

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

Petition #: 46-022-02-1-5-00003
Petitioners: Allan and Patricia Whitlow
Respondent: Michigan Township Assessor (LaPorte County)
Parcel #: 42-01-33-460-032
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 17, 2003.
2. The Petitioners received notice of the decision of the PTABOA on May 20, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on June 18, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 22, 2006.
5. The Board held an administrative hearing on May 10, 2006, before the duly appointed Administrative Law Judge Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Allan Whitlow, property owner
 - b) For Respondent: Terry Beckinger, Michigan Township Assessor
Carol McDaniel, County Assessor
Michael Gregorich, Nexus Group

Marilyn Meighen appeared as attorney for Michigan Township and the LaPorte County PTABOA.

Facts

7. The property is a 2,441 square foot single-family residence on a 207' x 150' lot located at 1010 E. Coolspring Avenue in Michigan City.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of the subject property to be \$ 63,100 for the land and \$96,900 for the improvements for a total assessed value of \$160,000.
10. The Petitioners requested a total assessed value of \$ 112,000.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners contend the appropriate value for the subject property is represented by the July 9, 1998 sale. *Whitlow testimony* In support of this contention, the Petitioners submitted the settlement statement for the sale indicating the sales price to be \$ 112,000. *Petitioner Exhibit 1*. The Petitioners further contend the subject property could not have appreciated in value \$48,000 between the sale date and the appraisal date of January 1, 1999. *Whitlow testimony*
 - b) The Petitioners allege the property was offered on the market by a realtor for an estate. *Whitlow testimony*. The subject property was advertised for \$112,000, but appraised at \$126,000 on June 9, 1998. *Whitlow testimony; Petitioner Exhibit 8 attachment*. The Petitioners further contend that the property was vacant when purchased and needed extensive work such as painting and kitchen remodeling; this work was performed after the purchase. *Whitlow testimony*. There are still more repairs to do such as windows and plumbing. *Id.*
 - c) The Petitioners explained that the discrepancy between the date of the signature (January 27, 2004) and the date of the value estimate (June 9, 1998) on the Petitioners' appraisal (Petitioner Exhibit 8 attachment) is because the Petitioners had to go to the appraiser to get a copy of the appraisal and the appraiser dated his signature on the date he gave the copy of the appraisal to the Petitioners. *Whitlow testimony*.
 - d) The Petitioners contend that the sale price best reflects the value of the property for January 1, 1999. *Whitlow testimony; Petitioner Exhibit 2*. Replacement costs, sales prices, and appraised values vary, but market value is market value. *Whitlow testimony*.

- e) The Petitioners contend the inspection date of March 27, 2004, indicated on Respondent Exhibit B is far removed from the assessment date of January 1, 1999. *Whitlow testimony*. The Petitioners further contend that many properties are over-insured; therefore, the amount of coverage indicated on the insurance declaration (Respondent Exhibit D) does not establish a market value for the property. *Id.*

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

- a) The Respondent contends the subject property is properly assessed at \$160,000. *Meighen argument*. In support of this contention, the Respondent submitted an appraisal for the subject property dated August 31, 1999, that estimates the market value at \$157,300. *Beckinger testimony; Respondent Exhibit A*. The Respondent also submitted an opinion of value from an appraiser and an insurance declaration for the subject property for the period November 2003 to November 2004. *Respondent Exhibits B and D*.
- b) The Respondent contends the appraiser signed the Petitioner appraisal (Petitioner Exhibit 8 attachment) estimating the property value as of June 9, 1998 on January 27, 2004. *Meighen argument*.
- c) The Respondent presented testimony that, for the original, preliminary hearing at the township level, the Petitioners submitted an appraisal dated August 31, 1999; this appraisal estimated the value of the subject property at \$157,300. *Beckinger testimony; Respondent Exhibit A*. In response to the appeal on the subject property, a local appraiser acting as a consultant for the county, reviewed the value of the property and estimated the appropriate value to be the \$160,000 assigned by the PTABOA. *McDaniel testimony and Respondent Exhibit B*. Although the inspection date is March 27, 2004, the comparable sales are from 1998 and 1999. *Meighen argument; Respondent Exhibit B*.
- d) The Respondent contends the subject improvements were insured for approximately \$250,000 in 2004. *Respondent Exhibit D* While not the strongest of evidence, the insurance declaration at \$250,000 in 2004 serves to support the \$160,000 estimate for January 1, 1999. *Meighen argument*.

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 # 6235,
- c) Exhibits:
 - Petitioner Exhibit 1: Settlement statement of 7-9-98 showing purchase price of \$ 112,000,
 - Petitioner Exhibit 2: Assessment Statement of 12-18-03 showing assessment of \$ 214,000,

Petitioner Exhibit 3: Form 130 filed 12-18-03,
Petitioner Exhibit 4: Form 115 signed 1-27-04,
Petitioner Exhibit 5: Form 114 signed 4-1-04,
Petitioner Exhibit 6: Form 115 signed 5-20-04,
Petitioner Exhibit 7: Form 131 signed 5-30-04,
Petitioner Exhibit 8: Form 131 signed 6-17-04,
Petitioner Exhibit 9: Form 130 signed 9-15-04,
Petitioner Exhibit 10: Form 115 signed 5-27-04,

Respondent Exhibit A: Troy appraisal,
Respondent Exhibit B: Property tax appeal response form,
Respondent Exhibit C: Photo of property,
Respondent Exhibit D: Insurance declaration,

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Notice of appearance for Marilyn Meighen,
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 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. Wash. 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 provided sufficient evidence to establish a prima facie case. The Respondent rebutted the Petitioners’ case with substantial evidence. This conclusion was arrived at because:

- a) The Petitioners contend that the assessment for the subject property exceeds its market value-in-use. *Whitlow testimony*. In support of this contention, the Petitioners submitted a Settlement Statement from the July 9, 1998, purchase of the property for \$112,000. *See Petitioner Exhibit 1*. Petitioners further submitted an appraisal estimating the value of the property at \$126,000 on June 9, 1998. *See Petitioner Exhibit 8 attachment*
- b) Real property in Indiana is assessed on the basis of its “true tax value”. *See Ind. Code § 6-1.1-31-6(c)*. “True tax value” is defined as “[t]he 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 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* 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.” *Id.*
- c) Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
- d) Here, the Petitioners submitted a settlement statement for July 8, 1998, with a value of \$112,000 and an appraisal for \$126,000, prepared by a licensed appraiser, which values the subject property as of June 9, 1998. *Petitioner Exhibits 1 and 8*. The appraiser attests the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* The appraiser used the sales comparison and cost approaches to value. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).
- e) Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach Petitioner’s case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- f) Here, the Respondent also submitted an appraisal of the subject property, which had been provided by the Petitioners at the preliminary hearing. *Beckinger testimony; Respondent Exhibit A*. This appraisal was prepared by a licensed appraiser in

accordance with USPAP. *Respondent Exhibit A*. The appraiser used the sales comparison and cost approaches to value and estimated the market value of the subject property to be \$157,300 as of August 31, 1999. *Id.*

- g) The Respondent contends that the value of \$160,000 is supported by other evidence submitted, namely the opinion of value by an appraiser, the county's consultant, for \$160,000, which is based on sales from 1998 and 1999 and show values from \$135,00 to \$149,000 and the insurance declaration for November 2003 through November 2004 for approximately \$250,000. *Meighen argument; Respondent Exhibits B and D*.
- h) Respondent Exhibit B does not carry substantial weight because the Respondent failed to submit any analysis of these properties. The Respondent failed to identify or explain the differences between the properties that might affect their relative market values-in-use. *See Long*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of comparability of the two properties. *Long*, at 470. Thus, the Respondent's "comparable" properties are insufficient to impeach or rebut the Petitioner's evidence.
- i) The Respondent submitted an insurance declaration for 2003-2004. *Respondent Exhibit D*. By the Respondent's own admission, this evidence has limitations, especially given the fact that it is for several years after the valuation date.
- j) While the Petitioners contend the \$112,000 purchase price is determinative of the valuation for January 1, 1999, the Petitioners' also presented an appraisal for \$126,000 dated June 9, 1998. *Petitioner Exhibits 1 and 8*. The Petitioners also submitted to the township an appraisal for \$157,300 as of August 31, 1999. *Respondent Exhibit A*.
- k) In considering the evidence, the most weight is given to the August 1999 appraisal. *Respondent Exhibit A*. This is because the valuation date is not the only date under consideration. The assessment date is March 1, 2002; the valuation date is January 1, 1999. The Board must consider the subject property as it was on March 1, 2002. By the Petitioners' admission, repairs and remodeling had taken place after the purchase. This is documented in the August 1999 appraisal, which states, "The owners have completed extensive remodeling over the past year, i.e., new asphalt shg. roof, GFA furnace/central air, kitchen cabinets/countertops, carpeting, wiring, redecorating, etc. No major repairs are deemed necessary at this time." *Id.* As such, the August 1999 appraisal considers the subject property's value with the repairs and, therefore, is deemed to more closely approximate the condition of the subject property on March 1, 2002, while still holding the assessed value at 1999 values.

Conclusion

16. The Petitioners made a prima facie case. The Respondent did rebut Petitioners' evidence. The Respondent's evidence supports an assessed value of \$157,300.

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>.