

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

Petition #: 35-014-04-1-4-00052
Petitioners: Rosella & Thomas Stouder
Respondent: Huntington Township Assessor (Huntington County)
Parcel #: 0140000100
Assessment Year: 2004¹

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 May 31, 2005.
2. The PTABOA mailed notice of its determination 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 29, 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.²
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Rosella Stouder, Taxpayer
Thomas Stouder, Taxpayer

¹ The parties agree that the assessment date under appeal is March 1, 2004. *T. Stouder testimony; Newsome testimony.* The Board notes that the Petitioners did not purchase the subject property until December 2004, and there is no evidence in the record from which to determine whether the Petitioners were responsible for the real estate taxes arising from the March 1, 2004, assessment. Nevertheless, the Respondent did not raise that issue at the hearing. The Respondent therefore has waived any objection to the Petitioners' standing to appeal the March 1, 2004, assessment.

² The parties also addressed two other petitions filed by the Petitioners – Pet. Nos. 35-014-14-1-5-00053 and 35-014-14-1-5-00054. The Board addresses those petitions in a separate written decision.

b) For Respondent: Julie Newsome, Huntington Township Deputy Assessor

Facts

7. The property consists of a residential dwelling and a commercial building located at 539 Third Street, Huntington, as shown on the property record card for parcel # 0140000100.
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 \$5,500 Improvements \$60,500 Total \$66,000.
10. Assessed Value requested by Petitioners on Form 131 petition:
Land \$6,000 Improvements \$12,000 Total \$18,000.

Issue

11. Summary of the Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners purchased the subject property for \$13,500 at real estate agent's auction in December 2004. *T. Stouder testimony*. The previous owner had purchased the subject property for \$11,000 in November 2003. *T. Stouder testimony; Pet'r Ex. 14*.
 - b) The Petitioners submitted information concerning the sale prices and/or assessments for twelve (12) properties located in the same area as the subject property. *Pet'rs Exs. 1-12*. The Petitioners contend that the sale prices and assessed values for the neighboring properties demonstrate that the subject property is assessed well in excess of its actual value. *See T. Stouder testimony*. The Petitioners highlighted the following information concerning those properties:
 - 817 E. Market Street is located next to the subject property. This property sold in November 2003 for \$12,250. *T. Stouder testimony; Pet'rs Ex. 1*.
 - 754 E. Market Street is located ½ block from the subject property and is assessed at \$30,000. This property sold for \$10,000 in 2004. The sale was not an auction or tax sale, but an individual sale. *T. Stouder testimony; Pet'rs Exs. 2-3*.
 - 749 E. Market Street sold in March 2004 for \$13,900. The buyer made improvements and sold the property in September 2004 for \$53,000. Mr. Stouder's mother once owned this property, and it contains the best house on the block. The property has an assessed value of \$24,100 and is comparable to the subject property. *T. Stouder testimony; Pet'rs Exs. 4, 5*.
 - 540 E. Third Street has an assessed value of \$35,800. *T. Stouder testimony; Pet'rs Ex. 6*.
 - 740 E. Market Street has an assessed value of \$31,200. *T. Stouder testimony; Pet'rs Ex. 7*.

- 526 Third Street sold for \$15,000 in June 2004. This property has an assessed value of \$15,100. This property just recently sold again, but the Petitioners are not sure of the sale price. *T. Stouder testimony; Pet'rs Exs. 8- 9.*
 - 772 E. Market Street is a two story house within the same block as the subject property. This property has an assessed value of \$35,100. *T. Stouder testimony; Pet'rs Ex. 10.*
 - 771 E. Market Street has an assessed value of \$21,700 and is within the same block as the subject property. *T. Stouder testimony; Pet'rs Ex. 11.*
 - 766 E. Market Street has an assessed value of \$31,800. *T. Stouder testimony; Pet'rs Ex. 12.*
- c) Both the commercial building and the residential dwelling located on the subject property were vacant and almost condemned when the Petitioners purchased the subject property. *T. Stouder testimony.* The residential dwelling was in bad condition and had been vacant for fifteen years. *Id; Pet'rs Ex. 14.* The ceiling was falling in and there were bird carcasses in the house. *R. Stouder testimony; Pet'rs Ex. 14.* The Petitioners spent \$18,000 and seven (7) months remodeling the dwelling. *T. Stouder testimony.* The commercial building was also remodeled, and the Petitioners replaced the floor joists and installed a new roof. *T. Stouder testimony; R. Stouder testimony.* The commercial building is up and running now. *Id.*
- d) The Petitioners contend that the comparable properties identified by the Respondent are closer to town and that those properties therefore are better than the subject property. *R. Stouder testimony; T. Stouder testimony.* The Petitioners also question whether those properties used by the Respondent were in the same condition as the subject property, given that the subject property was not habitable in 2004. *R. Stouder testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Prior to the hearing, the Respondent corrected the depth and frontage of the subject land. *Newsome testimony.* Those corrections reduced the land assessment from \$9,100 to \$5,500. *Id.*
- b) The Respondent also made changes to the assessment of the commercial building located on the subject property following an on-site inspection on June 30, 2005. *Newsome testimony.* The Respondent changed the use classification of the subject building from "general retail" to "utility storage." *Id.* The Respondent also changed the condition of the commercial building from "fair/average" to "poor." *Id.* The Respondent did not change the assessment of the dwelling. *Id.*
- c) The Respondent presented sales disclosures and property record cards for three (3) properties it believes are comparable to the subject property. These homes are all in the same neighborhood as the subject property, and they receive the same market adjustment as the subject property. *Newsome testimony; Resp't Exs. 4a-4c.*

- d) The property at 436 Market Street sold for \$57,500 in 2002 and for \$61,900 in 2005. The property has an assessed value of \$57,400. *Newsome testimony; Resp't Ex. 4a.*
- e) The property at 541 East Franklin sold for \$37,500 in 2003. The property has an assessed value of \$50,000. *Newsome testimony; Resp't Ex. 4b.*
- f) The property at 656 East Franklin sold for \$48,000 in 2004 and has an assessed value of \$45,100. *Newsome testimony; Resp't Ex. 4c.*
- g) In response to the Petitioners' questions, the Respondent was unable to say whether the comparable properties were inhabitable at the time of the sales. *Newsome testimony.*

Record

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

- a) The Form 131 petition,
- b) The recording of the hearing,
- c) Exhibits:

Petitioners Exhibits 1 thru 12 – Parcel Reports and/or Property Record Cards (“PRC”) for Comparable properties
 Petitioners Exhibit 13 – Subject PRC
 Petitioners Exhibit 14 – Letter from previous owner on condition of subject property

Respondent Exhibit 1: Copy of Form 131
 Respondent Exhibit 2: Copy of Form 115
 Respondent Exhibit 3: Subject PRC
 Respondent Exhibit 4a - c: Comparables with sales disclosures and PRCs
 Respondent Exhibit 5: Notice of Appearance for Deputy Assessor

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. 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 ASSESSMENT MANUAL at 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.
 - 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).”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. *MANUAL* at 5.
 - c) The Petitioners rely upon two theories to support their claim that the subject property is assessed in excess of its market value-in-use. First, the Petitioners point to the sale

- prices and assessed values of numerous properties from the area surrounding the subject property. In doing so, the Petitioners apparently seek to establish the market value of the subject property through the sales comparison approach to value. *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 Petitioners did not compare relevant features of the neighboring properties to those of the subject property. For example, the Petitioners did not discuss features such as the size of the dwellings and lots, the number of bathrooms, or the existence of amenities such as attics, basements, and garages. Consequently, the sale prices of the neighboring properties have little or no probative value regarding the market value-in-use of the subject property.
 - f) The Petitioners, however, also rely on evidence that they purchased the subject property for \$13,500 in December of 2004, and that the previous owner bought the property for \$11,000 in September 2003. *T. Stouder testimony; Pet’rs Exs. 13-14; Resp’t Ex. 3*. The Petitioners did not describe the circumstances of the either sale, other than Mr. Stouder’s testimony that the Petitioners bought the subject property at a “realtor’s auction.” *See Stouder testimony*.
 - g) Under normal circumstances, the fact that the Petitioners bought the subject property at auction might raise significant questions as to whether the seller was typically motivated and whether the property was exposed to the market in a commercially reasonable manner. In this case, however, the subject dwelling had been vacant for over fifteen years and suffered from significant deterioration rendering it uninhabitable at the time of the sale. Moreover, the Petitioners bought the property for a price comparable to that paid by the seller approximately one year previously. Those facts tend to indicate that the seller was typically motivated, and that the method of sale involved reasonable exposure to the market for the quality of property at issue.
 - h) The Manual, however, also provides that, for the 2002 general reassessment, a property’s assessment should reflect its value as of January 1, 1999. *See* MANUAL at 4, 8. The Petitioners did not explain specifically how the December 2004 sale price

relates to the subject property's value as of January 1, 1999. There is some evidence, however, that real estate in the area was appreciating rather than depreciating, given that the Petitioners paid \$2,500 more than the seller had paid when she bought the subject property in September 2003. Thus, it is likely that the subject property would have been worth no more as of January 1, 1999, than the December 2004 sale price of \$13,500. Moreover, the Petitioners bought the subject property for less than one-fourth of its current assessed value, and the improvements were in very poor condition. Under those circumstances, the December 2004 sale price is clearly a better indication of the subject property's market value-in-use as of January 1, 1999, than is the current assessment.

- i) Based on the foregoing, the Petitioners established a prima facie case that the assessment is in error and that the correct assessment should be \$13,500. The burden therefore shifted to the Respondent to impeach or rebut the Petitioners' evidence concerning the purchase price of the subject property.
- j) The Respondent submitted sales disclosures and property record cards for three (3) properties in support of the current assessment. *Resp't Exs. 4a - 4c*. The Respondent, however, did not explain how those properties compared to the subject property as required by the court in *Long, supra*. For example, the Respondent did not discuss features that are clearly relevant to market value such as the size of the dwellings and lots, and the number of bathrooms, or the existence of amenities such as attics, basements, and garages. While the property record cards submitted by the Respondent may contain some of that information, it was the Respondent's duty to explain how the properties were comparable. *See Fidelity 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."). The Respondent therefore failed to impeach or rebut the Petitioners' evidence concerning the sale price of the subject property.
- k) Based on the foregoing, the Petitioners established by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment for the March 1, 2004, assessment date should be no more than \$13,500.

Conclusion

- 16. The Petitioners made a prima facie case. The Respondent did not rebut the Petitioners' evidence. The Board finds in favor of the Petitioners.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment for the subject property 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>>.