PETITIONERS: Bonnie S. Kingrey and Adrian J. Miller

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney at Law

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BEFORE THE
INDIANA BOARD OF TAX REVIEW

Bonnie S. Kingrey and Adrian J. Miller,	)	Petition No. 88-017-10-1-5-00001
Petitioners,	)	Parcel No. 88-02-14-000-011.000-017
v.	)	
Washington County Assessor,	)	Washington County Posey Township 2010 Assessment
Respondent.	)	

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

April 20, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

Is the current 2010 assessment of $86,300 an accurate market value-in-use for the subject property and does the evidence show what a more accurate assessed valuation would be?

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The property is a single family residence located at 11445 South State Road 66 in Hardinsburg.

2. The Petitioners initiated an assessment appeal for 2010 with the County Property Tax Assessment Board of Appeals (PTABOA) by timely filing a Form 130 Petition.

3. On August 8, 2011, the PTABOA mailed its Notification of Final Assessment Determination (Form 115), concluding that the assessment is $18,300 for land and $68,000 for improvements (total $86,300).

4. On September 15, 2011, the Petitioners filed a Form 131 Petition seeking the Board's review of that determination. The Form 131 stated the assessed value should be $5,000 for land and $55,000 for improvements (total $60,000).

5. Administrative Law Judge Rick Barter held the Board's administrative hearing on January 25, 2012. He did not conduct an on-site inspection of the property.

6. Petitioner Bonnie S. Kingrey, Petitioner Adrian J. Miller, and Washington County Assessor Jason Cockerill were sworn as witnesses.

7. The Petitioners offered Exhibit 1 (letter from Judith and Erwin Boone) and Exhibit 2 (letter from Barbara Shaw). The Respondent objected to these exhibits because the Petitioners failed to follow the rules regarding the exchange of this evidence. When the Petitioners filed this case they specifically elected not to proceed according to small claims procedures. Accordingly, 52 IAC 2-7-1(b) required them to provide the opposing party with a list of the witnesses and exhibits at least 15 business days before the hearing and a copy of documentary evidence at least five business days before the hearing. The Petitioners admitted their Exhibits 1 and 2 were not provided prior to the hearing. They

apparently failed to understand the requirement to exchange evidence before the hearing, but they provided no substantial reason that might excuse the failure to do what the rule clearly requires. Even though nothing in either letter would change our determination if admitted as evidence, the objection is sustained.

8. The Respondent presented the following exhibits:

Respondent Exhibit A – Property record card,
Respondent Exhibit B – Campbell Appraisal.

9. The following additional items are recognized as part of the record:

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

SUMMARY OF THE PETITIONERS' CASE

10. The assessment has several facts about this house wrong. The assessment includes a new porch, but that porch has been there since 1960. The interior walls are old plaster covered with paneling, not drywall—if the house had drywall that would increase the value. Additionally, the house is assessed as having three full baths, but there is only one full bath and one room with a shower and vanity. *Kingrey testimony.*

11. The assessor incorrectly determined the home has 1,556 square feet. A contractor who measured it, however, concluded it has approximately 1,200 square feet. *Miller testimony*.

12. The Petitioners have offered the property for sale since early 2010. Initially they were asking $84,000.[1] Then they listed it with a realtor with an asking price of $79,000.

[1] The appraisal states, "For sale by owner for [$]84,900 for one week according to owner on date of inspection [March 4, 2010]. Property not listed or advertised." *Resp't Ex. B at 1 of 6*.

Miller testimony. Since then the asking price has been lowered four times—most recently down to $65,000—and still there have been no offers. *Kingrey testimony*.

13. The appraised value of $82,000 is too high. The Campbell Appraisal should not be used because it was for a bank loan. Of its four comparable sales, only one was from the same area (Hardinsburg). The other three were in a different area (Palmyra). *Miller testimony; Kingrey testimony*.

14. The Petitioners purchased the property in 2004 when the assessed value was $53,000. The assessment increased to $74,000 in 2008, to $78,000 in 2009, and then to $86,300 in 2010, even though the Petitioners made only minimal renovations. *Kingrey testimony*.

SUMMARY OF THE RESPONDENT'S CASE

15. The 2010 assessed value of $86,300 is supported by an appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice by L. Shane Campbell, a licensed Indiana Residential Appraiser. Based on the sales comparison approach to value, the appraiser concluded the property's value was $82,000 as of March 4, 2010. The appraisal states that the cost approach and the income approach were not developed. *Cockerill testimony; Resp't Ex. B at 2 of 6*.

16. The assessment and the appraisal reached similar conclusions about value. The assessor would be willing to lower the assessment to the appraisal amount. *Meighen argument; Cockerill testimony*.

17. The assessor determined the square footage is 1,556 square feet, which is identical to the square footage described in the appraisal. *Cockerill testimony; Resp't Exs. A and B at 1 of 6*. The assessment does not include three bathrooms. The property record card does

show a total of five plumbing fixtures consisting of one three-fixture bathroom (toilet, sink, and tub), plus a kitchen sink, and a water heater. *Cockerill testimony; Resp't Ex. A*.[2]

BURDEN OF PROVING VALUATION

18. Prior to this hearing the Board sent the following notice:

> On May 10, 2011, Governor Daniels signed House Enrolled Act 1004 into law. Section 32 of the law provides the following:
>
> 32. IC 6-1.1-15-17.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 17.2. 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.**

19. Unambiguous statutory language must be given its plain meaning. And this new burden-shifting provision states a basic rule about reviewing certain assessments in clear and unambiguous terms. Significantly, the provision does not directly address the meaning of the effective date.

20. The Board has determined that Ind. Code § 6-1.1-15-17.2 applies to appeals where the Board conducts its hearing after July 1, 2011. *Echo Lake, LLC v. Morgan County Assessor,* Pet. Nos. 55-016-09-1-4-00001 -02 and -03 (Ind. Bd. of Tax Rev. Nov. 4, 2011); *Stout v. Orange County Assessor,* Pet. No. 59-007-09-1-5-00001 (Ind. Bd. Tax Rev. Nov. 7, 2011). As explained in those decisions, "While statutes are generally given

[2] After the meaning of the plumbing fixtures information on the property record card was explained, the Petitioners ultimately agreed with what the property record card shows on that point. *Kingrey testimony*.

prospective effect absent a contrary legislative intent, it is also true that the jurisdiction in pending proceedings continues under the procedure directed by new legislation where the new legislation does not impair or take away previously existing rights, or deny a remedy for their enforcement, but merely modifies procedure, while providing a substantially similar remedy." *Tarver v. Dix*, 421 N.E.2d 693,696 (Ind. Ct. App. 1981)). According to the U.S. District Court for the Northern District of Indiana, "applying newly enacted procedure to a case awaiting trial in district court is not, strictly speaking, a retroactive application of the law" because the court has not yet "done the affected thing" when the new law is applied. *Brown v. Amoco Oil Co.*, 793 F. Supp. 846, 851 (N.D. Ind. 1992).

21. In *City of Indianapolis v. Wynn,* 157 N.E.2d 828, 834-835 (Ind. 1959), the Indiana Supreme Court held that a statutory amendment specifying that evidence of certain factors would constitute primary determinants of an annexation's merit was a procedural amendment. Because it was about a procedural matter, the amendment applied to a proceeding where the remonstrators had filed their challenge, but where no hearing had yet occurred. The Court reasoned that because the amendment "changes the method of procedure and elements of proof necessary to sustain an annexation ordinance, and does not change the tribunal or the basis of any right, it must be presumed that the Legislature intended that the proceedings instituted under the [prior version of the statute] should be continued to completion under the method of procedure prescribed by the [amendment]." *Id.; see also Tarver,* 421 N.E.2d at 696 (A statutory presumption of legitimacy applied to a case filed prior to its enactment but heard after the legislation was passed because "the new legislation … provided a substantially similar remedy while delineating more clearly the procedure to be followed in determining and enforcing this right.").

22. Indiana Code § 6-1.1-15-17.2 does not change the rules or standards for determining whether an assessment is correct. Nor does it change the assessor duties in making assessments. Assessors must assess real property based on its "true tax value," which is defined 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). This definition "sets the standard upon which assessments may be judged." *Id*. Moreover, property values are to be adjusted each year to reflect the change in a property value between general reassessment years. Ind. Code § 6-1.1-4-4.5. Having the burden to support an assessed valuation should not affect the obligation of the assessor to assess the property according to its market value-in-use.

23. The "affected thing" by Ind. Code § 6-1.1-15-17.2 is the hearing—not the assessor's valuing the property in the first place. If the Indiana General Assembly had not intended the law to apply to pending appeals, it could have said that the law only applies to future assessments. But the General Assembly did not do so.

24. Turning to the case at hand, the assessment went from $75,000 in 2009 to $86,300 in 2010. That is an increase of more than five percent. Therefore, the Assessor had the burden of proving an accurate market value-in-use for the assessment of the subject property.

ANALYSIS

25. 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." Ind. Code § 6-1.1-31-6(c); MANUAL at 2. The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Relevant 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.

26. The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of

Professional Appraisal Practice. *Kooshtard Property VI, LLC v. White River Twp. Assessor,* 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005).

27. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2010 assessment was March 1, 2010. IC 6-1.1-4-4.5(f). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.

28. The Campbell Appraisal is evidence that the value of the subject property was $82,000 as of March 4, 2010. The slight difference from the required valuation date is insignificant. Although it is a little less than the current assessment, the Respondent's evidence substantially supports a valuation of $82,000.

29. The Petitioners attempted to challenge the credibility of this appraisal, but not very effectively. They pointed out that only one of the four comparable sales was in Hardinsburg where the subject property is located and the other three were in Palmyra. For that reason, according to the Petitioners, they are not good comparables. But such bald conclusory statements are not probative evidence. They actually do nothing to rebut or impeach the appraisal. *See Whitley Products , Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Similarly, the Petitioners attempted to establish that the appraised value is too high because the appraisal was for a bank loan. According to Mr. Miller, "you know and I know that that's the reason why the government is in trouble today is because banks 'overloaned' … people on mortgages." Again, this kind of unsubstantiated conclusory statement is not probative evidence and does nothing to rebut or impeach the appraisal. *Id.*

30. Part of the Petitioners' case, however, provides some evidence that perhaps the appraisal's valuation is too high. Undisputed testimony established that since early 2010 the Petitioners have tried to sell the property, but they have been unsuccessful. For a short time in March 2010 they attempted to sell it themselves and were asking $84,000. Then they listed it with a realtor with an asking price of $79,000. Subsequently the asking price was reduced four times, eventually down to $65,000. During all this time they got no offers. The lack of detail and lack of supporting documentation diminishes the impact of this evidence, but the point has some relevance and probative value. Nevertheless, a history of price reductions and unsuccessful marketing is not enough to convince the Board to disregard the value indicated by the Campbell Appraisal. In this case, that appraisal is ultimately the more credible evidence.

31. Even if the property record card has errors concerning square footage, interior wall materials, and a "new" porch, the Petitioners failed to make their case by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). To successfully make their case they needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Id.; see also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that proper focus is not on methodology, but rather, on what the correct value actually is).

32. It is a "cardinal principle that each tax year stands on its own. *** Where a taxpayer challenges an assessment, the resolution of that challenge does not depend on how the property was previously assessed." *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 n.14 (Ind. Tax Ct. 1998). Therefore, how the assessment changed from 2004 or 2008 is not relevant to determining what an accurate market value-in-use is for March 1, 2010.

33. The Petitioners did not present substantial, probative evidence to support their claim for an assessment of $60,000 and they failed to rebut the value proved by the Campbell Appraisal.

SUMMARY OF FINAL DETERMINATION

34. The evidence establishes the assessed value should be changed to $82,000.

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

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

- 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.