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

Petitions:	**83-008-09-1-5-00804**
	83-008-10-1-5-00004
Petitioners:	**Robert & Patsy Penn**
Respondent:	**Vermillion County Assessor**
Parcel:	**83-99-99-999-004.000-008**
Assessment Years:	**2009 and 2010**

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 Petitioners initiated assessment appeals for the subject property with the Property Tax Assessment Board of Appeals (PTABOA) for 2009 and 2010.

2. The PTABOA mailed notice of its decision regarding the 2009 assessment on August 10, 2010, and for the 2010 assessment on February 23, 2011. (Although the Form 115 for the 2010 assessment states it was mailed on February 21, 2011, the Petitioners provided a copy of the envelope that is postmarked February 23, 2011.)

3. The Petitioners appealed both determinations to the Board by timely filing Form 131 petitions. They elected to have both cases heard according to small claims procedures.

4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on January 24, 2012. He did not conduct an inspection of the property.

5. Patsy Penn, County Assessor Patricia Richey, William Birkle, and Brian McHenry were sworn as witnesses.

Facts

6. The subject property is a residential property located at 101 Briarwood in Dana.

7. For March 1, 2009, the PTABOA determined that the assessed value is $12,100 for land and $44,600 for improvements (total assessed value of $56,700).

8. For March 1, 2010, the PTABOA determined that the assessed value is $12,100 for land and $47,500 for improvements (total assessed value of $59,600).

9. The Petitioners requested a total assessed value of $11,375 for both years.

Contentions

10. Summary of the Petitioners' case:

    a. The Petitioners bought the subject property and a contiguous unimproved property for $11,375 on April 27, 2007. They bought it from Collateral Finance Partners after a foreclosure. Based on purchase price, the assessments are too high. *Penn testimony; Pet'rs Ex. 2.*

    b. The price was fair market value. The circumstances are explained in Mr. Schenbeck's letter:

> My name is Michael Schenbeck, an Indiana licensed real estate agent with L.J. Michaels, Inc., Terre Haute, IN. I have been asked by clients of mine to comment on the notion that the property they purchased through our firm was not a "Arms Length Transaction."
>
> The property listed above [101 Briarwood] was on the market on the Terre Area Association of Realtors web site. It was on the Multiple Listing Service of the web site for all area real estate agents review, and it was listed on the L.J. Michaels, Inc. web site for anyone with a computer to look-up and review. The property was also listed on a very popular open web site Realtor.Com all the time it was listed with L.J. Michaels. The property was first listed by another company, Crawford Real Estate Services, from July 7, 2006 until October 10, 2006 when it was moved to our agency to market. We had the property listed from October 24, 2006, at an original price of $21900.00, until January 27, 2007. It was re listed with us on January 31, 2007 at a price of $20,900.00, and sold on April 27, 2007 to Mr and Mrs Penn for $11,375.00.
>
> With this property listed on the various public web sites, advertised in the Terre Haute Tribune Star, and marketed potentially by all Terre Haute area real estate agents I believe this was sold at a fair market price.

    Penn testimony; Pet'rs Exs. 3, 4.

    c. The properties that the Respondent offered as comparables are not truly comparable because unlike those sales the subject property was purchased out of foreclosure. Unlike the subject, those properties are not "depressed" and did not require extensive renovation after they were purchased. The Respondent should use other foreclosure properties as comparables. It is "illegal" to do otherwise. *Penn testimony.*

d. Further, assessment laws changed in 2002, and the Respondent is no longer allowed to employ a mass appraisal system to assess properties. The Respondent failed to follow Uniform Standards of Professional Appraisal Practice (USPAP) guidelines and the International Association of Assessing Officers (IAAO) is trying to change rulings to conflict with those standards, which amounts to "fraud." *Penn argument.*

e. Much of the Petitioners' other evidence related to tax liabilities for prior years and a related tax sale—matters that in this case are outside our jurisdiction. That information is irrelevant to the issue that is properly before the Indiana Board, namely, the accurate market value-in-use assessment of the subject property for March 1, 2009, and March 1, 2010. No attempt was made to include the irrelevant material in this summary of the Petitioners' case.

11. Summary of the Respondent's case:

a. Typically, foreclosure sales are not considered to be market transactions. Part of the definition of market value is that neither the buyer nor the seller is acting under duress. The only exception to that rule is when the property is in an area so rampant with foreclosures that they control the entire market. Here, that kind of situation is not the case. The subject property was bought out of foreclosure, but there are not enough foreclosures in its neighborhood to affect the market. Therefore, in accordance with assessing guidelines, the Respondent used market-sale properties as comparables. *Birkle testimony/argument.*

b. Specifically, two comparable properties sold in the neighborhood of the subject property in 2009. Those properties are located at 224 North Maple and 275 West Parkwood. They sold for an average of $35.90 per square foot and are assessed at an average of $26.53 per square foot. The average of those two figures is $31.22 per square foot, which is exactly the square foot value of the assessment of the subject property. *McHenry testimony; Resp't Exs. 1, 4-7.*

c. The Petitioners offered no evidence to prove the subject property is, or was, in poor condition. For example, they offered nothing to show the house was dilapidated, torn apart, or lacked a furnace. And they offered nothing to show how much they spent to get the house into shape. *Birkle testimony/argument.*

d. The Petitioners are incorrect in their belief that the Respondent cannot use mass appraisal techniques to assess property. In fact, since 2002 the Respondent has been required to use mass appraisal methodology to assess properties at their market value-in-use. *Birkle testimony/argument.*

Record

12. The official record contains the following:

    a. The Petition,

    b. A digital recording of the hearing,

    c. Petitioners Exhibit 1 – Warranty Deed dated April 16, 2007,
    Petitioners Exhibit 2 – Settlement Statement dated April 17, 2007,
    Petitioners Exhibit 3 – Broker's statement dated July 26, 2010,
    Petitioners Exhibit 4 – Realtor listing of the subject property,
    Petitioners Exhibit 5 – Notice of appeal dated May 28, 2010,
    Petitioners Exhibit 6 – Property record card (PRC) for subject property,
    Petitioners Exhibit 7 – Letter from County Treasurer dated June 23, 2010,
    Petitioners Exhibit 8 – Notice of Tax Sale,
    Petitioners Exhibit 9 – Motion to Vacate,
    Petitioners Exhibit 10 – "Sticky note" regarding the year of appeal,
    Petitioners Exhibit 11 – Notice of Tax Sale,
    Petitioners Exhibit 12 – Letter from County Treasurer dated June 23, 2010,
    Petitioners Exhibit 13 – PRC for parcel next to subject property,
    Petitioners Exhibit 14 – Tax sale notice from the local newspaper,

    Respondent Exhibit 1 – Chart of comparable sales,
    Respondent Exhibit 2 – PRC for subject property,
    Respondent Exhibit 3 – Photograph of the subject property,
    Respondent Exhibit 4 – PRC for 224 North Maple,
    Respondent Exhibit 5 – Photograph of 224 North Maple,
    Respondent Exhibit 6 – PRC for 275 West Parkwood,
    Respondent Exhibit 7 – Photograph of 275 West Parkwood,

    Board Exhibit A – Form 131 Petitions,
    Board Exhibit B – Notices of Hearing,
    Board Exhibit C – Hearing Sign-In Sheet,

    d. These Findings and Conclusions.

Analysis

13. 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").

14. The Petitioners did not make a prima facie case for any assessment change.

a. The Petitioners failed to support their claim that since assessment laws changed in 2002 an assessor is no longer allowed to use mass appraisal techniques. Furthermore, their position is wrong. Real property is assessed based on "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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has 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 is presumed to be accurate, but it 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. A property's sale price often provides probative evidence of its market value-in-use, but sometimes it does not. The distinction can depend on the conditions surrounding the sale and is reflected in the definition of "market value," which means:

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

MANUAL at 10.

c. This definition recognizes that sometimes the circumstances of a transaction make it less likely that a particular sale price accurately reflects market value. One frequent issue is whether "the buyer and seller are typically motivated." For example, when one family member sells a property to another family member the price paid is not reliable evidence of market value.[1] Other sales fall into the unreliable category because a seller's motivation is not "typical." They include ones where circumstances force a sale, such as tax sales, sheriff sales, and bankruptcy liquidations. Where a property sells under such circumstances, the price is likely to be less than it would have been if all the requirements in the "market value" definition were present. Consequently, sales with such problematic circumstances normally are not used by appraisers in forming an opinion about value.[2]

d. In a few cases convincing evidence has established that forced sales dominate a particular market. Under those circumstances, even forced sales can be relevant. *See Lake County Assessor v. U.S. Steel Corp*, 901 N.E.2d 85, 91-92 (Ind. Tax Ct. 2009) (finding that Board did not err in relying of bankruptcy sales where taxpayer proved that such sales were the market norm in the steel industry).

e. But was the purchase of the subject property after foreclosure the market norm for this neighborhood? No—in fact, the Petitioners specifically distinguished their purchase on that basis. They argued that other sales had higher prices *because* no foreclosure was involved and for that reason there simply are no comparable sales. According to the Petitioners, this is the reason their purchase price shows what the assessment should be. But they provided no authority or substantial argument to support how that conclusion might satisfy generally accepted appraisal principles.[3] To the contrary, the Petitioners' case leads the Board to conclude that their purchase price is not a reliable indication of market value-in-use. Accordingly, they failed to show that their purchase price was a reliable indicator of market value.

f. The Petitioners offered no probative evidence to substantiate the contention that when they bought the subject property it was in worse condition than other properties involved in typical sales. The conclusory statements they offered are not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioners offered no evidence about how much they spent to repair and renovate the property. Moreover, if the Petitioners did spend a substantial amount of money to renovate the property, it likely increased the value over and above the amount they paid. The purported problems with the condition of the subject property when the Petitioners bought it do not support any lower assessment.

[1] Such transactions are commonly disregarded by appraisers because they are not "arm's-length transactions."
[2] Alternatively, if they are considered an adjustment for the special circumstances is normally required.
[3] In focusing on foreclosure and claiming only other foreclosed properties would be really comparable, the Petitioners demonstrated a lack of understanding about using comparables as evidence of the value of the subject property. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

g. The Petitioners failed to make a prima face case for reducing their assessment for 2009 or 2010. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is 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); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

15. The Board finds in favor of Respondent for both 2009 and 2010.

Final Determination

In accordance with the above findings and conclusions, these assessments will not be changed.

ISSUED: _____

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>