

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

Petition No.: 91-013-06-1-5-00083
Petitioners: James D. and Sara Blythe II
Respondent: White County Assessor
Parcel No.: 010-18370-00
Assessment Year: 2006

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.
2. The PTABOA issued a notice of its decision on March 18, 2008.
3. The Petitioners filed a Form 131 petition with the Board on April 18, 2008. The Petitioners elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated December 10, 2008.
5. The Board held an administrative hearing on February 17, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: John L. Johantges, Property Tax Group 1, Inc.
 - b. For Respondent: Scott Potts, County Representative¹

¹ Mr. Potts admitted during the hearing that he was not an employee of the Assessor, but was a vendor to the County. The only authorized representatives in a Board hearing are "(1) a permanent full-time employee of the owner of a property; (2) assessing officials and permanent, full-time employees of local units of government appearing on behalf of the unit or as the authorized representative of another unit; (3) a tax representative as defined in 52 IAC 1-1-6; (4) a representative of a minor or incapacitated party as defined in 52 IAC 1-2-1.1; (5) a local government representative as defined in 52 IAC 1-1-3.5; (6) a certified public accountant when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or (7) an attorney who is a member in good standing of the Indiana bar..." 52 IAC 2-2-4. Mr. Potts could have filed to represent the Respondent as a local government representative under 52 IAC 1-1-3.5, but he failed to file a written verification that he is a "professional appraiser" approved by the Department of Local Government as required by 52 IAC 1-1-3.5 and he failed to file a power of attorney with the Board as required by 52 IAC 2-3-2. Thus, Mr. Potts was not properly representing the Respondent. The Board is aware that Mr. Potts has frequently appeared before it as a Representative of White County and notes that the Petitioners here did not object to Mr. Potts' participation. Mr. Potts, however, is admonished that he must comply with the Board's representation rules in any future proceedings.

Facts

7. The property consists of a 1,548 square foot single-family residence located at 3386 Bailey Road, Monticello, Monon Township, in White County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$94,800 for the land and \$133,500 for the improvements, for a total assessed value of \$228,300.
10. The Petitioners requested a total assessed value of \$182,000 for the land and improvements for the March 1, 2006, assessment year.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in assessment:
 - a. The Petitioners contend the property is assessed for more than its market value-in-use. *Johantges testimony*. According to the Petitioners, the property's value is \$182,000 based on an appraisal. *Johantges testimony*. In support of their position, the Petitioners submitted an appraisal report prepared by Sid Holderly of Holderly Appraisal & Real Estate. *Petitioner Exhibit C*. Mr. Holderly is an Indiana Certified Residential Appraiser. *Id.* In his appraisal report, Mr. Holderly estimated the property's value to be \$182,000 as of April 27, 2004. *Petitioner Exhibit C*.
 - b. The Petitioners argue the Respondent's sales ratio study used by the PTABOA to sustain the county's assessed value cannot be used to show the actual market value-in-use of the property. *Petitioner Exhibit F; Johantges testimony*. According to Mr. Johantges, the 2002 Real Property Assessment Manual states, and the Board likewise determined in *Christopher M. Harcourt v. Harrison Township Assessor*, Petition No. 84-002-02-1-5-00932, that an assessor cannot establish that the assessment of the property under appeal is correct by simply showing the assessment falls within an acceptable range for uniformity and equality of the jurisdiction. *Petitioner Exhibit D; Johantges testimony*.
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent argues the Petitioners' appraisal suffers from major flaws and therefore should be given little weight. *Potts testimony*. According to Mr. Potts, the primary value of a waterfront property stems from the part of the property that actually fronts the water. *Id.* The Respondent contends the appraiser did not

sufficiently adjust the sale prices of his comparable properties to reflect the fact that some of those comparables had significantly less lake frontage than the subject property. *Id.* In addition, the Respondent argues, the appraiser inadequately addressed the contributory value of the location and topography of the land of the comparable properties to the subject land. *Id.* Specifically, Mr. Potts argues that Petitioners' Comparable No. 2 is located on a 60 foot ditch, Comparable Nos. 3 and 4 are located on inlets which have no view of the lake and Comparable No. 5 is located on the Tippecanoe River not the Big Monon or Lake Shafer. *Petitioner Exhibit C; Potts testimony.*

- b. The Respondent also argues that four of the nine sales used in the Petitioners' sales comparison approach sold in 2003. *Potts testimony.* According to Mr. Potts, local officials used sales that occurred in 2004 and 2005 to establish assessed values for the March 1, 2006, assessment. *Potts testimony.* Further, the Respondent argues, the appraiser did not make any time adjustment to the 2003 comparable sales in his sale comparison approach. *Potts testimony.* Mr. Potts testified, for example, that Comparable No. 3, sold on January 15, 2004, for \$220,000 and then again on January 10, 2005, for \$245,000. *Petitioner Exhibit C; Respondent Exhibit 3.* Thus, Comparable No. 3 experienced a \$25,000 increase in the sales price in a 12 month time period, both sales were arms' length transactions and no changes were made to the property. *Respondent Exhibit 3; Potts testimony.* Mr. Potts argues that this illustrates why time adjustments are necessary when appraising property located on a lake. *Potts testimony.*
- c. Finally, the Respondent claims the appraiser failed to appreciate the cost of the improvements in his appraisal report before applying depreciation in the cost approach. *Potts testimony.*² According to the Respondent, the improvements were constructed in 2001 for \$120,000. *Respondent Exhibit 10; Potts testimony.* The Respondent contends that, at the time of the appraisal in 2004, the construction cost would have appreciated above the original estimated cost to construct of \$120,000. *Potts testimony.* The Respondent concludes, therefore, to accurately determine the cost of the improvements for 2004, the 7% depreciation applied in the appraisal report should be removed. *Petitioner Exhibit C; Potts testimony.*

² The Petitioners' appraisal report shows in 2004, the local builders charged \$65 per square foot on living area, \$16.25 per square foot on unfinished garages and \$21.60 per square foot on roofed porches to build. *Petitioner Exhibit C.* The cost to build on the property under appeal is \$120,564 minus 7% depreciation or \$8,439, for a total cost of construction of \$112,124. *Id.*

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:³

Petitioner Exhibit A – Notification of Final Assessment Determination – Form 115, dated March 18, 2008,

Petitioner Exhibit B – Petition to the Indiana Board of Tax Review for Review of Assessment, dated April 18, 2008,

Petitioner Exhibit C – Summary appraisal report prepared by Sid E. Holderly, Holderly Appraisal & Real Estate, dated March 28, 2005,

Petitioner Exhibit D – Indiana Board of Tax Review final determination in *Christopher M. Harcourt v. Harrison Township Assessor (Vigo County)*, Petition No. 84-002-02-1-5-00932,

Petitioner Exhibit E – PTABOA’s request for additional evidence, dated May 24, 2004,

Petitioner Exhibit F – White County’s sales ratio study, February 22, 2008,

Respondent Exhibit 1 – Property record card for Parcel No. 91-83-31-000-037.200-013 located at 5264 North West Shafer Drive, Monticello,

Respondent Exhibit 2 – Property record card for Parcel No. 91-73-06-000-018.800-020 located 3426 East 425 North, Monticello,

³ The Petitioners’ representative argued that the PTABOA allowed the county to submit their sales ratio study after the PTABOA hearing was conducted and the Petitioners were not given the opportunity to address this evidence prior to the PTABOA’s issuance of its Notification of Final Assessment Determination. *Johantges testimony*. Mr. Johantges therefore objected to the evidence offered by the Respondent because it was not presented at the PTABOA hearing and asked the Board to render the PTABOA’s decision invalid. *Id.* The Petitioners’ representative, however, misunderstands the nature of the proceedings before the Board. Once a taxpayer has properly invoked the Board’s jurisdiction, its proceedings are *de novo*. The parties are not limited to evidence offered as a result of the PTABOA hearing. See Ind. Code § 6-1.1-15-4 (m) (A person participating in a hearing [before the Board] 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.) And the Board owes the PTABOA determination no deference. Thus, while the Petitioners may feel they were deprived of the county’s evidence at the PTABOA hearing, it does not hinder their ability to present their case to the Board. To the extent Mr. Johantges can be seen to object to the Respondent’s evidence because it was not exchanged prior to hearing, this objection is likewise unavailing. The Board rules state that “[i]f requested by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing. 52 IAC 3-1-5(d). Mr. Johantges admitted that he did not request the evidence from the Respondent prior to hearing.

- Respondent Exhibit 3 – Property record card for Parcel No. 91-83-32-000-012.407-010 located 5156 North Boxman Drive, Monticello,
- Respondent Exhibit 4 – Property record card for Parcel No. 91-83-31-000-001.400-013 located at 5563 North Stahl Road, Monticello,
- Respondent Exhibit 5 – Property record card for Parcel No. 91-83-15-000-023.200-010 located at 8323 Kiger Drive, Monticello,
- Respondent Exhibit 6 – Property record card for Parcel No. 91-73-06-000-006.400-020 located at 3894 East Forest Lodge Loop, Monticello,
- Respondent Exhibit 7 – Property record card for Parcel No. 91-83-30-000-001.500-013 located on North 63, Monticello,
- Respondent Exhibit 8 – Property record card for Parcel No. 91-83-32-000.006.100-010 located off East Shafer, Monticello,
- Respondent Exhibit 9 – Property record card for Parcel No. 91-83-32-000-012.409-010 located at 5223 North Boxman Drive, Monticello,
- Respondent Exhibit 10 – White County Area Plan Commission Application for Improvement Location Permit, issued September 5, 2000,

- Board Exhibit A – Form 131 petition with attachments,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing sign-in sheet.

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 Township 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 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.
15. 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. Real property is assessed based on its “true tax value,” which is “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, for the property.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
 - b. In addition, the 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of January 1, 2005. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. Here, the Petitioners presented an appraisal prepared by Sid Holdery that estimated the value of the property to be \$182,000 as of April 27, 2004. *Petitioner Exhibit C; Johantges testimony*. The appraiser is an Indiana Certified Appraiser that prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices. (USPAP). *Id.* The appraiser used the sales comparison approach using properties that sold during 2003 and 2004. *Id.* While generally the 2006 assessment is to reflect the value of the property as of January 1, 2005, pursuant to 50 IAC 21-3-3(a), local assessing officials “shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date.” Thus, an appraisal valuing the property as of April 27, 2004, must also have some probative value. The Board therefore finds that the Petitioners raised a prima facie case that the property is over-assessed. *See Meridian Towers*, 805 N.E.2d at 479.

- d. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Here, the Respondent presented property record cards and testimony regarding the Petitioners' amount of lake front footage and the topography of the land on the comparable properties used in the Petitioners' appraisal report, as support for the assessment. *Respondent Exhibits 1 – 10; Potts testimony*. While the Respondent identified the differences in the characteristics of those properties – like the amount of lake frontage or the location of the property relative to the lake body – the Respondent failed to explain how the differences between the properties affect their relative market values-in-use. Conclusory statements that a property is “more valuable” or “less desirable” than another property do not constitute probative evidence. *See Long*, 821 N.E.2d at 470. Thus, the Respondent's evidence is not probative of the market value-in-use of the property under appeal.
- e. To the extent Mr. Potts contends that the Petitioners' appraiser chose poor comparables or made poor adjustments to his comparable sales, the Board similarly finds these arguments unpersuasive. It is well within an appraiser's expertise to choose the sales he or she deems most comparable to the subject property and apply adjustments to those comparable properties to value the differences between them. Absent evidence to the contrary, the comparable properties chosen by the appraiser or the adjustments made by the appraiser in a USPAP-compliant appraisal are deemed reasonable.⁴

Conclusion

16. The Petitioners raised a prima facie case that their property was over-valued. The Respondent failed to rebut or impeach the Petitioners' evidence. Thus, the Board finds in favor of the Petitioners and holds that the market value-in-use of the subject property is \$182,000.

⁴ The Respondent also claims the appraiser should not have deducted the depreciation when he calculated the cost of constructing the improvements in the appraisal. The only discussion regarding the cost approach in the appraisal, however, centers on the appraiser's evaluation of the assessment, rather than in his estimate of value. Thus, there is no evidence that the appraiser relied on a cost approach in his estimate of value.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should be changed.

ISSUED: May 12, 2009

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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 as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.

The Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the

Internet at <http://www.in.gov/legislative/bills/2007/SE0287.1.html>.