

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

Petition #: 20-016-02-1-5-00020
Petitioners: Michael and Barbara Cloud
Respondent: Harrison Township Trustee-Assessor (Elkhart County)
Parcel #: 20-10-21-100-010.000-016
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 Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated September 15, 2003.
2. The Petitioners received notice of the decision of the PTABOA on May 6, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on June 7, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated November 21, 2005.
5. The Board held an administrative hearing on January 11, 2006, before the duly appointed Administrative Law Judge Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Barbara Cloud, Property Owner
Michael Cloud, Property Owner
 - b) For Respondent: Michael DeFreese, Deputy Assessor
R. Eugene Inbody, Elkhart County PTABOA

Facts

7. The subject property is a single family residential property located at 64210 C.R. 9, Goshen.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the Elkhart County PTABOA:
 Land \$25,500 Improvements \$225,700 Total \$251,200.
10. Assessed Value requested by the Petitioners at the hearing:
 Land \$25,500 Improvements \$210,000 Total \$235,500.

Issues

11. Summary of the Petitioners' contentions in support of alleged error in assessment:
- a) The Petitioners commissioned an appraisal of the subject property. The appraisal estimates the value of the subject property at \$210,000 as of June 6, 2001. *B. Cloud testimony; Pet'r Ex. 1.*
 - b) The appraisal compares the subject property to three (3) other properties that sold between July 7, 2000 and February 9, 2001. *Pet'r Ex. 1.* Comparable #2, which is located on County Road 54, most closely resembles the subject property. After adjusting the sale price of Comparable #2 to account for differences between that property and the subject property, the appraiser determined the value of Comparable #2 to be \$210,420. *B. Cloud testimony; Pet'r Ex. 1.*
 - c) The Petitioners submitted sales disclosures for the three (3) comparable properties referenced in the appraisal to substantiate the sale prices listed by the appraiser. *B. Cloud testimony; Pet'r Ex. 2.*
 - d) The Petitioners request that the assessment of the subject property be lowered to \$210,000 for the subject dwelling plus \$25,500 for the subject land for a total value of \$235,500. *B. Cloud testimony.*
 - e) Construction of the subject dwelling began in September 1993 and the Petitioners moved-in on February 25, 1994. The final price after construction for the subject dwelling was \$168,244.24. That amount includes drywall only in the basement. The Petitioners added trim and interior doors to the basement in 1998 at a cost of \$1,457.30. In 2001, the Petitioners added carpet in the basement at a cost of \$2,300. *M. Cloud testimony.*
12. Summary of the Respondent's contentions in support of the assessment:
- a) The Petitioners added a pole barn in 2002. The pole barn adds a value of \$21,000 to the assessment for 2003. The Respondent wanted to make the Petitioners aware that their 2003 assessment will increase due to the addition of the pole barn. *DeFreese testimony.*
 - b) The Respondent compiled a Residential Appraisal Comparison Report ("Report") for purposes of comparing the subject property to four (4) similar properties. The

properties examined in the Report are more comparable to the subject property than are the properties referenced in the Petitioner's appraisal. *Inbody testimony*. The Report takes the exact information from the parcel cards [property record cards] of the comparable properties, shows the differences between those properties and the subject property, and makes adjustments. The adjusted sales prices for the four comparable properties are based on 2006 values. The Respondent trended the values back to January 1, 1999, using a trend factor of 12%. The Respondent provided copies of the sales ratio study and the "neighborhood trend factor" upon which it based its calculations. Based on the Report, the value of the subject property as of January 1, 1999, is \$236,039. *DeFreese testimony; Resp't Exs. 2, 6, 7, 8.*

- c) The PTABOA "generally runs with a range between ten percent (10%) one way or the other." *DeFreese testimony*. Thus, the subject property has a value range of \$212,435 to \$259,643. The current assessment of \$251,200 falls within that range. The value of \$236,039 determined by the Respondent's report and the Petitioners' requested value of \$235,500 also fall within that range. *DeFreese testimony; Resp't Ex. 2.*
- d) Mr. DeFreese testified that he agreed with the value requested by the Petitioners. The value from the Report of \$236,039 supports the Petitioner's request of \$235,500. Because the current assessment is within approximately six percent (6%) of the agreed value, however, the Respondent recommends that the assessment remain unchanged. *DeFreese testimony*.

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 BTR # 6197.
- c) Exhibits:

Petitioner Exhibit 1: Subject property appraisal dated June 6, 2001,
Petitioner Exhibit 2: Sales disclosures for appraisal comparables,

Respondent Exhibit 1: Determination of Elkhart County PTABOA,
Respondent Exhibit 2: Residential Appraisal Comparison Report less pole barn
and open frame porch,
Respondent Exhibit 3: Michael Cloud parcel card less pole barn and open frame
porch graded at B+2,
Respondent Exhibit 4: Residential Appraisal Comparison Report with pole barn
and open frame porch,

Respondent Exhibit 5: Michael Cloud parcel card with pole barn and open frame porch,

Respondent Exhibit 6: Parcels used in the comparison report,

Respondent Exhibit 7: Sales ratio study,

Respondent Exhibit 8: Neighborhood trend factor,

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

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 Petitioners did provide sufficient evidence to support their contention. 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 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.6 (“[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].”).
- c) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property as of a date substantially removed from January 1, 1999, must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
- d) The Petitioners submitted an appraisal estimating the market value of the subject property to be \$210,000. *Pet'r Ex. 1*. The appraiser estimated the market value of the subject property using the cost and sales comparison approaches to value and certified that he performed his appraisal in conformance with USPAP. *Id.* The appraisal, however, values the subject property as of June 6, 2001 - more than two years after the relevant valuation date of January 1, 1999. The Petitioners did not explain how the appraised value relates to the value as of the subject property as of January 1, 1999. Moreover, the Petitioners requested a value of \$235,500, rather than the \$210,000 estimate contained in the appraisal. *See B. Cloud testimony*. The Petitioners arrived at their requested value by adding the assessed value of the land at \$25,500 to the appraisal value of \$210,000. *Id.*
- e) Nonetheless, the Respondent agreed with the value requested by the Petitioners. In fact, the Respondent itself estimated the market value of the subject property to be \$239,036 as of January 1, 1999. *DeFreese testimony; Resp't Ex. 2*. The Respondent, however, contends that the Board should not order a change in assessment because the current assessment is within approximately 6% of the value estimated by both parties. According to the Respondent, the PTABOA does not change assessments where the assessed value of a property is within ten percent (10%) of its estimated market value. *DeFreese testimony*.
- f) The Respondent does not point to any authority for the proposition that an assessment should not be changed as long as it is within ten percent (10%) of the estimated

market value of a property. It is possible, however, that the Respondent has confused the standards for examining whether equalization measures are required under Ind. Admin. Code tit. 50 r. 14-1, with the standards for determining whether an individual assessment is correct. The former are used to determine when it is necessary either to reassess one or more classes of property within a jurisdiction or to adjust individual assessments to attain greater uniformity and equality. The latter address whether an individual taxpayer has established that his property is assessed in excess of its true tax value. The Manual clearly provides that a taxpayer may rebut the presumption that an individual assessment is correct by, among other things, offering evidence relevant to the market value-in-use of his property. MANUAL at 5. While an assessing official may present its own countervailing evidence of the market value of taxpayer's property, an assessing official cannot simply rest upon an assertion that the assessment falls within an acceptable margin of error.

- g) The evidence presented clearly shows that the subject property is assessed in excess of its market value-in-use. While it is possible that the market value-in-use of the subject property is close to the \$210,000 estimate contained in the appraisal submitted by the Petitioners, the Petitioners themselves did not request an assessment in that amount. Given that the Respondent's concession that the Petitioner's request of \$235,500 was an accurate reflection of the subject property's market value, the Board finds that the assessment should be reduced from \$251,200 to \$235,500.

Conclusion

16. The Petitioners made a prima facie case. The Respondent conceded that the amount requested by the Petitioner was an accurate reflection of the subject property's market value-in-use. The Board finds that the subject property's assessment should be reduced to \$235,500.

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>>.