

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

Petition #: 04-015-02-1-5-00002
Petitioners: Jason & Cristin Cole
Respondent: Richland Township Assessor
Parcel #: 04-23-442-002000-015
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 Benton County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 16, 2003.
2. The PTABOA mailed notice of its decision on April 8, 2004.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the county assessor on May 5, 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 21, 2005.
5. The Board held an administrative hearing on February 22, 2006, before the duly appointed Administrative Law Judge Joan Rennick.
6. Jason Cole, property owner; Janet C. Guimond, Benton County Assessor; Kelly Rose, Deputy Assessor; and Jennifer Becker, consultant, appeared at the hearing and were sworn as witnesses.

Facts

7. The property is classified as a one-family residential dwelling, as is shown on the property record card for parcel 04-23-442-002000-15.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. The PTABOA determined that the assessed value of the subject property is \$20,400 for the land and \$165,700 for the improvements for a total assessed value of \$186,100.
10. The Petitioners request a value of \$15,000 for the land and \$119,000 for the improvements for a total value of \$134,000.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners purchased the subject property on November 15, 2001, for \$132,500. *Cole testimony, Board Ex. A.*
 - b) The Petitioners also submitted two appraisals of the subject property. *Pet'rs Exs. 1-2.* The first appraisal was performed by Melissa L. Dickenson on March 10, 2003 (Dickenson Appraisal). Ms. Dickenson estimated the market value of the subject property to be \$134,000 as of January 1, 1999. *Cole testimony; Pet'rs Ex. 1.* Ms. Dickenson estimated the value of the subject property using the sales comparison and cost approaches to value, and she gave the most weight to the sales comparison approach in reaching her final estimate of value. *Pet'rs Ex. 1.*
 - c) The second appraisal was prepared by Michael Garing of Accurate Appraisals (Garing Appraisal). Mr. Garing estimated the market value of the subject property to be \$138,000 as of March 8, 2004. *Cole testimony; Pet'rs Ex. 2.* Mr. Garing performed his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP), using the cost and sales comparison approaches to value. *Pet'rs Ex. 2.*
 - d) The Petitioner also contends that a comparable property, located at 209 W. 6th Street in Earl Park, was listed for sale at \$137,000, and sold on November 5, 2004, for \$115,000. *Cole testimony; Pet'rs Ex. 3-4.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) Indiana Code § 6-1.1-31-6(C) states, "[w]ith respect to the assessment of real property, true tax value does not mean fair market value. True tax value is the value determined under the rules of the department of local government finance." *Becker argument; Resp't Ex. 4.*
 - b) The 2002 Real Property Assessment Manual (Manual) states, "[b]ased on the decisions provided by recent court rulings, the basis for True Tax Value outlined in this manual is value-in-use as opposed to value-in-exchange. . . . Property wealth under a value-in-use premise may or may not be the same as market value depending on the specific characteristics of the property." *Becker argument; Resp't Ex. 6.*

- c) An analysis of comparable properties shows that the subject property is assessed consistently with other properties in its neighborhood, and may actually be under assessed. *Becker testimony; Resp't Ex. 7.* The Respondent examined sales of twenty-one (21) properties within Benton County, all of which involved dwellings built in 1920 or earlier. *Id.* The Respondent trended the sale prices of those properties to reflect 1999 values. *Id.* The adjusted sale prices for nine (9) of the properties were within 10% of their assessed values. *Id.* Seven of the properties were assessed for less than their adjusted sale prices. *Id.*
- d) The Respondent also examined the sales of three properties within Benton County containing dwellings similar in size to the comparable dwelling. *Becker testimony; Resp't Ex. 7.* The Respondent extracted the land value from the sale price for each property and adjusted for additional plumbing fixtures, air conditioning or a lack thereof and a "couple of other" items. The Respondent then took the adjusted sale prices and determined a rate per square foot of \$41.39. Application of the \$36.79 per square foot rate to the subject dwelling yields a total value of \$206,134. *Id.; Resp't Exs. 7, 7C.*
- e) The Petitioners did not adjust their comparable sales data to reflect January 1, 1999, values. *Becker argument.*¹

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 - 5380.
- c) Exhibits:
 - Petitioners Exhibit 1: Appraisal of subject property as of January 1, 1999
 - Petitioners Exhibit 2: Appraisal of subject property as of March 8, 2004
 - Petitioners Exhibit 3: Listing sheet for property located at 209 W. 6th St. in Earl Park
 - Petitioners Exhibit 4: Listing sheet for property located at 209 W. 6th St. in Earl Park with a sold date of 11/5/04 for \$115,000
 - Petitioners Exhibit 5: Six (6) Multiple Listing Service (MLS) sheets of

¹ The Respondent attached a cover sheet to its exhibits in which it noted the following four issues pertaining to the appraisals submitted by the Petitioners: (1) only one comparable property referenced in the Dickenson Appraisal is located in Benton County; (2) the Dickenson appraisal did not include any market data to support its estimated site value of \$15,000, (3) the two appraisals listed different amounts of living area for the subject dwelling, and (4) both appraisals were performed for the purposes of securing loans and therefore are not reflective of true tax value. The cover sheet also includes several factual assertions regarding the circumstances of the Petitioners' purchase of the subject property. Given that the cover sheet is unsigned, it is not apparent who is making those factual assertions. Because the Respondent did not offer the cover sheet as an exhibit and did not refer to it at the hearing, the Board will not consider the factual assertions and argument contained therein. Moreover, the factual assertions are hearsay and lack any indicia of reliability.

sold properties in the area.

Respondent Exhibit 1: Notice of Appearance of Consultant on Behalf of Assessor

Respondent Exhibit 2: Subject property record card (PRC)

Respondent Exhibit 3: Photograph of subject house

Respondent Exhibit 4: IC 6-1.1-31-6 Real property assessment; classification of land and improvements

Respondent Exhibit 5: Form 115 of subject property

Respondent Exhibit 6: 2002 Real Property Assessment Manual - Version A Introduction, Page 3

Respondent Exhibit 7A: 21 sales of properties approximately the same age as the subject analyzed

Respondent Exhibit 7B: Paired sales analysis on properties that sold more than once to determine a factor to adjust those sales back to January 1, 1999. A factor of 2.8% per year was subtracted from each sale

Respondent Exhibit 7C: Adjusted sales prices.

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 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”).
- b) 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.

15. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) 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 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 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 use an appraisal prepared in accordance with the Manual's definition of true tax value to rebut the presumption that an assessment is correct. MANUAL at 5; *Kooshtard Property VI*, 836 N.E.2d at 505-06 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 the Uniform Standards of Professional Appraisal Practice [USPAP]."). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *See* MANUAL at 4, 8; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)
 - c) In the present case, the Petitioners submitted two appraisals estimating the market value of the subject property to be \$134,000 and \$138,000, respectively. In addition, Mr. Cole testified that the Petitioners bought the subject property on November 15, 2001, for \$132,500. *Cole testimony*. The two appraisals and the purchase price demonstrate a narrow range of values for the subject property, all of which are substantially lower than the current assessment. Given that the Dickenson appraisal values the subject property as of January 1, 1999, the Board finds that appraisal to be the most compelling evidence of the property's market value-in-use. The Petitioners therefore made a prima facie case that the current assessment is incorrect and that the correct assessment is \$134,000.
 - d) The burden therefore shifted to the Respondent to offer evidence to impeach or rebut the Petitioners' evidence.

- e) The Respondent argues that it followed rules promulgated by the Department of Local Government Finance in assessing the subject property, and that fair market value does not equal true tax value. According to the Respondent, the Manual provides that the assessment should reflect the market value-in-use of the subject property, not its value-in-exchange.
- f) The Respondent is correct that market value-in-use does not always equal value in exchange. Thus, in markets where “sales are not representative of utilities, either because the utility derived is higher than indicated sale prices, or in markets where owners are motivated by non-market factors such the maintenance of a farming lifestyle even in the face of a higher use value for some other purpose, true tax value will not equal value in exchange.” MANUAL at 2. Nonetheless, “[i]n markets where there are regular exchanges, so that ask price and offer price converge, true tax value will equal value in exchange. . . .” *Id.*
- g) The Respondent did not present any evidence that fair market value (value in exchange) is not indicative of the market value-in-use of the subject property. The Respondent does not point to any non-market factors - such as the Petitioners’ desire to maintain a farming lifestyle or otherwise to utilize the subject property for anything other than its highest use - that would render the subject property’s market value-in-use different from its value in exchange.
- h) The Respondent also argues that it assessed similar properties for amounts close to their time-adjusted sale prices. According to the Respondent, this shows that it assessed the subject property in a uniform and equal manner in comparison to similar properties throughout Benton County. The fact that residential property generally is assessed in a uniform and equal manner, however, is not relevant to rebut a taxpayer’s showing that his particular property is assessed in excess of its true tax value. As set forth above, the Manual explicitly recognizes that a taxpayer may rebut the presumption that an assessment is correct through evidence establishing that the assessment exceeds the subject property’s market value-in-use. *See* MANUAL at 5. In order to rebut such evidence, the Respondent must introduce its own evidence to show that the assessment is an accurate reflection of the property’s market value-in-use. The fact that application of the Real Property Assessment Guidelines for 2002 – Version A (Guidelines) has generally yielded values equal to or less than market value-in-use of a given group of properties does little or nothing to show that an individual property is assessed at its market value-in-use.
- i) Finally, the Respondent contends that the subject property has a market value of \$206,134 based upon the adjusted sale prices of three purportedly comparable properties. In making this argument, the Respondent essentially relies on a sales comparison approach to establish the market value-in-use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable,

properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).

- j) In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- k) Other than identifying the size and age of the dwellings at issue, the Respondent did nothing to demonstrate how those properties were comparable to the subject property in terms of characteristics that are likely to affect market value, such as the number of bedrooms and bathrooms and the relative locations of the properties. Consequently, the Petitioner’s evidence concerning the sale prices of those properties lacks probative value.
- l) Based on the foregoing, the Petitioners proved by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment is \$134,000.

Conclusion

- 17. The Petitioners made a prima facie case. The Respondent did not rebut Petitioners’ evidence. The Board finds in favor of Petitioner.

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: _____

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>.