

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

Petition #: 49-800-02-1-5-07202
Petitioner: Judith G. Ripley
Respondent: Washington Township Assessor (Marion County)
Parcel #: 8007768
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 Petitioner initiated an assessment appeal with the Marion County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 6, 2003.
2. The PTABOA's Notification of Final Assessment Determination was mailed to the Petitioner on February 25, 2005.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on March 24, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 11, 2005.
5. The Board held an administrative hearing on September 26, 2005, before the duly appointed Administrative Law Judge (ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Frank Kelly, Petitioner Representative
Judith Ripley, Petitioner
Jeremy Stow, Appraiser
 - b) For Respondent: Chad Polak, Washington Township Deputy Assessor

Facts

7. The property is located at 1812 East 75th Street, Indianapolis, Indiana. The subject property is classified as residential, as is shown on the property record card (PRC) for parcel # 8007768.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Values of subject property as determined by the Marion County PTABOA:
Land \$50,900 Improvements \$262,100 Total \$313,000
10. The Petitioner did not indicate on the Form 131 petition the assessed values that were being sought.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner contends that the value as assessed by the Respondent exceeds the market value-in-use of the subject property. The Petitioner purchased the subject property in May 1997 for \$230,000. *Kelly testimony; Pet'r Ex. 1.* While Mr. Kelly acknowledged that the Petitioner purchased the subject property from the Obert and Johanna Merrill Revocable Trust of 1997, he testified that the Land Contract was an "arms length" transaction that represented the market value of the subject property. *Kelly testimony.* In addition, the Petitioner submitted a letter from Michael Coppes who served as legal counsel to Obert and Johanna Merrill, trustees of the Obert and Johanna Merrill Revocable Trust of 1997. *Pet'r Ex. 4.* Mr. Coppes' letter states that negotiations for sale of the subject property were at "arms length" and that no discount or gift was involved. *Id.* Mr. Coppes' letter further states that the Merrills' researched property listing values before selling the subject property; Obert Merrill, though retired, was a successful businessman and real estate investor; and as the Merrills' attorney, he did not recommend or suggest that there was a gift involved in the transaction. *Id.*
 - b) As further evidence of the market value-in-use of the subject property, the Petitioner submitted an appraisal prepared by Jeremy Stow, a qualified residential appraiser. *Kelly testimony; Pet'r Ex. 2.* Mr. Stow utilized the sales comparison approach to arrive at an estimated value of the subject property of \$220,000. *Id.* The submitted appraisal had an effective date of January 1, 1999. *Id.* Mr. Stow testified that he stands by the value indicated on the appraisal. *Stow testimony; Pet'r Ex. 2.* Mr. Stow further testified that \$220,000 is an appropriate value for the subject property as of January 1, 1999. *Id.*
 - c) In addition, the Petitioner submitted an addendum to the appraisal in which Mr. Stow explained that he addressed the 759 square foot, one and one half story, structure on the property as a two car detached garage, although that structure

contains living quarters. *Pet'r Ex. 2*. Mr. Stow explained that the structure could have a negative affect on a buyer due to maintenance the structure would require, or it could have a positive affect on a buyer based on the possibility of using the structure for rental income or as "in-laws quarters." *Id.* Mr. Stow therefore determined that it was impossible to place a value on the structure other than as a garage. *Id.* Mr. Stow concluded that the structure would only affect marketability and not market value. *Id.* Finally, Mr. Stow testified that, while he should have addressed the aforementioned structure more specifically in his appraisal report, he did consider the structure in estimating the value of the subject property and that he determined that structure would affect only the marketability of the property and not its market value. *Stow testimony.*

- d) Finally, the Petitioner contends that the Board gives great deference to appraisals as determining market value-in-use, despite any perceived or actual problems with those appraisals. *Kelly testimony.* Based on this contention, the Petitioner contends that the appraisal is a better indicator of the subject property's market value-in-use than the Respondent's assessment or its trending of the Land Contract. *Id.*

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

- a) The PTABOA did not accept the Land Contract as a good indicator of the subject property's market value-in-use. *Polak testimony.* The Respondent, however, testified that he would be willing to use the amount paid for the subject property under the Land Contract (\$230,000) and trend it to a value as of January 1, 1999. *Id.* The Respondent testified that the subject property must have appreciated in value between May of 1997, when the Petitioner bought the property, and the relevant valuation date of January 1, 1999. *Id.* The Respondent used 3% per year as a rough estimate of the amount of appreciation of the subject property, although he admitted that 3% was not the exact amount of appreciation of the subject property. *Id.* Finally, the Respondent testified that his trending of the 1997 sale price resulted in a value of \$240,400 as of January 1, 1999. *Id.* The Petitioner did not accept the value of \$240,400 offered by the Respondent. *Kelly testimony.*
- b) The Respondent further contends that the appraisal submitted by the Petitioner is not a good indicator of the market value-in-use of the subject property. The appraisal does not include a 759 square foot, one and one half story dwelling that is located on the subject property. *Polak testimony.* The Respondent finally testified that he was unwilling to make any adjustment to value based on the appraisal due to the appraisal's failure to include the dwelling. *Id.*

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 # 6189.
- c) Exhibits:

- Petitioner Exhibit 1: Copy of recorded Land Contract
- Petitioner Exhibit 2: Appraisal of subject property
- Petitioner Exhibit 3: Photographs of subject property
- Petitioner Exhibit 4: Letter of attorney
- Petitioner Exhibit 5: PTABOA Findings

- Respondent Exhibit 1: Subject PRC
- Respondent Exhibit 2: PTABOA Findings
- Respondent Exhibit 3: Subject 1997 Land Contract
- Respondent Exhibit 4: Appraisal of subject property

- Board Exhibit A: Form 131 Petition
- Board Exhibit B: Notice of Hearing on Petition
- Board Exhibit C: Hearing sign-in sheet

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A petitioner seeking a 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 Petitioner did provide sufficient evidence to support her contentions. This conclusion was arrived at because:

- a) The 2002 Real Property Assessment Manual (Manual) defines the “true tax value” of real estate 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 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*, 2006 Ind. Tax LEXIS 4 (Ind. Tax 2006). A taxpayer, however, may use an appraisal prepared in accordance with the Manual’s definition of true tax value to rebut the presumption that an assessment is correct. MANUAL at 5; *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) 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4. Consequently, a party relying on evidence of a property’s market value as of a date substantially removed from January 1, 1999, must provide some explanation as to how that evidence demonstrates or is relevant to the property’s value as of January 1, 1999. *See Id.*
- d) To support her contention, the Petitioner submitted the Land Contract pursuant to which she purchased the property in May 1997 for \$230,000. *Pet’r Ex. 1*. Mr. Kelly testified that the Petitioner bought the property through an “arms length” transaction. *Kelly testimony*. The Petitioner also submitted a letter from Michael Coppes, who represented the owners of the subject property during the 1997 transaction. *Pet’r Ex. 4*. In that letter, Mr. Coppes stated that the purchase was an “arms length” transaction with no special discounts or gifts. *Pet’r Ex. 1; Kelly testimony; Pet’r Ex. 4*. Mr. Coppes further stated that the Merrills researched property listings before selling the subject property to the Petitioner and that Obert Merrill, though now retired, was a successful businessman and real estate investor. *Pet’r Ex. 4*.
- e) Mr. Stowe’s appraisal, which estimates the market value of the subject property to be \$220,000 as of January 1, 1999, constitutes additional probative evidence of the subject property’s market value-in-use. *Pet’r Ex. 2*. Mr. Stow, who is a certified

residential appraiser, used the sales comparison approach to value the subject property. *Id.* As noted above, the Manual expressly recognizes the sales comparison approach as a generally accepted appraisal technique relevant to determining a property's true tax value. MANUAL at 5.

- f) Both the sale price under the Land Contract and Mr. Stowe's estimation of value are probative evidence of the subject property's market value-in-use. While an appraisal is good evidence of market value at any given date, the actual sale price is often better evidence. In this case, the sale of the subject property occurred only seventeen months prior to the January 1, 1999, valuation date. *Pet'r Ex. 1.* Nonetheless, the Board recognizes that the subject property may have appreciated during that seventeen-month period. That unaccounted for appreciation, however, may well be offset by the fact that the Petitioner bought the subject property pursuant to a land contract. In such a transaction, the seller assumes a degree of risk in financing the sale that it would not assume were the buyer to use a more traditional type of financing. Consequently, one would expect the sale price to be slightly higher than if the buyer had financed the purchase through a loan secured by a mortgage.
- g) The 1997 sale price is further buttressed by Mr. Stowe's appraisal, which valued the property at \$220,000 as of January 1, 1999. As explained below, Mr. Stowe's failure to include the living quarters contained in the 759 square foot building as a component of value detracts somewhat from the reliability of his appraisal. Nonetheless, Mr. Stowe's opinion of value constitutes evidence that the value of the subject property as of January 1, 1999, is unlikely to have exceeded the \$230,000 sale price under the Land Contract.
- h) Based on the foregoing, the Petitioner established a prima facie case that the market value-in-use of the subject property was \$230,000 as of January 1, 1999. Therefore, the burden shifted to the Respondent to impeach or rebut the Petitioner's evidence. *See American United Life*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- i) The Respondent contends that the sale price under the Land Contract is not an acceptable indication of the subject property's market value-in-use because it does not include any appreciation occurring between the date the Petitioner purchased the property and the January 1, 1999, valuation date. *Polak testimony.* The Respondent offered to trend the sale price forward using 3% per year as a rough estimate of appreciation, resulting in a value of \$240,400. *Id.* The Respondent, however, admitted that 3% was only a rough estimate and that amount did not necessarily reflect the actual amount by which the subject property appreciated in value. *Id.* Absent some evidence to support the Respondent's proposed trending factor, the Board does not find the Respondent's estimation of \$240,400 to be more probative of the subject property's true tax value than the May 1997 purchase price.
- j) The Respondent also contends that the appraisal submitted by the Petitioner is not a good indication of the market value-in-use of the subject property because the appraisal does not include a 759 square foot, one and one half story dwelling located

on the subject property. *Polak testimony.* Mr. Stowe testified that he did consider the living area contained in that structure in estimating the value of the subject property, but that he did not believe that the structure had an effect on the market value of the subject property, other than as a two car detached garage. The Board is not entirely persuaded by Mr. Stowe's explanation in that regard, and it finds that Mr. Stowe's failure to characterize the structure properly detracts somewhat from the reliability of his appraisal. Nonetheless, the Board finds that Mr. Stowe's appraisal constitutes at least some evidence that the January 1, 1999, value of the subject property did not exceed the May 1997 purchase price under the Land Contract.

- k) The Petitioner demonstrated by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment should be \$230,000.

Conclusion

- 16. The Petitioner demonstrated by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment should be \$230,000. The Board finds in favor of the Petitioner and orders that the assessment shall be changed to \$230,000.

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: _____ [date]_____

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.