

PRO SE PETITIONER: Robert L. Wells

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Robert L. & Trudy K. Wells)	
)	
)	Petition No. 47-005-08-1-5-00013
Petitioners,)	
)	Parcel No. 47-14-01-233-031.000-005
v.)	
)	Lawrence County
Lawrence County Assessor,)	Marion Township
)	2008 Assessment
Respondent.)	

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

June 1, 2011

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

Did the Petitioners prove that the current assessment of \$113,500 is not an accurate market value-in-use for the subject property and did the Petitioner prove the correct assessment should be \$100,000?

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is a single family home located at 908 Crawford Street in Mitchell.
2. The Petitioners initiated an assessment appeal by filing a Form 130. The Property Tax Assessment Board of Appeals (PTABOA) mailed its decision on February 26, 2010. The Petitioners filed a Form 131 with the Board on April 12, 2010.
3. The PTABOA determined the assessed value was \$7,900 for land and \$105,600 for improvements (\$113,500 total).
4. The Petitioners contend the total assessed value should be \$100,000.
5. Administrative Law Judge Kay Schwade held a hearing for this petition on March 3, 2011. There was no on-site inspection of the subject property by her or by the Board.
6. Robert L. Wells and County Assessor April Stapp-Collins were sworn as witnesses at the hearing.
7. The Petitioners presented the following exhibits:
 - Petitioner Exhibit A – 2003 pay 2004 tax statement with the gross value highlighted in yellow,
 - Petitioner Exhibit B – Appraisal by Gilbert S. Mordoh.
8. The Respondent presented the following exhibits:
 - Respondent Exhibit A – Property record card (PRC) for the subject property,
 - Respondent Exhibit B – Spreadsheet of comparables,
 - Respondent Exhibit C – Sales disclosure form and PRC for 1010 Crawford Street (Comp 2),
 - Respondent Exhibit D1 – PRC for 1006 Crawford Street (Comp 1),
 - Respondent Exhibit D2 – PRC for 906 Crawford Street (Comp 3),

Respondent Exhibit D3 – PRC for 1008 Crawford Street (Comp 4),
Respondent Exhibit D4 – PRC for 1002 Crawford Street (Comp 5),
Respondent Exhibit D5 – PRC for 721 Crawford Street (Comp 6),
Respondent Exhibit E – Plat map.

9. The following items are recognized as part of the record:
- Board Exhibit A – Form 131 petition with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign-In Sheet.

SUMMARY OF THE PETITIONERS' CASE

10. The subject property's 2003 assessment originally was \$115,600. But it was appealed and reduced to \$99,200. *Wells testimony; Pet'r Ex. A.*
11. In 2009, Gilbert Mordoh, a reputable appraiser from Bloomington, prepared an appraisal of the subject property. His appraisal is a complete appraisal. It includes several photographs of the subject property. He estimated fair market value was \$100,000 as of November 9, 2009. *Wells testimony; Pet'r Ex. B.*
12. The Petitioners overpaid for the subject property. After the purchase, problems with the subject property, such as an inadequate air conditioning system, came to light. *Wells testimony.*
13. Property values have declined. The subject property would not sell for more than \$100,000. *Wells testimony.*

SUMMARY OF THE RESPONDENT'S CASE

14. The valuation date for a 2008 assessment is January 1, 2007. Assessed values for 2008 are based on the sales data during 2006 and 2007. The appraisal has a valuation date of November 9, 2009, which is almost three years past the correct valuation date and the

comparables are sales from November 2008 to October 2009. *Stapp-Collins testimony; Pet'r Ex. B.*

15. The Petitioners purchased the subject property in 2004 for \$107,000. *Stapp-Collins testimony; Resp't Ex. A.*
16. The comparable spreadsheet shows the price per square foot of the subject property and properties similar to it in age and square footage. All of the comparables and the subject property have grade factor of "C" and condition rating of "average." *Stapp-Collins testimony; Resp't Ex. B, D1 through D5.*
17. One of the comparables sold during the timeframe that serves as a basis for the 2008 assessments. Comp 2 is one year older and somewhat smaller than the subject property. It sold for \$100,000 in September 2007. That sale price is \$83.33 per square foot. *Stapp-Collins testimony; Resp't Ex. B, C.*
18. The spreadsheet demonstrates the uniformity and equality of the assessments in the area. The median price per square foot is \$69.29 and the mean price per square foot is \$68.87. The assessment of the subject property is only \$56.47 per square foot, which is less than the median and the mean. It also is less than the sale price per square foot of the only comparable sale in the area. *Stapp-Collins testimony; Resp't Ex. B.*
19. The plat map shows that the subject property has a large lot. It is identified as Tract 31. The "Z" shaped markings that cross over the lines of #274, #275, and #276 show that it is made up of more than two platted lots. *Stapp-Collins testimony; Resp't Ex. E.*
20. The Petitioners did not make a case. They are required to prove the assessment is in error and what the correct assessment should be. The appraisal's valuation date is almost three years past the correct valuation date for a 2008 assessment and the sales data it used is outside the appropriate timeframe for a 2008 assessment. Statements about overpaying for the property and the market declining are just conclusions. *Meighen argument.*

ADMINISTRATIVE REVIEW AND BURDEN

21. 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).
22. 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”).

ANALYSIS

23. Real property is assessed on the basis of 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 of a similar user, from the property.” Ind. Code § 6-1.1-31-6(c); 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 to determine market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
24. The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. Other evidence relevant to market value-in-use can 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.

25. To be relevant, the record must somehow establish how that kind of value evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2008 assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3 (2009).
26. The most effective method to show the value assigned by the assessor is incorrect is often through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Here the Petitioners presented such an appraisal for only \$100,000. It was prepared by a certified appraiser and appears to conform to generally accepted appraisal principles. It probably would have made a prima facie case for the Petitioners, except for one major problem. The appraised value as of November 9, 2009, is almost three years after the required valuation date and the record fails to establish how the appraised value might relate to value as of January 1, 2007. Therefore, the appraisal is not probative and does not help to determine what a more accurate 2008 assessment might be.
27. The Respondent correctly pointed out that the testimony about the Petitioners overpaying when they bought the property and about declining market values since then are unsupported conclusions that do not constitute probative evidence. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 239 (Ind. Tax Ct. 1999); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
28. Finally, because each tax year and each assessment year stands alone, evidence of a property's assessment for one year does not necessarily show its true tax value for a different assessment year. *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)).

29. When a taxpayer fails to provide probative evidence supporting its position 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.

SUMMARY OF FINAL DETERMINATION

30. The Petitioners did not make a prima facie case. The Board finds in favor of the Respondent.

This Final Determination for the above captioned matter is issued on the date first written above.

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>>