

REPRESENTATIVE FOR RESPONDENT:

Terrance Wozniak, Attorney for Portage Township Assessor
and St. Joseph County Property Tax Assessment Board of Appeals

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Anthony Murdock,	)	Petition No.:	71-026-02-1-5-00476
	)	Parcel:	18-1019-0812
Petitioner,)		
)		
v.)		
	)	County:	St. Joseph
Portage Township Assessor,	)	Township:	Portage
	)	Assessment Year:	2002
Respondent.)		

Appeal from the Final Determination of
St. Joseph Property Tax Assessment Board of Appeals

July 31, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the assessed value of the subject property exceeds the market value in use.

PROCEDURAL HISTORY

- Pursuant to Ind. Code § 6-1.1-15-3, Anthony Murdock, filed Form 131 Petition for Review of Assessment, on May 20, 2004, petitioning the Board to conduct an administrative review of the above petition. The St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on April 20, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

- Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Debra Eads, held a hearing on February 24, 2006, in South Bend, Indiana.
- The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Linda Murdock, spouse of the Petitioner,¹

For the Respondent:

Ross Portolese, PTABOA Member
Dennis Dillman, PTABOA Member
Rosemary Mandrici, Portage Township Assessor

David Wesolowski and Kevin Klaybor, members of the St. Joseph County PTABOA, were sworn in, but did not testify. Terry Wozniak, Attorney, represented Portage Township and the St. Joseph County PTABOA.

- Neither the Petitioner, nor the Respondent, submitted any documentary evidence.
- The following items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

¹ The Petitioner, Anthony Murdock, was unable to attend the hearing and, therefore, his spouse attended in his absence. Mrs. Murdock was married to the Petitioner during the assessment year at issue and, as such, was a “taxpayer responsible for the property taxes.” See 52 IAC 2-2-13. Thus, Mrs. Murdock would be a proper party to the proceeding.

Board Exhibit A – The 131 Petition with attachments²,
Board Exhibit B – Notice of Hearing dated December 2, 2006,
Board Exhibit C – Hearing Sign-In Sheet,

7. The subject property is an owner-occupied dwelling located at 417 ½ Lincolnway West, South Bend, in Portage Township.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. For 2002, the PTABOA determined the assessed value of the property to be \$3,600 for the land and \$61,800 for the improvements, for a total assessed value of \$65,400.
10. The Petitioner did not request a specific value.

JURISDICTIONAL FRAMEWORK

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. 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).

² The attachments to the petition included 2002 tax bills, a contract to purchase for the subject property dated July 30, 1993, an opinion of value dated September 11, 1992, the subject property record card before the PTABOA determination, Multiple Listing Service data for 413 Lincolnway dated December 12, 2003, two photographs of 411 Lincolnway, and a contract to purchase for 411 Lincolnway dated December 12, 2003.

13. 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. Wash. 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. 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.

ANALYSIS

Whether the assessed value of the subject property exceeds the market value in use.

15. The Petitioner contends that the subject property’s location in a blighted neighborhood makes the assessed value of \$65,400 unreasonably high.
16. The Respondent contends insufficient evidence was presented by the Petitioner to change the assessment of the subject property.
17. The Petitioner presented the following testimony in regard to this issue:
 - A. The Petitioner argues that the area is blighted and that property is selling for much less than the \$65,400 assessed value of the subject property. *Murdock testimony.*
 - B. The Petitioner testified that the purchase price of the subject property was \$30,000 in August of 1993. *Murdock testimony.* According to the Petitioner, at the time of the purchase, the subject property was appraised at \$54,000. *Id.*
 - C. The Petitioner argues that the assessed value exceeds the value for which neighboring properties are selling. *Murdock testimony.* According to the Petitioner, homes have

sold recently in the neighborhood for \$14,500 (two houses away from the subject property) and \$22,000. *Id.*

18. The Respondent presented the following testimony in regard to this issue:
 - A. The Respondent contends that the Petitioner failed to provide sufficient evidence to initiate a change in assessment. *Mandrici testimony.*
 - B. The Respondent's witness testified that in an effort to reflect the market value of the area, the previous township assessor reduced the assessment of the subject land by 25% and the improvements by 20%. *Portolese testimony.* According to the Respondent's witness, when the appeal came before the PTABOA, the PTABOA thought this was an agreement between the previous assessor and the Petitioner allowed the assessment to remain at \$3,600 for the land and \$61,800 for the improvements. *Id.*
 - C. Finally the Respondent argues that the \$54,000 appraisal referenced by the Petitioner was actually a letter of opinion issued by a real estate broker in 1992. *Dillman testimony.* The Respondent's witness testified that he believed the \$30,000 sale price in 1993 more reasonably reflects the value of the property than the letter of opinion. *Id.* According to the Respondent's witness, the difference between the letter of opinion and the purchase price suggests that the neighborhood is an area going through changes and that it is not a good area. *Id.*

20. Real property in Indiana is assessed on the basis of its "true tax value." Ind. Code § 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 2.3-1-2) (hereinafter "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).

21. 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. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *Long*, at 466,471.

22. Here, the Petitioner contends that the property is over-valued on the basis of its purchase price and an earlier appraised value. In support of this contention, the Petitioner submitted a 1992 opinion of value for \$54,000 and a 1993 contract for the purchase of the subject property for \$30,000 with the Form 131 petition. *Board Exhibit A*. The sale of a subject property is often the most compelling evidence of its market value. In this case, however, the Petitioner purchased the property six years prior to the valuation date and failed to present any evidence that related the 1993 purchase price to the January 1, 1999, valuation date. *See Long*, at 466,471. Thus, the Petitioner's purchase price is not probative of the property's 2002 assessed value. Similarly, 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). In this case, however, not only does the Petitioner's "appraisal" dated September 11, 1992, run afoul of *Long*, the "appraisal" is little more than an opinion of value without probative value. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).³ Thus, the Petitioner has failed

³ While one of the Respondent's witnesses testified that he believed the \$30,000 sale price in 1993 more reasonably reflects the value of the property, the Respondent itself did not take this position. Further, the testimony by Respondent's witness regarding the 1993 sales price lacks any relation to the January 1, 1999, valuation date as to be probative.

to raise a prima facie case that its property is over-valued on the basis of its 1992 appraised value or its 1993 sale.

23. The Petitioner also alleges that the property is over-valued based on the sale of two properties on the same block that sold in 2003 for \$22,000 and \$14,500. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. See MANUAL at 3 (stating that 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.”); See also, *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Petitioner made no attempt to compare the two sale properties to the subject property. The Petitioner only alleged that the sales “proves” the true value of the property. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court.⁴ See *Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). The Board finds that the Petitioner has failed to raise a prima facie case that the assessed value exceeds the market-value-in-use.
25. 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).

⁴ The Petitioner also failed to relate the sale prices of the two “comparable” properties to the January 1, 1999, valuation date as required by *Long*.

SUMMARY OF FINAL DETERMINATION

Whether the assessed value of the subject property exceeds the market value in use.

26. The Petitioner failed to make a prima facie case that the subject property is over-valued.
The Board finds in favor of the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>>. 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 days of the date of this notice.