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

Petition #: **35-003-02-1-5-00023**
Petitioner: **Kent D. Bowers**
Respondent: **Huntington Township Assessor (Huntington County)**
Parcel #: **0140138200**
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 Petitioner initiated an assessment appeal with the Huntington County Property Tax Assessment Board of Appeals (the "PTABOA") by written document dated December 30, 2003.

2. Notice of the PTABOA's decision was mailed on September 13, 2004.

3. The Petitioner filed an appeal to the Board by filing a Form 131 petition with the county assessor on September 27, 2005. The Petitioner elected to have this case heard in small claims.

4. The Board issued a notice of hearing to the parties dated May 25, 2005.

5. The Board held an administrative hearing on July 7, 2005, before the duly appointed Administrative Law Judge Jennifer Bippus.

6. Persons present and sworn in at hearing:

    a) For Petitioner: Kent D. Bowers, Taxpayer
    Les Howe, Witness
    Lee Ritter, Witness

    b) For Respondent: Joan Stoffel, Huntington Township Assessor
    Jennifer Becker, Township Representative/Technical Advisor

Facts

7. The property is classified as a residential two-family dwelling [duplex] located at 511-517 Riverside Drive, Huntington as is shown on the property record card for parcel #0140138200.

8. The Administrative Law Judge ("ALJ") did not conduct an inspection of the property.

9. Assessed value of subject property as determined by the Huntington County PTABOA:
Land $6,200 Improvements $97,300 Total $103,500.

10. Assessed value requested by Petitioner on the Form 131 petition:
Land $6,200 Improvements $50,000 Total $56,200.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

a) The active listings on the market for multi-family dwellings in the area range from $49,900 to $76,900. The Petitioner presented listing sheets for 12 multi-family dwellings. *Bowers testimony; Pet'r Ex. 1.*

b) Sales prices for multi-family dwellings in the area during the past 24 months range from $26,000 to $77,500. The Petitioner presented listing sheets for the sales of 14 multi-family dwellings. *Bowers testimony; Pet'r Ex. 2.*

c) The Petitioner presented photographs and assessment information for the following properties located in the subject neighborhood:

1. The property at 416 – 416 ½ High Street is multi-family rental property directly behind the subject property. It is in better condition than the subject property and is assessed for $47,900.
2. The property at 311 A, B & C Riverside Drive is a triplex located a third of a block away from the subject property. This property is assessed for $58,900.
3. The property at 314 – 316 Whitelock Street is in excellent condition and is assessed for $62,100.
4. The property at 527 – 527 ½ Riverside Drive is in better condition than the subject property and is assessed for $72,300.
5. The Jefferson Street Fiveplex is an historical home and is assessed for $132,600.

Bowers testimony; Pet'r Ex. 9.

d) The property next door to the subject property sold for $40,000, and the property behind the subject property sold for $17,000. Other properties in the neighborhood are assessed between $42,000 and $62,000. *Bowers testimony.*

e) The subject property previously was assessed at $3,000 for land and $36,400 for improvements. The property record card lists the subject dwelling as having a quality grade of "C-1" and the garage as having a quality grade of "D." The prior assessment was more reflective of the value of the subject property. *Bowers testimony; Pet'r Ex. 5.*

f) The subject property has been on the market since July 4, 2004. The Petitioner initially listed the property for $69,900. The property is currently listed for $59,900. There has been no activity in response to the Petitioner's listing of the subject property. *Bowers testimony; Pet'r Ex. 3.*

g) The Petitioner purchased the subject property in October 2001 for $33,000 from Mr. Couch. The Petitioner is a real estate agent and had listed the property for Mr. Couch. The subject property had been on the market and did not sell. The Petitioner provided the settlement statement and purchase agreement regarding his 2001 purchase of the subject property. The Petitioner testified that he got a good deal because the subject building was ready to fall down. *Bowers testimony; Pet'r Ex. 4.*

h) The Petitioner also presented a title insurance commitment for the subject property, which lists the land value of the subject property as $1,000 and the improvement value as $12,130. *Bowers testimony; Pet'r Ex. 7 at 2.*

i) The subject property was in bad shape at the time the Petitioner purchased it. Mr. Ritter installed 22 windows and replaced siding on the house and the garage. The Petitioner furnished the materials and paid Mr. Ritter $5,500 for labor. Prior to this, no other work had been done to the property for years. *Ritter testimony.* The Petitioner also installed a new furnace and central air conditioning in November 2001. *Bowers testimony.*

j) The Petitioner submitted an appraisal of the subject property, which estimated the market value of the subject property to be $70,000 as of March 11, 2003. The appraisal was prepared for Tower Bank & Trust, apparently in conjunction with the Petitioner's request for a loan in order to begin repairs on the subject property. *See Pet'r Ex. 8; Bowers testimony.* The appraiser specifically conditioned his estimate of value upon completion of various repairs and improvements identified by the Petitioner. *See Pet'r Ex. 8, at, addenda*. To this date, only the exterior repairs are complete. This includes the windows, doors, and siding. *Bowers testimony; Pet'r Ex. 8, at addenda.*

k) The photographs in the appraisal show the subject property prior to the repairs. The back porch has been removed and new decks have been built. The front porches have been repaired, and the garage has a new roof and new doors. *Bowers testimony; Pet'r Ex. 8 at 10-11.*

l) The Petitioner also submitted a "rate of return calculation." According to the Petitioner's witness, Les Howe, an investor would expect a minimum rate of return of

10% on the subject property, and a rate of 11% would be more reasonable. Applying those rates of return to the net revenues from the subject property as reflected on the Petitioner's tax returns, the subject property should be valued between $43,000 and $52,000. *Howe testimony; Pet'r Ex. 12.*

m) The loan to value ratio on commercial property is 75%, maximum. *Howe testimony.* A bank offered to loan $56,000 on the subject property with the improvements. Based on a 75% loan to value ratio, the value of the subject property with the specified improvements would be $74,667. *Howe testimony; Pet'r Ex. 12.*

n) The response from the township shows that lowering the quality grade of the dwelling to "D+2" would reduce the value of the dwelling to $85,900. The property deemed comparable by the Township has a dwelling value of $81,600. This change still does not bring the value of the subject property to the listing price of $59,900. *Bowers testimony*; *Pet'r Exs. 10, 11.*

o) Based on the evidence presented, the Petitioner believes that the market value of the subject property is between $40,000 and $53,000. *Bowers testimony.*

12. Summary of Respondents' contentions in support of the assessment:

a) The subject dwelling has 2,954 square feet of living area. Two of the comparable dwellings presented by the Petitioner have less than 1,500 square feet. This would make a large difference in the assessed values of the properties. *Becker testimony.*

b) The Respondent presented information regarding a property that it believes is comparable to the subject property. The subject dwelling has 3,648 square feet[1], while the comparable dwelling has 2,782 square feet, which makes a difference in the value. Both dwellings were built in 1900. The subject garage was built in 1970 and the comparable garage was built in 1900, so there is a difference in assessed values. *Becker testimony; Resp't Ex. 1 at 2.* Nonetheless, the Respondent recommended changing the quality grade assigned to the subject dwelling from "C-1" to "D+2" to match the grade assigned to the comparable dwelling. This would reduce the value of the subject dwelling to $85,900. *Becker testimony; Resp't Exs. 1 at 2, 3.*

c) The appraisal was prepared for a bank with regard to its decision whether to loan money to the Petitioner to repair and improve the subject property. It is for the bank's use only, and there would need to be a release from the appraiser stating that the appraisal can be used for other purposes. The Petitioner did not present such a release. *Becker testimony.*

d) The Respondent assessed all rental properties in the subject neighborhood in a uniform manner using the Real Property Assessment Guidelines for 2002 – Version A ("Guidelines"). *Becker testimony.* The Respondent also developed a neighborhood

[1] Ms. Becker did not indicate from where she derived this number. The property record card for the subject property indicates that the subject dwelling has 2,945 square feet of finished living area. *Resp't Ex. 3.*

factor from sales of properties in the area occurring within 18 months of January 1, 1999. The sales presented by the Petitioner are not within the range of the January 1, 1999 date. *Becker testimony.*

e) Some of the purportedly comparable properties identified by the Petitioner are located in other neighborhoods and therefore do not have the same neighborhood factor as the subject property. *Becker testimony.*

f) The income approach submitted by the Petitioner *(Pet'r Ex. 11*) is just a bunch of numbers on paper. The Petitioner did not document how he derived his capitalization rate. *Becker 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 6077,

c) Exhibits:

Petitioner Exhibit 1: Active comparables,
Petitioner Exhibit 2: Sold comparables,
Petitioner Exhibit 3: MLS listings for subject property listed since 7/9/04,
Petitioner Exhibit 4: HUD Settlement Statement for subject property dated 10/25/01,
Petitioner Exhibit 5: Property Record Card (PRC) printed 12/4/03,
Petitioner Exhibit 6: Offer to Purchase subject property dated 10/5/01,
Petitioner Exhibit 7: Title work on subject property,
Petitioner Exhibit 8: Appraisal on subject property dated 3/11/03,
Petitioner Exhibit 9: Other multi-family units in the area,
Petitioner Exhibit 10: Huntington Township Assessor's response to Form 131,
Petitioner Exhibit 11: Copy of 158 Riverside Drive property used as a Comparable property by the Huntington Township Assessor's office,
Petitioner Exhibit 12: Valuation projection according to Accountant,

Respondent Exhibit 1: Response from Township to Form 131 appeal,
Respondent Exhibit 2: Notice of Appearance,
Respondent Exhibit 3: Copy of the subject PRC,
Respondent Exhibit 4: Copy of subject Form 115,
Respondent Exhibit 5: Copy of comparable PRC,
Respondent Exhibit 6: Photo of comparable property,
Respondent Exhibit 7: Aerial photo of subject and comparable,

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing Sign In Sheet,

d) These Findings and Conclusions.

14. The Respondent objected to the introduction of the Petitioner's exhibits on grounds that he did not present those exhibits prior to the hearing. *Becker testimony*.

a) The parties elected to contest this case under the procedures governing small claims. *See* 52 IAC 3. Those procedures are intended to make the administration of small claims "more efficient, informal, simple, and expeditious than those administered under 52 IAC 2." 52 IAC 3-1-1(b).

b) The small claims rules provide that "the parties shall *make available* to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing." 52 IAC 3-1-5(f) (emphasis added).

c) By contrast, the rules applicable to non-small claims proceedings state that a party to the appeal "*shall provide*" to the other parties: (1) copies of documentary evidence at least five (5) business days before the hearing; and (2) a list of witnesses and exhibits at least fifteen (15) business days before the hearing. 52 IAC 2-7-1(b).

d) The Board interprets the phrase "shall make available" contained in 52 IAC 3-1-5(f) to mean that the specified items must be provided to other parties if requested. The Board does not interpret that phrase to create an obligation to provide copies of documentary evidence to other parties independent of a request by one or more of those parties. This interpretation gives meaning to the difference between the language used in 52 IAC 3-1-5(f) and 52 IAC 2-7-1(b) and best reflects the principles underlying the more informal small claims procedures.

e) The Respondent stated they understood the rules, but claim the hearing instructions stated that evidence was to be provided to the parties prior to the hearing. The Respondent did not provide a copy of the hearing instructions.

f) Based on the foregoing, the Board overrules the Respondent's objection.

Analysis

15. 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.

16. The Petitioner did provide sufficient evidence to support a reduction in assessment. This conclusion was arrived at because:

a) The Petitioner contends the subject property is assessed in excess of its market value. In support of his position, the Petitioner points to the following evidence: (1) the sale prices, listing prices and assessments of purportedly comparable properties; (2) his "rate of return" calculation valuing the subject property between $43,000 and $52,000; (3) his "loan to value ratio" calculation valuing the subject property at $74,667; (4) his unsuccessful listing of the subject property for 59,900; (5) his October 2001 purchase of the subject property for $33,000; and (6) an appraisal estimating the market value of the subject property to be $70,000 as of March 11, 2003.

b) The Petitioner presented listing sheets for 12 properties currently for sale and 14 properties that sold within the last 24 months. The Petitioner also presented assessment information for 5 neighborhood properties. *Pet'r Exs. 1, 2, 9.*

c) In presenting such evidence, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* MANUAL at 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).

d) 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.*

e) The Petitioner did not engage in any significant comparison of the features of the subject property and those of the purportedly comparable properties as required by the court in *Long*. While the listing sheets and assessment information submitted by the Petitioner contain some information concerning features of the purportedly comparable properties, a petitioner must do more than simply present raw data. Instead, he must explain the relevance of that information to his contentions. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022 ("[I]t is the taxpayer's duty to walk the Indiana Board … through every element of the analysis").

f) The Petitioner also presented a "rate of return" calculation. The Petitioner used income and expenses from his 2004 Federal Income Tax Return. The Petitioner applied a rate of return of 10% to 11% to the "net revenues" of the subject property to arrive at a value between $43,000 and $52,000. *Howe testimony; Pet'r Ex. 12.* The Petitioner did not explain the methodology behind this calculation. Moreover, neither the Petitioner nor his witness, Mr. Howe, explained how they chose a rate of return of 10%-11%. At most, Mr. Howe made the conclusory statements that a minimum rate of return of 10% would be expected in the "financial world" and that an 11% rate of return was "reasonable" *Howe testimony*. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).

g) The Petitioner further relied upon the fact that he had listed the property for $69,900 and reduced his asking price to $59,900 in July 2004. Under some circumstances, the inability to sell a property might support an inference that the property's market value is something less than its asking price. If a party wishes for the Board to draw such an inference, however, that party must demonstrate the degree to which he or she exposed the property to the market, including his or her efforts to advertise that the property was for sale. The Petitioner did not provide such evidence in this case.

h) The Petitioner, however, did present two facts, which, when viewed together, show that the subject property is assessed substantially in excess of its market value-in-use: his purchase of the subject property for $33,000 in October 2001 and an appraiser's estimate that the subject property's market value was $70,000 as of March 11, 2003. *Bowers testimony; Pet'r Exs. 4, 6-8.*

i) 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). Three generally accepted appraisal techniques may be used to calculate a property's market value-in-use: 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.

j) 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*, 2006 Ind. Tax LEXIS 4 (Ind. Tax 2006). A taxpayer, however, may use evidence relevant to a property's market value-in-use to rebut the presumption that an assessment is correct. *Id*. Such evidence includes information regarding the sale of the subject property and appraisals prepared in accordance with the Manual's definition of true tax value and the Uniform Standards of Professional Appraisal Practice ("USPAP"). MANUAL at 5; *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].").

k) Thus, both the $33,000 sale price of the subject property and the $70,000 appraisal fall within categories of evidence recognized by the Manual and Tax Court as being probative of a property's true tax value. In this case, however, each item has a flaw that deprives it of some measure of probative value. With regard to the sale price, the Petitioner testified that he made improvements to the exterior of the subject buildings following his purchase of the subject property in October 2001. *Bowers testimony*. The Petitioner, however, did not explain what improvements he made between the purchase date and the assessment date of March 1, 2002. Thus, the Board cannot tell whether the sale price reflects the value the subject property as it physically existed on the assessment date.

l) The appraisal submitted by the Petitioner likewise does not address the subject property as it existed on March 1, 2002. In fact, the appraisal does not even address the value of the subject property as it existed on the date of the appraisal. The appraisal states "[t]his appraisal is made subject to the completion of the proposed improvements as detailed within the attached addenda as of March 11, 2003." *Pet'r Ex. 8 at 7*. The improvements include new baths, kitchens, carpet, outside repairs, and garage doors. *Pet'r Ex. 8 at 12*. At the hearing, the Petitioner testified he had only completed the exterior improvements. *Bowers testimony*. Moreover, the appraisal estimates the market value of the subject property as of March 11, 2003, a date more than four years after the relevant valuation date of January 1, 1999. *See* MANUAL, 4 ("In assessment, we are estimating how this negotiation [regarding the hypothetical sale of properties being assessed] will be resolved as of January 1, 1999."); *see also, Long*, 821 N.E.2d at 466 (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).

m) Nonetheless, when viewed in its entirety, the Petitioner's evidence demonstrates that the current assessment of $103,500 is incorrect and that the true tax value of the

subject property does not exceed the appraised value of $70,000. While the Petitioner did not expressly relate the appraisal to the subject property's value as of January 1, 1999, it is clear from the difference between the 2001 purchase price and the 2003 appraised value that the property was appreciating, rather than depreciating, in value. Thus, the $70,000 sets the upper limit of the subject property's market value. This is especially true, given that the $70,000 estimate is premised upon repairs and improvements to the subject buildings that had not been made as of the date of the appraisal. The Petitioner, however, failed to submit probative evidence that would justify any reduction in value below the amount estimated in the appraisal.

n) Based on the foregoing, the Petitioner established a prima facie case of error in assessment. The burden therefore shifted to the Respondent to impeach or rebut the Petitioner's evidence. *See Meridian Towers*, 805 N.E.2d at 479

o) The Respondent attempted to impeach the appraisal offered by the Petitioner on grounds that it was prepared for a bank and the Petitioner did not submit a release authorizing its use in a property tax assessment appeal. At best, the Respondent's argument goes to whether either the Petitioner or the bank for which the appraisal was performed violated any contractual terms of the bank's engagement of the appraiser; it does not detract from the probative value of the opinions set forth in the appraisal.

p) The Respondent also attempted to impeach the probative value of the $33,000 sale price for the subject property on grounds that the Petitioner did not provide sufficient details regarding the sale. The Respondent, however, did not adduce any evidence, either through cross-examination of the Petitioner or the introduction of independent evidence, to show why the transaction was not indicative of the market value of the subject property.

q) Finally, the Respondent contends that it assessed the subject property in accordance with the Guidelines. The Petitioner, however, already rebutted the presumption that Respondent's assessment under the Guidelines is an accurate representation of the subject property's market value-in-use. It was incumbent upon the Respondent either to impeach the reliability of the Petitioner's evidence, or to introduce its own market-based evidence to show that the assessment is a reasonable measurement of the market value-in-use of the subject property. The Respondent did not introduce any such evidence.

Conclusion

17. The Petitioner established by a preponderance of the evidence that the current assessment is incorrect and that the subject property should be assessed for a total of $70,000.

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>.