

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

Petition No.: 07-005-03-1-4-00004
Petitioner: Stephen W. Gore, Brown County Assessor
Respondents: Matthew Bryant Gray and Amy Jo Gray
Parcel No.: 0011160003
Assessment Year: 2003¹

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

Procedural History

1. On December 15, 2005, the taxpayers, Matthew and Amy Gray, initiated an assessment appeal with the Brown County Property Tax Assessment Board of Appeals (PTABOA).
2. On November 1, 2007, the PTABOA issued its determination reducing the subject property's total assessment from \$538,700 to \$325,600.
3. Seven days later, the Brown County Assessor filed a Form 131 petition with the Board. The Assessor elected to have his appeal heard pursuant to the Board's small claims procedures.
4. The Board's designated administrative law judge, Alyson Kunack, held a hearing on August 4, 2009. She did not inspect the property.
5. The following people were present and sworn in at the hearing:
 - a) For the Assessor: Stephen W. Gore, Brown County Assessor
Frank Kelly, county vendor and witness
 - b) For the Grays: Milo Smith, taxpayer representative

¹ The Form 115 Notification of Final Assessment Determination lists the assessment date as March 1, 2004. *Board Ex. A.* But both the Grays' Form 130 petition and the Assessor's Form 131 petition refer to the March 1, 2003, assessment date. *Id.* At the hearing, the parties agreed that 2003 was the assessment year under appeal.

Facts

6. The subject property is a commercial parcel located at 79 N. Van Buren Street in Nashville.

7. The PTABOA determined the following values:

Land: \$161,800 Improvements: \$163,800 Total: \$325,600.

8. The Assessor requested the following values, which match the property's original assessment before the PTABOA's determination:

Land: \$323,700 Improvements: \$215,000 Total: \$538,700.

Issues

9. Summary of the Assessor's contentions:

- a. To arrive at the original assessment of \$538,700 the assessors used land base rates that they developed from sales information, income statements, and appraisals for other properties. *Kelly testimony*. The Grays actually bought the subject property for \$590,000 in July of 2003, which supports the original assessment. *Gore testimony; Pet'r Ex. 1*. Before buying the property, the Grays paid "top dollar" for Chitwood Appraisals to appraise it. They wanted to be sure that they had "true and correct information." See *Kelly testimony (quoting from the Grays' Form 130 petition)*. Thus, while the Grays offered only a portion of that appraisal to the PTABOA and the Assessor therefore did not know exactly what the appraiser estimated the property to be worth, it appears that the appraisal supported the \$590,000 sale price. *Kelly argument*.
- b. The fact a nearby vacant parcel of land has been listed for sale for at least five years with an asking price of approximately \$475,000 further supports the subject property's original \$538,700 assessment. *Gore testimony; Kelly argument*.
- c. Also, by changing the base rates for only the subject property and a few others, the PTABOA acted in a non-uniform and inequitable manner. Other properties in Nashville's central business district were assessed using the rate that had originally been applied to the subject property's land. *Kelly argument*.
- d. Finally, the Grays mistakenly claim that, by pursuing this appeal, the Assessor is engaging in sales chasing. An assessor engages in sales chasing if he uses sale prices to adjust the assessments only of properties that have sold. The Assessor, however, is not trying to change the subject property's assessment to match its sale price. He instead wants to change the assessment back to its original amount, which was based on data from numerous other sales. He simply offered the

subject property's sale price as evidence to support that original assessment.
Kelly argument.

10. Summary of the Grays' contentions:

- a. By basing his argument on the subject property's sale price, the Assessor is essentially engaging in sales chasing. If an assessor uses sales data to adjust one property's assessment, he should use that same data to adjust the assessments for all other properties in the same neighborhood. *Smith argument.*
- b. In any event, the Assessor failed to meet his burden of proof. He did not show that the revised assessment of \$325,600, which the PTABOA duly ruled upon, should be overturned. *Smith argument.*

Record

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

- a. The Form 131 petition.
- b. A digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1: Sales disclosure form for the subject property

Board Exhibit A: Form 131 petition,
Board Exhibit B: Notice of hearing,
Board Exhibit C: Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

12. The most applicable governing cases are:

- a. A petitioner seeking review of an assessing official's determination 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 petitioner 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 [petitioner'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 respondent to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The respondent must offer evidence that impeaches or rebuts the petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
13. The Assessor failed to make a prima facie case for changing the subject property's assessment. The Board reached this decision for the following reasons:
- a. Real property is assessed based on its "true tax value," which means "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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). In conducting mass appraisals, assessors normally use the Real Property Assessment Guidelines for 2002-Version A. And a property's market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006). To rebut that presumption, a taxpayer may use relevant evidence that is consistent with the Manual's definition of true tax value, such as actual construction costs, market-value-in-use appraisals, sales information regarding the subject property or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.* at 678; *see also* MANUAL at 5.
 - b. The Manual further provides that, for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. That is also true for succeeding assessment years through 2005. *See id.* at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002 through March 1, 2005, assessment dates). Thus, a party relying on an appraisal performed substantially after January 1, 1999, must explain how the value estimated by the appraiser relates to the property's market value-in-use as of January 1, 1999. Otherwise, that evidence lacks probative value. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
 - c. Here the Assessor pointed to the subject property's July 2003 sale price of \$590,000. But he did not explain how that sale price related to the property's value as of the relevant January 1, 1999, valuation date. That sale price therefore lacks probative value. The same is true for the appraisal that the Assessor claimed was connected with the sale. Of course, that appraisal also lacks probative value for an even more fundamental reason—the Assessor did not offer a copy of the appraisal. In fact, the Assessor did not even know the amount of the appraiser's valuation opinion.
 - d. The fact that a nearby vacant property had been listed for sale with an asking price of \$475,000 similarly lacks probative value. The Assessor did not even

attempt to explain how that property compared to the subject property. *See Long*, 821 N.E.2d at 471 (taxpayers had duty to explain how their property compared to purportedly comparable properties and how any differences affected the properties market values-in-use). And because the property did not actually sell, the Board infers little from its asking price. If anything, the fact that the property had not sold tends to show that it was worth less \$475,000. But how much less is anybody's guess.

- e. Because the Assessor failed to offer any probative evidence, the Grays' duty to support the PTABOA's assessment determination was not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

14. The Assessor failed to make a prima facie case. The Board therefore finds for the Grays.

Final Determination

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

ISSUED: _____

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 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>.