

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

Petition #: 91-011-02-1-5-00053
Petitioners: Merl and Lya Ann Ellis
Respondent: Liberty Township Assessor
Parcel #: 0086188000
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 White County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 27, 2004.
2. The Petitioners received notice of the decision of the PTABOA on August 11, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on September 10, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 11, 2005.
5. The Board held an administrative hearing on September 29, 2005, before the duly appointed Administrative Law Judge (ALJ), Joan Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Merl Ellis, Taxpayer,
Lawrence Culp, Appraiser
 - b) For Respondent: Scott Potts, Consultant for the Township Assessor.

Facts

7. The property is classified as a residential, improved property located at 4350 E. 400 N Street, Monticello, in Liberty Township.
8. The ALJ did not conduct an inspection of the property.

9. The PTABOA determined the assessed value of the subject property to be \$94,600 for the land and \$72,900 for the improvements, for a total assessed value of \$167,500.
10. The Petitioners requested an assessment of \$40,000 for the land and \$80,000 for the improvements, for a total assessed value of \$120,000.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners contend that the subject property is over-valued. In support of this contention, the Petitioners submitted an appraisal dated September 12, 2004, that valued the subject property as of December 31, 1999. *Ellis testimony; Petitioner Exhibit 1*. According to the appraisal, the market value of the subject property is estimated to be \$120,000. *Id.*
 - b) The Petitioners contend there is only fifty feet of usable bay frontage. *Ellis testimony*. The balance of the frontage is a ditch that is twenty to twenty-five feet deep and fifty feet wide. *Id.* According to the Petitioners' appraiser, the appraiser valued the fifty feet of usable frontage at \$40,000 and gave no value to the additional frontage. *Culp testimony*. The appraiser contends the remaining thirty-five feet of frontage cannot be used in any way. *Id.* A septic system or well could not be placed there. *Id.*
 - c) Further, the Petitioners contend there is no view of the main lake because the property is on a bayou. *Ellis testimony*.
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent contends that the appraisal submitted by the Petitioners was not submitted prior to a decision being made by the White County PTABOA. *Respondent summary of testimony; Potts testimony*.
 - b) Further, according to the Respondent, the appraisal value does not accurately reflect the subject property's value because the appraisal bases the land value on only 50 feet of frontage. *Potts testimony*. The Respondent alleges that the Petitioners' property actually has 85 feet of frontage which is 70% larger than the lot size considered in the appraisal. *Id.*
 - c) The Respondent also alleges that the appraisal used properties that were not comparable to the subject property. According to the Respondent, all of the comparable properties used in the appraisal are in different neighborhoods than Petitioners' property. *Potts testimony; Respondent Exhibit 6*. However, the Respondent admits that the property identified as Comparable #1 in the appraisal is actually a lakefront property that is more valuable than the subject property because the subject property is on a bayou and does not face the lake. *Id.*

- d) Finally, in support of the assessment, the Respondent submitted a list of ten sales of properties in the same neighborhood as the Petitioners' property. *Respondent Exhibit 5; Potts testimony*. According to the Respondent, the properties in the subject neighborhood have an assessment to sale ratio median of 1.03 which indicates that the models used for the land and the improvements in that neighborhood are accurate.

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 BTR #6218,
- c) Exhibits:

Petitioner Exhibit 1: Appraisal dated December 31, 1999,
Petitioner Exhibit 2: Three photographs of the subject frontage,

Respondent Exhibit 1: Form 131 Petition filed by the Petitioner,¹
Respondent Exhibit 2: Property record card,
Respondent Exhibit 3: Appraisal,
Respondent Exhibit 4: Transcripts of PTABOA hearing,
Respondent Exhibit 5: Residential Sale File,
Respondent Exhibit 6: Copies of the property record cards from the appraisal,
Respondent Exhibit 7: Aerial map,

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 Appearance of Consultant on Behalf of Assessor,

- d) These Findings and Conclusions.

Analysis

14. 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).

¹ The Table of Contents shows eight exhibits, the seven listed above plus the Summary of Testimony.

- 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.
15. The Petitioners provided sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a) The Petitioners contend the property is over-valued. In support of this contention, the Petitioners presented an appraisal that valued the property for \$120,000 as of December 31, 1999. In addition, the Petitioners presented photographs and testimony from their appraiser.
- b) Real property in Indiana is assessed on the basis of its “true tax value.” See Ind. Code § 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.*
- c) 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.*
- d) Here, the Petitioners submitted a fair market value appraisal as of December 31, 1999, performed by a licensed appraiser.² *Petitioner Exhibit 1*. The appraiser attests that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* The appraiser used the cost and sales

² The Respondent contends that the appraisal was not presented to the White County PTABOA Board prior to their decision. *Potts testimony*. However, a party “is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.” Ind. Code § 6-1.1-15-4-(m).

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). Further, to determine the land value for each neighborhood, a township assessor selects representative sales disclosure statements or written estimations of a property value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Chap.2, pg. 7 (the GUIDELINES), According to the GUIDELINES, “representative disclosure statements ... refer to a transaction, or written estimations of value must refer to an estimation of value, that is dated no more than eighteen (18) months prior or subsequent to January 1, 1999.” Accordingly, an appraisal valuing the subject property or comparing sales that occurred within eighteen months of the January 1, 1999, assessment valuation date must also have evidentiary value. Thus, the Board finds that the Petitioners have raised a prima facie case that the subject property is over-valued.

- e) 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 contends that the appraisal shows the Petitioners’ front footage as fifty feet, but the actual frontage is eighty-five feet. Thus, according to the Respondent, the subject property’s lot size is seventy per cent larger than the lot size considered in the appraisal.³ Further, the Respondent contends that the comparable sales used in the appraisal are not in the same neighborhood as the subject property and presented the property record cards of the comparable sales used in the appraisal. *Respondent Exhibit 6*. The Respondent argued that Comparable #1 is a more valuable property because of the lake frontage and because the subject property is not on the lake but on a bay.⁴ *Potts testimony; Ellis testimony*. However, merely criticizing various calculations in an appraisal as “flawed” or “suspicious” ... “falls well short of the substantial evidence” a Respondent must present to rebut an appraisal prepared by a licensed appraiser. *See Hometowne Associates v. Maley*, 839 N.E.2d 269, 280 (Ind. Tax Ct. 2005). It is not sufficient to make conclusory statements that the wrong values were used by the Petitioners. *Id.* The Respondent needed to provide evidence of the variables it contends are the proper value and how use of such “proper” values would change the appraised value offered by the Petitioners. This, the Respondent failed to do.
- f) In further support of the assessed value, the Respondent submitted a “Residential Sale File” of sales in the subject property’s neighborhood assigned by the local assessing officials. According to the Respondent, these sales were used in the neighborhood ratio study and the median ratio was determined to be 1.03.⁵ *Id. Potts testimony*.

³ The appraisal identifies the site as .33 acre with 50 feet usable frontage. According to Petitioners’ appraiser, no value was given to the additional frontage because it cannot be used in any way. *Culp testimony*.

⁴ The Petitioners’ appraiser testified that he made negative adjustments in the appraisal for the locations of Comparable #1 and Comparable #2. *Petitioner Exhibit 1; Respondent Exhibit 3*.

⁵ A ratio study is the study of the relationship between assessed values and market values. MANUAL at 11. Here, while the median ratio may be within an acceptable range, the Board notes the dispersion of those values ranged from .77 to 1.77 over ten sales. Thus, the Board questions how accurately the individual assessed values reflect market value.

Thus, the Respondent contends, the assessments in the Petitioners' neighborhood, including the subject property, are correct. *Potts testimony*.

- g) To rebut or impeach a Petitioner's case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) ("Time and time again, this Court has reminded taxpayers that as part of making a prima facie case, 'it is the taxpayer's duty to walk the [Board] through every element of [its] analysis.' ... These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case."). Thus, the Respondent is responsible for explaining how the characteristics of the subject property compared to the characteristics of the purportedly comparable property, and how any differences affected the relevant market value-in-use of the properties. *Fidelity Federal*, 836 N.E.2d at 1082 ("[I]t was not the Indiana Board's responsibility to review the record card submitted by the Assessor to determine whether that property was indeed comparable -- that duty rested with the Assessor.") Here, the Respondent failed to present any evidence that the properties listed in the residential sales file are in any way comparable to the subject property to determine the market value of the subject property. Further, the Respondent failed to show how a chart identifying assessed values in the Petitioners' neighborhood from 23% below market value to 77% higher than market value proves that the Petitioners' assessment is correct. Thus, the Respondent failed to rebut Petitioners' evidence.

Conclusion

16. The Petitioners made a prima facie case. The Respondent did not successfully rebut the Petitioners' evidence. 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 \$120,000.

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>>. 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 days of the date of this notice.