

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

Petition: 79-022-06-1-5-00001
Petitioners: Vassil Marinov and Venetka Marinova
Respondent: Wabash Township Assessor (Tippecanoe County)
Parcel: 134-06817-0148
Assessment Year: 2006

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The PTABOA issued notice of its decision on October 26, 2006.
3. The Petitioners appealed to the Board by filing a Form 131 with the county assessor on December 7, 2006. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 3, 2008.
5. The Board held an administrative hearing on July 22, 2008, before duly appointed Administrative Law Judge Debra Eads.
6. The following persons were present and sworn as witnesses at the hearing:
For the Petitioners — Vassil Marinov and Venetka Marinova,
For the Respondent — First Deputy County Assessor Georgia Jones and Deputy County Assessor Melissa Dickson.¹

¹ For appeals of PTABOA determinations issued prior to July 1, 2007, the township assessor is typically the proper Respondent. The Wabash Township Assessor, however, did not appear at the hearing and the record contains no written authorization for county officials to provide representation. *See* Ind. Admin. Code tit. 52, r. 3-1-4. Nevertheless, nobody disputed the authority of the county assessor's deputies. Therefore, the Board will address the case on its merits.

Facts

7. The property is a single family dwelling located at 2315 Archer Court in West Lafayette.
8. The Administrative Law Judge did not conduct an on-site inspection of the property.
9. The PTABOA determined the assessment is \$36,900 for land and \$179,300 for improvements (total assessed value of \$216,200).
10. The Petitioners requested a total assessment of \$172,000.

Issue

11. Summary of the Petitioners' contentions in support of the assessment error:
 - a. In conjunction with litigation, Dale Webster, SRA, MAI, appraised the subject property. He considered the quality of construction as "fair/average." He estimated a market value of \$166,000 as of December 9, 2003. *Marinov testimony; Petitioners Exhibit 4.*
 - b. Tippecanoe Circuit Court Judge Donald Daniel determined the fair market value of the home was \$166,000 as of June 29, 2004. *Marinov testimony; Petitioners Exhibit 2.*
 - c. Webster performed a second appraisal of Petitioners' property. Using the sales-comparison approach, he appraised the property for \$172,000 as of November 21, 2006. *Marinov testimony; Petitioners Exhibit 3.*
 - d. In connection with the Petitioners' 2007 assessment appeal, the Wabash Township Assessor agreed to assess the subject property for \$173,200. *Marinov testimony; Dixon testimony; Petitioners Exhibit 1.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Webster appraisals reflect inaccurate market values. Each appraisal contained excessive and unsubstantiated "quality of construction" adjustments to the comparable properties (\$15,000 to \$55,000). *Dixon Testimony.* Further, the total percentage of unexplained adjustments was higher than normal, indicating the Webster comparables lack any substantive comparison to Petitioners' property. *Id.* Therefore, both Webster appraisals represent unreliable market values. *Dixon testimony, referring to Petitioners Exhibits 3 and 4; Respondent Exhibit B.*

- b. The 2007 assessment value (\$173,200) resulted from a settlement between Petitioners and the Wabash Township Assessor. Regardless of the disparity between the assessed property values, the 2007 settlement value bears no correlation to the 2005 market value. *Jones testimony*.
- c. Data from 2004-2005 sales in Petitioners' neighborhood indicates properties characteristically similar to the subject property sold at prices ranging from \$209,000 to \$243,000. *Respondent Exhibit 4*. These sale prices support the 2005 valuation and represent a more appropriate comparison than the Webster comparables. *Dixon testimony; Respondent Exhibits A and C*.

Record

- 13. The official record for this matter consists of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioners Exhibit 1 – Notification of Final Assessment Determination (Form 115) for March 1, 2007,
Petitioners Exhibit 2 – June 2004 Findings of Fact and Conclusions of Law for litigation pertaining to the subject property²,
Petitioners Exhibit 3 – November 2006 appraisal of the subject property,
Petitioners Exhibit 4 – December 2003 appraisal of the subject property,
Respondent Exhibit A – Assessor's comparables,
Respondent Exhibit B – Analysis grid comparing the subject property with the three comparable sales used in the 2006 appraisal and MLS data sheets for those four properties,
Respondent Exhibit C – List of 2004-2005 sales in the subject neighborhood,
Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign-in sheet.
 - d. These Findings and Conclusions.

² As offered, Petitioners' Exhibit 2 appears to be an incomplete copy—the pages are not numbered, but the copy contains an initial page with caption and heading "Findings Of Fact, Conclusions Of Law And Entry Of Final Judgment" together with "III. Conclusions Of Law" and "IV. Order And Entry Of Final Judgment." The Court's Findings Of Fact were not provided. The submitted copy contains a total of four pages.

Analysis

14. 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. *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). In making its case, the taxpayer must explain how each piece of evidence is relevant to the disputed assessment. *Indianapolis Racquet Club, Inc. v. Washington 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”). Once Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *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 prove that the assessment should be changed. The Board reaches this decision for the following reasons:
 - a. Real property is assessed on the basis of its "true tax value," which is "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); 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. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the 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. Such 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.
 - b. Two appraisals, both by Dale Webster, are the main foundation for the Petitioners’ claim. Mr. Webster did not testify. The conclusions for each appraisal appear to be based primarily on the sales comparison approach—each appraisal used three comparable sales (for a total of six). The Respondent attacked the credibility of the appraisals because the adjustments Mr. Webster applied to the comparables were

extremely large, especially the adjustments for quality of construction. The adjustment for that item alone on each comparable were as follows:

<u>address</u>	<u>sale price</u>	<u>quality of construction adjustment</u>
2802 Ibis Ct.	\$219,000	-\$50,000
2106 Longspur	\$195,000	-\$40,000
2217 Longspur	\$197,000	-\$55,000
2808 Ibis Ct.	\$184,000	-\$35,000
2193 Cousteau	\$195,142	-\$30,000
3331 Humboldt	\$173,000	-\$15,000

The 2006 appraisal shows that the gross adjustments for the comparables were 40.4%, 34.9%, and 49.3%. (The 2003 appraisal does not identify the percentages of gross adjustments.) These adjustments appear to be very large and they lack any kind of detailed explanation, either in the appraisal or through testimony. These points seriously detract from the credibility of the value conclusions that Mr. Webster reached in both appraisals.

- c. The Petitioners' evidence about the Tippecanoe Circuit Court determination establishes that there was some kind of breach of contract action between the Petitioners and their home builder. The Conclusions Of Law state that the Petitioners failed to carry their burden of establishing the builder breached his contract with them and that the builder "provided a habitable house, substantially on time and substantially in compliance with the Marinovs' reasonable requirements." That Court concluded "the fair market value of the work as performed is \$166,000.00. The Court finds that the fair market value of the Home is \$166,000.00 and Orders the sale of the Home ... to the Marinovs at that price." *Petitioners' Exhibit 2*. The Petitioners offered conclusory testimony that this amount included everything. But such conclusory testimony is not sufficient to prove that amount actually represents the total market value-in-use of the property. Most significantly, the evidence does not establish whether or not the \$166,000 figure includes land value, or only the house.
- d. But ultimately, the credibility of the appraisals is not the decisive question in this case. A 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- e. Although the Petitioners introduced evidence of the parcel's value on several dates, they failed to explain how the 2003 or 2006 appraisal values or the 2004 Circuit Court finding (which was based on the 2003 appraisal) relate to the required valuation date of January 1, 2005. Accordingly, that evidence has no probative value. *Id.*

- f. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, the assessed value for 2007 is not probative evidence of the value for the 2006 assessment.
16. Where Petitioner fails to support an appeal 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).

Conclusion

17. The Petitioners failed to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the 2006 assessment will not be changed.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

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>>