

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

Petition #: 53-009-04-1-5-00759
Petitioners: Charles R. Jr. & Diane Short
Respondent: Perry Township Assessor (Monroe County)
Parcel #: 015-30690-97
Assessment Year: 2004¹

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 Monroe County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 9, 2004.
2. The PTABOA mailed notice of its decision on September 24, 2004.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Monroe County Assessor on October 22, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 24, 2006.
5. The Board held an administrative hearing on April 18, 2006, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Charles R. Short Jr., Taxpayer
 - b) For Respondent: Judith Sharp, Monroe County Assessor
Marilyn Meighen, Attorney Representative
Ken Surface, County/Township Technical Advisor

¹ The Form 131 Petition indicates that the Petitioners are appealing from the March 1, 2003, assessment of the subject property. At the hearing, the parties agreed that the appeal is for the March 1, 2004, assessment date.

Facts

7. The property is classified as residential property, located at 2800 Olcott Blvd., Bloomington, Indiana as is shown on the property record card for parcel 015-30690-97.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. The PTABOA determined that the assessed value of the subject property is \$58,600 for the land and \$612,900 for the improvements for a total assessed value of \$671,500.
10. The Petitioners request a value of \$58,600 for the land and \$391,900 for the improvements for a total value of \$450,500.

Issue

11. Summary of Petitioners’ contentions in support of alleged error in assessment:
 - a) The Petitioners purchased the home in January, 2004, for \$450,000. *Short testimony; Pet’r Ex. 2.* The current assessment of \$671,500 is too high. *Short argument.*
 - b) The subject property originally was listed with ReMax Realty 487 days with an asking price of \$498,000. It was subsequently listed with Advantage Real Estate for 271 days at an asking price of \$450,000 before the Petitioners bought the property. *Short testimony; Pet’r Ex. 1.*
 - c) The blueprints for the subject property show that the subject dwelling contains approximately 7,000 square feet, not 9,859 square feet as shown on the property record card. *Short testimony, Pet’r Ex. 3.*
 - d) On two separate occasions, the Petitioners had to cancel appointments with an appraiser hired by the Respondent to appraise the subject property. *Short testimony; Sharp testimony; Resp’t Ex. E.* The Petitioners unsuccessfully tried to reschedule an appointment with the appraiser. *Short testimony.* The PTABOA then sent the Petitioners a Form 115 determination stating that the assessment would remain the same. *Id.*
 - e) The subject house is a box-style home with no details. *Short testimony.* It has street appeal, but is not of the same quality as the homes to which the Respondent seeks to compare it. *Id.* The purportedly comparables properties identified by the Respondent are all large homes, but the subject lacks any of the architectural detail of those homes. *Short argument.*
 - f) Comparable B presented by the Respondent contains marble, a magnificent stairway and kitchen, a 12/12 pitched roof, gables everywhere, and top quality windows and

arches. In addition, Comparable B is situated on three lots, whereas the subject house is situated on one lot, and Comparable B is larger than the subject house. *Short testimony.*

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

- a) The Respondent provided information concerning the assessed values of properties in the same neighborhood as the subject property. The Respondent contends that those properties are comparable to the subject property. According to the Respondent, the Howard Young (now owned by Christopher Hawes) property has a total finished area of 9,859 square feet, was built in 1997, and has an assessed value of \$657,800. *Resp't Ex. B; Sharp testimony.* The John Strobel property has a finished area of 4,812 square feet, was built in 1997, and has an assessed value of \$489,800. *Resp't Ex. C; Sharp testimony.*
- b) The Respondent admits that each of the comparables houses is of superior quality to the subject house. *Sharp testimony.* Nonetheless, Ms. Sharp testified to her opinion that the Young property is a \$1,000,000, property and that the subject property is worth \$600,000. *Id.* Ms. Sharp further acknowledged that the Strobel property exhibits much better quality workmanship than does the subject property, and that there were "shortcuts" taken on the subject property. *Id.*
- c) The Respondent submitted two sales disclosures for the Strobel property. The first sale is from 2003, and was for \$699,900. *Resp't Ex. D.* The second sale is from 2005, and was for \$765,000. *Id.* The Respondent contends that values in Monroe County are not going down. *Sharp testimony.* Hyde Park, where all of the properties are located, is a very stable upper income neighborhood. *Id.*
- d) Ms. Sharp testified that the Respondent would have been able to verify the value of the subject property if the Petitioners had allowed the Respondent's appraiser to appraise the property. *Sharp testimony.* Ms. Sharp further testified that the Petitioners had the opportunity to buy an under-priced home, that the sale was not an arm's-length transaction and that the realtors did not adequately market the subject property. *Sharp testimony.*
- e) The dimensions on the subject property's blueprints are the same as the dimensions on the property record card for the subject property. *Sharp testimony.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition,
- b) The digital recording of the hearing labeled BTR 6182,

- c) Petitioners' Exhibit 1 - Copies of MSL listings for the subject with the listing prices of \$450,000 and \$498,000,
Petitioners' Exhibit 2 - Copy of the Settlement Statement for the purchase of the property for \$450,000,
Petitioners' Exhibit 3 – Copy of Blue Prints submitted to Respondent (received by ALJ on April 27, 2006)²,

Respondent Exhibit A: Photograph of Short home and property record card,
Respondent Exhibit B: Photograph of home/parcel no. 015-01860-71 & property record card,
Respondent Exhibit C: Photograph of home/parcel no. 015-29567-08 & property record card,
Respondent Exhibit D: Sales disclosures for parcel no. 015-29567-08
Respondent Exhibit E: Letter dated September 14, 2004 from Travis Vencel to Judy Sharp.

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,
Board Exhibit E: Notice of County Assessor Representation,
Board Exhibit F: Request to Petitioners for copy of blueprint

- d) These Findings and Conclusions.

Analysis

- 14. The most applicable governing cases are:
 - a) A petitioner seeking review of the 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 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, 281 (Ind. Tax Ct. 2004). The assessing official must offer

² The Petitioners offered blueprints into evidence at the hearing, but did not have copies. The Respondent agreed to allow the Petitioners to submit copies of the blueprints subsequent to the hearing.

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 exceeds the market value of the subject property in light of the property's January 2004 sale price.
 - b) The Board now turns to the Petitioners' claim that the subject property is assessed in excess of its market value. 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.
 - c) 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*, 824 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. That type of evidence includes information regarding the sale of the subject property. *Id.* In fact, the sale price of a property is often the best evidence of that property's market value.
 - d) Here, the Petitioners submitted evidence that they bought the subject property for its listing price of \$450,000. *Short testimony; Pet'r Ex. 2*. In addition, Mr. Short testified that the subject property had been listed for a substantial period with two different realtors and that the seller had lowered its original asking price of \$498,000. *Short testimony; Pet'r Ex. 2*. Thus, the Petitioners submitted precisely the type of evidence recognized by the Manual as relevant to rebut the presumption that an assessment is correct.
 - e) The Manual, however, also 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, a party relying on evidence of a property's market value-in-use as of a date substantially removed from valuation date of January 1, 1999, must explain how that evidence demonstrates or is relevant to 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).

- f) In this case, the sale of the property for \$450,000 in January 2004 occurred five years after the January 1, 1999, valuation date. Absent evidence to the contrary, however, the Board does not accept the premise that the subject property decreased approximately 33% in value between 1999 and 2004. In fact, Ms. Sharp testified that the subject property is in a "very stable upper-income property neighborhood," and that property values are not decreasing. Thus, the January 2004 sale price is sufficient to raise a prima facie case that the property's market value-in-use did not exceed \$450,000 as of January 1, 1999.³
- g) The burden therefore shifted to the Respondent to impeach or rebut the Petitioners' evidence. *See American United Life Inc. Co. v. Maley*, 803 N.E.2d at 281.
- h) Judy Sharp testified to her belief that the sale was not an arms-length transaction and that, although the subject property was listed with two realtors, it was not adequately marketed. *Sharp testimony*. Ms. Sharp's testimony is entirely conclusory. She did not identify any basis for her belief that the Petitioners had a special relationship with the seller, nor did she identify any specific shortcomings concerning the realtors' attempts to market the subject property. The Board therefore assigns no weight to Ms. Sharp's testimony on those points.
- i) The Respondent also points to Mr. Short's own testimony that he thought the subject property was worth a bit more than he paid for it. *Meighen argument; Short testimony*. The fact that one party to a transaction believes that he obtained a good deal does not necessarily deprive the sale price of probative weight regarding the market value-in-use of the property that was the subject of the transaction. The fact that the price was sufficient to motivate the seller to part with the property is still an indication that the sale price equals the utility derived from the property. Moreover, the record demonstrates that the property had been listed for a substantial period at \$450,000 - the same amount as the sale price - without being sold. Thus, the Petitioners' opinion that he may have paid a little less than the property was worth was not necessarily reflected by the market at large.
- j) The Respondent also offered photographs of, and property record cards for, three purportedly comparable properties in an effort to support the current assessment. *Sharp testimony*. The Respondent further supplied sales disclosure statements for two separate sales of one of those properties. The Respondent, however, did not explain how those properties are similar to the subject property in terms of physical characteristics and other factors relevant to market value other than to note that all of the dwellings are large. *See Sharp testimony*. In fact, Ms. Sharp admitted that the

³ The Petitioners also contend that the Respondent used incorrect measurements for the subject dwelling in assessing the subject property. Because the Board finds that January 2004 sale price is dispositive of the subject property's market value, it does not separately address the Petitioners' claims regarding the measurement of the subject dwelling.

comparable properties exhibit superior quality and workmanship compared to the subject property. Ms. Sharp, however, did not provide any evidence to quantify the effect of those differences on the respective values of the properties. *See id.* Thus, the Respondent's evidence regarding the value of the purportedly comparable properties is not probative of the subject property's market value-in-use. *See Long*, 821 N.E.2d 471-72)(holding that the petitioners failed to explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences affected the relative market values of the properties).

- k) Based on the foregoing, the Petitioners demonstrated by a preponderance of the evidence that the current assessment is incorrect and that the subject property should be assessed for \$450,000.

Conclusion

- 16. The Petitioners demonstrated by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment is \$450,000. The Board finds in favor of the Petitioners and orders that the assessed value of the subject property shall be changed to \$450,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed accordingly.

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>.