
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

JERRY J. AND KAREN M. JOHNSON)	Petition: 75-014-06-1-5-00003B
TRUST,)	
)	Parcel: 10-2100-30200-03900
Petitioner,)	
)	Starke County
v.)	
)	Wayne Township
WAYNE TOWNSHIP ASSESSOR,)	
)	2006 Assessment
Respondent.)	

Appeal from the Final Determination 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, 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 a petition 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 determination on May 3, 2007.
3. On May 15, 2007, the Petitioner filed a Form 131 Petition for Review of Assessment and elected to opt-out of small claims procedures.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The subject property is a single-family rental dwelling located at 3958 Third Street in North Judson, Indiana.
5. The PTABOA determined the total assessed value of the property is \$58,900 (\$7,900 for the land and \$51,000 for the improvements).
6. The Petitioner contends the total assessed value should be \$53,000.
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 Petitioner presented the following exhibit: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 Respondent presented the following exhibits:
- Respondent Exhibit 1 – Pages 1, 2, and 3 from the Petitioner’s appraisal,
 - Respondent Exhibit 2 – Subject property record card,
 - Respondent Exhibit 3 – Form 115, Notification of Final Assessment Determination,
 - Respondent Exhibit 4 – Form 131 Petition,
 - Respondent Exhibit 5 – Photograph showing view of property across from 402 Blackberry Street,
 - Respondent Exhibit 6 – Property record card for 402 Blackberry Street,
 - Respondent Exhibit 7 – Petitioner’s appraisal grid with the Respondent’s proposed revisions and photographs of the comparable properties,
 - Respondent Exhibit 8 – Photograph of the subject property and photographs of comparable properties identified by the Respondent with sales prices,
 - Respondent Exhibit 9 – Location map of the subject and comparable properties utilized by the Petitioner and the Respondent,
 - Respondent Exhibit 10 – MLS sales data for 6505 S. Woodrow,
 - Respondent Exhibit 11 – The Respondent’s appraisal grid using three comparable properties,
 - Respondent Exhibit 12 – MLS sales data for 311 North Franklin Street, 4775 W SR 10, and 402 Blackberry Street.
11. The following additional items are part of the record of proceedings:
- Board Exhibit A –Form 131 Petition with attachments (including appraisal),
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign in sheet,
 - Board Exhibit D – Notice of County Assessor Representation.

OBJECTION

12. The Board’s procedural rules for plenary appeals require that a party to the appeal must provide other parties with copies of documentary evidence or summaries of testimony at least five business days prior to the hearing. 52 IAC 2-7-1. The purpose of this requirement is to allow both parties to be informed, to avoid surprises, and to assure a more organized, efficient and fair consideration of the issues. Neither party complied with these requirements by exchanging evidence before the hearing.

13. During the proceedings, the Petitioner objected to the admission of the Respondent's exhibits 9 through 12 and related testimony because those items brought in new material that had not been exchanged.
14. The Board emphasizes that all parties must comply with the exchange provisions. The Petitioner's objection is well taken and hereby granted. This appeal will be decided without consideration of Respondent's Exhibits 9 through 12 and testimony relating to those exhibits.

CONTENTIONS

15. Summary of the Petitioner's contentions:
 - a) According to a certified appraisal, the value of the subject property was \$53,000 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) A nearby residential property located at 6505 S. Woodrow is the best comparable property. *Johnson testimony.* This property sold for \$42,900 on December 21, 2004, which was less than two weeks from the valuation date. This same property sold for \$77,500 on July 6, 2005, but that was after it was 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 \$58,900. *Johnson testimony.* The subject property would sell for no more than \$44,000 based on the sale of this comparable property. *Id.*
 - c) The subject dwelling is in bad shape. Some of the floors are rotting, and the property could use new siding, windows, drywall, and kitchen cabinets. Tenants currently rent

the property for \$550 per month with no utilities included. It is difficult to find tenants for this property. *Johnson testimony*.

16. 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*. The appraisal described the condition of the home as average, which contradicts the Petitioner's assertions the structure has significant deterioration. *Id.* Several additional adjustments in the appraisal are incorrect. *Id.*; *Resp't Ex. 7*. 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*.
- b) The 2005 and 2006 sales of properties that are more comparable than those selected by the Petitioner's appraiser support the current assessed value. *Simoni testimony*; *Resp't Ex. 8*.
- c) The property at 6505 Woodrow is comparable, but the 2004 sale is not a valid indication of fair market value because it was likely a distressed sale. *Simoni testimony*; *Resp't Ex. 8*.

ADMINISTRATIVE REVIEW AND BURDEN

17. 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).

18. 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”).
19. 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

20. 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.

21. The Petitioner presented a certified appraisal that concluded the value of the residential parcel was \$53,000 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).
22. 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.
23. 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.² Undisputed testimony established that the first sale took place when that property was in need of repair (a "handyman special") and that the second sale took place after it had been remodeled to "like new" condition. 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

² 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.

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

24. Furthermore, the Petitioner failed to provide any substantial explanation about how the first sale price of 6505 South Woodrow Street supports the proposed value for the subject property. 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).
25. Conclusory statements about what the property would sell for are not probative evidence. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998).
26. 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

27. The Board finds in favor of the Respondent. The assessment of the subject property 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>>