

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

**Petition #:** 48-003-04-1-5-00218  
**Petitioners:** Gary & Julia Webb  
**Respondent:** Anderson Township Assessor (Madison County)  
**Parcel #:** 18 376J-77Z  
**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 Madison County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 20, 2005.
2. The PTABOA mailed notice of its decision on July 25, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Madison County Assessor on August 19, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated July 14, 2006.
5. The Board held an administrative hearing on August 31, 2006, before the duly appointed Administrative Law Judge, Jennifer Bippus.
6. Persons present and sworn in at hearing:
  - a) For Petitioners: Gary Webb, Taxpayer
  - b) For Respondent: Patricia Davis, Anderson Township Chief Deputy Assessor  
Dennis Plackard, Anderson Township Deputy Assessor  
Lloyd Brumback, Madison County Deputy Assessor

## Facts

7. The subject property is classified as residential, and it is located at 2012 Tamarack Road, Anderson, as shown on the property record card for parcel 18 376J-77Z. The Petitioners use the subject property as a rental property.
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 is \$11,300 for the land and \$70,800 for the improvements for a total assessed value of \$82,100.
10. The Petitioners request a total value of \$42,500.

## Issue

11. Summary of the Petitioners' contentions in support of alleged error in assessment:
  - a) At the PTABOA hearing, the Petitioners submitted an appraisal (Original Appraisal) prepared by Leon A. Mudd, a certified appraiser.<sup>1</sup> *Webb testimony*. Pursuant to that appraisal, Mr. Mudd estimated the market value of the subject property to be \$68,500 as of June 14, 2005. *Id. Pet'rs Ex. 7*. The PTABOA did not consider the appraisal because Mr. Mudd did not estimate the property's value as of January 1, 1999. *Webb testimony*.
  - b) The Petitioners therefore had Mr. Mudd prepare another appraisal (Second Appraisal), pursuant to which Mr. Mudd estimated the market value of the subject property to be \$60,500 as of 1999. *Webb testimony; Pet'rs Ex. 11*.
  - c) The Petitioners also had Mr. Mudd estimate the market value of the subject property using the income approach to value. *Webb testimony; Pet'rs Ex. 10*. Mr. Mudd arrived at a market value of \$42,662 using that approach. *Id.* The Petitioners contend that the income approach is the best way to value the subject property. *Webb argument*. The Petitioners note that, although market rent for the subject property is \$650 per month, they charge only \$600 per month because they are in competition with Anderson Housing, which does not have to pay taxes. *Webb testimony*.
  - d) The Petitioners also submitted assessment information regarding three (3) comparable properties to support their requested assessment. *Pet'rs Ex. 8-9*. The assessments for those properties range from \$54,000 to \$73,200. *Id.*

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<sup>1</sup> In the Original Appraisal, Mr. Mudd provides his certification number, but indicates that his certification expired on December 31, 2001. *Pet'rs Ex. 7*. In a subsequent appraisal, however, Mr. Mudd indicates that his certification will expire on June 30, 2008. *Pet'rs Ex. 11*. It is not clear whether the expiration date listed in the Original Appraisal is a typographical error. Regardless, Mr. Mudd clearly was a certified appraiser when he prepared his second appraisal.

12. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent does not consider the Second Appraisal to be a valid appraisal. *Plackard argument*. Mr. Mudd simply went back to 1999 and found comparable properties. *Id.*
  - b) The Respondent contends that the income capitalization calculation submitted by the Petitioners is invalid because property taxes were included as expenses in determining the net operating income of the subject property. *Plackard argument*. Property taxes should be considered in determining the capitalization rate rather than as expenses in determining net operating income. *Id.* When the Respondent removed property taxes as an expense and applied the same capitalization rate of eight percent (8%) used by the Petitioners, it arrived a value of \$73,375. *Id; Plackard testimony; Resp't Ex. 2.*
  - c) The dwellings on the comparable properties submitted by the Petitioners are thirty (30) years older than the subject dwelling. *Plackard testimony*. Older homes receive more depreciation, which affects their values. *Id.*
  - d) The Respondent submitted sales information for three comparable properties located in the same area as the subject property to support the subject property's assessment. *Resp't Ex. 3*. The sale prices for those properties ranged from \$76,000 to \$89,000. *Id.*

### **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 6195,
- c) Exhibits:

Petitioners' Exhibit 1: Notice of Hearing on Petition for August 31, 2006,  
Petitioners' Exhibit 2: Notice of Hearing July 19, 2005,  
Petitioners' Exhibit 3: Form 115 – Notification of Final Assessment Determination,  
Petitioners' Exhibit 4: Form 130 with county assessor's hearing notes  
Petitioners' Exhibit 5: Minutes of county hearing July 19, 2005,  
Petitioners' Exhibit 6: Copy of Form 131 petition,  
Petitioners' Exhibit 7: Appraisal of subject property  
Petitioners' Exhibit 8: Madison County tax forms for three comparative properties,  
Petitioners' Exhibit 9: Names and addresses of owners of the three comparative properties,  
Petitioners' Exhibit 10: Capitalization work sheet for subject property (L. Mudd – American United Appraisal),

Petitioners' Exhibit 11: 1999 appraisal of subject property.

Respondent's Exhibit 1: Notice of Township Representation for Patricia Davis and Dennis Plackard.

Respondent's Exhibit 2: Response to capitalization method provided by Petitioners,

Respondent's Exhibit 3: Comparable properties presented by the township.

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 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 did provide sufficient evidence to prove error in the subject property’s 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).”). 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 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 the appraisal relates 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) The Board must examine the Petitioners' evidence in light of the foregoing guidance concerning the ways in which a taxpayer may rebut the presumption of validity afforded to an assessment. The Petitioners rely on the following evidence in support of their claims: a calculation of the subject property's market value under the income approach; assessment information concerning properties that the Petitioners contend are comparable to the subject property; and two appraisals of the subject property. The Board will address each of those items in turn.

#### *Income Approach*

- e) The Petitioners contend that the subject property should be valued at \$42,662, which is the amount determined by Mr. Mudd when he calculated the subject property's value under the income approach. *Webb testimony; Pet'rs Ex. 10*. In support of that contention, the Petitioners submitted what Mr. Webb testified were Mr. Mudd's handwritten calculations. *Id.* Those calculations, however, are unsigned, and Mr. Mudd did not appear before the Board to testify that they represent his opinion of

value. *Pet'rs Ex. 10*. Under those circumstances, the Board assigns no probative weight to the handwritten calculations submitted by the Petitioners.

- f) In addition, the handwritten calculations are wholly conclusory. They set forth amounts of income and expenses for 2005 with no indication as to the source of that information. Similarly, the calculations assume a vacancy loss of 5% without explaining the basis for that assumption. Finally, the calculations reflect the application of a capitalization rate of 8% without any explanation regarding how that rate was computed. Consequently, even if Mr. Mudd had signed or certified the calculations at issue as setting forth his opinion of value, the Board would assign that opinion little or no probative weight. This is particularly true in light of the fact that Mr. Mudd performed two appraisals pursuant to which he certified his opinion of the subject property's market value in amounts far in excess of the \$42,662 reflected in the handwritten calculations.

#### *Purportedly Comparable Properties*

- g) The Petitioners also submitted property record cards for three (3) properties that they contend are comparable to the subject property. *Pet'rs Exs. 8-9*. The assessments for those properties range from \$54,000 to \$73,200. *Id.* Presumably, the Petitioners assert a lack of uniformity and equality in assessment. To establish such a claim, however, a taxpayer must present probative evidence demonstrating that comparable properties are assessed and taxed differently than is the subject property. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). In doing so, the taxpayer must explain how relevant features of the other properties compare to those of the subject property. *See id.*; *see also, Long*, 821 N.E.2d at 471-72 (holding that taxpayers failed to establish a prima facie case using the sales comparison approach to value where they did not explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).
- h) The Petitioners did not explain how any relevant features of the three (3) properties they identified compare to those of the subject property. While the property record cards submitted by the Petitioners may contain relevant information from which such a comparison could be made it is the Petitioners' responsibility – not the Board's – to explain how the properties are comparable. *See Long*, 821 N.E.2d at 471 ([I]t was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers]."). The Petitioners therefore failed to establish a lack of uniformity and equality in assessment.

#### *Appraisals*

- i) The Petitioners also submitted two appraisals prepared by Mr. Mudd. *Pet'rs Exs. 7; 11*. The Original Appraisal estimates the market value of the subject property at

\$68,000 as of June 14, 2005, and the Second Appraisal estimates the market value of the property at \$60,500 as of 1999. *Id.* Both appraisals value the subject property using the sales comparison approach. *Id.* In each instance, Mr. Mudd certified that he prepared his appraisal in accordance with the Departure Provision of USPAP. *Id.* Moreover, the Second Appraisal expressly estimates the market value of the subject property as of 1999.

- j) The appraisals therefore constitute the type of evidence contemplated by the Manual and Tax Court as being relevant to establish the subject property's true tax value. The Board assigns the most weight to the Second Appraisal, given that it values the subject property as of 1999, which is close to the relevant valuation date of January 1, 1999, set forth in the Manual. MANUAL at 4, 8. Consequently, the Petitioners established prima facie case that the assessment is in error and that the true tax value of the subject property is \$60,500.
- k) The burden therefore shifted the Respondent to impeach or rebut the appraisals submitted by the Petitioners. *See Meridian Towers*, 805 N.E.2d at 479. The Respondent first asserts that the Second Appraisal is not really an appraisal because Mr. Mudd simply went back to 1999 and found comparable sales. *Plackard argument*. Mr. Mudd, however, certified that he performed the Second Appraisal in accordance with the Departure Provision of USPAP, and he clearly utilized a generally accepted method of appraisal – the comparable sales approach to value. The Respondent does not identify any specific flaws in Mr. Mudd's analysis. Moreover, Mr. Mudd's estimate of value in the Original Appraisal strongly corroborates his conclusion in the Second Appraisal.
- l) The Respondent also attempted to apply its own sales comparison approach to value using the sales of three (3) properties that it alleges are comparable to the subject property. Those properties sold for amounts ranging from \$76,000 to \$89,000. *Resp't Ex. 3*. The Respondent, however, did not attempt to explain how relevant features of those properties compare to those of the subject property or to explain how any salient differences between the properties affect their relative market values. *See Long* 821 N.E.2d at 471-72. Consequently, the sale prices of the purportedly comparable properties are not probative of the subject property's true tax value.
- m) Based on the foregoing, the Petitioners demonstrated that the current assessment is in error and that the true tax value of the subject property is \$60,500.

### **Conclusion**

- 16. The Petitioners established by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment should be \$60,500. The Board finds for 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 parcel should be changed.

ISSUED: December 1, 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](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>.**