

REPRESENTATIVE FOR PETITIONER:

Mark A. Bennett, Esq.

REPRESENTATIVES FOR RESPONDENT:

Jack Norris, Madison County Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Olive B. and Lowell LaGarde,	)	Petition No.:	48-033-06-1-4-07419
)		
Petitioners,	)	Parcel:	1508011036
)		
v.)		
	)	County:	Madison
Madison County Assessor,	)	Township:	Union
)		
Respondent.	)	Assessment Year:	2006

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

May 4, 2009

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

PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-15-1, Olive and Lowell LaGarde (the Petitioners) filed a Form 131 Petition for Review of Assessment on June 11, 2008, petitioning the Board to

conduct an administrative review of the above petition. The Madison County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on May 19, 2008.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Alyson Kunack, the duly designated Administrative Law Judge (the ALJ), authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on February 4, 2009, in Anderson, Indiana.
3. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioners:
 - Douglas LaGarde, Petitioner
 - Olive LaGarde, Petitioner
 - Carl Chambers, witness
 - For the Respondent:
 - Jack Norris, Madison County Assessor
4. The Petitioners presented the following evidence:
 - Petitioners Exhibit 1 – Appraisal of the subject property,
 - Petitioners Exhibit 2 – Rental Value calculation for the subject property,
 - Petitioners Exhibit 3 – MLS listing sheets for comparable properties used in the appraisal.
5. The Respondent did not submit any exhibits.
6. 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 March 6, 2008,
 - Board Exhibit C – Hearing sign-in sheet.
7. The subject property is a residence located at 3516 Ridgeway in Anderson, Madison County.

8. The ALJ did not conduct an on-site inspection of the subject property.
9. For 2006, the PTABOA determined the assessed value of the property to be \$15,200 for land, and \$62,600 for improvements, for a total assessed value of \$77,800.
10. According to the Form 131 Petition, the Petitioners requested the property be assessed for \$10,000 for the land and \$45,000 for the improvements, for a total assessed value of \$55,000.¹

JURISDICTIONAL FRAMEWORK

11. 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 PETITIONER'S BURDEN

12. 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 Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
13. 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. Washington Township 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”).

¹ At the hearing, the Petitioners argued for a lower value of \$34,500, based on the property's rent.

14. 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.

PETITIONERS' CONTENTIONS

15. The Petitioners contend their property is overvalued based on an appraisal prepared by Mr. Carl Chambers. *Bennett argument*. Mr. Chambers testified that he is a real estate broker who has worked in the real estate business since 1962. *Chambers testimony*. According to Mr. Chambers, he has been doing appraisals for approximately 45 years, including appraisal work for several counties like Madison County. *Id.* He is a member of the National Association of Realtors, and is a former President of the Madison County Board of Realtors. *Id.*
16. Mr. Chambers testified that he appraised the subject property based on a fee simple interest. *Chambers testimony; Pet. Ex. 1*. According to Mr. Chambers, the subject property is a small home built in 1973, consisting of 984 square feet of living area. *Id.*; *Pet. Ex. 1*. The house has only a single bath and has a window air conditioning unit. *Id.* Mr. Chambers argues that most homes in the area are approximately 1,300 to 1,400 square feet in size and have central air conditioning and at least 1½ baths. *Id.*; *Pet. Ex. 1*.
17. Mr. Chambers testified that he used sales data from four properties in the same subdivision as the subject property to determine a price per square foot. *Chambers testimony*. According to Mr. Chambers, he determined the average price per square foot to be \$55.89, which he applied to the subject property resulting in a value of \$55,000. *Id.*; *Pet. Ex. 1*. Mr. Chambers admitted, however, that two of the homes used as comparables were foreclosed properties. *Id.*
18. The Petitioners also contend their property is overvalued based on a "rental value calculation" prepared by Mr. Chambers. *Bennett argument*. According to Mr.

Chambers, he based his calculations on a method purportedly used by local officials. *Chambers testimony*. Mr. Chambers estimated a rent rate of \$575 per month for the property based on a conversation with a property management company. *Id.*; *Pet. Ex.2*. Mr. Chambers then multiplied that figure by 6, and then divided by 0.12, to arrive at an estimated value of \$34,500 based on the property's use as a rental. *Id.*

RESPONDENT'S CONTENTIONS

19. The Respondent contends the assessed value of the property is fair. *Norris testimony*.

ANALYSIS

20. Real property in Indiana is assessed on the basis of its true tax value. *See* Ind. Code § 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 similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3.
21. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of those guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. MANUAL at 5. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *Id.*; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The parties may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

22. Whatever evidence the parties use, they must explain how it relates to the property's market value-in-use as of the relevant valuation date. *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). For the March 1, 2006, tax year, the valuation date is January 1, 2005. 50 I.A.C. 21-3-3.
23. The Petitioners first offer an opinion of value letter dated January 4, 2008, prepared by Mr. Chambers. *Pet. Ex. 1*. As stated above, a market-value-in-use appraisal prepared according to USPAP will often establish a prima facie case for value. *Kooshtard VI*, 836 N.E.2d at 506 n.6. However, what the Petitioners offer as an appraisal does not meet that standard. First, nowhere in Mr. Chambers' written report is there any indication that he performed the appraisal in accordance with USPAP principles.² *Pet. Ex. 1*. In addition, there is no effective date for the value given in the appraisal. *Id.* Without it, there is simply no way to determine if Mr. Chambers' estimated value relates to the valuation date of January 1, 2005. Both of these factors greatly undermine the probative value of Petitioners' Exhibit 1.
24. Further, Mr. Chambers' opinion of value is unsupported. In his letter, the Petitioners' witness identifies three sales of purportedly comparable properties.³ *Pet. Ex. 1*. The letter states that the comparable properties "are similar to the subject; however, each sales price must be adjusted for differences in location, traffic count, lot size, age, size, condition, and amenities offered." *Pet. Ex. 1*. Despite this acknowledgment, nowhere in the opinion of value are those sales prices adjusted to reflect any differences in the

² This may, in fact, violate the standards established by the Real Estate Commission. "Any broker who appraises real estate in Indiana must comply with the Uniform Standards of Professional Appraisal Practice as adopted in 876 IAC 3-6-2 and 876 IAC 3-6-3." 876 I.A.C. 1-1-43.

³ The letter actually identifies four sales. The Board notes, however, from the MLS listings that although the opinion of value letter identifies a sale at 2312 N 200 East and one at 2311 N 200 East, the actual sales appear to both be for the same property located at 2312 N 200 East. *Pet. Ex. 3*. Moreover, the property was sold as a HUD home for \$41,000 and resold four months later for \$67,500. The use of both of these sales without any explanation as to why it was a proper valuation practice to include both a bank sale and that same property's resale value in his valuation of an unrelated property raises serious credibility issues with Mr. Chambers' opinion of value.

properties. Further, Mr. Chambers' opinion letter provides no evidence as to how Mr. Chambers reached his ultimate conclusion of value other than identifying four sales with prices ranging from \$41,000 to \$91,250 and stating that "[h]aving considered all pertinent facts and information, and based on recent sales of similar property, my appraisal of market value of said property is: \$55,000." *Id.* This is insufficient support for Mr. Chambers' opinion of value on the property to be probative of the property's market value-in-use.

25. While not a part of the appraisal, the Petitioners also offered MLS listing sheets for the four sales of the three properties identified as "comparable properties" in their appraisal and an additional property that sold in October of 2008. *Pet. Ex. 3.* The sales-comparison approach is based on the assumption that potential buyers will pay no more for a property than it would cost them to purchase an equally desirable substitute property already existing in the market place. *Long*, 821 N.E.2d at 471. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, 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 properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.*
26. The Board notes that the property located at 2312 N 200 East sold as a HUD home for \$41,000 in August of 2006 and then resold for \$67,500 four months later. *Pet. Ex. 3.* The property located at 3416 Ridgeway Drive also sold "as is" as a bank owned home. *Id.* While bank sales and HUD homes may be used as evidence in a property tax appeal, there must be some evidence that the bank sale represents the market value of the

property. Here, it is clear that the HUD sale did not represent market value because the property resold four months later for 60% more.

27. Further all of the sales occurred one to three years after the statutory valuation date, except for a single sale that occurred in 2001 – which is four years prior to the valuation date. *Id.* Mr. Chambers made no adjustments to the sales prices for the time of the sales. *Chambers testimony.* This is particularly problematic given that the Petitioners’ witness testified that property values have been declining for the past two or three years. *Id.* Further, Mr. Chambers made no adjustments to the sales for the differences between the properties. *Id.* Thus, the Petitioners’ comparable sales have little reliability in estimating the subject property’s market value in use as of January 1, 2005.
28. Moreover, in hearing, Mr. Chambers testified that he applied the average price per square foot of the sales values to estimate the subject property’s value. *Chambers testimony.* The Petitioners, however, presented no evidence that merely averaging a price per square foot of various sales is a generally accepted valuation method to estimate the value of a residential property. Even if the Board could determine that Mr. Chambers’ method was a valid method of estimating the value of the subject property, the Petitioners presented no evidence as to how Mr. Chambers determined his “average price per square foot.” Mr. Chambers testified that the “comparable” sales prices were \$61.70, \$47.67, \$67.69, \$52.67 and \$28.95 per square foot. *Chambers testimony.* According to Mr. Chambers, he “averaged them out and considered the improvements in the comparables – air conditioner, fireplace, two bathrooms and so forth and came up with the figure of \$55.89 per square foot.” *Id.* There is no evidence of any “adjustments” being made for those improvements and the Board cannot determine how the \$55.89 per square foot value was determined. “[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
29. Finally, the Petitioners submitted a “rental value estimate” as evidence that the property is over-assessed. *Pet. Ex. 2.* This estimate, however, suffers from the same issues as the

appraisal in that there is no evidence of the effective date of the valuation and there is no evidence the “rental value estimate” is a generally accepted valuation practice. Yet, the rental value estimate is even more problematic. In chief, neither the Petitioners nor Mr. Chambers provided any explanation of the origin of this method, beyond Mr. Chambers testimony that it was based on the method purportedly used by the city to review rental assessments. *Chambers testimony.*

30. By failing to sufficiently prove their estimates of value, the Petitioners have failed to establish a prima facie case showing an error in the assessment. Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

31. The Petitioners failed to establish a prima facie case showing an error in the assessment. The Board finds in favor of the Respondent.

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

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>>