

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

Petition: 84-009-10-1-5-01824
Petitioner: Dale Bohnenkemper
Respondent: Vigo County Assessor
Parcel: 84-07-30-104-003.000-009
Assessment Year: 2010

The Indiana Board of Tax Review (Board) issues this determination in the above matter. It finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated March 28, 2011.
2. The PTABOA mailed notice of its decision regarding the 2010 assessment on May 18, 2012.
3. The Petitioner appealed the determination to the Board by timely filing a Form 131 petition on June 25, 2012. He elected to have this case heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on March 13, 2013. He did not inspect the property.
5. Dale Bohnenkemper appeared *pro se*. Chief Deputy Assessor Susan McCarty represented the Respondent. Dale Bohnenkemper, Susan McCarty and Michael West were sworn as witnesses.

Facts

6. The property is a single family residence at 213 Terre Vista Drive in Terre Haute.
7. The PTABOA determined the assessed value is \$26,800 for land and \$130,600 for improvements (total assessed value of \$157,400).
8. The Petitioner contended the total assessed value should be \$50,630.

Contentions

9. Summary of the Petitioner's case:

- a. The Petitioner's purchase price establishes the assessment of \$157,400 is excessive. During the seven months the property was on the market, the initial asking price of \$150,000 was reduced to \$80,000 and then reduced to \$77,000. The Petitioner purchased the property for \$51,250 on August 25, 2009. The property had been on the market for seven months when the Petitioner purchased it from the U.S. Department of Housing and Urban Development (HUD). *Bohnenkemper testimony; Pet'r Ex. 2.*
- b. The Respondent referred to two sales of the subject property on the same day, one to Wells Fargo Bank and the second to HUD, each for \$106,250. They were transfers of the subject property, but not market value sales. Wells Fargo Bank had a standing bid of \$106,000 for the subject property. If a bid of \$10,000 was made, the transfers to Wells Fargo Bank and HUD would be reported at \$106,000. *Bohnenkemper testimony.*
- c. The Respondent's neighborhood trending factor was -2.4% for the period March 1, 2009, through March 1, 2010. Applying this annual trending factor to the purchase price would result in an assessed value of \$50,630. *Bohnenkemper testimony.*
- d. The property was appraised for \$71,100 as of August 13, 2009. This appraisal from Gibson Appraisal Service is certified as meeting the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) and the appraiser who signed the document, Kyle Shoults, is identified as state licensed appraiser LR60700428. *Bohnenkemper testimony; Pet'r Ex. 1.*
- e. Using the same trending factor of -2.4%, the trended appraisal value would be \$70,142. The appraisal is an estimate of value. The purchase price of \$51,250 is the better indication of value. *Bohnenkemper testimony.*
- f. The construction dates of the comparable properties identified by the Respondent range from 1950 to 2008. *Bohnenkemper testimony.*

10. Summary of the Respondent's case:

- a. The Petitioner purchased the subject property for \$51,250 on August 9, 2009. *Resp't Ex. 1.* His purchase price is not indicative of what the property would have brought on the open market. It was a forced distressed sale and it was not an arm's-length transaction. *McCarty testimony.*

- b. The appraiser states that he reviewed three years of prior sales data and found no record of a previous sale of the subject property. *Resp't Ex. 2 at 2*. Nevertheless, the subject property was sold at a sheriff's sale to Wells Fargo Bank for \$106,250 in August 2008. *McCarty testimony; West testimony; Resp't Ex. 1a*. Wells Fargo Bank then sold the property to HUD on the same date for the same amount, which was \$106,250. *West testimony; Resp't Ex. 1b*.
- c. The appraisal states that the original listing price of the subject property was \$145,000. *McCarty testimony; Resp't Ex. 3*. This asking price is a more accurate indication of value than the purchase price of \$51,250. *McCarty testimony*.
- d. Comparable property #1 (13 Hudson Boulevard) in the appraisal was purchased by Michael and Betty Lanke for \$62,080 from Fifth Third Mortgage Company on January 22, 2009. *Resp't Ex. 4*.¹ The Lankes sold this property to Michael Ferris for \$120,000 on September 25, 2009. Twice the amount the Lankes paid for it. *Resp't Ex. 4a*. This transaction would have been an active or pending sale on the appraisal date and should have been noted in the appraisal. *West testimony*.
- e. The appraisal contains adjustments for functional utility. *Resp't Ex. 5 at 2*. But the appraiser also states there are no apparent physical deficiencies or adverse conditions that may affect the livability, soundness, or structural integrity of the property. *West testimony; Resp't Ex. 5 at 1*.
- f. Comparable property #2 (925 Barton) has a lot that is half the size of the subject property, but no adjustment was made for that difference. Further, no adjustments were made for variations in type of construction or age. Adjustments for different basement types and crawl spaces were not explained. *West testimony; Resp't Ex. 5 at 2; Resp't Ex. 6*.
- g. Based on similarities on the property record cards (PRCs), there were seven comparable sales in the subject neighborhood. These sales could have been used to supplement the appraisal. *West testimony; Resp't Ex. 7, 7a*.
- h. With the exception of functional utility, the same adjustments the appraiser made to the three comparable properties in the appraisal were applied to the seven comparable properties identified by the Respondent. *West testimony; Resp't Ex. 8*.

¹ The conveyance date on the first page of this document is "1/22/08." Every other date on the sales disclosure form, however, is 2009.

Record

11. The official record contains the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Appraisal of the subject property,
Petitioner Exhibit 2 – Sales disclosure form for the subject property,
Respondent Exhibit 1 – Sales disclosure form for the subject property dated August 25, 2009,
Respondent Exhibit 1a – Sales disclosure form for the subject property dated August 16, 2008,
Respondent Exhibit 1b – Sales disclosure form for the subject property dated August 16, 2008,
Respondent Exhibit 2 – Appraisal page 2,
Respondent Exhibit 3 – Appraisal page 1,
Respondent Exhibit 4 – Sales disclosure form for appraisal comparable #1 (13 Hudson Avenue) dated January 22, 2009,
Respondent Exhibit 4a – Sales disclosure form for appraisal comparable #1 (13 Hudson Avenue) dated September 25, 2009,
Respondent Exhibit 5 – Appraisal pages 1 and 2,
Respondent Exhibit 6 – Appraisal page 2,
Respondent Exhibit 7 – Worksheet with seven comparable sales in the subject neighborhood with data,
Respondent Exhibit 7a – Aerial map of the subject neighborhood,
Respondent Exhibit 8 – Three page worksheet of seven comparables with the same adjustments as the ones in the appraisal,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,
 - d. These Findings and Conclusions.

Burden

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal

increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

13. The assessed value under appeal is less than the prior year's assessment. Therefore, Ind. Code § 6-1.1-15-17.2 does not apply. The Petitioner has the burden of proof.

Analysis

14. The Petitioner made his case for a change in the assessment. The Board reached this decision for the following reasons:
 - a. Real property is assessed based on "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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it 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. Regardless of the method used to challenge an assessment's presumption of accuracy, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2010 assessment, the valuation date was March 1, 2010. 50 IAC 21-3-3 (2010).
 - c. The Petitioner bought the property on August 25, 2009, for \$51,250. His purchase was just six months before the assessment and valuation date of March 1, 2010. The time is close enough to be relevant. And we have recognized in many cases that the purchase price of the property can be a good way to prove an accurate market value-in-use for assessment purposes.

- d. The Petitioner attempted to go one step further. Using the trending factor of -2.4% that the Respondent developed for the period March 1, 2009, through March 1, 2010, the Petitioner reduced his purchase price to \$50,630. This trending factor, however, represents a market adjustment for an entire year, which is not relevant. *See* Ind. Code §6-1.1-4-4.5. The Petitioner failed to establish a factor for the relevant six month period from August 2009 to March 2010. The “trended” purchase price calculated by the Petitioner does not help prove what a more accurate assessed value would be for his property.
- e. The Petitioner also presented an appraisal that concluded the value of the subject property was \$70,142 as of August 13, 2009. Such an appraisal prepared in accordance with USPAP standards is a widely recognized means of establishing the market value-in-use of a property. *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The certified appraisal that the Petitioner offered appears to meet those standards. The Respondent offered no substantial evidence or argument that it does not. Therefore, this appraisal is additional probative evidence that the current assessment is excessive.
- f. Both the purchase of the subject property and the appraisal are only approximately four months before the statutory valuation date. With this proximity, they both are relevant, probative evidence. Either one is sufficient to make a prima facie case.
- g. Therefore, the burden of going forward shifted to the Respondent. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The Respondent needed to offer substantial, probative evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479. Of course one way for the Respondent to do so would be to present relevant, substantial, probative evidence that the disputed assessment actually is an accurate market value-in-use for the subject property. Rather than following that route, the Respondent primarily attempted to attack purported weaknesses in the Petitioner’s evidence—the purchase price and the appraisal. But after considering everything that was presented, those purported weaknesses are not serious enough to totally destroy the probative value of either the purchase price or the appraisal.
- h. For a sale price to be a reliable indicator of market value, the sale must have involved typically motivated and informed parties, the property must have been exposed to the open market for a reasonable time, the payment must have been made in terms of cash or comparable financial arrangements, and the price must have been unaffected by special financing or concessions. *See* MANUAL at 10 (defining “market value”). The Respondent claimed that the Petitioner’s purchase price resulted from a distressed sale and does not establish what this property would bring on the open market because the property was bought by Wells Fargo Bank at a sheriff’s sale, subsequently sold to HUD, and then sold to the Petitioner. But the Respondent offered no evidence that either the Petitioner or HUD was not typically motivated in negotiating the sale or that the subject property was not reasonably exposed to the market. (It was marketed for seven months before it sold.) The Respondent

identified no other specific factors to show the purchase price is not a valid indicator of market value-in-use. The Respondent's unsubstantiated conclusory statements attempting to attack the reliability of this particular sale do not constitute probative evidence. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). And the Respondent's bald assertion that the original asking price is a more accurate indication of value than the amount the Petitioner actually paid is even more unpersuasive. Therefore, the Petitioner's purchase price is substantial evidence supporting a reduced assessment for the subject property.

- i. Even though the Respondent attempted to attack the appraisal from two angles, the Board reaches a similar conclusion about it.
- j. The appraisal states, "My research did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal." The evidence, however, indicates there were two such transfers in August 2008, the first was to Wells Fargo Bank and the second was to HUD. Therefore, we conclude the appraiser made a mistake on this point. This mistake detracts from the credibility of the appraiser and appraisal to some extent. It is an indication that the appraiser was not as careful as he should have been. It does not, however, entirely destroy the appraisal's probative value.
- k. The Respondent also attempted to impeach the credibility of the appraisal by claiming it should have considered seven additional sales of other properties in the same neighborhood. This part of the attack on the appraisal also was ineffective. The Respondent characterized the seven additional properties as comparables, but provided very few details with little comparative analysis. Conclusory statements that a property is "similar" or "comparable" to the subject property do not constitute probative evidence. *Long*, 821 N.E.2d at 470. To use this kind of evidence effectively, the Respondent was responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. *Id.* at 471. Here, the sales prices of the seven neighborhood properties range from \$111,500 to \$245,000. The construction dates of the homes occurred during a 58-year period ranging from 1950 to 2008. The Respondent offered no discussion of the amenities of the homes or analysis of how any differences affected value. Although the Respondent presented a comparison grid that mimics a sales comparison grid that might be contained in an actual appraisal, the evidence does not establish who calculated these adjustments, what that person's qualifications might be, what criteria was used for the adjustments, or whether the work conformed to USPAP standards or generally accepted appraisal principles. In other words, the Respondent failed to offer any meaningful comparison of the properties. The Respondent did virtually nothing to explain how the range of "adjusted" sale prices for these purported comparables—from \$96,876 to \$239,456—helps demonstrate what an accurate valuation of the subject property is. Therefore, these sales have no probative value in attacking the appraisal or in demonstrating that the existing assessed value on the subject property should be maintained.

- l. The Respondent failed to convince the Board that the appraisal was significantly flawed to the point where it should be disregarded in determining the actual market value-in-use of the subject property.
- m. In addition, the Respondent failed to offer any substantial evidence or explanation supporting the assessment of \$157,400.
- n. Therefore, the assessment will be changed to either the value indicated by the Petitioner's purchase price or the value indicated by the appraisal. There is, however, no general or absolute rule about which of those is more persuasive. In *Hubler Realty Co. v. Hendricks Co. Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) the Board's determination assigning greater weight to a purchase price than to an appraisal was affirmed by the Tax Court. But to repeat, the Board weighs the evidence and ultimately decides what is most persuasive on a case by case basis. In this case that determination is a close call (between the appraisal and the purchase price) based on the totality of the evidence and how effectively the parties made their cases.
- o. Ultimately, the Board finds the Petitioner's purchase price to be the strongest evidence of the actual market value-in-use. Although Wells Fargo Bank acquired the property through a sheriff's sale and then transferred it to HUD, there was no dispute about the fact that subsequently this property was on the market for seven months before the Petitioner bought it. During that time the listing price started at \$150,000 and then it was reduced several times before the Petitioner finally bought it for \$51,250.² The Respondent presented no substantial evidence to support its conclusory claims that this transaction was not an arm's-length transaction or that it was a forced distressed sale. Under these circumstances that transaction has considerable weight. On the other hand, the appraiser's unexplained failure to disclose the 2008 transfers is troubling. It indicates a lack of care in his work that detracts somewhat from the credibility of the appraisal's final conclusion about value. Therefore, the Petitioner's purchase price (rounded to \$51,300) is determined to be the best indication for an accurate valuation in this case.

Conclusion

15. The Board finds in favor of the Petitioner.

² The appraisal contains slightly different information. It states that the subject property "is currently for sale MLS # 55379 for \$77,000 with 143 days on the Market. Originally listing price was \$145,000." The inconsistency is not significant to the outcome of this case.

Final Determination

In accordance with the above findings and conclusions, the 2010 assessment will be changed to \$51,300.

ISSUED: June 4, 2013

Commissioner, Indiana Board of Tax Review

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- Appeal Rights -

You may petition for judicial review of this final determination under 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 Indiana 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/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>