

REPRESENTATIVE FOR PETITIONERS:
John L. Johantges, Property Tax Group 1, Inc.

REPRESENTATIVES FOR RESPONDENT:
Tara Acton, Residential Lead Deputy, Wayne Township
Michael Thompson, Assistant Chief Deputy, Wayne Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

DAN P. & COLEEN M. FITCH,	)	Petition No.:	49-901-02-1-5-08867
	)	Parcel:	9-034415
Petitioners,)		
)		
v.)		
	)	County:	Marion
WAYNE TOWNSHIP ASSESSOR,	)	Township:	Wayne
	)	Assessment Years:	2002
Respondent.)		

Appeal from the Final Determination of
Marion County Property Tax Assessment Board of Appeals

August 30, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (the “Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUES

1. The parties presented the following restated issue for consideration by the Board:
Whether the assessed value of the subject property exceeds its market value-in-use.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, John L. Johantges, Property Tax Group 1, Inc., filed Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 Petition) on behalf of Dan P. and Coleen M. Fitch, petitioning the Board to conduct an administrative review of the above petition. The Form 131 Petition was filed on September 9, 2004. The determination of the Marion County Property Tax Assessment Board of Appeals (the “PTABOA”) was issued on August 27, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on March 3, 2005, in Indianapolis, Indiana before Brian McKinney, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:
For the Petitioners:
John L. Johantges, Property Tax Group 1, Inc.

For the Respondent:
Tara Acton, Residential Lead Deputy, Wayne Township
Michael Thompson, Assistant Chief Deputy, Wayne Township
5. The following exhibits were presented for the Petitioners:
Petitioners’ Exhibit 1 – Appraisal of subject property, dated December 17, 1999;

Petitioners' Exhibit 2 – Appraisal of property in Center Township, dated December 16, 1999; Copy of agreement between owner and Center Township changing grade; Form 115 reflecting grade change; subject property record card.

6. The following exhibits were presented for the Respondent:

Respondent's Exhibit 1 – Spreadsheet of sales in neighborhood;

Respondent's Exhibit 2 – Property record card and sales disclosure statement for properties used in appraisal in Pet'r Ex. 1;

Respondent's Exhibit 3 – Pages 53-54 of INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, MASS APPRAISAL OF REAL PROPERTY;

Respondent's Exhibit 4 – Property record card for subject property.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The Form 131 Petition;

Board Exhibit B – Notice of Hearing dated December 14, 2004;

Board Exhibit C – Letter removing case from Small Claims docket.

8. The subject property is a one story single-family dwelling located at 3248 Georgetown Road, in Indianapolis, Indiana.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2002, the PTABOA determined the assessed value of the property to be:

Land: \$7,100 Improvement: \$39,200 Total: \$46,300

11. For 2002, the Petitioners contend the assessed value of the property should be:

Total: \$38,500.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing

official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONERS' BURDEN

13. 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).
14. 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. Wash. 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”).
15. 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.

ANALYSIS

Whether the assessed value of the subject property exceeds its market value in use.

Parties' Contentions

16. The Petitioners contend that the subject property should have an assessed value of \$38,500. *Johangtes testimony*. In support of their position, the Petitioners submitted an appraisal estimating the market value subject property to be \$38,500 as of September 26, 1999. *Pet'r Ex. 1*.

17. The Respondent contends that the Petitioners' appraisal lacks probative value because the seller of each property relied upon by the appraiser in his comparable sales analysis was a bank. *Acton testimony; Resp't Ex. 2*. The Respondent also presented a sales comparison sheet showing the selling prices of twenty-nine (29) homes in the same neighborhood as the subject property. *Resp't Ex. 1*. The Respondent contends that the sale prices of those homes support the subject property's assessment. *Acton testimony; Rep't Ex. 1*.

18. The Petitioners presented the following evidence and argument in support of their position:
 - A. The Petitioners submitted an appraisal performed by a certified appraiser, which estimates the market value of the subject property to be \$38,500 as of September 26, 1999. *Pet'r Ex. 1*. The appraisal states that the appraiser performed his analysis in conformity with the Uniform Standards of Professional Appraisal Practice in place as of the effective date of the appraisal. *Id.*
 - B. The properties that the appraiser selected for comparison to the subject property in his "market comparable analysis" were appropriate. *Johangtes testimony*.
 - C. The Petitioners also presented an appraisal for a second property located in Center Township, Marion County, Indiana. *Pet'r Ex. 2*. The township assessor used that appraisal to change the assessed value for the property in question. *Johangtes testimony*. The Petitioners attached a copy of a form showing that the township assessor changed the quality grade assigned to the property. *Pet'r Ex. 2*. The Petitioners also attached a copy of the Form 115 Notification of Final Assessment Determination from the PTABOA and the property record card for the property in question, both of which show the change in quality grade. *Id.*
 - D. The Petitioners' representative testified that, in his personal experience, some township assessors change the grade assigned to a property in order to bring its assessment more in line with an appraisal. *Johangtes testimony*.

19. The Respondent presented the following evidence and argument in support of the assessment:

- A. The change made to the property in Center Township was a grade change; it was not the result of an appraisal. *Acton testimony*. The change of value to the Center Township property identified by the Petitioners may not have been in response to an appraisal. *Acton testimony*. It would be inappropriate to make a grade change because of an appraisal. *Id.*
- B. The Respondent presented a spreadsheet containing information about the properties used to determine the neighborhood factor for the subject property's neighborhood. *Resp't Ex. 1*. The Respondent also presented a spreadsheet of sales of properties in the subject neighborhood that were similar to the subject property in age, grade, and square footage. *Id.* Those sale prices support the subject property's assessment.
- C. The sales relied upon by the Petitioners' appraiser in his "market comparable analysis" were not probative of the subject property's market value because the seller in each transaction was a bank. *Acton testimony; Resp't Ex. 2*. The Respondent presented a copy of two pages from MASS APPRAISAL OF REAL PROPERTY, a publication of the International Association of Assessing Officers. *Resp't Ex. 3*. The excerpted section contains a discussion regarding "Non-Arms-Length Sales," including sales in which the seller is a financial institution. *Acton testimony; Resp't Ex. 3*.
- D. The appraisal appears to have been performed for the Estate of Warrant T. Fitch, who the Respondent believes may have been the father of one of the Petitioners. *Acton testimony*. The excerpted portion of MASS APPRAISAL OF REAL PROPERTY also contains a discussion regarding estate sales.

Discussion

- 20. The Petitioners rely upon an appraisal that estimates the market value of the subject property to be \$38,500 as of September 26, 1999. *Pet'r Ex. 1*.
- 21. The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate as "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." 2002 REAL PROPERTY

ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual's definition of true tax value, such as appraisals that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through the cost and income capitalization approaches).

22. One such generally recognized method of appraisal is the sales comparison approach. That approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 2. *See also, Long v. Wayne Twp. Assessor* 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
23. The appraiser certified that he performed the appraisal in accordance with the Uniform Standards of Appraisal Practice. *Pet'r Ex. 1*. In addition, the appraisal, on its face, is based upon a comparison of the subject property to other properties that sold at or near the time of the date of the appraisal. *Id.* The appraiser compared numerous characteristics of the subject property to those of the other properties being analyzed. The appraiser also adjusted the sale prices of the comparable properties where their characteristics differed in significant ways from those of the subject property. *Id.*

24. Moreover, the appraisal valued the subject property as of a date not far removed from the relevant valuation date of January 1, 1999, set forth in the Manual. *See* MANUAL at 4.
25. Based on the foregoing, the Petitioners established a prima facie case that the assessment is in error and that the correct assessment should be \$38,500.
26. The burden therefore shifted to the Respondent to impeach or rebut the appraisal submitted by the Petitioners. *Meridian Towers*, 805 N.E.2d at 479. The Respondent sought to impeach the credibility of the appraisal through sales disclosure statements for each of the properties relied upon by the appraiser in his sales comparison analysis. *Resp't Ex. 2*. According to the Respondent, the sales disclosures indicate that, in each case, the seller was a financial institution. *Id.* The Respondent claims that the sales therefore were not arms length transactions and that the appraiser should not have relied upon them in estimating the market value of the subject property. *Acton testimony*.
27. As an initial matter, only one sales disclosure statement manifestly indicates that the seller was a financial institution. *Resp't Ex. 2*. In that sale, the disclosure statement identifies the seller as National City Bank of Indiana. *Id.* Of the other two sales, one seller was a federal agency, and the other was "Banker's Trust Company as Trustee for Walsh Acceptance Corp." *Id.*
28. Moreover, even the publication relied upon by the Respondent does not indicate that all sales in which the seller is a financial institution are invalid. Instead, that publication states: "[s]ales in which a financial institution is the *seller* should be viewed cautiously but may be valid if made in the open market." *Resp't Ex. 3 (emphasis in original)*. The Respondent did not present any evidence to show that the sales did not occur on the open market. In fact, the Respondent itself apparently used one of the sales relied upon by the Petitioners' appraiser – the sale of a property located at 4619 Bertrand - in determining the neighborhood factor to be applied to all properties within the subject's neighborhood. *Resp't Ex. 1*.

29. The Respondent also pointed to the fact that the appraisal appears to have been prepared for the Estate of Warren T. Fitch. *Acton testimony; Pet'r Ex. 1*. According to the Respondent, the same publication that cautions against the use of sales involving financial institutions also includes a discussion regarding estate sales. *Acton testimony; Resp't Ex. 3*. The Petitioners, however, do not rely upon the actual purchase or sale of the subject property by or from an estate, but rather upon an appraisal commissioned by a lender. *Pet'r Ex. 1*. The appraisal, on its face, states that the appraiser is rendering an opinion regarding the market value of the subject property. *Pet'r Ex. 1*. Moreover, to the extent that an estate may be motivated by non-market related concerns in buying or selling property, there is no reason to impute those concerns to a lender. The lender almost invariably will be concerned with the actual market value of the property in question.
30. Finally, the Respondent argues that the assessed value of the subject property was in line with the sale prices and assessed values of similar properties in the same neighborhood. *Acton testimony; Resp't Ex. 1*. In making this argument, the Respondent essentially relies on a sales comparison approach to establish the market value-in-use of the subject property. As such, the Respondent was required to engage in the type of analysis outlined in *Long, supra*.
31. The Respondent presented a spreadsheet showing the square footage, age, condition, and grade of numerous properties. The Respondent, however, did not explain why those characteristics are the most relevant to the determination of market value, or why other characteristics that the Respondent did not identify, such as the number of bedrooms and bathrooms, do not also significantly affect the market value of the properties. Moreover, the Respondent did not attempt to explain how any significant differences between the properties affect their relative market values. *See Long*, 821 N.E.2d at 471. Thus, the Respondent's evidence concerning the assessments and sale prices of the purportedly comparable properties listed on its spreadsheets is not probative of the market value of the subject property and does not serve to rebut the appraisal submitted by the Petitioners.

32. Based on the foregoing, the Board finds that the preponderance of the evidence demonstrates that the current assessment is in error and that the correct assessment should be \$38,500.¹

SUMMARY OF FINAL DETERMINATION

33. The Petitioners demonstrated, by a preponderance of the evidence, that the current assessment is incorrect and that the correct assessment should be \$38,500. The assessment should be changed to reflect a total value for the subject property of \$38,500.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

¹ Petitioner submitted Petitioner's Exhibit 2 in an attempt to show that another jurisdiction had relied on a similar appraisal in making a change in the assessment. Because the Board finds the appraisal of the subject property probative, and un rebutted by the Respondent, there is no need to address this contention.

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>.