

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

Petition #: 84-013-02-1-5-00154
Petitioners: John O. & Royce B. Whitaker
Respondent: Otter Creek Township Assessor (Vigo County)
Parcel #: 109-02-24-176-007
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 November 25, 2003.
2. The Petitioners received notice of the decision of the PTABOA on September 3, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on October 1, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 28, 2005.
5. The Board held an administrative hearing on August 9, 2005, before the duly appointed Administrative Law Judge (the ALJ) Joan Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: John O. Whitaker, Jr., Taxpayer
Richard T. Conley, Jr., Appraiser,
 - b) For Respondent¹: Gloria Donham, Vigo County PTABOA
Ann Akers, Vigo County PTABOA
Susan McCarty, Vigo County Deputy Assessor
Deana Chrisman, Vigo County Assessor's Office
Warren Soules², Otter Creek Township Assessor

¹ The Board's procedural rules, 50 IAC 2-6-6(b), states in part, that in order for the county assessor to appear as an additional party to an appeal, "that the county assessor must (1) notify the parties and the board in writing, (2) include a detailed statement of reason for the appearance or objection, and (3) file a notice of their appearance as a party within thirty (30) days of the petition filing or within ten (10) days of receipt of notice of the proposed settlement or stipulation." Though the Vigo County Assessor did not appear, the county was represented by members of the Vigo County PTABOA and representatives of the Vigo County Assessors Office.

Facts

7. The subject property is a single family residence on a lot measuring .96 acres.
8. The ALJ did not conduct an on-site visit of the property.
9. The Vigo County PTABOA determined the assessed values of the subject property to be \$12,900 for the land and \$137,800 for the improvements, for a total assessed value of \$150,700.
10. The Petitioners requested an assessment of \$11,400 for the land and \$102,500 for the improvements, for a total assessed value of \$113,900.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners contend that the assessment on the subject property is excessive due primarily to a market adjustment (neighborhood factor) of 129%. *J. O. Whitaker, Jr. testimony*. The 129% market adjustment factor is the highest factor in all of Otter Creek Township and has led to major inequities. *Id.* According to the Petitioners, Otter Creek Township was divided into many small neighborhoods which meant that the market adjustment was based on very few sales. *Id.* In the Petitioners' neighborhood, the Petitioners contend, the market adjustment factor was based on just four sales of high priced properties. *Id.*
 - b) The Petitioners further contend that properties similar to the subject property nearby or in similar neighborhoods are assessed at much lower levels. *Id.* One such example is Parcel #109-02-24-251-003 (Smith property) which is on the same road and in the same block as the subject property and is just six houses away from the subject. *J.O. Whitaker, Jr. testimony & Petitioner Exhibit 1(b)*. According to the Petitioners, it has a market adjustment factor of 68% and is assessed at \$71,100 or half as much as the subject. *Id.*
 - c) In support of their contentions, the Petitioners submitted an appraisal that estimated the value of the subject property to be \$96,500 as of January 30, 1999. *J. O. Whitaker testimony & Petitioner Exhibit 4*. The appraiser's comparable properties sold between \$80,500 and \$110,000. *Id.* According to the Petitioners, all of these values were much lower than the current assessed value for the subject property. *Id.* The Petitioners' appraiser testified that comparable #3 is close to the subject property in design, age and amenities. *Conley, Jr. testimony; Petitioner Exhibit 4*. Using 1999 values, Petitioners' appraiser argues, comparable #3 is a strong comparable for the subject and shows its fair market value. *Id.*

² Mr. Soules, Otter Creek Township Assessor, appeared at the hearing as an advocate for the Petitioner.

12. Summary of Township Assessor's contentions in support of the Petitioners:

- a) The Otter Creek Township Assessor stated that he was in agreement with the Petitioners that the subject property is over assessed. *Soules testimony*. In support of this contention, the Township Assessor referred to evidence submitted at a previous hearing for property owned by the Petitioners in the same neighborhood (Petition #84-013-02-1-5-00155). *Id.* Further, the Township Assessor submitted several PRCs to show the diversity in the township of the market adjustment factor. *Township Exhibit 1*. The Township Assessor testified that properties located in Ce Mar Estates have a market adjustment is 68% and properties in the Rodighiero Subdivision have a market adjustment factor of 100%. *Id.* Further, properties right around the corner from the subject property have a market adjustment factor of 70% and properties across the street from Marquette Farms have a 96% market adjustment factor. *Id.* Finally properties to the south of the subject property have a 98% market adjustment factor. *Id.*
- b) The Township Assessor further alleged that the Petitioners' house is not worth \$150,000 on the fair market value system. *Soules testimony*. According to the Township Assessor, the appraisal fits the house and that neighborhood. *Id.*

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

- a) The Respondent contends that the neighborhood factor is correct. In support of this contention the Respondent entered into evidence PRCs and Sales Disclosures for sales in the subject property's neighborhood (Neighborhood #308) along with a comparison of the sales to the properties' assessments. *Donham statement; Respondent Exhibits 1 & 3*. *Id.* The first comparable sale was 7769 N. Clinton Street that sold on October 14, 1999, for \$89,000. According to the Respondent, this property was assessed for \$82,700. *Id.* The next comparable sale was 3181 E. Marquette Avenue that sold on November 5, 1999, for \$67,000 which was assessed for \$64,000. The next comparable sale was at 7745 N. Huntington that sold on November 18, 1998, for \$61,000. It was assessed for \$65,000. Finally, the property at 7801 N. Clinton Street sold on March 22, 2004, for \$70,000 and was assessed for \$75,900. *Id.* According to the Respondent, all of the properties had the same market adjustment factor as the subject. *Id.*
- b) The Respondent submitted the neighborhood map for the subject property and the surrounding neighborhoods. *Donham statements & Respondent Exhibit 2*. Besides having a different neighborhood code than the Petitioners' comparables, the subject neighborhood had a different front foot value and a different market adjustment. *Id.*
- c) The county admitted there are some rating problems in the area. *McCarty statement*. However, the Respondent testified that some of the problems are grade issues. *Id.* As a test case, the Respondent submitted Exhibit 4 where the grade

applied to the house and garage was changed to “D+1”. *Donham statement*. With these changes, according to the county, the total assessment was \$123,700.³ *Id.*

- d) Finally, the Respondent alleged that there were concerns with the Petitioners’ appraisal. *Donham statement & Respondent Exhibit 5*. The Respondent pointed to pricing differences when the in-ground pool, patio and gazebo are reviewed. According to the Respondent, the main concern was the value attributed to these items by the appraiser. *Petitioner Exhibit 4*. In the cost Approach the appraiser used a value of \$30,000 for the pool, patio, gazebo and fireplace. *Donham statement & Petitioner Exhibit 4*. However, in the sales comparison approach, there is a \$5,000 adjustment when compared to only a patio in comparable #1. *Id.* In comparable #2 there was an adjustment of only \$3,000 when compared to a shed and in comparable #3 there is no adjustment made when compared to a pool, patio and a 1978 shed. *Id.* Thus, the Respondent argued, the adjustments are not correct and that the subject property’s amenities are better in comparison. *Id.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR # 6212.
- c) Exhibits:

- Petitioner Exhibit 1: Form 131 Petition
- Petitioner Exhibit 1a: Subject PRC
 - 1b: Comparable PRC (Kathleen C. Smith property)
- Petitioner Exhibit 2: Form 115
- Petitioner Exhibit 3: Form 130 Petition
- Petitioner Exhibit 4: Appraisal as of January 30, 1999
- Petitioner Exhibit 5: Statement of Township Assessor

- Respondent Exhibit 1: PRCs with Sales Disclosures attached
- Respondent Exhibit 2: Land neighborhood maps
- Respondent Exhibit 3: Sales Ratio Study
- Respondent Exhibit 4: Test Parcel (subject property)
- Respondent Exhibit 5: Response to Petitioners’ Appraisal

- Board Exhibit A: Form 131 Petition with attachments
- Board Exhibit B: Notice of Hearing on Petition
- Board Exhibit C: Sign-In Sheet

³ The Petitioners testified that grade is not at issue in this appeal. Thus, the Board will not address the Respondent’s admission that the grade could be lowered to lower the assessment.

- d) These Findings and Conclusions.

Analysis

15. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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.

16. The Petitioners provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

- a) The Petitioners contend that the assessment on the subject property is excessive. In support of this contention, the Petitioners alleged that the market adjustment factor over-valued their property. Further, the Petitioners presented an appraisal dated January 30, 1999 that they contend represents the proper value of the subject property. *J. O. Whitaker testimony & Petitioner Exhibit 4.*

Neighborhood Factor

- b) The subject property is located in neighborhood number 308. It is currently assessed with a 1.29 neighborhood factor. The Petitioners contend that the neighborhood factor is excessive in comparison to other properties located in close proximity to the subject property. *J.O. Whitaker testimony.* In support of the Petitioners’ position, the Township Assessor testified regarding properties located in adjacent neighborhoods with neighborhood factors of 68%, 70%, 96% and 100%. *Soules testimony.*
- a) A neighborhood is defined as “[a] geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and

- housing characteristics.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A (the GUIDELINES), glossary at 14 (incorporated by reference at 50 IAC 2.3-1-2). A “neighborhood factor” accounts for the “economic characteristics” of a neighborhood, “such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size.” GUIDELINES, app. B at 8. The neighborhood factor is determined “based upon an analysis of residential properties that have sold within the neighborhood.” *Id.* The factor is computed by dividing the actual sales price of a property’s improvements (determined by subtracting the land value) by the assessment improvement value. *Id.* at 9. The resulting number is an adjustment factor to further refine the assessments in a neighborhood so that they better reflect the market value-in-use.
- b) Neighborhoods share common development characteristics, average ages of the improvements, size of lots, subdivision plats and zoning maps, school and other taxing district boundaries, among other characteristics. GUIDELINES, Chap. 2 at 8. Mere proximity of properties is insufficient to prove similarity of neighborhoods. Instead, a party must explain the characteristics of the subject neighborhood and how those characteristics compare to those of purportedly comparable properties, as well as how any differences between the properties’ neighborhoods affect the relative market values-in-use. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). The only showing the Petitioners make here is that different neighborhoods have different neighborhood factors.
- c) While it may be unusual for properties situated across from one another or properties just down the street from one another to be assigned to different neighborhoods, the Petitioners did not present any evidence to demonstrate that the Respondent improperly applied the factors identified in the applicable administrative rules drawing the neighborhood boundaries. See GUIDELINES, ch. 2 at 8. Nor did the Petitioners show that a different neighborhood factor was applied to the subject property than to other properties in the same neighborhood or that an error was made in calculating the neighborhood factor that is applied to the subject property. The Petitioners presented no alternative calculation or any additional sales disclosures to suggest that the neighborhood factor is incorrect. Instead, the Petitioners merely identified a range of neighborhood factors from .68 to 1.00. This falls far short of the burden imposed upon a Petitioner. To prevail in an appeal, a Petitioner must demonstrate both that an 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).
- d) Petitioners failed to raise a prima facie case that an error was made in developing Petitioners’ neighborhood factor. Where the Petitioner has not supported his claim with probative evidence, 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). Accordingly, the Board finds

that the Petitioners have failed to establish an error in the current assessment of the subject property based on its neighborhood factor.

Appraisal

- e) The Petitioners also submitted an appraisal in support of their contention that the subject property is over-valued. The appraisal, dated January 30, 1999, estimated the market value of the subject property to be \$96,500. *See Petitioner Exhibit 4.*
- f) Real property in Indiana is assessed on the basis of its “true tax value”. See I.C. 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-1) (the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.*
- g) Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
- h) Here, the Petitioners submitted a fair market value appraisal as of January 30, 1999, performed by a licensed appraiser within thirty days of the January 1, 1999, valuation date. *Petitioner Exhibit 4.* The appraiser attests the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* The Appraiser used the cost and sales comparison approaches to value. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E. 2d 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioners have raised a prima facie case that the subject property is over-valued.
- i) 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.). Here, the Respondent submitted PRCs and Sales Disclosures for four properties that sold in the Petitioners’ neighborhood along with neighborhood maps in support of the assessment. *Respondent Exhibits 1-3.* However, the Respondent failed to submit any comparison or analysis of these properties to one another or to the subject. The Respondent did not identify characteristics of the subject property explain how those characteristics compared to

characteristics of the purportedly comparable properties, or explain differences between the properties that might affect their relative market values-in-use. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of comparability of the two properties. *Long*, at 470. Thus, Respondent’s “comparable” properties are insufficient to impeach or rebut Petitioners’ evidence.

- j) The Respondent also argued that the value attributed to the in-ground pool by the appraiser is far lower than its cost. In response to this concern, the Petitioners’ appraiser testified that an in-ground pool is a special amenity with a special cost to the buyer that is not a recaptured cost in the sale of the home. Thus, even though it may have cost \$30,000 to build the pool, the \$5,000 market adjustment for the in-ground pool was correct. *Conley testimony*. The Board finds that the Respondent failed to show that the appraisal or the actions taken by the appraiser were not within the standards set by USPAP or that they were outside standard appraisal practices.
- k) The Board, therefore, finds in favor of the Petitioners and holds that the value of subject property is \$96,500 on the basis of the appraisal.

Conclusions

- 17. The Petitioners made a prima facie case that the subject property is over-valued. The Respondent failed to rebut the Petitioners’ evidence. The Board finds in favor of the Petitioners and determines that the assessment should be \$96,500. The Petitioners failed to raise a prima facie case on all other matters.

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 \$96,500.

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>>.