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

Petition #: **35-004-04-1-4-00001**
Petitioners: **Max W. & Barbara A. Garwood**
Respondent: **Jackson Township Assessor (Huntington County)**
Parcel #: **004-00473-01**
Assessment Year: **2004**

The Indiana Board of Tax Review (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 Huntington County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 31, 2004.

2. The PTABOA mailed notice of its decision on November 29, 2005.

3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Huntington County Assessor on December 22, 2005. The Petitioners elected to have this case heard in small claims.

4. The Board issued a notice of hearing to the parties dated May 3, 2006.

5. The Board held an administrative hearing on June 21, 2006, before the duly appointed Administrative Law Judge, Jennifer Bippus.

6. Persons present and sworn in at hearing:

    a) For Petitioners: Max Garwood, Property Owner

    b) For Respondent: Terri Boone, Huntington County Assessor
    Carol Stouder, Huntington County Deputy Assessor

Facts

7. The subject property is classified as "other commercial property," but the land is valued as agricultural land, as shown on the property record card for parcel 004-00473-01. The property is located at 858 East 700 North, Huntington, Indiana.

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 $16,190 for the land and $177,200 for the improvements for a total assessed value of $193,390.

10. The Petitioners request a value of $16,190 for the land and $133,810 for the improvements for a total value of $150,000.

Issue

11. Summary of the Petitioners' contentions in support of alleged error in assessment:

    a) Matthew F. Capozza, a licensed appraiser, performed an appraisal of the subject property pursuant to which he estimated the market value of the property to be $150,000 as of April 16, 2004. *Pet'rs Ex. 1; Garwood testimony.* Mr. Capozza performed his appraisal in conjunction with the Petitioners' application for a loan to be secured by the subject property. *Garwood testimony*. The appraisal is a fair representation of the subject property's market value. *Garwood argument.* Property values have increased since 1999, so the appraisal value should be trended back to 1999 using an annual factor between 3% and 5%. *Garwood testimony.*

    b) The buildings on the subject parcel are very dated; the oldest building predates the civil war. *Id; Pet'rs Ex. 1.* The barn was built in 1878. *Garwood testimony.*

    c) The Jackson Township Assessor contends that the appraisal should be a commercial appraisal, but the subject property is not a commercial property. *Id; Garwood argument.* The Petitioners do operate a business out of a pole barn located on the subject property. *Garwood testimony.* The Petitioners' business, however, is not sensitive to location, and the subject property is not in a location that lends itself to commercial development. *Id.* While the subject property is zoned agricultural, its highest and best use is residential. *Pet'rs Exs. 1 -2; Garwood testimony.* Mr. Capozza considered the pole barn when valuing the property, as the pole barn could also have an agricultural use. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

    a) The total assessed value of the subject property, without the small shop building included, totals $123,300. *Boone testimony; Resp't Ex.* 2. That amount is below the appraised value of $150,000. *Boone testimony*. The appraisal fails to account for the shop building. *Id.*

    b) The first comparable property used by Mr. Capozza in his appraisal is located at 4931 West 200 South. *Boone testimony; Resp't Ex. 3*. The property sits on 6.5 acres of land. *Id*. The property has a 64' x 72' pole barn that was built in 1981. *Id*. The pole barn is assessed for $2,700. *Id.* The property is classified as residential, and it sold

for $130,000 in August 2003. *Boone testimony.* Mr. Capozza did not adjust the sale price to account for the property's outbuildings. *Boone testimony; Resp't Ex. 3.*

c) The second comparable property used by Mr. Capozza is located at 2835 East 300 North, and it is classified as residential. *Boone testimony; Resp't Ex. 3b.* The pole building on that property is 30' x 48' and was built in 1966. *Id.* The property sold in December 2003, for $147,500. *Id.* Once again, Mr. Capozza made no adjustments for the outbuildings or for the size and age difference between the pole building on the comparable property and the pole building on the subject property. *Boone argument.*

d) The third comparable property used by Mr. Capozza is located at 4503 South 500 East. The property sits on 1.3 acres of land and does not contain any outbuildings. *Boone testimony; Resp't Ex. 3c.* That property therefore is not comparable to the subject property. *Boone argument.*

e) The sale price of each property used by Mr. Capozza in his sales comparison analysis was lower than its 2004 assessed value. *Boone testimony.*

f) The assessed value of a property must reflect its value as of January 1, 1999. *Boone argument; Resp't Ex. 4.* The Respondent therefore "objects" to the subject appraisal on grounds that it was performed in April 2004. *Boone argument.* Moreover, Mr. Capozza performed the appraisal for refinancing purposes, and it therefore does not constitute an "arm's-length appraisal." *Id.*

g) Finally, Mr. Capozza valued the subject property based upon a residential use. The subject property, however, is being use for commercial purposes and should be valued accordingly. *Boone argument.*

Record

13. The official record for this matter is made up of the following:

a) The Form 131 petition,

b) The digital recording of the hearing labeled IBTR 6189,

c) Exhibits:

Petitioners' Exhibit 1: Appraisal for subject property dated April 16, 2004.
Petitioners' Exhibit 2: Letter from Mathew F. Capozza dated October 8, 2005.

Respondent's Exhibit 1: Notice of Assessor Representing Jackson Township Trustee Assessor,
Respondent's Exhibit 2: Property record card for subject property,
Respondent's Exhibit 3a – 3c: Property record cards for comparables used by

Appraiser,
Respondent's Exhibit 4: Copy of *Long v. Wayne Twp. Assessor*,
Respondent's Exhibit 5: Definition of use value from 2002 Real Property Assessment Manual, page 22.

Board Exhibit A: Form 131 petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Letter from Max Garwood with witness and evidence lists,
Board Exhibit D: 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 a county property tax assessment board of appeals 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 276 (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 raised several procedural concerns at the hearing. First, Mr. Garwood noted that the Petitioners were not served with advance notice that the Huntington County Assessor would be appearing at the hearing. Second, Mr. Garwood noted that the Huntington County Assessor did not file notice of its intent to appear at the hearing within thirty (30) days of the Petitioners filing their Form 131 petition. Finally, Mr. Garwood indicated that the Respondent did not provide the Petitioners with a witness list and copies of exhibits it intended to submit prior to the hearing.

16. As to Mr. Garwood's first concern, a representative of one unit of local government may appear on behalf of another unit of local government. *See* Ind. Admin. Code tit. 52, r. 1-1-6(3). In order to do so, however, the representative must file with the Board written notice of its authorization to appear in a representative capacity. 52 IAC 2-2-2(b). The

Huntington County Assessor duly filed such a written notice in this case. *See Resp't Ex. 1*. While parties are required to serve opposing parties with all pleadings and other documents filed with the ALJ or Board, the Petitioners did not explain how they were prejudiced by any failure of the Huntington County Assessor to serve them with its notice of appearance prior to the hearing in this case.

17. Mr. Garwood is simply incorrect regarding his second concern. The Board's procedural rules do provide that a county assessor wishing to appear as an additional party must file notice of its intent to do so within thirty (30) days of the filing of the petition initiating the appeal. *See* 52 IAC 2-6-6(b)(3). The Huntington County Assessor, however, did not seek to appear as an additional party in this case, but rather as a representative of the Respondent, Jackson Township Assessor.

18. As to Mr. Garwood's last concern, the Petitioners' decision to prosecute this action under the Board's procedures for small claims affects the parties' obligations concerning pre-hearing exchanges. The Board's procedural rules concerning small claims, which are set forth at 52 IAC 3, 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). 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).

19. 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. 51 IAC 2-7-1(b). 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.

20. The Petitioners do not allege that they formally requested a witness or exhibit list or copies of documents prior to the administrative hearing. Consequently, the Respondent complied with the Board's procedural rules, and the Board overrules any objections to the admissibility of testimony or exhibits offered by the Respondent.

21. The Petitioners provided sufficient evidence to support their claim for a reduction in assessment. The Board reaches this conclusion for the following reasons:

    a) 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.

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 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 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. MANUAL at 4, 8. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal performed substantially after January 1, 1999, should explain how the value estimated by that appraisal relates to the property's 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).

d) Here, the Petitioners submitted an appraisal performed by Matthew F. Capozza, a licensed appraiser, pursuant to which Mr. Capozza estimated the market value of the subject property to be $150,000 as of April 16, 2004. *Pet'rs Ex. 1.* Mr. Capozza utilized both the cost and sales comparison approaches to form his opinion of value, although he found the sales comparison approach to be the most reliable indicator of value. *Id.* Furthermore, Mr. Capozza certified that he performed his appraisal in conformity with USPAP. *Id.* Thus, Mr. Capozza's appraisal constitutes the type of evidence recognized by the Tax Court and Manual as being relevant to a determination of the subject property's true tax value.

e) Mr. Capozza, however, estimated the market value of the subject property as of a date more than five (5) years after the relevant valuation date of January 1, 1999. Nonetheless, Mr. Garwood explained that property values in the subject area have increased at a rate between 3% and 5% per year since 1999. *See Garwood testimony*. The Respondent did not dispute Mr. Garwood's testimony in that regard. Thus, broadly speaking, Mr. Garwood explained that the subject property was worth no

more as of January 1, 1999, than the $150,000 estimated by Mr. Capozza in April 2004. The Board, however, denies the Petitioners' request that it "trend" the value estimated by Mr. Capozza back to January 1, 1999, based on Mr. Garwood's testimony. While Mr. Garwood's testimony may be sufficient, as a general matter, to explain the relationship between Mr. Capozza's April 2004 estimate and the subject property's value as of January 1, 1999, it is not sufficient to support a calculation as to how much less the property was worth as of January 1, 1999, with any reasonable degree of certainty.

f) Based on the foregoing, the Board finds that the Petitioners established a prima facie case that the current assessment is in error and that the true tax value of the subject property does not exceed $150,000. The burden therefore shifted to the Respondent to impeach or rebut Mr. Capozza's opinion of value.

g) The Respondent first "objects"[1] to Mr. Capozza's appraisal because it estimates the market value of the subject property as of April 16, 2004, rather than January 1, 1999. As explained above, however, the Board finds that Mr. Garwood's testimony concerning the appreciation of property values in the area suffices to comply with requirements of *Long, supra*. The Respondent did not present any evidence to suggest that real estate in the subject property's area was not appreciating between January 1, 1999, and April 16, 2004.

h) The Respondent next argues that Mr. Capozza failed to consider the value of outbuildings contained both on the subject property and the comparable properties listed in his appraisal. According to the Respondent, Mr. Capozza should have adjusted the sale prices of the comparable properties to reflect differences in size and age between the outbuildings located on the subject property and those located on the comparable properties, and for the complete absence of outbuildings on one of the comparable properties.

i) The Board agrees that Mr. Capozza's failure to adjust the sale prices of the comparable properties to reflect differences between the outbuildings contained on the subject property and those contained on the comparable properties tends to detract marginally from the reliability of his opinion of value. A party, however, did not present any evidence to show that, had Mr. Capozza made such adjustments, those adjustments would have changed his opinion of value to a significant degree. For example, the Respondent did not attempt to quantify the adjustments it contends that Mr. Capozza should have made. At most, the Respondent submitted property record cards showing the amounts for which it valued the outbuildings in question under the Guidelines. The Respondent, however, must explain how the evidence it submits relates to its case; it cannot simply present the Board with documents and expect the

[1] While Ms. Boone used the term "I object" when referencing the purported shortcomings of Mr. Capozza's appraisal, the Board does not take this to be an evidentiary objection. Instead, it appears to be part of Ms. Boone's impeachment of the appraisal's credibility. Moreover, the ALJ had already admitted Mr. Capozza's appraisal at the time Ms. Boone made her statement. To the extent that Ms. Boone was objecting to the admissibility of the appraisal, the Board overrules such objection.

Board to draw the conclusions it desires. *Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) ("[I]t was not the Indiana Board's responsibility to review the record card submitted by the Assessor to determine whether that property was indeed comparable -- that duty rested with the Assessor."). Moreover, the Board will not assume that the values assigned to the outbuildings under the mass appraisal cost approach set forth in the Guidelines necessarily reflect the contributory values of those outbuildings to the overall market value-in-use of properties at issue.

j) Next, the Respondent contends that Mr. Capozza's appraisal is not entitled to any probative weight because it is not an "arm's length" appraisal. *See Stouder argument*. The Respondent appears to base its contention on the fact that Mr. Capozza prepared the appraisal in conjunction with the Petitioners' application for a loan. As an initial matter, the Respondent appears to have confused its terminology. The question of whether a transaction is at "arm's length" concerns the relationship between the parties to the transaction. The Respondent, however, does not appear to be alleging that that there was any special relationship between Mr. Capozza and either the Petitioners or the lending institution that engaged his services.

k) The substance of the Respondent's position also lacks merit. The Respondent apparently contends that an appraiser engaged by a financial institution to appraise a property in connection with a lending decision is more concerned with determining whether the property is worth at least the amount of the proposed loan than with determining the precise market value of the property. The Respondent, however, did not present any evidence that Mr. Capozza was so motivated in this case. To the contrary, Mr. Capozza certified that he prepared his appraisal in conformity with USPAP. *Pet'rs Ex. 1*. Consequently, the fact that Mr. Capozza prepared the appraisal in connection with the Petitioners' application for a loan does not detract from the credibility or reliability of his opinion of value

l) Finally, the Respondent contends that Mr. Capozza did not estimate the market value-in-use of the subject property because he valued the subject property based upon a residential use, whereas the Petitioners conducted a home business from the pole barn. The Respondent is correct that true tax value is based upon market value-in-use as opposed to purely market value. *See* MANUAL at 3. The Respondent, however, offered no evidence or explanation as to how the Petitioners' operation of a home business rendered the Petitioners' primary use of the subject property as commercial. Indeed, it is clear from Mr. Capozza's report that the highest and best use of the subject property is residential, and that if the subject property were to exchange, it likely would be sold to a buyer that would use the property primarily for residential purposes. *See Pet'rs Exs. 1-2.* The Respondent did not present any evidence that the Petitioners derive special utility from the subject property as a result of the operation of their home business such that the property's value-in-use would exceed its likely value in exchange. In fact, the record is devoid of evidence concerning the nature of the Petitioners' home business other than Mr. Capozza's statement that the Petitioners

use one of the outbuildings for a home-based fundraising business and warehouse. *See Pet'rs Ex. 2.*

m) Based on the foregoing, the Respondent failed to impeach or rebut Mr. Capozza's appraisal. The Petitioners established by a preponderance of the evidence that the current assessment is in error and that the true tax value of the subject property does not exceed $150,000.

Conclusion

22. The Petitioners made a prima facie case. The Respondent did not rebut the Petitioners' evidence. The Board finds in favor of the Petitioners and orders that the assessed value of the subject property does not exceed $150,000.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not exceed $150,000.

ISSUED: **November 28, 2006**

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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>.