

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

Petition No.: 53-004-06-1-5-00001
Petitioners: Huitang & Ping Sun Zhou
Respondent: Monroe County Assessor¹
Parcel No.: 012-14440-21
Assessment Year: 2006

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

Procedural History

1. The Petitioners challenged the subject property’s assessment by filing a Form 130 petition with the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”).
2. On June 13, 2007, the PTABOA issued its determination denying the Petitioners relief.
3. On July 19, 2007, the Petitioners filed a Form 131 petition with the Board. They elected to have this case heard according to the Board’s small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 19, 2008.
5. The Board held an administrative hearing on January 13, 2009, before its duly appointed Administrative Law Judge, Rick Barter (“ALJ”).
6. Marilyn Meighen appeared as counsel for the Respondent. The following people were present and sworn in at the hearing:
 - a. For Petitioners: Gregory A. Poore, Tax Representative
 - b. For Respondent: Ken Surface, Contractor for Monroe County
Judith Sharp, Monroe County Assessor

¹ The Bloomington Township Assessor made the original assessment determination under appeal. Thus, under Ind. Code 6-1.1-15-3(b) as it existed at the time of the PTABOA decision, the Bloomington Township Assessor was the statutorily designated respondent. *See* I.C. 6-1.1-15-3(b)(2006); P.L. 219-2007 § 156(c). But on June 30, 2008, the Bloomington Township Assessor’s duties were transferred to the Monroe County Assessor. *See* § I.C. 36-6-5-1(h). Thus, the Monroe County Assessor is the Respondent in this case.

FACTS

7. The property under appeal is an improved residential property located at 3803 Commodore Trail in Bloomington.
8. The ALJ did not inspect the property.
9. The PTABOA determined the following values for the subject property:
Land: \$182,100 Improvements: \$741,600 Total: \$923,700.
10. At the hearing, the Petitioners asked for a total assessment of \$725,000.²

PETITIONERS' CONTENTIONS

11. The subject property is assessed for more than its market value-in-use. *Poore argument*. Trenton A. Jones, a certified general appraiser, appraised the subject property and estimated that it was worth \$725,000 as of January 1, 2005. *Pet'rs Ex. 2*.
12. Although the Respondent argued that Mr. Jones averaged the three adjusted sale prices from his sales-comparison analysis, he actually weighted those sales. *Poore testimony*. Similarly, while the Respondent claimed that Mr. Jones used an unsupported sale price for one of his three comparable sales, that fact does not affect the reliability of his valuation opinion. Even if Mr. Jones had used what the Respondent identified as the appraised value of that property, the three comparable sale prices would still have been \$726,200, \$723,500, and \$818,700. *Poore testimony*.
13. As to the Respondent's own analysis, two of the three houses that the Respondent used were much larger than the subject house, and the third was located in Sterling Woods—a more appealing subdivision. *Poore argument*. Also, Mr. Surface works for the company that assesses property for the Respondent. The fact that he used one of his assessments in his comparable-sales analysis weakens the Respondent's argument. *Poore argument*.

RESPONDENT'S CONTENTIONS

14. The Petitioners failed to make a prima facie case. The Indiana Tax Court has repeatedly said that a taxpayer must walk the Board through each step of its case. *Meighen argument*. The Petitioners, however, simply offered Mr. Jones's appraisal without explaining it. *Id.*
15. And Mr. Jones's appraisal had two flaws that made it unreliable. First, he used only the sales-comparison approach in estimating the subject property's value. He ignored the

² On their Form 131 petition, the Petitioners asked for a total assessment of \$763,900, broken down as \$78,900 for land and \$685,000 for improvements. *See Board Ex. A.*

cost approach despite the fact that the improvements were built in 2004—less than one year before the relevant January 1, 2005, valuation date. *See Surface testimony; Meighen argument.*

16. Second, Mr. Jones listed a sale price of [REDACTED] for the [REDACTED] comparable property in his sales-comparison analysis. But the Respondent could not verify that price through public records. *Surface testimony.* In fact, the PTABOA had addressed an appeal of that property's assessment. In that appeal, the property's owner offered an August 5, 2004, appraisal that was used to get a construction loan and a permanent loan in September 2004. *Resp't Ex. 9.* Based on construction plans, that appraisal estimated the property's value at [REDACTED]. And the taxpayer claimed that the house was built consistent with those plans. *Id.* The taxpayer then trended the appraisal to reflect a March 1, 2006, value of [REDACTED]. *Id.* Because Mr. Jones estimated the subject property's sale price by simply averaging the adjusted sale prices for his three comparable properties, his use of the unsupported [REDACTED] sale price had an exaggerated effect on his valuation opinion. *Surface testimony.*
17. Regardless, the sale prices and assessments for three nearby comparable properties support the subject property's assessment. *Meighen argument; Resp't Exs. 5A & B, 6A & B, and 7A & B.* A home located close to the subject property at 3715 Commodore Trail sold for \$1 million on March 31, 2006. *Surface testimony; Resp't Exs. 5A, 5B.* It is larger than the subject home, but the two homes are of the same construction type and are architecturally similar. *Surface testimony.* The home at 3715 Commodore Trail sold again in mid-2008 for \$1.3 million. Thus, in a short period, there are homes on Commodore Trail that sold for over \$1 million. *Surface testimony.* Another property located at 3746 Commodore Trail was assessed for \$1.27 million. *Surface testimony; Resp't Exs. 6A, 6B.* Again, while that property's home was bigger than the subject home, they were both custom homes that were comparable to each other. *Id.* Finally, a home in Sterling Wood, another subdivision with homes in the million-dollar range, sold for a little over \$1 million in 2002. *Surface testimony; Rep't Exs. 6A, 6B.* That home was the same size as the subject home. While the sale occurred before the relevant January 1, 2005, valuation date, property in Monroe County appreciated roughly 5% between 2002 and 2006. *Surface testimony.*

RECORD

18. The official record for this matter is made up of the following:
 - a. The Form 131 petition,
 - b. A digital recording of the hearing,
 - c. Exhibits:

Petitioners Exhibit 1 – Revised request for assessed value change,
Petitioners Exhibit 2 – Copy of appraisal report from T. Jones Appraisals, Inc.,

Respondent Exhibit 1 – Photograph of subject property,
Respondent Exhibit 2 – Withdrawn,
Respondent Exhibit 3 – Withdrawn,
Respondent Exhibit 4 – Property record card for subject property,
Respondent Exhibits 5A & B – Property record card and photograph of 3715
Commodore Trail,
Respondent Exhibits 6A&B – Property record card and photograph of 3746
Commodore Trail,
Respondent Exhibits 7A&B – Property record card and sales disclosure form for
4443 Forest Hill Drive,
Respondent Exhibit 8 – Sales disclosure form for subject property dated
March 22, 2002,
Respondent Exhibit 9 – One-page sheet with information from assessment appeal
on 3701 Mabels Way,
Respondent Exhibit 10 - Sales disclosure form for 3701 Mabels Way dated April
7, 2004,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

ANALYSIS

19. The most applicable governing cases are:
- a. A petitioner seeking review of an assessing official's determination 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.

20. The Petitioners proved that the subject property's assessment should be lowered to \$725,000. The Board reaches that decision for the following reasons:
- a. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). In conducting mass appraisals, assessors normally use the Real Property Assessment Guidelines for 2002-Version A. And a property's market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006). To rebut that presumption, a taxpayer may use relevant evidence that is consistent with the Manual's definition of true tax value. The most effective method is by offering a market-value-in-use appraisal completed in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Id.* at 678. A taxpayer may also offer actual construction costs, appraisals, sales information regarding the subject property or comparable properties, and any other evidence compiled using generally accepted appraisal principles. *Id.*; *see also* MANUAL at 5.
 - b. Also, a property's March 1, 2006, assessment reflects its value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Thus, a petitioner who offers valuation evidence for a different date must explain how that evidence relates to the property's value as of January 1, 2005. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)(finding that a 2003 appraisal lacked probative value because taxpayers did not explain how it related to the property's value as of the January 1, 1999, valuation date used in the 2002 general reassessment).
 - c. The Petitioners made a prima facie case. They offered an appraisal report in which Mr. Jones estimated the subject property's market value at \$725,000 as of January 1, 2005. *Pet'rs Ex. 2; Poore testimony*. Mr. Jones used the sales-comparison approach and certified that he prepared his report in accordance with USPAP. *Id.* Thus, on its face, Mr. Jones's appraisal report bears the hallmarks of what the Manual and Tax Court have recognized as probative market value-in-use evidence. And despite the Respondent's argument to the contrary, the Petitioners' failure to explain Mr. Jones's report is of no moment. The report is self-explanatory; it both asserts Mr. Jones's conclusions and explains how he reached them. *See Pet'rs Ex. Ex. 2*.
 - d. The burden therefore shifted to the Respondent to impeach or rebut Mr. Jones's valuation opinion. The Respondent argued that Mr. Jones's opinion was unreliable for two reasons: (1) he ignored the cost approach, and (2) he used an unsupported sale price for one of the three properties in his sales-comparison analysis. While those shortcomings detract somewhat from the reliability of Mr. Jones's valuation opinion, his opinion still carries weight.
 - e. The Board shares some of the Respondent's concern about Mr. Jones's decision to forego the cost approach. As the Manual recognizes, fee appraisers often use all three

generally accepted valuation approaches when appraising individual properties. MANUAL at 3. Nonetheless, one or more of those approaches may not be appropriate for a given appraisal problem. In particular, the cost approach may be inappropriate when appraising properties with older buildings. *E.g. Congoleum Corp. v. Hamilton Twp.*, 7 N.J. Tax 436, 443 (N.J. Tax Ct. 1985) (“The calculation of depreciation as applied to a property of fairly recent construction presents a baffling problem of appraisal technique. To calculate it for improvements which are extremely old, obsolete and which would never be replaced in their original condition is almost impossible.”). Here, though, the subject home was built less than one year before the appraisal’s effective date. Granted, in explaining his decision to forego the cost approach, Mr. Jones did not point to the home’s age but rather to what he felt was the “inherent subjectivity involved in estimating quality of construction and labor and material costs.” *Pet’rs Ex. 2*. But the Petitioners’ actual material and labor costs presumably were available to Mr. Jones. And that information’s availability should have eased his concerns.

- f. That being said, Mr. Jones still used an accepted valuation method—the sales-comparison approach. While Mr. Jones’s opinion might have been stronger had he checked his conclusions by also developing the cost approach, his failure to do so does not make his opinion too unreliable for the Board to give it significant weight.
- g. The Respondent’s second point—that Mr. Jones may have relied on an incorrect sale price in his sales-comparison analysis—likewise only moderately impeaches his valuation opinion. Mr. Surface testified that he could not find any public record to show that Mr. Jones’s first comparable property sold for \$616,000 in 2004. *Surface testimony*. Instead, vacant land at that address sold for \$218,000 in April 2004. And in a document submitted to the PTABOA, the property’s owner claimed that he got a pre-construction appraisal in August 2005 to support a September 2004 loan. *Surface testimony; Resp’t Ex. 9*. Although the document also referenced the amount of that appraisal, the Respondent did not offer the appraisal report.
- h. At best, the Respondent showed that the property in question may not have sold on September 21, 2004, or that, if it did sell, it did not have a finished house. Beyond that, the unsigned appeal document and Mr. Surface’s hearsay testimony tell us little or nothing about what the property was actually worth. Still, Mr. Jones’s reliance on that purported September 21, 2004, sale price creates some doubt about the reliability of his valuation opinion, doubt that is somewhat magnified by his decision not to use the cost approach to check his conclusions. But even with those two flaws, Mr. Jones’s appraisal better measures the property’s market value-in-use than does the property’s Guidelines-based assessment.
- i. The Board therefore turns to the Respondent’s own market value-in-use evidence. In that vein, Mr. Surface pointed to three other properties. Two of those properties sold for more than \$1 million and the third was assessed for \$1.27 million. But Mr. Surface did little to explain how any of those properties compared to the subject property. He made only general statements about their relative sizes and locations,

referring to the subdivisions that they were located in as “million dollar” subdivisions. *Surface testimony*. To the extent that Mr. Surface focused on the properties’ physical features, he made only sweeping comparisons. For example, he testified that the subject home and the home at 3715 Commodore Trail were “architecturally built a lot alike.” *Id.* More importantly, Mr. Surface did not even attempt to explain how any relevant differences between the purportedly comparable properties and the subject property affected their relative values. And he avoided doing so despite recognizing that two of the three purportedly comparable homes were larger than the subject home. The Respondent’s sales and assessment information therefore lacked probative value. *See Long*, 821 N.E.2d at 470-71 (rejecting sales-comparison evidence where taxpayers failed to explain how properties were comparable or how any relevant differences affected their relative market values-in-use).

- j. In sum, the Board finds that Mr. Jones’s valuation opinion offers the best evidence of the subject property’s market value-in-use.

CONCLUSION

- 21. By offering Mr. Jones’s appraisal report, the Petitioners made a prima facie case. While the Respondent pointed to some problems with that report, it was still the most probative evidence of the property’s market value-in-use. And the Respondent did not offer any probative valuation evidence of its own. Thus, the Board finds for the Petitioners and orders the subject property’s March 1, 2006, assessment to be reduced to \$725,000.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessment should be changed.

ISSUED: April 7, 2009

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>.