

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

Petition #'s: 08-008-05-1-5-00001 08-008-05-1-5-00002
 08-008-05-1-5-00003 08-008-05-1-5-00004
 08-008-05-1-5-00005 08-008-05-1-5-00006
 08-008-05-1-5-00007 08-008-05-1-5-00008
 08-008-05-1-5-00009 08-008-05-1-5-00010
 08-008-05-1-5-00011 08-008-05-1-5-00012

Petitioner: Robert Griffin

Respondent: Jefferson Township Assessor (Carroll County)

Parcel #'s: 008-08035-00 008-08036-00
 008-08037-00 008-08038-00
 008-08039-00 008-08040-00
 008-08041-00 008-08042-00
 008-08043-00 008-08044-00
 008-08045-00 008-08046-00

Assessment Year: 2005

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 twelve assessment appeals with the Carroll County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated May 27, 2005.
2. The Petitioner received notices of the decisions of the PTABOA on November 28, 2005.
3. The Petitioner filed twelve appeals to the Board by filing Form 131 petitions with the county assessor on December 27, 2005. The Petitioner elected to have these cases heard in small claims.
4. The Board issued notices of hearing to the parties dated February 1, 2006.

5. The Board held an administrative hearing on March 30, 2006, before the duly appointed Administrative Law Judge (ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:¹
 - a. For Petitioner: Robert Griffin, Owner
Frank Kelly, Nexus Group/Taxpayer Representative
 - b. For Respondent: Janie Smith, PTABOA Member
Arnold L. Abbott, PTABOA Member
Doris McLeLan, Carroll County Assessor
Jennifer L. Becker, Jefferson Township Representative
Marvin R. Holman, Jefferson Township Representative

Facts

7. The properties under appeal are lots 49 through 60 in the Unit 2, Sunset Park Block 4 Subdivision, which include a 25' x 135' parcel with a 36' x 98' asphalt tennis court (Lot 49); a 25' x 134' vacant parcel (Lot 50); a 25' x 133' vacant parcel (Lot 51); a 25' x 132' vacant parcel (Lot 52); a 25' x 130' vacant parcel (Lot 53); a 25' x 128' vacant parcel (Lot 54); a 25' x 126' vacant parcel (Lot 55); a 25' x 123' vacant parcel (Lot 56); a 25' x 121' vacant parcel (Lot 57); a 25' x 114' vacant parcel (Lot 58); a 25' x 104' vacant parcel (Lot 59); and a 25' x 93' vacant parcel (Lot 60).
8. The properties are located at North Upper Lake Shore Drive, Monticello, in Jefferson Township, Carroll County.
9. The ALJ did not conduct an in-site inspection of the properties.
10. The PTABOA determined the assessed values of the subject parcels to be \$6,600 for the land and \$2,300 for the improvements, for a total assessed value of \$8,900 for Lot 49; \$6,600 for the land for Lot 50; \$7,200 for the land for Lot 51; \$7,200 for the land for Lot 52; \$7,100 for the land for Lot 53; \$7,000 for the land for Lot 54; \$6,900 for the land for Lot 55; \$6,900 for the land for Lot 56; \$6,800 for the land for Lot 57; \$6,600 for the land for Lot 58; \$6,300 for the land for Lot 59; and \$5,900 for the land for Lot 60. There are no improvements on Lots 50 through 60.
11. The Petitioner requested the assessed values to be \$2,000 for the land and \$2,300 for the improvements, for a total assessed value of \$4,300 for Lot 49; \$2,000 for the land for Lot 50; \$2,250 for the land for Lot 51; \$2,250 for the land for Lot 52; \$2,250 for the land for Lot 53; \$2,250 for the land for Lot 54; \$2,000 for the land for Lot 55; \$2,000 for the land

¹ Ms. Janie Smith and Mr. Arnold L. Abbott were present during the administrative proceedings on behalf of the PTABOA, but they were not sworn in to present testimony.

for Lot 56; \$2,000 for the land for Lot 57; \$2,000 for the land for Lot 58; \$2,000 for the land for Lot 59; and \$2,00 for the land for Lot 60.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends that the assessed value exceeds the market value for the subject properties. *Kelly testimony*. In support of this contention, the Petitioner submitted a Land Appraisal Report for the subject properties prepared by Erika N. Mullen, Knop Corporation, an appraiser trainee, and verified by Mr. Daniel Knop, a licensed residential appraiser. *Petitioner Exhibit 1*. The appraisal valued the twelve parcels identified as Lots 49 through 60 in Unit 2 Sunset Park Block 4 as one property containing .832 acre and estimated the total market value to be \$22,000 as of June 27, 2005. *Id.* The appraisal was performed for the purpose of establishing the current market value of the subject property. *Id.*
 - b. In its rebuttal testimony, the Petitioner alleged that the Respondent's 3% annual adjustment relates the appraised value to 1999. *Kelly testimony*. According to the Petitioner, based on the Respondent's adjustment, the 1999 value of the property would be no higher than the 2005 appraised value. *Id.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends the subject lots are properly assessed. According to the Respondent, the land of the subject lots has been assessed at \$590 per front foot, which is consistent with all other parcels in the neighborhood that are located off the water. *Respondent Exhibit 4; Becker testimony*.
 - b. The Respondent further alleges that the subject properties are assessed fairly compared to the sales of neighboring lots. *Becker argument*. In support of this contention, the Respondent submitted evidence of ten comparable parcels located within the subject properties' neighborhood that sold in 2003 and 2005 for \$22,000 to \$88,000. *Respondent Exhibits 5 and 6*. To determine the value of the land as of January 1, 1999, the Respondent removed the assessed value of the improvements and adjusted the sales prices by 3% annually. *Id; Becker testimony*. According to the Respondent, the subject properties are assessed at an average of \$6,950 per lot, while the comparable sales range from \$9,450 to \$29,500 per lot. *Respondent Exhibit 5; Becker testimony*.
 - c. Finally, the Respondent raised concerns with the Petitioner's appraisal prepared by Knop Corporation. *Becker testimony*. The Respondent argues that the appraisal considered three sales that occurred in 2003 and 2004 of properties located .96 miles to 2.62 miles away from the subject properties and failed to

consider the four sales that occurred within the same neighborhood as the subject properties in 2003 and 2005. *Petitioner Exhibit 1; Respondent Exhibit 5; Becker testimony.* The Respondent further argues that the appraiser did not adequately explain why the twelve lots under appeal were valued as one parcel. *Becker testimony.* The Respondent also contends that the appraisal submitted by the Petitioner fails to show how the value established as of June 27, 2005, is relevant to or establishes the subject properties' value as of the statutory valuation date. *Becker argument.*

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 IBTR #6291,
- c. Exhibits:

Petitioner Exhibit 1 – Land Appraisal Report prepared by Erika N. Mullen, Knop Corporation,

Petitioner Exhibit 2 – Power of Attorney from Robert Griffin to Frank Kelly, Nexus Group,

Respondent Exhibit 1 – Notice of Appearance of Consultant from Harold Erdmann, Jefferson Township Assessor to Jennifer Becker and Marvin Holman, Indiana Assessment Service,

Respondent Exhibit 2 – Subject property record cards for lots 49 through 60,

Respondent Exhibit 3 – Real Property Assessment Guidelines – Version A, chapter 2, pages 7 – 10,

Respondent Exhibit 4 – Carroll County Residential Neighborhood Valuation Form, pages 6 and 7,

Respondent Exhibit 5 – Comparable sales analysis prepared by Jefferson Township,

Respondent Exhibit 6 – Property record cards and sales disclosures for the Stephen Fee, Barbara Miller, Michael Chaplin, and Daniel Good properties, an aerial map for 11904 Lookout Drive, Monticello and a plat map for 12015 North Upper Lakeshore Drive, Monticello,

Respondent Exhibit 7 – Jefferson Township Assessor's response to Form 131 petition issues,

Respondent Exhibit 8 – Worksheet showing current, 130 petitions, and requested assessed values on the subject properties,
Respondent Exhibit 9 – Indiana Tax Court case *William & Dorothy Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices of Hearing,
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 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 Petitioner provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a. The Petitioner contends that the subject parcels should be assessed for a total of \$22,000. In support of this contention, the Petitioner submitted a Land Appraisal Report prepared by Erica N. Mullen of Knop Corporation that sets a market value of \$22,000 for all twelve parcels as of June 27, 2005. *Petitioner Exhibit 1*. Further, in its rebuttal case, the Petitioner alleges that the Respondent's 3% annual adjustment relates the 2005 appraisal value to the 1999 statutory valuation date. *Kelly testimony*.

- b. Real property in Indiana is assessed on the basis of its “true tax value”. See Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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) (hereinafter the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* 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.” *Id.*
- c. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
- d. Here, the Petitioner submitted an appraisal performed by a trainee appraiser and supervised by a licensed appraiser. *Petitioner Exhibit 1*. The appraiser used the sales comparison approach to value and valued the property for \$22,000 as of June 27, 2005. *Id.* In its rebuttal case, the Petitioner contends that the Respondent’s trending factor shows that the June 27, 2005, appraised value would not exceed the properties’ January 1, 1999, statutory value. An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. See *Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioner has raised a prima facie case that the subject property is over-valued.
- e. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner’s evidence. See *American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent contends that the property was appraised properly in accordance with the Manual. In order to carry its burden, however, the Respondent must do more than merely assert that it assessed the property correctly. See *Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case).
- f. The Respondent also argues that the Petitioner’s appraisal failed to value the property as of January 1, 1999. We find that the Respondent’s use of a negative

3% annual adjustment to value its sales comparables to 1999, although insufficient to prove that 3% is the proper annual adjustment, is sufficient to show that the Respondent and Petitioner both agree that properties appreciated between 1999 and 2005. Thus, the 1999 valuation of the properties as required by *Long* would not exceed the value determined in the Petitioner's 2005 appraisal.

- g. Further, the Respondent contends that the Petitioner's appraiser valued the property as a single parcel and chose sales comparables from .96 to 2.62 miles from the subject properties. However, Respondent did not go forward to explain why or how these "flaws" invalidate the Petitioner's evidence. "Open-ended questions" and "conclusory statements" are not sufficient to rebut the Petitioner's case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) ("In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Russell's calculations. Rather, he merely asked open-ended questions or made conclusory statements."). Thus, we find that the appraiser's choice of sales comparables and the appraisal's valuation of the subject properties as a single parcel were not unreasonable and were firmly within the appraiser's expertise in valuing real property.
- h. Finally, the Respondent alleges that sales in the subject properties' neighborhood prove that the assessment of the subject properties is correct. In support of this contention, the Respondent submitted evidence of four sales within the subject properties' neighborhood in 2003 and 2005. *Respondent Exhibits 5 and 6*. In three of the sales, the Respondent compared lots with improvements with the vacant subject properties. *Id.* In order to determine the value of the land as of January 1, 1999, the Respondent removed the assessed value of the improvements and adjusted the sales prices by 3% annually. *Id.* We find, however, that these three sales are not probative evidence of the subject properties' value because the assessor reduced the sales value of the "comparable" properties by the assessed value of their improvements to estimate a "market" value of the land. This is like mixing apples and oranges. In Indiana, properties are assessed according to their true tax value. MANUAL at 1. True tax value "does not mean fair market value." *Id.*; Ind. Code § 6-1.1-31-6(c). Therefore, deducting the assessed value of the improvements from the sales value of the property as a whole is not probative of the market value of the land.
- i. The Respondent also submitted one sale of two 25' x 139' lots in the subject properties' neighborhood which sold for \$22,000 on July 31, 2003.² The Respondent adjusted the sales price by a negative 3% annually and determined the 1999 sales value to be \$18,890 or \$9,450 per lot. *Id.* The Respondent, therefore, concluded that the subject properties' assessed values, averaging \$6,950, were

² *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1020 (Ind. Tax Ct. 2004) ("properties within each geographic area, subdivision, or neighborhood in a land order are presumed to be comparable, both in distinguishing characteristics and market value.")

correct. While this sale is probative evidence supporting the assessed value, the Board finds that a single sale in the subject neighborhood is insufficient to rebut the Petitioner's appraisal. Had the Respondent's additional sales been unimproved parcels, the result here may have been different.

Conclusion

16. The Petitioner raised a prima facie case that the property is over-valued based on its appraisal. The Respondent failed to rebut the Petitioner's case with substantial evidence. Therefore the Board finds for the Petitioner and holds the assessed value of the subject properties should be reduced to a total of \$22,000.

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: _____

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>>.