

REPRESENTATIVE FOR PETITIONERS:
John Johantges, Property Tax Group 1, Inc.

REPRESENTATIVE FOR RESPONDENT:
Benjamin Buckles, Washington Township Administrative Deputy

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Vincent H. and Lois A. Geiger, Jr.,	)	Petition No.:	49-800-0-1-5-06100
	)	Parcel No.:	8-058833
Petitioners,)		
)		
v.)		
	)	County:	Marion
Washington Township Assessor,	)	Township:	Washington
	)	Assessment Year:	2002
Respondent.)		

Appeal from the Final Determination of the
Marion County Property Tax Assessment Board of Appeals

January 6, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issues:

Issue 1: Should the area identified as Petitioners' neighborhood be changed?

Issue 2: Should the assessment be changed because the market value of the property is more accurately established by Petitioners' comparables or construction cost data?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Marion County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on January 28, 2005. Pursuant to Ind. Code § 6-1.1-15-3, John Johantges, representing Vincent H. and Lois A. Geiger, Jr., filed a Form 131 Petition for Review of Assessment, seeking the Board's review of the Geiger's 2002 assessment. The Form 131 was filed with the Marion County Assessor on February 25, 2005.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3, held the hearing on July 7, 2005.
3. The following persons were sworn as witnesses at the hearing:
 - For Petitioners - John Johantges, Property Tax Group 1, Inc.,
Vincent H. Geiger, Jr., owner,
 - For Respondent - Joline Ohmart, Washington Township Assessor,
Benjamin Buckles, Administrative Deputy,
Chad Polak, Chief Deputy.
4. The following exhibits were presented for the Petitioners:
 - Petitioners Exhibit 1 – Letter from V. Geiger to the Board dated June 21, 2005,
 - Petitioners Exhibit 2 – Map of Alverna Estates,
 - Petitioners Exhibit 3(a) – Map of Alverna Estates,
 - Petitioners Exhibit 3(b) – Copy of Petitioners Exhibit 1,
 - Petitioners Exhibit 3(c) – List of six properties (one is the subject) with
information regarding assessed value, 2005 tax
amounts, year built, square footage, basement square
footage, and tax per square foot,

Petitioners Exhibit 3(d) – Multiple listing for 832 Alverna Drive,
Petitioners Exhibit 3(e) – Marion County Complete Tax Report for 725 Williams
Cove, 735 Williams Cove, and 755 Williams Cove,
Petitioners Exhibit 3(f) – Multiple listing for 845 Williams Cove,
Petitioners Exhibit 3(g) – Summary statement,
Petitioners Exhibit 4 – Sale disclosure form for lot at 740 Alverna Drive,
Petitioners Exhibit 5 – Statement of construction costs,
Petitioners Exhibit 6 – Invoices related to construction costs.

5. The following exhibits were presented for the Respondent:

Respondent Exhibit 1 – Property record card,
Respondent Exhibit 2 – Neighborhood factor analysis,
Respondent Exhibit 3 – Appraisal of subject property (740 Alverna Drive)
by Robert S. Diener,
Respondent Exhibit 4 – Analysis of the Diener appraisal of the subject property
by Assessment Advisor’s Inc.,
Respondent Exhibit 5 – Appraisal of 620 Alverna Drive by Robert W. Zachidny,
Respondent Exhibit 6 – Analysis of the appraisal of 620 Alverna Drive by
Assessment Advisor’s Inc.,
Respondent Exhibit 7 – Appraisal of 825 Alverna Drive by Michael D. Moore,
Respondent Exhibit 8 – Analysis of the appraisal of 825 Alverna Drive by
Assessment Advisor’s Inc.

6. The parties were allowed until July 22, 2005, to submit additional evidence. The following additional exhibits were submitted within that time:

Petitioners Exhibit 7 – Letter from Vince Geiger dated July 11, 2005,
Petitioners Exhibit 8 – Settlement statement for purchase of the lot,
Petitioners Exhibit 9 – Settlement statement for purchase of the improvements,
Respondent Exhibit 9 – Letter from Ben Buckles dated July 22, 2005.

7. Vince Geiger mailed another letter dated July 26, 2005. The period for submitting additional evidence had expired. It is marked as Petitioners Exhibit 10, but it is not admitted as evidence and it is given no weight in the determination of this appeal.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Sign-in sheet.
9. The subject property is a single-family dwelling located at 740 Alverna Drive in Indianapolis.
10. The Administrative Law Judge did not conduct an on-site inspection of the property.
11. The PTABOA determined the assessed value of the property is:
 - land \$569,900 improvements \$662,400 total \$1,232,300.
12. Petitioners contend the total assessed value of the property should be \$616,000.
13. Petitioners presented the following evidence:
 - A. Petitioners purchased the lot for \$170,000 on May 19, 1994. Petitioners paid the contractor a total of \$379,918.58 to build the home in 1995, for a total cost of land and improvements of \$549,918.58. Trending this amount by 12% (3% annually for four years) results in a value of \$615,908. *Geiger testimony; Petitioners Exhibits 1, 4, 5, 6, 7, 8, 9.*
 - B. Respondent did not properly define the neighborhood, which is currently limited to the subject subdivision, Alverna Estates. Nearby properties in Williams Cove and Somerset Hills subdivisions are comparable to the subject property, share school systems, and should be included in the determination of the neighborhood factor. Petitioners identified five purportedly comparable properties. One of them is located

- in Alverna Estates and four are located in the Williams Cove subdivision. *Geiger testimony; Petitioners Exhibit 3(c)*.
- C. The appraisal of Petitioners' property introduced by Respondent is not a valid indication of the subject's market value. *Geiger testimony*.
 - D. Settlement statements indicate the total costs of the lot and home were \$507,572.71 as of June 1995. Trending this 1995 amount at an annual rate of three percent results in a value of \$571,277.54 as of January 1, 1999. *Petitioners Exhibits 7, 8, 9*.
14. Respondent presented the following evidence:
- A. The properties in William Cove, Somerset Hills, and the surrounding area are not comparable to properties in Alverna Estates. The homes in these other subdivisions are smaller and sell in the range of \$200,000 to \$300,000. Alverna Estates contains million dollar homes and has no homesites smaller than one acre. *Buckles testimony*.
 - B. Petitioners presented an appraisal of their property to local officials indicating the total value of the property was \$1,400,000 as of November 28, 2001. *Respondent Exhibit 3*. This appraisal was reviewed and deemed to be unacceptable. *Respondent Exhibit 4*. Respondent agreed with Petitioners' assertion that this appraisal is not a reliable indication of the property's value. *Buckles testimony*.
 - C. The 1995 construction costs are not reflective of the market as of January 1, 1999. Construction costs and other data from 1997 and 1998 were increased by three percent per year in Washington Township to trend those values to the valuation date, January 1, 1999. As a matter of policy, the township officials do not accept values from periods prior to 1997 because of the difficulty in determining a reliable trending factor. *Buckles testimony; Respondent Exhibit 9*.
 - D. Petitioners' settlement statement indicates only that they borrowed \$325,000. Nothing in the record indicates the amount of down payment that was made on the property. Banks typically require such a payment. *Respondent Exhibit 9*.
 - E. The purchase price of the land and the construction costs of the home do not equal the market value in use of the property. The sum is worth more than the parts. *Buckles testimony; Respondent Exhibit 9*.

JURISDICTIONAL FRAMEWORK

15. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

16. 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).
17. 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”).
18. 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.

ANALYSIS

Issue 1: Should the area identified as Petitioners' neighborhood be changed?

19. A township assessor must define neighborhoods based on certain factors. Those factors include common development characteristics, average age of most improvements, size of lots, subdivision plats and zoning maps, school boundaries, geographic boundaries, sales statistics, and other appropriate characteristics. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, ch. 2 at 8 (incorporated by reference at 50 IAC 2.3-1-2).
20. Petitioners acknowledged the Williams Cove properties are classified as a different neighborhood than their property location in Alverna Estates, but argued that these developments, along with Somerset Hills, should have been considered as a single neighborhood. Petitioners relied upon the fact that these areas share the same school system and their proximity as the basis for this claim.
21. There is no dispute in the record that these three areas share the same school system and that they are located close together. These points are relevant, probative evidence regarding the neighborhood. Those facts alone, however, are not sufficient to support Petitioners conclusory statements that the current neighborhood designation does not conform to the totality of the factors specified. *Id.*
22. Petitioners did not make a prima facie case that requires any change regarding the definition of their neighborhood.

Issue 2: Should the assessment be changed because the market value of the property is more accurately established by Petitioners' comparables or construction cost data?

23. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." *Ind.*

Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

24. For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

25. Petitioners identified five purported comparable properties, one located in Alverna Estates and four located in the Williams Cove subdivision. Conclusory statements that a property is "similar" or "comparable" to another property, however, do not constitute probative evidence of the comparability of the two properties. Instead, the party seeking to rely on comparables must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *Id.* The only identified property that is also located in Alverna Estates sold for \$1,700,000, an amount well in excess of Petitioners' current assessment. Additionally, Petitioners offered no comparison of the amenities of any of the properties, either to each other or to their own dwelling. Petitioners failed to establish the comparability of these properties to their home. Therefore, this evidence is not probative.

26. Petitioners contended the true tax value of the parcel should be the purchase price of the land and the cost of the improvements, but the assessed value exceeds the actual construction costs. Petitioners testified that they purchased their lot for \$170,000 and submitted the relevant sales disclosure form dated May 19, 1994. Petitioners further testified that they paid the contractor a total of \$379,919 to build their dwelling and presented contractor records to support this amount. Total costs were therefore \$549,919. Trending this amount to January 1, 1999, Petitioners initially contended the assessed value should be \$615,908. Petitioners subsequently introduced settlement statements indicating the total costs were \$507,572.71. Trending this amount, Petitioners contended the assessed value should be \$571,277.04. This unexplained difference has some negative impact on the credibility of Petitioners' figures, but ultimately the credibility of the construction costs is not the decisive point on this issue.
27. Although the parties agree the appropriate annual trending factor is three percent for the period 1997 and 1998, the parties disagree concerning the use of three percent as a trending factor for 1995 and 1996. The Board cannot assume a trending factor for 1997 and 1998 is equally appropriate for 1995 and 1996. Petitioners presented no authority in support of their contention that three percent is the appropriate trending factor for years prior to 1997. Petitioners' unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Further, Petitioners purchased the land in 1994. Relating that purchase price to a January 1, 1999, value would therefore require a different calculation than the trending of the 1995 improvements. Petitioners provided no such calculation nor did they even suggest an appropriate trending factor for the 1994 purchase price of the land.
28. The record lacks probative evidence or explanation that might relate the 1994 and 1995 purchase prices to the required valuation date of January 1, 1999. Consequently, the evidence that Petitioners presented about what they paid for the property has no probative value. *Long*, 821 N.E.2d at 471. Petitioners have therefore failed to establish a prima facie case of error in the assessment.

29. Because Petitioners failed to make a prima facie case for any change to their assessment, the Respondent's burden to support the current assessment with probative evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

SUMMARY OF FINAL DETERMINATION

30. Petitioners did not make a prima facie case. The Board finds for Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>.