
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

JERRY J. AND KAREN M. JOHNSON)	Petitions: 75-014-06-1-5-00003
TRUST,)	75-014-06-1-5-00003A
)	
Petitioner,)	
)	
v.)	Parcels: 10-2100-30200-02600
)	10-2100-30200-01700
)	
WAYNE TOWNSHIP ASSESSOR,)	Starke County
)	
Respondent.)	Wayne Township
)	
)	2006 Assessment

Appeal from the Final Determinations of the Starke
County Property Tax Assessment Board of Appeals

DECEMBER 4, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue: Does the evidence establish that the current assessment of the subject property, a rental house and garage, is too high and that the assessment must be changed?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Jerry J. and Karen M. Johnson Trust (Petitioner) filed petitions for review of assessment with the Starke County Assessor on March 20, 2007.

2. The Starke County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations on May 3, 2007.
3. On May 15, 2007, the Petitioner filed the Form 131 Petitions for Review of Assessment and elected to opt-out of small claims procedures.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The subject property consists of two contiguous parcels. The address is 6527 South Woodrow Street in North Judson, Indiana. Parcel 10-2100-30200-02600 has a single-family rental house. Parcel 10-2100-30200-01700 has a detached garage.
5. The PTABOA determined the total assessed value for both parcels is \$63,500.
6. The Petitioner contends the total assessed value should be \$57,000.
7. Patti Kindler, the designated Administrative Law Judge, held the hearing on September 13, 2007. She did not conduct an on-site inspection of the property.
8. The following persons were present and sworn as witnesses:
For the Petitioner – Jerry J. Johnson,
For the Respondent – Rhonda R. Milner, Starke County Assessor,
Ronald L. Simoni, certified real estate appraiser and
PTABOA member.
9. The following exhibit was presented for the Petitioner:¹
Petitioner Exhibit 1 – Two Multiple Listing Service (MLS) sales documents for
6505 S. Woodrow Street, North Judson, Indiana.

¹ During the hearing, the Petitioner also requested that the appraisal attached to the Form 131 (*Board Ex. A*) be admitted as evidence. The Respondent did not object. The Respondent subsequently introduced portions of the same document. (*Resp't Ex. 1*). The entire appraisal as of March 7, 2007, prepared and certified by Steve Whited, is considered as part of the evidence in this case.

10. The following exhibits were presented for the Respondent:

- Respondent Exhibit 1 – Pages 1, 2, and 3 from the Petitioner’s appraisal,
- Respondent Exhibit 2 – Subject property record cards,
- Respondent Exhibit 3 – Form 115, Notifications of Final Assessment Determination,
- Respondent Exhibit 4 – Form 131 Petitions,
- Respondent Exhibit 5 – Photograph of the subject property,
- Respondent Exhibit 6 – Petitioner’s appraisal grid with the Respondent’s proposed revisions,
- Respondent Exhibit 7 – Photographs of the comparable properties used in the Respondent’s appraisal grid,
- Respondent Exhibit 8 – Location map of comparable properties utilized by the Petitioner and the Respondent,
- Respondent Exhibit 9 – The Respondent’s appraisal grid using three comparable properties,
- Respondent Exhibit 10 – MLS sales data for 516 Magnolia,
- Respondent Exhibit 11 – MLS sales data for 6175 S. John Street,
- Respondent Exhibit 12 – MLS sales data for 309 E. Weinger Street,
- Respondent Exhibit 13 – MLS sales data for 6195 S. John Street.

11. The following additional items are part of the record of proceedings:

- Board Exhibit A – Form 131 Petitions with attachments (one for each parcel),
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing sign-in sheet,
- Board Exhibit D – Notice of County Assessor Representation.

OBJECTION

12. The Petitioner objected to admission of the Respondent’s Exhibits 7, 9, 11, 12, and 13 because they relate to sales that took place in 2006, rather than 2005. As discussed later in this decision at paragraph 19, evidence of value for a 2006 assessment must somehow be related to the valuation date of January 1, 2005. This point, however, goes to the weight or probative value that the evidence has, rather than admissibility. Furthermore, the Petitioner relied in part on an appraisal as of March 7, 2007, that used comparable sales from 2006 as part of its analysis. Therefore, this objection is overruled.

CONTENTIONS

13. Summary of the Petitioner's contentions:
- a) According to a certified appraisal, the value of the subject property was \$57,000 as of March 7, 2007. The appraisal used both the cost and sales comparison approaches to value. *Johnson testimony; Board Ex. A*. Although the appraiser used 2006 sales, the Respondent's appraisal grid is based on sales from 2006 as well. *Johnson testimony*.
 - b) The property at 6505 South Woodrow is the best comparable. It is located next door to the subject property. *Johnson testimony*. It sold for \$42,900 on December 21, 2004, which was less than two weeks from the valuation date. It sold again for \$77,500 on July 6, 2005, but that sale was after being remodeled to "like new" condition. *Id.; Pet'r Ex. 1*. The sale for \$42,900 in December is the best representation of the value of the subject property and supports the claim that the assessment of the subject property is excessive at \$63,500. *Johnson testimony*. The subject property would sell for no more than \$50,000 based on the sale of this comparable property. *Id.*
 - c) Tenants rent the subject property for \$625 per month with no utilities included. It is difficult to find tenants at this rental rate. *Johnson testimony*. The subject property needs new siding, a new furnace, new carpeting, and new windows. The subject property would require at least \$25,000 worth of repairs, not including labor, to sell for what the 6505 South Woodrow Street property sold for in July of 2005. *Id.*
14. Summary of the Respondent's contentions:
- a) There are several flaws in the appraisal. For example, the property is not located on US 39. It is on a street just off US 39. *Simoni testimony*. Several adjustments in the

- appraisal are incorrect. *Resp't Ex. 6*. The amount of gross adjustments made by the Petitioner's appraiser to the purported comparable property on Blackberry Street demonstrates it is not truly comparable. *Simoni testimony*. The neighborhood has experienced an annual increase of three to five percent, but no time adjustments were made to the sale prices of these comparable properties. *Id.*
- b) Several better comparable properties were available and should have been used to determine the correct value. *Simoni testimony*; *Resp't Exs. 7 – 13*. The three most comparable properties establish the value should be \$70,000. *Id.*
- c) The appraisal described the condition of the home as average, which contradicts the Petitioner's assertion that the structure has significant deterioration. *Simoni testimony*. County officials assessed the property using a grade classification of D+2 to give the Petitioner the benefit of the doubt. *Id.*

ADMINISTRATIVE REVIEW AND BURDEN

15. 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).
16. 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”).

17. 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

18. Real property is assessed based on 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 (hereafter 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. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A* (incorporated by reference at 50 IAC 2.3-1-2). 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.
19. The Petitioner presented an appraisal that concluded the combined value of the parcels was \$57,000 as of March 7, 2007. But the required valuation date for a 2006 assessment is January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3; *see also 117 Republic Limited Partnership v. Brown Twp. Assessor*, 851 N.E.2d 399, 400 n. 2 (Ind. Tax Ct. 2006). Any evidence of value relating to a different date must also have an explanation

about how it demonstrates or relates to value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469-471 (Ind. Tax Ct. 2005).

20. The appraisal itself does not comply with the required valuation date. Furthermore, the record contains no additional probative evidence or substantial explanation that might establish how the appraisal's opinion of value relates to value as of January 1, 2005. Therefore, the appraisal is not probative evidence. It does not help to establish the Petitioner's claim.²

21. The Petitioner argued the sale of 6505 South Woodrow Street for \$42,900 on December 21, 2004, supports the claim that the current assessment of the subject property is excessive. The Respondent also identified the same property as a comparable, but contended that the sale in July of 2005 for \$77,500 was a better indication of the property's value.³ Undisputed testimony established that the first sale took place when that property was in need of repair and that the second sale took place after it had been remodeled. Although both parties attempted to rely on the 6505 South Woodrow property as a comparable, neither of them provided the kind of facts and analysis that might help to establish one sale or the other as a valid comparable. *See Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (stating that the parties are responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant market value-in-use of the

² The certification page of the appraisal is unsigned. The appraisal, therefore, does not conform to USPAP requirements. "Comment: A signed certification is an integral part of the appraisal report. An appraiser who signs any part of the appraisal report, including a letter of transmittal, must also sign this certification." THE APPRAISAL FOUNDATION, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE AND ADVISORY OPINIONS, Standards Rule 2-3 at 31 (2004). The Respondent, however, did not raise this issue and the Board has not completely rejected the appraisal for that reason.

³ The Respondent contended the sale on December 21, 2004, may have been a distressed sale or under some other special circumstances that mean it should be given no weight. Such conclusory speculation, however, is not probative evidence and it does nothing to rebut or impeach that sale. The MLS listing indicates the home was sold by a private owner through a real estate office after 109 days on the open market. *Pet'r Ex. 1*. If there was evidence that the circumstances of this sale were in some way unusual, the Respondent should have presented facts about it.

properties and that where the record lacks such explanation, the evidence of purported comparable sales carries no probative value.)

22. The conclusory testimony that it would take \$25,000 of repairs, not including Mr. Johnson's labor, to be able to sell the subject property for as much as the second sale of 6505 South Woodrow is not probative evidence. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998). Thus, neither of the 6505 South Woodrow Street sales helps to establish what the assessment of the subject property should be. *Long*, 821 N.E.2d at 471 (explaining that in making its case the taxpayer has the duty to walk the Board through every element of its analysis).
23. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

24. The Board finds in favor of the Respondent. The assessments will not be changed.

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

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>