

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

Petition #: 40-013-04-1-5-00005
Petitioners: David A. & Tena M. Brooks
Respondent: Center Township Assessor (Jennings County)
Parcels: 120402200300012 & 120402200400012
Assessment Year: 2004

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 Jennings County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 10, 2004.
2. The Petitioners received notice of the decision of the PTABOA on June 29, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on July 26, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing notice to the parties dated October 18, 2004.
5. The Board held an administrative hearing on November 18, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: David A. Brooks, Taxpayer
Tena M. Brooks, Taxpayer
 - b) For Respondent: Linda Kovacich, County Assessor (Authorized Representative - Center Township)

Facts

7. The property is classified as a residential home located on two lots. The home and one lot are shown on the property record card 12-04-022-003.000-12 with Tax ID 0130284100 (“Lot 3”). The second lot is shown on property record card 12-04-022-004.000-12 with Tax I.D. 0130284200 (“Lot 4”).¹
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Jennings County PTABOA:

12-04-022-003.000-12	Land: \$28,800	Improvements \$ 270,000
12-04-022-004.000-12	Land: \$19,400	
10. Assessed Value requested by Petitioners:

12-04-022-003.000-12	Land: \$16,450	Improvements: \$252,100
12-04-022-004.000-12	Land: \$16,450	

Issues

11. Summary of Petitioners’ contentions in support of alleged error in assessment is:
 - a) The assessed value is unrealistic and doesn’t show a clear picture of what the subject property is worth. *D. Brooks Testimony*. An appraisal performed by Robert W. Barber of Barber’s Appraisal Service estimated the market value of the subject properties as being \$285,000 as of June 26, 2004. *D. Brooks Testimony; Petitioners Exhibit 3*. The appraisal is the best evidence of value. *D. Brooks Argument*.
 - b) The Petitioners compared the subject property to three recently sold homes. *D. Brooks Testimony; Petitioners Exhibit 4*. The Petitioners computed the value per square foot of the subject property using the assessed value of record divided by the livable square footage to arrive at \$75.58 per square foot. *Id.* The Petitioners also computed the value per square foot of the three purportedly comparable homes using the sale price and livable square footage for each home. *Id.* The values for the three homes range from \$44.52 per square foot to \$70.24 per square foot. *Id.* The subject property has the highest value per square foot. *Id.*

¹ The Petitioners only listed Lot 3 on their form 130 Petition. *Board Exhibit A*. However, in issuing its Notification of Final Assessment Determination (Form 115), the PTABOA determined the assessment for Lots 3 and 4. *Id.* On their Form 131 petition for review to the Board, the Petitioners listed only Lot 3 in the section of the petition asking for the legal description of the property being appealed. However, the Petitioners requested a lower land value for Lot 4 in setting forth their grounds for appeal, and presented evidence concerning Lot 4 at the hearing. The Respondent did not object to the inclusion of Lot 4 in the Form 131 petition or the introduction of evidence concerning Lot 4. Therefore, the Board will address the Petitioners claims concerning both Lots 3 and 4 in making its final determination.

- c) The Petitioners also computed the property taxes per square foot for the subject home and the three purportedly comparable homes identified in Petitioners Exhibit 4. *D. Brooks Testimony; Petitioners Exhibit 4.* The taxes per square foot for the subject property are \$1.39. *Id.* The taxes per square foot for the three purportedly comparable homes range from \$0.64 to \$0.86 per square foot. *Id.*
 - d) Jennings County rarely has houses that sell for over \$200,000. If the Petitioners tried to sell the subject property they could only get \$285,000 because no one could obtain a loan for more than the appraised value. *D. Brooks Testimony.* All three houses listed on Petitioner Exhibit 4 for less than the asking price. *D. Brooks Testimony; Petitioners Exhibit 4.*
 - e) The Petitioners purchased the subject lots for \$22,000 for each. *D. Brooks Testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent contends the Petitioners' appraisal was done solely for tax appeal purposes. *Kovacich Testimony.*
 - b) In issuing its final assessment determination, the PTABOA analyzed the Petitioners' appraisal and determined Sale 1 was the best comparable. Two members of the PTABOA are appraisers. The PTABOA made changes to Sale 1 based on the following:
 - (1) The subject property and Sale 1 are the same age and no adjustment should be given for age.
 - (2) Lots in Country Meadows, location of Sale 1, have an average sale price of \$25,000. Houses are generally built on one (1) lot. Lots in Woodfield where the subject property is located, sell between \$23,000 and \$28,000. The subject property is built on two lots. The Petitioners paid \$47,000 for the two lots in Woodfield. The PTABOA used an adjustment of \$20,000 for lot value instead of the \$10,000 used in the appraisal.
 - (3) The county shows more bathrooms on the property record card for the subject property than the appraiser has listed. The differences in the bathrooms would have made the subject property appraisal value higher.
 - (4) The same appraiser gave a \$5,000 adjustment on a different property for an extra car garage. For the Petitioners' appraisal, the appraiser used \$2,500 for the extra car garage adjustment. The PTABOA used \$5,000 for the adjustment.
 - (5) After the adjustments are made the value of Sale 1 becomes \$321,745, which supports the subject property value of \$318,000.
Kovacich Testimony; Respondent Exhibits 1- 3.

- c) The Respondent contends if the assessment is lowered the price related differential would be affected. Lower priced homes are assessed at one hundred percent (100%) because there are more comparable sales, and homes such as the subject property will be lowered simply for lack of sale comparisons when they still offer the utility and use of a \$300,000 plus home. *Kovacich Testimony.*
- d) Respondent Exhibits 4 thru 10 show sales of vacant lots in Woodfield Subdivision (subject area) and Country Meadows (comparable area). The sales values range from \$23,500 up to \$28,500. The subject lots were sold for \$23,500. The assessment of the subject property reflects the sale of the lots and is at market value as it should be. *Kovacich Testimony; Respondent Exhibits 4 thru 10.*
- e) The Respondent opined the sale on Dallas Drive (Petitioners Exhibit 4, Listing 1) was a “stressed sale” because the seller had relocated. *Kovacich Testimony.*

Record

- 13. The official record for this matter is made up of the following:
 - a) The Petition, and all subsequent pre-hearing, or post-hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR # 5884.
 - c) Exhibits:
 - Petitioners Exhibit 1: Copy of Form 115 dated June 29, 2004.
 - Petitioners Exhibit 2: Copy of Form 131 dated July 24, 2004.
 - Petitioners Exhibit 3: Copy of Appraisal dated June 22, 2004.
 - Petitioners Exhibit 4: Comparison of Current Home Sales/Asking Prices.
 - Petitioners Exhibit 5: Brooks Paid Taxes.

 - Respondent Exhibit 1: Written explanation of PTABOA’s decision.
 - Respondent Exhibit 1-A: Copy of appraisal presented to PTABOA at 130 hearing.
 - Respondent Exhibit 2: Copy of appraisal presented by taxpayer with amended differences made by PTABOA.
 - Respondent Exhibit 3: Copy of an appraisal done for another taxpayer by subject’s same appraiser with discrepancies.
 - Respondent Exhibits 4 thru 10: Copies of Property Record Cards (PRC’s) with sales of vacant lots in subject and comparable neighborhoods.

- d) These Findings and Conclusions.

Analysis

- 14. The most applicable governing law is:
 - 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).
 - 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. 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”).
 - 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 failed to provide sufficient evidence to support Petitioners’ contentions. This conclusion was arrived at because:
 - a) The Petitioners rely on three main pieces of evidence to support their position: (1) the June 26, 2003 appraisal of the subject property; (2) a comparison of the subject property and three purportedly comparable properties; and (3) the amount for which they purchased the subject Lots. *D. Brooks Testimony; Petitioners Exhibit 3.*

Appraisal

- b) Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4; *Long v. Wayne Twp. Assessor*, Cause No. 49T10-0404-TA-20 at 8. If a petitioner seeks to rely on evidence of a property’s value as of a date substantially removed from January 1, 1999, the petitioner must explain how that evidence relates to the property’s fair market value-in-use as of January 1, 1999. *See Long*, Slip op. at 8-9 (holding that an appraisal prepared in 2003 lacked probative value regarding the property’s market value-in-use as of January 1, 1999). The assessment value at issue in this case is governed by the rules and regulations applicable to the 2002 general

reassessment. *See K.P. Oil, Inc. v. Madison Twp. Assessor*, 818 N.E.2d 1106, 1108 (Ind. Tax Ct. 2004)(stating that property values in a general reassessment are carried forward from year to year until the next general reassessment).

- c) The Petitioners presented an appraisal estimating the value of the subject property as of June 25, 2003. *Petitioners Exhibit 3*. The Petitioners did not explain how the value set forth in the appraisal relates to the fair market value-in-use of the subject property as of January 1, 1999. *D. Brooks Testimony*. Moreover, nothing in the appraisal itself purports to relate the estimation of value to January 1, 1999. *Petitioners Exhibit 3*. The appraiser based his estimation of value on a sales comparison approach and identified two of the three the comparable sales upon which he relied as being “almost two years old.” *Petitioners Exhibit 4*. This would mean the sales occurred sometime in 2001. The appraisal does not list the sale date of the third comparable property. *Id.* The appraisal submitted by the Petitioners therefore lacks probative value to establish the subject property’s fair market value-in-use on the relevant valuation date – January 1, 1999.

Sales comparison

- d) The Petitioners also sought to compare the subject property to three properties that sold in 2004. Once again, the Petitioners presented no explanation regarding how those sales relate to the value of the subject property as of January 1, 1999. Thus, like the appraisal, the sales information submitted by the Petitioner lacks probative value.
- e) The Petitioners’ reliance of the sales identified in Petitioners Exhibit 4 is misplaced for another reason – the Petitioners did not sufficiently establish the comparability of the properties set forth in Exhibit 4 to the subject properties.
- 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 2 (incorporated by reference at 50 IAC 2.3-1-2).
- g) The market value-in-use of a property may be calculated utilizing several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, Cause No. 49T10-0404-TA-20 at 4 (Ind. Tax Ct. corrected original opinion dated January 28, 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.*

- h) However, 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. *Id.* at 7. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect their relative market values-in-use. *Id.* at 8.
- i) Here, the Petitioners provided little or no description of the characteristics of either the subject properties or the purportedly comparable properties beyond setting forth the area in square feet for each home. *Brooks Testimony; Petitioners Exhibit 4.* While the relative sizes of the homes are relevant to a sales comparison inquiry, they are not sufficient by themselves to establish comparability.

Purchase of the subject lots

- j) The Petitioners further contend that the assessed land values for the subject properties are excessive. In support of this contention, the Petitioners point to the fact that they purchased the subject lots for \$22,000 each. *D. Brooks Testimony.* Although the Petitioners did not testify as to the date of purchase, there are copies of warranty deeds for the two lots dated January 17, 2000, attached to the appraisal submitted by the Petitioners. *Petitioners Exhibit 3.*
- k) The purchases of the subject lots are much closer in time to the relevant valuation date of January 1, 1999, than is the appraisal submitted by the Petitioners. In fact the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A allow assessors to analyze sales occurring within an eighteen (18) month window of January 1, 1999, valuation date in determining land values within an assessment neighborhood. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 8 (incorporated by reference at 50 IAC 2.3-1-2).* However, the GUIDELINES also provide that in analyzing such sales, “value adjustments should be made as necessary to approximate the value of the subject land on January 1, 1999.” *Id.* Consequently, some explanation of how the purchase price of the subject lots on January 17, 2000, relates to their value as of January 1, 1999, was necessary in order to assign probative value to those purchases. The Petitioners did not provide such an explanation.
- l) Finally, the Petitioners contend that Lot 4 has been devalued due to the fact that part of the subject home is built upon it and that it cannot be sold separately. However, the Petitioners provided no evidence to quantify the

extent to which the value of Lot 4 is affected or why the assessed value of \$19,400 does not accurately reflect the decrease in value caused by the placement of the subject home.

Conclusion

16. The Petitioners did not make a prima facie case for a change in assessment. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

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.