008. But he explained that there were no comparable sales of Amish-style homes from 2004 and 2005. He also testified that he had examined trending studies dating back to 2004, and that the area's market had remained stable until it began declining in the fall of 2008. Thus, Mr. Mack's appraisal was sufficient to make a prima facie case that the subject property's market value-in-use was no more than \$135,000 as of January 1, 2005.
31. Of course, the Assessor was free to impeach or rebut both Mr. Mack's valuation opinion in general and his opinion about the market's relative stability between January 1, 2005, and March 1, 2008. The Board therefore turns to the Assessor's attempts to do so.
32. First, Mr. Smith pointed to the "HPI calculator," which showed appreciation of 5.2% between January 1, 2005, and June 2009. If anything, however, Mr. Smith's testimony supports the notion that the subject property was worth less as of January 1, 2005, than it was worth when Mr. Mack appraised it three years later.
33. Second, while Mr. Smith agreed that Mr. Mack had performed his appraisal in a professional manner, he nonetheless offered his own opinion of the subject property's market value-in-use. Unfortunately, Mr. Smith did not clearly explain how he reached

his value estimate, other than to say that he subtracted amounts from the subject house's replacement cost new to account for the absence of amenities and that he used cost tables provided by the DLGF to quantify those adjustments.

34. By contrast, Mr. Mack arrived at his valuation opinion using sale prices from comparable Amish-style homes. The Board finds Mr. Mack's market-based approach more persuasive. Thus, the subject property's assessment should be reduced to \$135,000—the amount that Mr. Mack estimated in his appraisal.

SUMMARY OF FINAL DETERMINATION

35. The Lengachers made a prima facie case for reducing the subject property's assessment and the Assessor did not effectively impeach or rebut the Lengachers' evidence. The Board therefore finds for the Lengachers and orders that the subject property's assessment be reduced to \$135,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>