

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

Petition #: 49-801-02-1-5-08067
Petitioners: James J. & Laura M. Mulligan
Respondent: Washington Township Assessor (Marion County)
Parcel #: 8034636
Assessment Year: 2002

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 Marion County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 8, 2003.
2. The Petitioners received notice of the decision of the PTABOA on March 18, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on April 5, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 22, 2005.
5. The Board held an administrative hearing on August 17, 2005, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: John Johantges, Property Tax Group 1, Inc.
 - b) For Respondent: Chad Polak, Washington Township Assessor's Office

Facts

7. The subject property is classified as a two unit row type residential, as is shown on the property record card for parcel #8034636.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the Marion County PTABOA:
Land \$21,000 Improvements \$102,100 Total \$123,100.
10. The total Assessed Value requested by Petitioners on the Form 131 petition: \$50,000.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The Petitioners' representative submitted an appraisal for the subject property. The appraisal estimates the market value of the subject property to be \$50,000 as of January 1, 1999. *Johantges testimony; Pet'r Ex. 1.*
 - b) The Petitioners' representative presented a copy of the PTABOA hearing tape. At the PTABOA hearing, the county hearing officer stated the property was over assessed. *Johantges testimony; Pet'r Ex. 2.*
 - c) The appraisal of the subject property and the PTABOA hearing officer's statements support the Petitioners' contention that the assessment is too high. *Johantges argument.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The comparable properties used in the Petitioners' appraisal are flawed. The Respondent stated one of the comparables is too far away from the subject property and that the other comparables are frame construction while the subject dwelling is constructed of brick. *Polak testimony.*
 - b) The Respondent presented property record cards for two comparable properties. The dwellings on those properties are brick and they are almost identical in size to the subject property. The only difference between the properties is the neighborhood factor used in assessing them. *Polak testimony; Resp't Exs. 4, 5.*
 - c) The PTABOA hearing officer made the statements referenced by the Petitioners in the context of a discussion regarding how to quantify an over assessment. *Polak testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition.
 - b) The recording of the hearing.
 - c) Exhibits:

Petitioners Exhibit 1: Appraisal of subject property for January 1, 1999
Petitioners Exhibit 2: Tape recording of PTABOA Hearing

Respondent Exhibit 1: Subject Property Record Card (PRC)
Respondent Exhibit 2: Form 115
Respondent Exhibit 3: Copy of Petitioners' appraisal
Respondent Exhibit 4: PRC for 5039 Hillside Ave.
Respondent Exhibit 5: PRC for 5101 Hillside Ave.

Board Exhibit A: Form 131 petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Power of attorney
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. 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 provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend that the assessment of the subject property is too high. The Petitioners presented an appraisal of the subject property to support their contention.
 - b) 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). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals conducted in accordance with generally accepted appraisal techniques, to contest a property’s assessment. *See* MANUAL at 5; *see also* *Kooshtard Property VI, LLC v. White River Twp. Assessor*, No. 49T10-0412-TA-57, 2005 Ind. Tax LEXIS 76, at *5 (Ind. Tax Ct. Nov. 3, 2005). An assessor may rely on the same type of evidence to support an assessment. *See* *Kooshtard Property VI*, 2005 Ind. Tax LEXIS at * 11, n.6.

- c) One such generally accepted appraisal technique is the sales comparison approach to value, pursuant to which one “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 3. 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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.*
- d) 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. Consequently, in order to present evidence probative of a property’s true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates the property’s value as of January 1, 1999. *See Long v. Wayne Township 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).
- e) Here, the Petitioners submitted a certified Uniform Residential Appraisal Report prepared by Jeffrey S. Juday. The appraiser relied primarily upon the sales comparison approach to value and compared three properties that sold between January 1998 and August 1998 to the subject property in terms of various characteristics relevant to market value. The appraiser also adjusted the sale prices of the comparable properties to reflect significant differences between those properties and the subject property. Based on his sales comparison analysis, the appraiser estimated the market value of the subject property to be \$50,000 as of January 1, 1999.
- f) The appraisal submitted by the Petitioners is consistent with the Manual’s definition of true tax value and relates the value of the subject property to the relevant valuation date of January 1, 1999. The appraisal therefore constitutes probative evidence both

- that the current assessment is incorrect and that the amount requested by the Petitioners is the correct assessment. Thus, the Petitioners have established a prima facie case for a change in assessment.
- g) The burden shifted to the Respondent to impeach or rebut the Petitioners' appraisal. *See Meridian Towers*, 805 N.E.2d at 479.
 - h) The Respondent attempted to rebut the appraisal by pointing out that one of the comparables utilized by the appraiser is located a significant distance from the subject property and that the other comparables differed from the subject dwelling because they were frame construction as opposed to brick. As the Petitioners' representative explained, however, the appraisal adjusts the sale prices of the comparable properties to account for the differences between those properties and the subject properties in location, style and quality of construction. *Johantages testimony; Pet'r Ex. 1*.
 - i) The Respondent also attempted to support the assessment through its own evidence concerning sales of purportedly comparable properties.
 - j) The Respondent presented property record cards for two purportedly comparable properties. *Resp't Exs. 4, 5*. Those property record cards contain information about many of the same types of features as those addressed in the appraisal. *See Resp't Ex. 4, 5*. With the exception of construction type and square footage, however, the Respondent did not explain how the properties compared in terms of characteristics relevant to their market values-in-use. *See Long*, 821 N.E.2d at 471 ("It 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].") Moreover, the Respondent did not address how any differences between the purportedly comparable properties and the subject property affect their relative market values-in-use.
 - k) In addition, a review of the evidence submitted by the Respondent shows that the sales of its purportedly comparable properties occurred in 2004, approximately five years after the relevant valuation date of January 1, 1999. The Respondent did not explain how the sales from 2004 related to the value of the subject property as of January 1, 1999 as required by the Court in *Long*. *Long*, 821 N.E.2d at 471-72.
 - l) Based on the foregoing, the Respondent failed to impeach or rebut the appraisal submitted by the Petitioners. The preponderance of the evidence supports a finding that the current assessment is incorrect, and the correct assessment is \$50,000.

Conclusion

16. The Petitioners made a prima facie case. The Respondent did not rebut Petitioners' evidence. The Board finds in favor of the Petitioners. The assessment shall be changed to a total of \$50,000.

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: _____

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>>.