

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

Petitions #: 84-002-02-1-5-00888
84-002-02-1-5-00889
84-002-02-1-5-00890
84-002-02-1-5-00891

Petitioners: Phillip Michael & Malka Rae Frandzel

Respondent: Harrison Township Assessor (Vigo County)

Parcels #: 118-06-14-404-003
118-06-14-404-010
118-06-14-404-012
118-06-14-404-013

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 Petitioners initiated an assessment appeal for each parcel with the Vigo County Property Tax Assessment Board of Appeals (the “PTABOA”) by written documents dated October 27, 2003.
2. The PTABOA mailed notices of its decisions on August 4, 2004.
3. The Petitioners filed appeals to the Board by filing a Form 131 for each parcel with the county assessor on August 30, 2004. The Petitioners elected to have the cases heard as small claims.
4. The Board issued notices of hearing to the parties dated May 12, 2005.
5. The Board held an administrative hearing on June 22, 2005, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn as witnesses at the hearing:
 - a) For Petitioners – Phillip M. Frandzel, owner,
 - b) For Respondent – Debbie Cagle, Representative of Harrison Township Assessor, Richetta J. Hale, Harrison Township Chief Deputy Assessor, Ann Akers, PTABOA member, Gloria Donham, PTABOA member,

Susan McCarty, Vigo County Chief Deputy Assessor,
Deana J. Chrisman, Vigo County Assessor's Office.

Facts

7. The subject properties are vacant residential lots, each measuring 38 feet by 130 feet, located at 1529 N. 28th Street, 1500 N. 29th Street, 1502 N. 29th Street, and 1510 N. 29th Street in Terre Haute. Only two of the lots are contiguous.
8. The Administrative Law Judge (the "ALJ") did not conduct an inspection of the property.
9. The assessed value as determined by the PTABOA:

Parcel 118-06-14-404-003		
Land \$3,200	Improvements \$0	Total \$3,200,
Parcel 118-06-14-404-010		
Land \$3,200	Improvements \$0	Total \$3,200,
Parcel 118-06-14-404-012		
Land \$3,200	Improvements \$0	Total \$3,200,
Parcel 118-06-14-404-013		
Land \$3,200	Improvements \$0	Total \$3,200.
10. The assessed value requested by Petitioners:

Parcel 118-06-14-404-003		
Land \$1,500	Improvements \$0	Total \$1,500,
Parcel 118-06-14-404-010		
Land \$1,500	Improvements \$0	Total \$1,500,
Parcel 118-06-14-404-012		
Land \$1,500	Improvements \$0	Total \$1,500,
Parcel 118-06-14-404-013		
Land \$1,500	Improvements \$0	Total \$1,500.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The current assessed values are over-stated compared to the 1998 sale price of \$6,000 of four similar lots located one-half of a block from the subject properties. *P. Frandzel testimony; Petitioner Exhibit 2.*
 - b) The lots located one-half of a block away from the subject properties are similar to the subject properties. They sold on December 1, 1998, one month before the 2002 assessment date of January 1, 1999, for a total of \$6,000 in an arms'-length transaction. That price is equivalent to \$1,500 per lot. The subject properties and these four lots all measure 38 feet by 130 feet. *P. Frandzel testimony; Petitioner Exhibit 2.*

- c) There are two lots on the same block as the subject properties listed for sale at \$2,000 per lot. They sold on July 22, 2003, for \$1,333 per lot. *P. Frandzel testimony; Petitioner Exhibit 1.*
- d) The 2003 sale suggests there has not been any appreciation in value of residential lots in the McKeen Park Place tract between December 1998 and July 2003. *Petitioner Exhibit 1.*

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

- a) The sales of other lots in the area support the current assessed value of subject properties. Three lots in the same block as the subject sold for \$6,700 (\$2,333 per lot) on February 6, 1998. *Donham testimony; Respondent Exhibit 1.*¹
- b) Other lots near the subject properties have the same assessed value. This is evidence that all vacant lots were assessed similarly. *Donham testimony; Respondent Exhibit 2.*
- c) The 1998 sale of the four lots presented by the Petitioners might not represent an arms'-length transaction and, therefore, may not represent a valid comparable sale because a power of attorney was involved in the sale. *McCarty testimony; Petitioner Exhibit 2.*

Record

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

- a) The Petition,
- b) The tape recording of the hearing labeled 6202,
- c) Exhibits:
 - Petitioner Exhibit 1 – A copy of the Form 131 with a statement of contentions, a list of the other parcels under appeal, a copy of the Form 115, the subject property record card, a copy of the Form 130, a statement of the Form 130 contentions, a copy of a plat map highlighted to show the subject properties and comparable properties,
 - Petitioner Exhibit 2 – A copy of offer to purchase, a counter offer, and closing statement for four lots identified as 1427 N. 29th Street,
 - Petitioner Exhibit 3 – A copy of page 2 from the Form 115,

¹ Ms. Donham testified that this sale involved two lots and the price per lot would be \$3,350. If that were correct, the sale would support the current assessments of \$3,200 per lot. The Sales Disclosure Form itself, however, lists three lots, which would be only \$2,230 per lot. This fact contradicts that testimony and substantially lowers the price per lot that this evidence would support.

Petitioner Exhibit 4 – A copy of an article from the Terre Haute Tribune-Star dated January 23, 2004,

Respondent Exhibit 1 – Sales disclosure form for a property located near the subject properties,

Respondent Exhibit 2 – The property record cards for properties identified as Parcel #118-06-14-404-011, Parcel #118-06-14-404-002, Parcel #118-06-14-405-001, Parcel #118-06-14-405-002, and Parcel #118-06-14-405-003,

Board Exhibit A – Form 131 petitions,

Board Exhibit B – Notices of Hearing,

Board Exhibit C – Hearing Sign In Sheet,

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) Petitioners seeking review of a determination of an assessing official have 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 a case, taxpayers 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 Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' 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 Petitioners' 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) 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 (hereafter GUIDELINES). 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.

- b) For the 2002 reassessment, an assessment is to reflect value of the property 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 how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) The Petitioners offered evidence relating to the sale price of four lots and the characteristics of these lots. The evidence establishes that those lots are also vacant lots. Each lot is 38 feet by 130 feet, as are the subject properties. These comparables are located within half of a block of the subject properties. Thus, the Petitioners established comparability of these lots to the subject property.
- d) The evidence also establishes that in 1998 the comparable property sold for \$6,000, or \$1,500 per lot, in an arms'-length transaction. The 1998 sale price relates closely to the required valuation date of January 1, 1999. That sale has probative value and is enough to make a prima facie case for the Petitioners' claim.
- e) The burden shifted to the Respondent to present evidence to rebut or impeach the Petitioners' case. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- f) The Respondent attempted to rebut by establishing that the neighborhood assessments were correctly determined because other properties in the same neighborhood have like assessed values. The Respondent does not provide any authority or explanation for the conclusion that the current assessments of the subject properties are correct because five other lots have the same assessed value. That conclusory evidence does not qualify as probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Furthermore, because the taxpayer is specifically permitted to offer evidence relevant to the market value-in-use of a property that includes actual construction costs, sales and appraisals, an argument that generally the neighborhood assessments are correct or that the value determined from the cost

approach in the guidelines is somehow close enough to be acceptable appears to be wrong. MANUAL at 5.

- g) The Respondent also attempted to rebut by speculating that the evidence presented by the Petitioners may not be a valid sale. The Respondent speculates that the 1998 comparable sale might not be an arms'-length transaction because it involved the use of a power of attorney. It is not enough to speculate or question whether the Petitioners' evidence is faulty. The Respondent is required to bring forth probative evidence to rebut the Petitioners' evidence. The Respondent's conclusory statement that the Petitioners' evidence of value may not be valid because a power of attorney was involved lacks any explanation or authority and does not qualify as probative evidence. *Whitley Products*, 704 N.E.2d at 1119.
- h) Finally, the Respondent attempted to rebut and to support the current assessments by offering evidence of a comparable sale for \$3,350 per lot. The Sales Disclosure Form, Respondent Exhibit 1, establishes that the value per lot was substantially less. Three lots in the same block as the subject sold for \$6,700 on February 6, 1998. This evidence supports a value of only \$2,230 per lot, not the current assessments.
- i) Thus, there is probative evidence from both the Petitioner and the Respondent for a lower value: one sale where the value per lot was \$1,500 and another sale where the value per lot was \$2,330 per lot. Therefore, the assessments must be changed. The Board finds the evidence establishing \$1,500 per lot to be the most credible and persuasive evidence of value in this case.

Conclusion

16. After weighing the evidence presented by both sides, the Board finds in favor of the Petitioners.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$1,500 per lot.

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>.