

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

Petition: 84-011-02-1-5-00049
Petitioners: Richard D. & Linda L. Wills
Respondent: Nevins Township Assessor (Vigo County)
Parcel: 107-03-13-451-007
Assessment Year: 2002

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 Vigo County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 27, 2003.
2. The PTABOA issued notice of the decision on October 26, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on November 16, 2004. Petitioners elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated February 1, 2005.
5. The Petitioners failed to appear at the hearing scheduled for March 8, 2005. As a result, the Board issued an Order of Dismissal on April 27, 2005.
6. The Petitioners responded to the Order of Dismissal on May 4, 2005, and requested the Board vacate the dismissal and set another hearing date.
7. The Board vacated the Order of Dismissal and issued a Notice of Hearing on Petition—Reschedule on June 28, 2005.
8. The Board issued a notice of hearing to the parties dated June 28, 2005.
9. The Board held an administrative hearing on August 9, 2005, before duly appointed Administrative Law Judge Joan Rennick.

10. Persons present and sworn as witnesses at the hearing:
Richard D. Wills, owner,
Gloria Donham, PTABOA member,
Ann Akers, PTABOA member,
Susan McCarty, Vigo County Deputy Assessor,
Deana Chrisman, Vigo County Assessor Office.

Facts

11. The property is a residential single-family structure located at 11100 E. Rio Grande, Brazil. The location is in Nevins Township.
12. The Administrative Law Judge did not conduct an inspection of the property.
13. Assessed value as determined by the Vigo County PTABOA:
- | | | |
|---------------|------------------------|------------------|
| Land \$12,700 | Improvements \$130,900 | Total \$143,600. |
|---------------|------------------------|------------------|
14. The total assessed value requested by Petitioners is \$ 95,000.

Issues

15. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The Petitioners purchased the property for \$73,500 in 1999 at an auction from an unrelated person. The house was not habitable at the time of purchase and required \$12,000 to \$13,000 of repairs before it became livable. The township and county would not accept the sale because it was purchased at auction. The auction was advertised in the newspaper for several weeks and the auctioneer had a real estate license. *Wills testimony.*
 - b) An appraisal was prepared by an Indiana Certified Residential Appraiser for refinance with Old National Bank on February 27, 2003. The estimated value was \$87,500. The township and county would not accept the appraisal because it was for refinancing. *Wills testimony; Petitioner Exhibit 1.*
 - c) An appraisal was prepared by an Indiana Licensed Trainee Appraiser under the supervision of Larry A. Cutts, Indiana Certified Residential Appraiser, on July 7, 2005. The estimated market value was \$92,000. The appraisers were completely independent. *Wills testimony; Petitioner Exhibit 2.*
 - d) A newspaper article dated Friday, July 1, 2005, states that Terre Haute had a 4.15% loss of population from April 2000 to July 2004. That percentage was the highest in the state. These statistics affect value. *Wills testimony; Petitioner Exhibit 4.*

- e) A magazine article from January 2005 lists the worst housing value declines, with Indiana being one of the worst in the USA. These statistics affect value. *Wills testimony; Petitioner Exhibit 4.*

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

- a) The property record cards of properties located on the same street as the subject property show that the properties were assessed from the Vigo County Land Order for that area and the total assessments are similar to the assessment of the subject property. *Respondent Exhibit 1.*
- b) The Vigo County Hearing Officer Cause Sheet from the PTABOA hearing states the adjustments made by the appraiser to comparable properties were not supported because the framing type was too different and the appraisal was for refinancing. That sheet states that the market adjustment of 1.16 is the biggest deterrent to the assessment and that cannot be changed. *Respondent Exhibit 3.*
- c) The township assessor highlighted different portions of the Petitioner's 2003 appraisal. Anywhere "refinance" is mentioned the word is highlighted and "bought at auction" is added. The township assessor contends the purchase price at auction was paid to a family member. Also highlighted are locations of the comparable properties on the Location Map of the appraisal. On the Comparable Photograph Addendum page, the township assessor added notes and highlighted the types of exterior walls on each comparable sale. On the Text Addendum of the appraisal, the township assessor added "Purchased at auction to settle an estate." *Respondent Exhibit 4.*
- d) The PTABOA responded by using the comparable sales used in the 2003 appraisal along with sales disclosure forms for those sales. Respondent compared the assessment value on the PRC to the sales price and contends the assessments are on target in comparison.
- e) The PTABOA offered testimony that the subject property was purchased in June 1999 for \$73,500 by a family member and that the Petitioner's 2003 appraisal was for refinance.

Record

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

- a) The Petition,
- b) The tape recording of the hearing labeled BTR #6040,

- c) Exhibits:
- Petitioner Exhibit 1: Appraisal dated July 13, 2005,
 - Petitioner Exhibit 2: Appraisal dated February 27, 2003,
 - Petitioner Exhibit 3: Article dated July 1, 2005,
 - Petitioner Exhibit 4: Article dated January 2005,
 - Respondent Exhibit 1: Property Record Cards of surrounding properties,
 - Respondent Exhibit 2: Form 131,
 - Respondent Exhibit 3: Hearing Officer Cause Sheet (County),
 - Respondent Exhibit 4: Remarks made to Petitioner's 2003 appraisal,
 - Respondent Exhibit 5: Property Record Cards and Sales Disclosures relating to the 2003 appraisal
 - Respondent Exhibit 6: Two pages from Petitioner's 2003 appraisal,
 - Board Exhibit 1: Form 131 Petition with attachments,
 - Board Exhibit 2: Notice of Hearing,
 - Board Exhibit 3: Hearing Sign-In Sheet,
 - Board Exhibit 4: Notice of County Assessor Representation,
- d) These Findings and Conclusions.

Analysis

18. The most applicable governing cases are:
- a) 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).
 - 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 (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.

19. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) Real property is assessed on the basis of 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c) The Petitioners presented testimony and other probative evidence regarding the value of the property. The property was purchased at auction in June 1999 for \$73,500. It was appraised in 2003 for \$87,500 and appraised again in 2005 for \$92,000. The current total assessed value is \$143,600.
 - d) While an auction price might not be the strongest evidence of market value, where the evidence establishes that the property was advertised to the public for a reasonable time and there was open, competitive bidding, the price at auction can have some weight. The Respondent attempted to rebut or impeach that evidence by claiming the transaction was between family members. The Respondent, however, simply based that claim on a conclusory note that somebody had made on the paperwork. Respondent presented no probative evidence to support that claim. In contrast, the Petitioners offered direct testimony that their purchase was not from a family member. Such testimony is sufficient to convince the Board that the Petitioners did not buy this property from a family member.

- e) The effective dates of Petitioners' appraisals do not conform to the proper valuation date for the 2002 reassessment. Nevertheless, the actual purchase price of the property is very close to the proper valuation date, January 1, 1999.
- f) The purchase price and the two appraisals together establish a clear pattern of value that is sufficient to give the appraisals some probative value and relevance in confirming the purchase price as a reliable indication of market value. Beginning with the purchase at auction in 1999, continuing with \$12,000 or \$13,000 of repairs to make the property habitable, and ending with the appraisal value of 2005, the property value increased modestly to \$92,000. The evidence makes a prima facie case that the current assessment is not correct and that the value for the 2002 reassessment should have been \$86,500 (based on the purchase price plus the repairs that the Petitioners admittedly made to make the property habitable).
- g) The burden of going forward with probative evidence shifted to the Respondent.
- h) The Respondent presented the property record cards for other properties on the same street as the subject property to show that the subject was in the range of the other assessments. The assessed values for those dwelling range from \$97,900 to \$151,300. *Respondent Exhibit 1*.
- i) In making this argument, it appears that the Respondent relies on a comparison approach to establish the market value-in-use of the subject property. *MANUAL* at 3; *See also Long*, 821 N.E.2d at 469. The Respondent seeks to support the assessment by comparing the assessments of purportedly comparable properties. In order to effectively use a comparison approach as evidence, however, the proponent must establish the true comparability of the properties. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability. *Id.* at 470-471. The party seeking to rely on a comparable analysis must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. The party must also explain how any differences between the properties affect their relative values. *Id.*
- j) The Respondent did not explain how the neighboring properties are comparable to the subject. The Respondent provided no comparison of similarities and differences. The Respondent failed to explain how any differences affect the respective values of the properties. Consequently, those purported comparables lack relevance and probative value in this case.
- k) An "arm's-length" transaction relates to dealings between two parties who are not related, not on close terms, and not in a confidential relationship. They presumably have roughly equal bargaining power. *BLACK'S LAW DICTIONARY* 116 (8th ed. 1999). An "arm's-length transaction" is one conducted as if the parties were strangers, so that no conflict of interest arises. *Id.* at 1535. The

Respondent contends that the sale of the subject property at auction was not an arm's-length transaction. Although there is no dispute that the Petitioners bought the subject property at auction, that fact does not demonstrate that it was not an arm's-length transaction. While the Respondent also claimed that the Petitioners bought the property from a family member (a fact that if proven could establish lack of an arm's-length transaction), the record fails to support that claim. There is direct testimony that the sale did not involve family members, which is purportedly contradicted based on a note that someone placed on a record. If there is any real question about it in this case, the Board accepts the testimony that the Petitioners did not buy the property from a family member.

- l) The Respondent claims that the 2003 appraisal is flawed because it shows the sale of the subject. The appraisal demonstrates, however, that the appraiser did not use the sale of the subject as a comparable. It simply is noted at the bottom as "price of a prior sale." The Respondent also highlighted the properties on the location map and made notations regarding the exterior wall types of the comparables. The appraiser made adjustments for the differences in exterior wall types and explained the reason for the distance between the subject and the comparables. The Respondent's conclusory allegations against the appraisal are not probative evidence against it. The Respondent did not effectively rebut or impeach this appraisal. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- m) The Respondent submitted three comparables from the 2003 appraisal to support its contention that actual sales show the assessments are on target. The Board will accept that these are comparable properties because they were included in the appraisal. One property is assessed at \$69,700 and sold for \$77,900 in 2002. The second property is assessed at \$72,000 and sold for \$84,800 in 2002. The third property is assessed at \$136,300, but sold for only \$95,000 in 2003. The Respondent failed to establish how these figures support the current assessment for the subject property at \$143,600.
- n) The Respondent failed to rebut or impeach the Petitioners' case. The evidence demonstrates that the 1999 purchase price (\$73,500) plus the repairs the Petitioners admittedly made before they could live there (\$13,000) are the best evidence of what the assessment for this property should be.

Conclusion

20. The Petitioners made a prima facie case. The Board finds in favor of 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 \$86,500.

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>.