

REPRESENTATIVE FOR PETITIONERS:

John Johantges, taxpayer representative

REPRESENTATIVES FOR RESPONDENT:

Lester Need, Gordon McIntyre, and Ronald Faulkner, Hendricks County PTABOA
Gail Brown, Hendricks County Assessor¹

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Ricky J. and Cindy K. Leffler	)	Petition No.:	32-001-04-1-5-00009
	)	Parcel:	01-2-29-72E 305-001
Petitioners,)		
)		
v.)		
	)	County:	Hendricks
Brown Township Assessor,	)	Township:	Brown
	)	Assessment Year:	2004
Respondent.)		

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

September 1, 2006

FINAL DETERMINATION

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

¹ As explained in note 2, *infra*, the above-named individuals did not properly appear on behalf of the Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The parties presented the following restated issue for consideration by the Board:
Whether the subject property's assessment exceeds its market value-in-use

PROCEDURAL HISTORY

2. On or about November 14, 2005, the Hendricks County Property Tax Assessment Board of Appeals ("PTABOA") issued its Form 115 Notification of Final Assessment Determination with regard to the subject property. On December 2, 2005, pursuant to Ind. Code § 6-1.1-15-3, the Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment ("Form 131 petition"), petitioning the Board to conduct an administrative review of the subject property's assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on April 6, 2006, in Danville, Indiana before Alyson Kunack, the duly designated Administrative Law Judge ("ALJ") authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

John Oranges, taxpayer representative

For the Respondent:

Lester Need, Gordon McIntyre, and Ronald Faulkner, Hendricks County
PTABOA

Gail Brown, Hendricks County Assessor²

5. The following exhibits were presented for the Petitioners:

- Petitioners' Exhibit 1 – Summary of Petitioners' arguments
- Petitioners' Exhibit 2 – Page 2 of attached determination from PTABOA hearing
- Petitioners' Exhibit 3 – Closing statement for sale of subject land
- Petitioners' Exhibit 4 – Building contract for subject improvement dated October 11, 1999
- Petitioners' Exhibit 5 – Building Permit for subject dated November 10, 1999
- Petitioners' Exhibit 6 – Appraisal report for subject dated October 26, 1999
- Petitioners' Exhibit 7 – Closing statement for improvements dated November 2, 1999
- Petitioners' Exhibit 8 – E-mail printout from Petitioners dated April 18, 2005
- Petitioners' Exhibit 9 – Appraisal of subject property as of March 10, 2001
- Petitioners' Exhibit 10 – Appeal packet including IBTR determination, Form 131, Form 115, and Form 130 for David T. Reece
- Petitioners' Exhibit 11 – IBTR determination, Closing statement, and appraisal for Craig H. Bartels
- Petitioners' Exhibit 12 – IBTR determination, Closing statement, and appraisal for Christopher M. Harcourt
- Petitioners' Exhibit 13 – REAL PROPERTY ASSESSMENT GUIDELINE, Appendix A, pages 3-6 & 15-16
- Petitioners' Exhibit 14 – Floor plan of subject dwelling
- Petitioners' Exhibit 15 – Summary of Petitioners' arguments for PTABOA hearing
- Petitioners' Exhibit 16 – E-mail from Petitioners dated April 25, 2005
- Petitioners' Exhibit 17 – Real estate sales listing, property record card (PRC), and comparison data for comparable property (8453 Mary Ct.)
- Petitioners' Exhibit 18 – Subject PRC for 2002 forward
- Petitioners' Exhibit 19 – Subject PRC for 1996 - 2001
- Petitioners' Exhibit 20 – Form 115 rebuttal

² The Brown Township Assessor is the proper Respondent in this case because she made the original assessment determination. *See* Ind. Code § 6-1.1-15-3. The Brown Township Assessor did not appear at the hearing, nor did she provide written authorization for any other local governmental officials to represent her. *See* Ind. Admin. Code tit. 52, r. 3-1-4 (allowing a party to appear before the Board on his or her own behalf or by a representative that is expressly authorized by the party in writing to appear on the party's behalf). Thus, the Hendricks County Assessor and the two members of the PTABOA were not authorized to appear on behalf of the Respondent. The Hendricks County Assessor was statutorily authorized to appear as an additional party by filing a notice of appearance prior to the hearing. Ind. Code § 6-1.1-15-3(p); *see also*, Ind. Admin. Code tit. 52, r. 2-6-6(b). The County Assessor, however, did not file such an appearance. Nonetheless, given that this issue was not raised prior to or at the hearing, the Board will consider the arguments of the County Assessor and PTABOA members as if they had properly appeared on behalf of the Respondent

6. The following exhibits were presented for the Respondent:
 - Respondent's Exhibit 1A – Powerpoint presentation
 - Respondent's Exhibit 1 – Form 130 and attached documentation
 - Respondent's Exhibit 2 – Taxpayer representative's summary from PTABOA hearing
 - Respondent's Exhibit 3 – Appraisal of subject property dated March 10, 2001
 - Respondent's Exhibit 4 – Subject Property Record Card (PRC)
 - Respondent's Exhibit 5 – PRC for 89 Oak Tree Drive
 - Respondent's Exhibit 6 – PRC for 10987 Fawn Lake Drive
 - Respondent's Exhibit 7 – PRC for 7419 Windridge Way
 - Respondent's Exhibit 8 – Form 115
 - Respondent's Exhibit 9 – Building permit for subject
 - Respondent's Exhibit 10 – Certificate of Occupancy for subject
 - Respondent's Exhibit 11 – Sales data used to determine neighborhood factor

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 131 Petition
 - Board Exhibit B – Notice of Hearing dated February 17, 2006
 - Board Exhibit C – Hearing Sign-In sheet

8. The subject property is located at 10601 Reel Creek Lane in Brownsburg, Indiana. The subject property contains a single-family residence built in 1999.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. The PTABOA determined that the assessed value of the subject property is \$77,500 for the land and \$443,500 for the improvements for a total assessed value of \$521,000.

11. The Petitioners request a value of \$62,000 for the land and \$365,000 for the improvements for a total value of \$427,000.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions;

and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONERS' BURDEN

13. A petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
14. 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”).
15. 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.

ANALYSIS

Whether the subject property's assessment exceeds its market value

Parties' Contentions

16. The Petitioners contend that the assessment is in error because the Respondent did not base the assessment on the actual construction costs for the subject dwelling. According to the Petitioners, those construction costs combined with the amount for which they purchased the subject land reflect the market value of the subject property.
17. The Respondent contends that the Petitioners did not submit probative evidence regarding the actual construction costs of the subject property and that appraisals submitted by the Petitioners are not reliable evidence of the property's market value.
18. The Petitioners presented the following evidence and arguments in support of their position:
 - A. The Petitioners base their claim on various statements of value, beginning with a pre-construction appraisal dated October 26, 1999. The pre-construction appraisal estimated that the subject property, when completed, would have a market value of \$387,000. The appraiser based his estimate on the construction plans for the subject dwelling and the closing statement for the purchase of the subject land, which states a sale price of \$61,845. *Pet'rs Exs. 3, 6.*
 - B. The Petitioners also submitted various other documents setting forth estimated construction costs. A construction contract dated October 11, 1999, between the Petitioners and CAR Construction Group, Inc. estimates the cost of construction to be \$325,261. *Pet'rs Ex. 4.* The building permit for the subject dwelling, which was issued on November 10, 1999, estimates the cost of construction to be \$340,000.

- Pet'rs Ex. 5.* The settlement statement for the Petitioners' construction loan, dated November 2, 1999, sets forth a "contract sales price" of \$387,261. *Pet'rs Ex. 7.*
- C. The actual construction costs exceeded the original estimate due to overruns. *Johantges testimony; Pet'rs. Ex. 8.* The actual cost of constructing the subject home was \$365,000. *Id.*
- D. A second appraisal, which was prepared after construction of the subject dwelling was completed, estimates the market value of the subject property to be \$455,000, as of March 10, 2001. *Pet'rs Exs. 9.*
- E. The subject property should be assessed for \$427,000, which represents the sum of the purchase price of the subject land and the costs of constructing the subject dwelling (\$62,000 + \$365,000). *Johantges argument, Pet'rs. Exs. 1, 3, 8.*
19. The Respondent presented the following evidence and arguments in support of its position:
- A. The subject dwelling had not yet been constructed as of the January 1, 1999, valuation date. *Need testimony.* The costs referenced in the construction contract were only estimates. *Id.*
- B. The construction plans differ in several respects from the home that the Petitioners actually constructed. *Id; Resp. Ex. 1 at 11.* The plans call for a 3344 square foot dwelling, while the finished dwelling is 4006 square feet and has an additional half story. *Id.* The Petitioners did not submit any documents to support their claim that the actual construction costs were \$356,000. *Need testimony.* The PTABOA determined a price per square foot based on the October 26, 1999, pre-construction appraisal submitted by the Petitioners and concluded that the current assessment was accurate. *Id.*

- C. The Petitioners installed a swimming pool in 2003, which is not included in the March 10, 2001, appraisal. That appraisal suffers from other shortcomings as well. The properties used as comparables in the 2001 appraisal are too distant from the subject property, and the dwellings on those properties differ significantly from the subject dwelling in terms of external complexities. *Id.* The subject dwelling has 52 external wall cuts and 34 roof cuts, while the comparables used in the appraisal each have less than half that number of wall and roof cuts. *Need testimony.* Thus, there would be a large discrepancy between the subject property and the comparables in terms of price per square foot. *Need argument.*
- D. Contrary to what is stated in the Petitioners' appraisal, two properties from the Reel Creek subdivision sold within twelve months of the date of the appraisal. *Need testimony.* The Respondent considered those sales in establishing its "mass appraisal neighborhood factor." *Id; Resp't Ex.1 at 19-20.*
- E. In addition, the March 10, 2001, appraisal was prepared for purposes of securing a refinancing loan. Appraisals performed in conjunction with loan requests are prepared to provide the lender with confidence that a property is worth at least the amount of the requested mortgage. *Id.* Consequently, such appraisals generally are not considered valid for tax assessment purposes. *Need testimony.* Here, the Petitioners refinanced the subject property several times. *Id.* Each time, the Petitioners' mortgage loan was for between \$260,000 and \$275,000, well below the Petitioners' requested assessment of \$427,000. *Id.*
- F. The Respondent cites to *State Bd. of Tax Comm'rs v. Town of St. John*, (St. John V) 702 N.E.2d 1034, 1039-40 (Ind. 1998) for the proposition that the Property Taxation Clause of the Indiana Constitution neither creates a personal, substantive right of uniformity and equality nor requires absolute and precise exactitude as to the uniformity and equality of each individual assessment. *Need testimony; Resp't Ex.1 at 37.*

Discussion

20. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property 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 real property.

21. 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 offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 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 [USPAP].”). A taxpayer may also rely upon actual construction costs, sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

22. The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. This provision has significant consequences for appraisals performed substantially before or after that date. In order for such an appraisal to constitute probative evidence of a property’s true

tax value, there must be some explanation as to how the appraisal relates to the property's market value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

23. The Petitioners submitted several items in support of their contention that the subject property should be assessed for \$427,000, which the Petitioners contend equals the sum cost of the subject lot and the costs of construction of the subject dwelling. First, the Petitioners presented several items setting forth pre-construction estimates of the cost of constructing the subject dwelling: a building contract dated October 11, 1999, a building permit dated November 10, 1999, an appraisal report dated October 26, 1999, and a settlement statement dated November 2, 1999. The undisputed evidence, however, demonstrates that the subject dwelling, in its finished form, differs significantly from the original plans. For example, the pre-construction appraisal, which was based on the construction plans, lists the above grade gross living area as 3,344 square feet. *Pet'rs Ex. 6*. By contrast, the March 10, 2001, appraisal lists the gross living area as 4,900 square feet. *Pet'rs Ex. 9*. Consequently, the preconstruction appraisal and cost estimates have little or no probative value in determining the market value-in-use of the subject property as it physically existed on the March 1, 2004, assessment date.
24. The only evidence that even purports to reflect the actual cost of constructing the subject dwelling is contained in an e-mail from Cindy Leffler to Mr. Johantages. In response to Mr. Johantages' question "What did you build your home for back in 2000-2001 time period," Ms. Leffler responded "\$365,000 moved in Aug[.] 2000." *Pet'rs Ex. 8*. Ms. Leffler's e-mail response is rank hearsay. *See* Indiana Evid. R. 801 ("Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). While the Board's procedural rules provide that it may admit hearsay, the Board is not required to do so, and it need not assign such evidence any evidentiary weight. *See* Ind. Admin. Code tit. 52, r. 2-7-3 ("Hearsay evidence . . . may be admitted.")(emphasis added). Ms. Leffler's statement completely lacks any indicia of reliability. Her statement is not under oath and

she was not subject to cross-examination. Moreover, the record does not contain any independent evidence to corroborate her statement. The Board therefore assigns no weight to Ms. Leffler's statement regarding the construction cost of the subject dwelling.

25. The Petitioners also submitted an appraisal prepared by Craig Moore, a licensed appraiser, pursuant to which Mr. Moore estimated the market value of the subject property to be \$455,000. *Pet'rs Ex. 9*. Unlike the prior appraisal, Mr. Moore valued the subject property after construction of the subject dwelling was completed, although prior to the Petitioners' installation of a swimming pool. *Id.* Mr. Moore, however, valued the subject property as of March 10, 2001, more than two years after the relevant valuation date of January 1, 1999. The Petitioners did not explain how Mr. Moore's estimate of value relates to the subject property's market value-in-use as of January 1, 1999. All of the Petitioner's attempts to relate values to January 1, 1999, centered on the gradual increase in value from the date of the original cost estimates in October and November of 1999 through the date March 10, 2001, appraisal. As explained above, however, those original estimates were for a planned structure that differed significantly from the dwelling that ultimately was constructed. Thus, the difference between the 1999 construction estimates and the March 10, 2001, appraised value does not necessarily demonstrate a market increase between January 1, 1999, and the date of the appraisal. Consequently, the March 10, 2001, appraisal lacks probative value. *See Long, supra*, 821 N.E.2d at 471.³
26. Based on the foregoing, the Petitioners failed to present probative evidence to establish the market value-in-use of the subject property.

³ Even if the March 10, 2001, appraisal constituted probative evidence, the appraisal values the subject property as it existed prior to Petitioners' installation of a swimming pool and concrete apron. *See Resp't Ex. 4*. The Petitioners did not discuss the effect of the swimming pool on the market value of the subject property. Nonetheless, the Board might have entertained an argument that the cost of the swimming pool could be added to the appraised value to arrive at the subject property's true tax value for the March 1, 2004, assessment date. The Respondent assessed the swimming pool and concrete apron for \$19,800 and Ms. Leffler made the hearsay statement that the swimming pool and apron cost \$42,000. *See Resp't Ex. 4, Pet'rs Ex. 8*. Thus, even if the Board accepted the appraisal as probative evidence, the overall value would be significantly more than either the \$427,000 requested by the Petitioners or the \$455,000 reflected in the appraisal.

SUMMARY OF FINAL DETERMINATION

44. The Petitioners failed to demonstrate that the assessment is in error. The Board finds in favor of the Respondent.

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

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>.