

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

Petition #: 84-013-02-1-5-00155
Petitioners: John O. & Royce B. Whitaker
Respondent: Otter Creek Township Assessor (Vigo County)
Parcel #: 109-02-24-176-008
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 Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated November 25, 2003.
2. The Petitioners received notice of the decision of the PTABOA on September 3, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on October 1, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 28, 2005.
5. The Board held an administrative hearing on August 9, 2005, before the duly appointed Administrative Law Judge (the ALJ) Joan Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: John O. Whitaker, Jr., Taxpayer
Richard T. Conley, Jr., Appraiser,
 - b) For Respondent¹: Gloria Donham, Vigo County PTABOA
Ann Akers, Vigo County PTABOA
Susan McCarty, Vigo County Deputy Assessor
Deana Chrisman, Vigo County Assessor's Office
Warren Soules², Otter Creek Township Assessor

¹ The Board's procedural rules, 50 IAC 2-6-6(b), states in part, that in order for the county assessor to appear as an additional party to an appeal, "that the county assessor must (1) notify the parties and the board in writing, (2) include a detailed statement of reason for the appearance or objection, and (3) file a notice of their appearance as a party within thirty (30) days of the petition filing or within ten (10) days of receipt of notice of the proposed settlement or stipulation." Though the Vigo County Assessor did not appear, the county was represented by members of the Vigo County PTABOA and representatives of the Vigo County Assessors Office.

Facts

7. The subject property is a single family residence on a lot measuring .96 acres.
8. The ALJ did not conduct an on-site visit of the property.
9. The Vigo County PTABOA determined the assessed values of the subject property to be \$12,900 for the land and \$87,900 for the improvements, for a total assessed value of \$100,800.
10. The Petitioners requested an assessment of \$11,400 for the land and \$65,400 for the improvements, for a total assessed value of \$76,800.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in assessment:
 - a) The Petitioners contend that the assessment on the subject property is excessive due primarily to a market adjustment (neighborhood factor) of 129%. *J. O. Whitaker, Jr. testimony*. According to the Petitioners, the 129% market adjustment factor is the highest factor in all of Otter Creek Township. *Id.*
 - b) The Petitioners further contend that properties similar to the subject property nearby or in similar neighborhoods are assessed at much lower levels. *Id.* One such example, according to the Petitioners, is Parcel #109-02-24-251-002 (Bates property) which is just four houses away from the subject property. *Petitioner Exhibit 1(b)*. The Petitioners argue that the Bates property has a market adjustment of 68% and is assessed at \$66,300. *Id.* Though the properties are quite similar, the subject property has a 129% market adjustment and is assessed at \$100,800. *J. O. Whitaker, Jr. testimony*.
 - c) In support of their contention that the subject property is over-valued, the Petitioners submitted an appraisal that estimated the value of the property to be \$76,000 as of January 30, 1999. *J. O. Whitaker testimony & Petitioner Exhibit 4*. The appraiser's comparable properties sold between \$57,500 and \$73,000. *Id.* According to the Petitioners, all of these values were much lower than the current assessed value for the subject property. *Id.*
12. Summary of Township Assessor's contentions in support of the Petitioners:
 - a) The Otter Creek Township Assessor stated that he was in agreement with the Petitioners that the subject property is over assessed. *Soules testimony*. In support of this contention, the Township Assessor submitted several PRCs to show the diversity in the township of the market adjustment factor. *Township*

² Mr. Soules, Otter Creek Township Assessor, appeared at the hearing as an advocate for the Petitioner.

Exhibit 1. According to the Township Assessor, the property located at 3715 Marquette Avenue (parcel #109-02-24-251-001) in Ce Mar Estates borders the subject property's subdivision (Marquette Farms) and is just four or five houses east of the subject. It has a market adjustment of 68%. Another property located at 201 Rodighiero Avenue (parcel #109-02-22-101-006) borders the subject to the north and east and has a market adjustment of 100%. 8127 N. Clinton Street (parcel #109-02-13-352-012) is on the northern edge of Marquette Farms and it has a market adjustment factor of 70%. On the west side of the subject is 7780 N. Clinton Street (parcel #109-02-23-231-011) with a market adjustment factor of 96%. Finally, to the south of the subject property is 3560 E. Carol Avenue (parcel #109-02-24-326-007) in the Bartley Subdivision that has a market adjustment factor of 98%. *Id.*

- b) The Township Assessor further contends that the subject's market adjustment factor was based on only four sales ranging from \$61,000 to \$89,000 (\$61,000, \$67,000, \$70,000 and \$89,000) and that these homes were a little smaller than the subject. *Soules testimony & Respondent Exhibit 3.* According to the Township Assessor, it takes more than four sales to establish a neighborhood or a market adjustment factor. The Township Assessor also requested that a market adjustment factor of "100" be assigned until the problems with the neighborhood classifications in Otter Creek Township are remedied. *Id.*
 - c) Finally, the Township Assessor submitted into evidence a Board decision from an unrelated appeal in November 2004. *Township Exhibit 2.* This appeal was also in Otter Creek Township for the 2002 tax year. According to the Township Assessor, the County recognized that there were problems with the values in that neighborhood at this hearing. *Id.* In addition, in that case, the County testified that a new "land order" may be developed for the area in the near future. *Id.*
13. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent contends that the neighborhood factor is correct. In support of this contention, the Respondent entered into evidence PRCs and Sales Disclosures for sales in the subject property's neighborhood (Neighborhood #308) comparing the sales with the properties' assessments. *Respondent Exhibit 1 & 3.* The first comparable sale at 3181 E. Marquette Avenue is comparable #3 on the Petitioners' appraisal. This property is located in the same neighborhood as the subject and sold in 1999 for \$67,000 and was assessed for \$64,000. According to the Respondent, this suggests that the sales ratio study worked because the assessment is in line with the sales price. *Donham statements.* The next comparable at 7769 N. Clinton Street which was sold for \$89,000. According to the Respondent, it assessed for \$82,700 and had the same market adjustment as the subject. Similarly, the property at 7745 N. Huntington is in the same neighborhood as the subject with the same market adjustment, and it sold for \$61,000 and was assessed at \$65,000 and the property at 7801 N. Clinton Street, in the same neighborhood with the same market adjustment, sold for \$70,000 and

was assessed for \$75,900. *See Respondent Exhibit 3.* The Respondent concluded that since the sales prices and assessed values were within the ten percent allowed by the State, it proved that the Market Adjustment of 129% for Neighborhood #308 was without error. *Respondent Exhibit 1.*

- b) The Respondent also submitted the neighborhood map for the subject property to show the boundaries of the neighborhood and to show that a comparable used by the Township Assessor at 201 Rodighiero Road, is actually in Neighborhood #309 and not in the subject neighborhood. *Donham statements & Respondent Exhibit 2.* The subject neighborhood has different front foot values and different market adjustments than other neighborhoods. *Id.*
- c) The Respondent further stated that there were some concerns with the Petitioners' appraisal. *Donham statements & Respondent Exhibit 4.* According to the Respondent, the main concern with the appraisal is the value attributed to the tennis court by the appraiser. *Petitioner Exhibit 4.* The subject property's PRC has a value of \$26,200 for the tennis court. Similarly, the appraiser under the cost approach listed a front porch/enclosed rear porch and the tennis court as having a value of \$30,000. *Donham statement & Respondent Exhibit 4.* However, in the sales comparison approach, the appraiser only adjusted \$5,000 for the same tennis court/enclosed porch. *Id.* The Respondent argued that when the subject property's assessed value minus the cost of the tennis court, is compared to other homes in the neighborhood, the subject home falls right in range with the Petitioners' appraisal. Thus, according to the Respondent, the only difference in the two values is the cost of the tennis court. *Id.* Finally, the Respondent alleged that the income approach to determine value should have been used because the subject property is a rental property. *Donham statements.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR # 6044.
- c) Exhibits:

- Petitioner Exhibit 1: Form 131 Petition
- Petitioner Exhibit 1a: Subject PRC
- 1b: Comparable PRC (Bates property)
- Petitioner Exhibit 2: Form 115
- Petitioner Exhibit 3: Form 130 Petition
- Petitioner Exhibit 4: Appraisal as of January 30, 1999
- Petitioner Exhibit 5: Statement of Township Assessor

Township Exhibit 1: PRCs of properties in surrounding neighborhoods showing market adjustment factors applied

Township Exhibit 2: Previous IBTR decision for Paul M. Cherepkai

Respondent Exhibit 1: PRCs with sales disclosures attached

Respondent Exhibit 2: Land neighborhood maps

Respondent Exhibit 3: Sales Ratio Study

Respondent Exhibit 4: Response to Petitioners' appraisal

Board Exhibit A: Form 131 Petition with attachments

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign-In Sheet

- d) These Findings and Conclusions.

Analysis

15. 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 Township 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).

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 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”).

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.

16. The Petitioners provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

a) The Petitioners contend that the assessment on the subject property is excessive. In support of this contention, the Petitioners alleged that the market adjustment factor over-valued their property. Further, the Petitioners presented an appraisal dated

January 30, 1999, that they contend represents the proper value of the subject property. *J. O. Whitaker testimony & Petitioner Exhibit 4.*

Neighborhood Factor

- b) The subject property is located in neighborhood number 308. It is currently assessed with a 1.29 neighborhood factor. The Petitioners contend that the neighborhood factor is excessive in comparison to other properties located in close proximity to the subject property. *J.O. Whitaker testimony.* In support of the Petitioners' position, the Township Assessor presented property record cards for properties located in adjacent neighborhoods with neighborhood factors of 68%, 70%, 96% and 100%. *Township Exhibit 1.*
- a) A neighborhood is defined as “[a] geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A (the GUIDELINES), glossary at 14 (incorporated by reference at 50 IAC 2.3-1-2). A “neighborhood factor” accounts for the “economic characteristics” of a neighborhood, “such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size.” GUIDELINES, app. B at 8. The neighborhood factor is determined “based upon an analysis of residential properties that have sold within the neighborhood.” *Id.* The factor is computed by dividing the actual sales price of a property’s improvements (determined by subtracting the land value) by the assessment improvement value. *Id.* at 9. The resulting number is an adjustment factor to further refine the assessments in a neighborhood so that they better reflect the market value-in-use.
- b) Neighborhoods share common development characteristics, average ages of the improvements, size of lots, subdivision plats and zoning maps, school and other taxing district boundaries, among other characteristics. GUIDELINES, Chap. 2 at 8. Mere proximity of properties is insufficient to prove similarity of neighborhoods. Instead, a party must explain the characteristics of the subject neighborhood and how those characteristics compare to those of purportedly comparable properties, as well as how any differences between the properties’ neighborhoods affect the relative market values-in-use. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). The only showing the Petitioners make here is that different neighborhoods have different neighborhood factors.
- c) While it may be unusual for properties situated across from one another or properties just down the street from one another to be assigned to different neighborhoods, the Petitioners did not present any evidence to demonstrate that the Respondent improperly applied the factors identified in the applicable administrative rules drawing the neighborhood boundaries. See GUIDELINES, ch. 2 at 8. Nor did the Petitioners show that a different neighborhood factor was applied to the subject property than to other properties in the same neighborhood or that an error was made

in calculating the neighborhood factor that is applied to the subject property. The Petitioners presented no alternative calculation or any additional sales disclosures to suggest that the neighborhood factor is incorrect. Instead, the Petitioners merely identified a range of neighborhood factors from .68 to 1.00. This falls far short of the burden imposed upon a Petitioner. To prevail in an appeal, a Petitioner must demonstrate both that an 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).

- d) Petitioners failed to raise a prima facie case that an error was made in developing Petitioners' neighborhood factor. 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). Accordingly, the Board finds that the Petitioners have failed to establish an error in the current assessment of the subject property based on its neighborhood factor.

Appraisal

- e) The Petitioners also submitted an appraisal in support of their contention that the subject property is over-valued. The appraisal, dated January 30, 1999, estimated the market value of the subject property to be \$76,000. *See Petitioner Exhibit 4.*
- f) Real property in Indiana is assessed on the basis of its "true tax value". See I.C. 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 a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-1) (the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the "sales comparison approach." *Id.* The sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." *Id.*
- g) Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
- h) Here, the Petitioners submitted a fair market value appraisal as of January 30, 1999, performed by a licensed appraiser within thirty days of the January 1, 1999, valuation date. *Petitioner Exhibit 4.* The appraiser attests the appraisal was prepared in

accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* The Appraiser used the cost and sales comparison approaches to value. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E. 2d 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioners have raised a prima facie case that the subject property is over-valued.

- i) 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.). Here, the Respondent raised several concerns with the appraisal including that the income approach was not used by the appraiser when the subject property is a rental and that the value attributed to the tennis court by the appraiser is far lower than its cost.
- j) In response to these concerns, the Petitioners' appraiser testified that investors do not usually buy single family homes for investments. They are more likely to buy duplexes or more than one-family dwellings. *Conley testimony*. Thus, the best approaches to value single family homes are the cost and sales approaches which were used in the Petitioners' appraisal. *Id.* Further, in response to the Respondent's concern regarding the valuation of the tennis court, the Petitioners' appraiser stated that a tennis court is a special amenity with a special cost to the buyer that is not a recaptured cost in the sale of the home. Thus, even though it may have cost \$26,000 to build the tennis court, you will not find a buyer willing to pay \$26,000 for such an amenity. *Conley testimony*. According to the Petitioners' appraiser, the \$5,000 market adjustment for the tennis court was correct. *Id.*
- k) The Board finds that the Respondent failed to show that the appraisal or the actions taken by the appraiser were not within the standards set by USPAP or that they were outside standard appraisal practices. Thus, the Board finds in favor of the Petitioners and holds that the value of subject property is \$76,000 on the basis of the appraisal.

Conclusions

- 17. The Petitioners made a prima facie case that the subject property is over-valued. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of the Petitioners and determines that the assessment should be \$76,000. The Petitioners failed to raise a prima facie case on all other matters.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$76,000.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.