

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

Petitions: 76-012-02-1-5-00005 and 76-012-02-1-5-00006
Petitioner: Craig and Elizabeth Williams
Respondent: Pleasant Township Assessor (Steuben County)
Parcels: 06-27-140-115-000-50 and 06-27-140-107-000-50
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated assessment appeals with the Steuben County Property Tax Assessment Board of Appeals (the PTABOA) by filing Petitions For Review (Form 130) dated May 6, 2004.
2. The PTABOA held a hearing on those petitions on January 31, 2005, but as of September 13, 2006, it did not issue a written determination about them.
3. The Petitioner filed a Form 131 appeal to the Board on February 8, 2006, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 13, 2006.
5. Administrative Law Judge Ted Holaday held an administrative hearing in Angola on September 13, 2006.
6. Persons present and sworn as witnesses at the hearing:
For Petitioner – Craig Williams and Elizabeth Williams, property owners,
For Respondent – Larry H. May, Steuben County Assessor.

Facts

7. The subject property is in Angola. There are two parcels. A single-family residence is on one. The other is an adjoining vacant lot.
8. The Administrative Law Judge (the ALJ) did not inspect the property.
9. The total assessed value listed on the property record cards (PRCs) for both parcels is \$142,600 as of March 1, 2002. At the hearing, the parties agreed that subsequently this

amount was reduced and currently the total assessment for both parcels is \$107,200. While the PRCs show that reduced value for the 2004 assessment, they do not show the change for 2002. The PTABOA's failure to issue a written determination results in an ambiguity on this point.

10. The Petitioners requested a total of \$85,000 for both parcels.

Issue

11. Summary of Petitioner's contentions in support of alleged error:

- a) The assessed value is not equal to the market value-in-use of the subject property. The total assessment for both parcels should not exceed \$85,000. *C. Williams testimony.*
- b) The Petitioners bought this property for \$85,000 in 1999. The asking price had been \$89,900. The property was listed with a realtor on the open market since March 1999. The Petitioners reached agreement with the seller in November 1999 and the sale closed in December 1999. The property was on the open market for 275 days, while the average time for residential property in Steuben County was only 130 days. This time shows reasonable market exposure. Furthermore, neither party was under duress or compulsion. The Petitioners paid fair market value. *C. Williams testimony; Petitioners Ex. 1, 2, 11.*
- c) A certified appraisal of the subject property (both parcels) estimates market value was \$90,000 as of November 12, 1999. This appraisal from Putnam Appraisals, Inc. used both the cost approach and the sales comparison approach. "The sales comparison analysis is considered to be the most reliable method of valuing single-family residences The income approach is not developed due to a lack of similar rental properties in the area. The cost approach serves to support the sales comparison." *Petitioners Ex. 3.*
- d) A "Comparative Market Analysis" provides information regarding three comparable sales. This document, dated November 1, 1999, estimates a sale price of \$84,648 for the subject property. *Petitioners Ex. 5.*

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

- a) The subject property consists of two parcels at 810 W. Broad Street. The PRCs list the 2002 assessed values as \$119,600 for the parcel with the residence and \$23,000 for the unimproved parcel. *Respondent Ex. 2, 2A.* Nevertheless, those values changed. Currently, the assessed values are \$88,700 and \$18,500. The total assessed value is currently \$107,200. *May testimony.*
- b) The subject property and the Respondent's three comparables are in the same neighborhood. *Respondent Ex. 2, 2A, 3, 4, 5, 6; May testimony.*

- c) The assessments and actual sales of the comparables demonstrate that the assessed value of \$107,200 for the subject property is fair. *May testimony.*
- d) The comparable at 113 N. Powers shows a 1999 sale for \$97,500. The assessment uses the same base rate for land and the same neighborhood factor as the subject property. This comparable has only one lot. The house is bigger and older than the subject property. This comparable also has two detached garages. The sale price and its \$92,700 assessment support an assessment of \$107,200 for the subject property. *Respondent Ex. 4; May testimony.*
- e) The comparable at 304 Fieldcrest has a smaller lot and smaller house. It also has an attached garage, rather than a detached garage. It was assessed for \$71,800 as of March 1, 2002. In 2004, it sold for \$80,000. *Respondent Ex. 5; May testimony.*
- f) The comparable at 300 Fieldcrest has only one lot and is not nearly as large as the subject property. The square footage of the home, however, is almost the same as the subject property. It was assessed for \$79,400 as of March 1, 2002. In 2005, it sold for \$97,500. *Respondent Ex. 6; May testimony.*
- g) There was appreciation in value from 1999 through 2005, but the amount has been difficult to determine. *May testimony.*
- h) Comparables demonstrate that the assessment for the subject property is fair. *May testimony.*
- i) The appraisal offered by the Petitioners is not persuasive because it was prepared for mortgage purposes only. *May testimony.*
- j) The purchase price and appraisal are not persuasive because the guidelines require assessments to break down land and improvements. *May testimony.*

Record

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

- a) Digital recording of the hearing,
- b) Petitioner Exhibit 1 – Offer/Counter Offer Forms regarding November 1999 purchase of subject property,
 Petitioner Exhibit 2 – Sales Disclosure Form, Deed and other documentation regarding November 1999 purchase of subject property,
 Petitioner Exhibit 3 – Appraisal of subject property as of November 12, 1999,
 Petitioner Exhibit 4 – PRC for subject property, PRCs and Sales Disclosure Forms for Appraisal Comparables,

Petitioner Exhibit 5 – Comparative Market Analysis dated November 1, 1999,
Petitioner Exhibit 6 – Form 130 Petitions for both parcels,
Petitioner Exhibit 7 – "Demystifying Fair Market Value" article attributed to
Beard Miller Company,
Petitioner Exhibit 8 – Respondent's evidence from PTABOA hearing,
Petitioner Exhibit 9 – IBTR Final Determination, Toms v. DLGF,
#45-032-02-1-5-00315,
Petitioner Exhibit 10 – IBTR Final Determination, Cole v. Richland Twp.
#04-015-02-1-5-00002,
Petitioner Exhibit 11 – MLS listing for subject property,
Petitioner Exhibit 12 – Form 131 Petitions for both parcels,

Respondent Exhibit 1 and 1A – Notices of County Assessor Representation,
Respondent Exhibit 2 – PRC for parcel 06-27-140-115-000-50,
Respondent Exhibit 2A – PRC for parcel 06-27-140-107-000-50,
Respondent Exhibit 3 – Plat map,
Respondent Exhibit 4 – PRC and Sales Disclosure Form for 113 North Powers,
Respondent Exhibit 5 – PRC and Sales Disclosure Form for 304 Fieldcrest Drive,
Respondent Exhibit 6 – PRC and Sales Disclosure Form for 300 Fieldcrest Drive,

Board Exhibit A – Notices of Hearing,
Board Exhibit B – Cover letter for 131 Petitions,
Board Exhibit C – Form 131 Petitions,
Board Exhibit D – Form 130 Petitions,
Board Exhibit E – Minutes from PTABOA hearing on January 31, 2005,
Board Exhibit F – Hearing Sign In Sheet,

c) These Findings and Conclusions.

Analysis

14. The Board has the jurisdiction and authority conveyed by statute. The Board must "conduct an impartial review of all appeals ... from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law." Ind. Code § 6-1.5-4-1.
15. The path to review of an assessment is provided in Ind. Code § 6-1.1-15 and specifically requires going through the county PTABOA. "After the hearing the county property tax assessment board of appeals shall, by mail, give notice of its determination to the taxpayer" Ind. Code § 6-1.1-15-2.1(e). The PTABOA should prepare its determination within sixty days. Ind. Code § 6-1.1-15-(i).

16. The most applicable portions of the statute authorizing the Board to review an assessment are:

A taxpayer may obtain a review by the Indiana board of a county property tax assessment board of appeals action with respect to the assessment of that taxpayer's tangible property if the county property tax assessment board of appeals' action requires the giving of notice to the taxpayer.

In order to obtain a review by the Indiana board under this section, the party must file a petition for review with the appropriate county assessor not later than thirty (30) days after the notice of the county property tax assessment board of appeals action is given to the taxpayer.

Ind. Code § 6-1.1-15-3(a) and (c).

17. The most applicable governing cases are:

- a) The PTABOA has a duty to conduct a hearing and rule on a properly submitted Petition For Review (Form 130) within prescribed periods, but there is no statutory provision governing default. Furthermore, nothing in the statute implies a legislative desire to permit circumvention of the administrative process. *State Bd. of Tax Comm'rs v. Mixmill Mfg.*, 702 N.E.2d 701, 704 (Ind. 1998). "[T]he legislature intended to require the taxpayer to follow all statutory procedures for review before going to the Tax Court. This is not an irrational requirement." *Id.* Where the PTABOA defaults on its obligations, a taxpayer's appropriate remedy is to bring a mandamus action against the PTABOA in Tax Court to enforce the duty to act on such a petition. *Id.* at 704-705; *State Bd. of Tax Comm'rs v. L. H. Carbide*, 702 N.E.2d 706, 707 (Ind. 1998); *see also Alcoils v. State Bd. of Tax Comm'rs*, 727 N.E.2d 795, 799 (Ind. Tax Ct. 2000).
- b) 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).
- c) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *Fidelity Fed. Sav. & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005); *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").

- d) 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.
18. The statutes and case law discussed above make it very clear that the process the legislature has established for review of property tax assessments must go through the PTABOA. Even though the statutes provide no default provision for what happens when the PTABOA fails to complete its work, it is clear that a PTABOA decision is required before any further review can proceed. In *Mixmill* and *L. H. Carbide*, the Supreme Court determined that taxpayers could not skip completion of the administrative review process and proceed with judicial review. In this case, the Petitioners present a slightly different question because they seek only to advance to the next step of the administrative review process with their 131 Petitions to the Board. This difference, however, is not enough to justify a different result. Unfortunately, the Board must conclude that it lacks jurisdiction to make a determination about the disputed assessments.
19. The Supreme Court stated "[w]e hope that the county officials will not put [the taxpayer] and themselves to the expense of a mandamus action" to force the PTABOA to complete its duties. *Mixmill*, 702 N.E.2d at 705; *accord L.H. Carbide*, 702 N.E.2d at 707. The Board has the same hope in this case. But for the lack of jurisdiction, the Board would determine that the Petitioners provided sufficient evidence to support their claim because:
- a) 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 guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter GUIDELINES). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may 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.
- b) For the 2002 reassessment, an assessment is to reflect value as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation about how those values demonstrate, or are relevant to the value of the subject property as of

January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c) In order to establish probative evidence based on comparability, one must explain the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affect the market value-in-use of the properties. *Long*, 821 N.E.2d at 471. Without such a comparison, statements that the properties are similar or comparable are conclusory and they have no probative value. *Id.*; *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d) As noted above, the Guidelines are only a starting point. There are several other ways to prove what the assessment should be. Sales information and appraisals regarding the subject property are two of those ways.
- e) The undisputed evidence establishes that the Petitioners paid \$85,000 for the entire property in 1999. The evidence is more than sufficient to establish they paid fair market value. Furthermore, the Respondent offered no probative evidence to the contrary. This part of the Petitioners' case is the most persuasive.
- f) The appraisal is a valid alternative approach. While its opinion of value as of November 12, 1999, is slightly higher than the purchase price, the appraisal is relevant, probative evidence that shows the current assessment is too high and supports a value close to what the Petitioners paid.
- g) The appraisal was prepared for Cendant Mortgage Services. The appraisal is by a certified appraiser who specifically stated, "I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan." *Petitioners Ex. 3*. The Respondent attempted to attack the appraisal because it was for mortgage purposes only. The conclusory statements that the appraised value is somehow suspect for that reason are not probative evidence. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.
- h) If the sale price of the subject property were not in evidence, the appraisal alone would be sufficient evidence to support an assessed value of \$90,000.
- i) The Respondent attempted to support the current assessments with purportedly comparable sales and assessments. This evidence, however, lacks probative value. The Respondent failed to provide facts and analysis that might support any meaningful comparison. *See Long*, 821 N.E.2d at 471 (it is not the Board's responsibility to review all the documents to determine whether properties are comparable — the party offering a comparable must explain the characteristics of the subject property, how those compare to the comparable, and how any differences affected the relevant market value-in-use of the properties). In

addition, the assessments and sales that the Respondent offered appear to support a value somewhat lower than the current assessment.

Conclusion

20. Unfortunately, the Board does not have jurisdiction to make a final determination about the assessments because of the PTABOA's unjustified and unacceptable failure to complete its duties.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review reluctantly dismisses this case. The effect of this dismissal will be to permit the PTABOA to complete its duties and issue a determination, which it should have done long ago.

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>.