

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

Petition #: 84-025-02-1-5-00019
Petitioner: Morris Plan
Respondent: Fayette Township Assessor (Vigo County)
Parcel #: 101-01-12-432-004
Assessment Year: 2002

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 Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 27, 2003.
2. The Petitioner received notice of the decision of the PTABOA on March 1, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on March 31, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated September 27, 2004.
5. The Board held an administrative hearing on November 4, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. The following persons were present and sworn in at hearing:
 - a) For Petitioner: Jerrald L. Titus, Collection Manager, for Morris Plan
 - b) For Respondent: Susan McCarty, Vigo County Assessor's Office
Gloria Donham, Vigo County PTABOA member
Robert Walls, Vigo County PTABOA member

Facts

7. The property is classified as Residential, as is shown on the property record card for parcel # 101-01-12-432-004.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Vigo County PTABOA:

Land: \$ 4,700 Improvements: \$12,800 Total: \$17,500.

10. Assessed Value requested by Petitioner:

Land \$4,700 Improvements \$ 1,500 Total: \$ 6,200.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The subject property was purchased on May 21, 2002, at a Sheriff's sale for the amount of the Morris Plan judgment of \$24,988.16. This is standard procedure for Morris Plan to bid the judgment amount. *See Form 131 Petition.*
- b) An appraisal was completed on the subject property on May 13, 2002, for financing purposes and the appraisal gives an estimate of value of \$6,200. *Petitioner's Ex. 1.*
- c) An Indiana Certified Residential Appraiser prepared the appraisal and the final estimate of value of \$6,200 should be the assessment figure of the subject property. *Titus testimony.* Petitioner contends that the local assessing officials are unqualified to dispute the findings of a licensed appraiser. *Titus argument.*
- d) Petitioner sold the property for over \$12,000 to tenants after the PTABOA hearing. *Titus testimony.* The difference between the sale price and requested assessment represents financing. *Id.* Given enough time, Petitioner would have sold the property for its appraised value of \$6,200. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The sale of the subject property was not an arms length transaction and is not an indication of market value. *McCarty argument.*
- b) The public records show that Comparable #1 and #2 used in the appraisal were not arms length transactions. Both were transferred from lending institutions. This was verified through sales disclosures. Comparable #3 is not in a neighborhood with similar characteristics. *Id.*

Record

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR # 6032.
- c) Exhibits:
 - Petitioner Exhibit 1: Appraisal of the subject property located at 9700 Rangeline Place, West Terre Haute as of 5/13/02.
 - Respondent Exhibits: None
- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- 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. 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”).
- 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.
- d) **Definition of Market Value:** The most probable price which a property should bring in a competitive open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash or U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal

consideration for the property unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. *Petitioner's Ex. 1 at 4.*

15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:

- a) The Respondent contends the transfer of the subject property in the amount of the Morris Plan judgment is not a valid sale. *McCarty testimony.* Petitioner did not offer this sale as proof that the market value-in-use should be the price of the judgment. *Titus testimony.* The Board does not find the Sheriff's sale purchase price of \$24,988.16 to be probative of what the true tax value of the property should be.
- b) Petitioner submits an appraisal as evidence of the market value of the property. *Pet'r Ex. 1.* This appraisal establishes a value of the property as of May 13, 2002. *Id.* The appraisal was completed by a certified appraiser and performed according to professional appraisal practices. *Titus testimony.*
- c) Respondent contends that the appraisal is not probative because two of the three comparable sales used by the appraiser in the appraisal were not "valid sales" because they were both transferred from lending institutions. *McCarty testimony.* The other sale used by the appraiser was not a true comparable to the subject because of its location in a better neighborhood and closer to amenities. *McCarty testimony.*
- d) The Respondent's claim is essentially that the comparable sales used in the appraisal do not fit the definition of market value and thus are no probative on that issue.¹ Respondent claims that the sales involve parties that were not typically motivated and may have acted in a manner not conducive to an open and competitive market.
- e) Respondent has not presented evidence to substantiate the claims that the sales are not indicative of fair market value. Respondent provided evidence that the seller was a financial institution, and nothing more. This alone does not mean that the

¹ Market Value is defined in the Assessment Manual as:

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- o The buyer and seller are typically motivated;
 - o Both parties are well informed or advised and act in what they consider their best interests;
 - o A reasonable time is allowed for exposure in the open market;
 - o Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

sale is not representative of market value. Respondent has not impeached the Petitioner's appraisal with this challenge.

- f) Petitioner's appraisal, however, does not establish a prima facie case. Indiana's assessment regulations state that for the 2002 general reassessment, a property's assessment was to reflect its value as of January 1, 1999. *See* MANUAL at 4. The Petitioner's appraisal, however, indicates a property value for May 13, 2002. Consequently, Petitioner is required to provide some explanation as to how this value demonstrates or is relevant to the subject property's value as of January 1, 1999. *Long v. Wayne Township Assessor*, No. 49T10-0404-TA-20, slip op. at 8 (Ind. Tax Ct. January 28, 2005).
- g) Petitioner provided no explanation to relate the appraisal to the valuation date of January 1, 1999. Thus, the appraisal does not carry any probative value. *See Long*, slip op. at 8-9.

Conclusion

16. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

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: _____

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.