

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

Petitions: 76-012-02-1-5-00005a
76-012-02-1-5-00006a
Petitioners: Craig and Elizabeth Williams
Respondent: Pleasant Township Assessor (Steuben County)
Parcels: 06-27-140-115-000-50 and 06-27-140-107-000-50
Assessment Year: 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioners initiated the assessment appeals process with the Steuben County Property Tax Assessment Board of Appeals (PTABOA) by filing written documents dated May 6, 2004.
2. The PTABOA held a hearing on the above petitions on January 31, 2005, but failed to issue written determinations. The Petitioners filed two Form 131 appeals with the Board on February 8, 2006. The Board held a hearing on September 13, 2006, and concluded that it did not have jurisdiction to make a final determination about the assessments because the PTABOA had not yet issued its Notifications of Final Assessment Determination (Form 115). The Board dismissed the appeals, which allowed the PTABOA to issue its determinations.
3. The PTABOA mailed the notices of its decision to the Petitioners on October 19, 2006.
4. The Petitioners filed the Form 131 appeals to the Board on October 24, 2006, and elected small claims procedures.
5. The Board issued notices of hearing to the parties dated March 15, 2007.
6. Administrative Law Judge Patti Kindler held an administrative hearing in Angola, Indiana on May 10, 2007.
7. The following persons were present and sworn as witnesses at the hearing:
For the Petitioners - Craig and Elizabeth Williams,
For the Respondent - Jennifer Becker,
Larry May, Steuben County Assessor.

Facts

8. The subject property consists of two contiguous parcels, one with a single-family residence and one that is vacant. They are located at 810 West Broad Street in Angola.
9. The Administrative Law Judge did not conduct an inspection of the property.
10. The PTABOA determined the total assessed value for both parcels is \$88,300.
11. The Petitioners contended the total assessed value should be \$85,000 for both parcels.

Issue

12. Summary of the Petitioners' contentions in support of an alleged error:
 - a) The Petitioners purchased the two contiguous parcels on December 23, 1999, for \$85,000, which should be the total assessed value. The Re/Max agent listed the property on the open market in March of 1999 with a list price of \$89,900. The property was on the open market for 275 days before closing, while the average marketing time for residential property in Steuben County is 130 days. This shows the property had reasonable market exposure and the purchase price complies with the definition of fair market value. *C. Williams testimony; Pet'rs Exs. 1, 2, 7, 10.*
 - b) A certified appraisal of the subject property estimated its market value was \$90,000 on November 12, 1999. The appraisal used both the cost and sales comparison approaches to value. The sales comparison approach shows an estimated market value for the property of \$90,000, and the cost approach indicated an estimated value of \$85,600, both of which support the purchase price. *C. Williams testimony; Pet'rs Ex. 3.*
 - c) A comparative market analysis prepared by a realtor prior to the purchase of the subject property estimated the purchase price should be \$84,648, just \$352 under the actual sale price of \$85,000. *C. Williams testimony; Pet'rs Ex. 5.*
 - d) Previous Board decisions, such as *Cole v. Richland Township*, have supported the Petitioner when multiple, independent methods of valuation demonstrate a narrow range of values for the property that are substantially lower than the assessment. Further, the Board stated in its determination for *Toms v. Dep't of Local Gov't Fin. (DLGF)* that conclusory statements about a property being similar or comparable to another property do not constitute probative evidence of the comparability of the two properties. In this appeal, the Respondent has not demonstrated how the comparable properties used in the assessment relate to the parcels' true tax value for 2002. *C. Williams testimony; Pet'rs Ex. 8 at 4; Pet'rs Ex. 9 at 5.*

- e) The Board's Final Determination for the subject property on October 3, 2006, states that the case was dismissed because the Board did not have the authority to change the assessment without a PTABOA hearing. Nevertheless, the Board determined that undisputed evidence established the Petitioners paid \$85,000 for the entire property in 1999 and their case was the most persuasive. The Board concluded that, by offering no evidence to the contrary, the Respondent did not rebut the Petitioners' case. *C. Williams testimony; Pet'rs Ex. 12 at 7.*
13. Summary of the Respondent's contentions in support of the assessment:
- a) The current assessment of \$88,300 for both parcels is within four percent of the purchase price of \$85,000. 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). Further, "[t]rue tax value may be thought of as the ask price of property by its owner, because this value more clearly represents the utility obtained from the property..." *Id.* In this appeal, the asking price of the subject property was \$89,900. *Resp't Ex. 6.* The certified appraisal value was \$90,000. *Resp't Ex. 7.* Both of these values support the current assessment and are even greater than the current assessed value. *Becker testimony.*
- b) In the Board's final determination for *Toms v. DLGF*, the Respondent did not rebut the Petitioner's appraisal dated May 1999 and the Board changed the assessment to the appraisal value. *Becker testimony.* In the final determination issued for *Cole v. Richland Township*, the Board changed the assessment to the value reported on the 1999 certified appraisal rather than the sale price that occurred on November 15, 2001. *Id.* The *Toms* and *Cole* final determinations support the position that a Multiple Listing Service (MLS) listing or certified appraisal may be more representative of the market value of a property than its purchase price. *Id.*
- c) The MANUAL does not define market value-in-use as the exact purchase price of a property. Instead, the MANUAL describes the ask price of a property as representative of the utility that must be replaced to induce the owner to leave the property. In this appeal, the ask price is the MLS list price of \$89,900. The assessor used acceptable methods to value the property and the current assessment is reasonable at \$88,300, or two percent less than the ask price. Therefore, the Board should not change the assessment to the exact sale price of the property. *Becker testimony; Resp't Exs. 1, 6, 8.*
- d) The prior Board Final Determination issued on October 3, 2006, for the subject parcels dismissed the appeals because the PTABOA had not conducted a hearing. The prior dismissed appeals should have no bearing on the current appeals. *Becker testimony.*

Record

14. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioners Exhibit 1 – Offer/counter-offer forms for the December 1999 purchase of the subject property,
Petitioners Exhibit 2 – Sales disclosure form, warranty deed, and affidavit of mortgagor regarding December 1999 purchase of the subject property,
Petitioners Exhibit 3 – Certified appraisal of subject property as of November 12, 1999,
Petitioners Exhibit 4 – Property record card (PRC) for subject property, PRC and sales disclosure forms for the comparable properties listed on the certified appraisal,
Petitioners Exhibit 5 – Comparative market analysis dated November 1, 1999,
Petitioners Exhibit 6 – Form 130 Petitions for both parcels at appeal,
Petitioners Exhibit 7 – “Demystifying Fair Market Value” article attributed to Beard Miller Company,
Petitioners Exhibit 8 – Board Final Determination for *Toms v. DLGF*, petition 45-032-02-1-5-00315,
Petitioners Exhibit 9 – Board Final Determination for *Cole v. Richland Township Assessor*, petition 04-015-02-1-5-00002,
Petitioners Exhibit 10 – MLS listing of the subject property,
Petitioners Exhibit 11 – Initial Form 131 Petitions for both parcels,
Petitioners Exhibit 12 – Board Final Determination for *Williams v. Pleasant Township Assessor*, petitions 76-012-02-1-5-00005 and 76-012-02-1-5-00006,
Petitioners Exhibit 13 – Form 115, Notification of the Final Assessment Determination, for both parcels,
Petitioners Exhibit 14 – Form 131 Petitions for both parcels,
Petitioners Exhibit 15 – Petitioners’ Brief of Contentions,
Respondent Exhibit 1 – Pleasant Township Assessor response to the Petitioners’ issues,
Respondent Exhibit 2 – Notice of Appearance of Consultant on Behalf of Assessor,
Respondent Exhibit 3 – PRCs for both parcels at appeal,
Respondent Exhibit 4 – Form 115, Notification of Final Assessment,
Respondent Exhibit 5 – Copies of the original purchase agreement, the counter-offers, and sales disclosure form for the subject property,
Respondent Exhibit 6 – MLS listing of the subject property,

Respondent Exhibit 7 – Appraisal of the subject property as of November 12, 1999,
Respondent Exhibit 8 – Manual, page 2,
Respondent Exhibit 9 – Respondent Signature and Attestation Sheet,
Board Exhibit A – Form 131 Petitions with attachments,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing 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 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.

16. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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); MANUAL at 2. There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A*. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may 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) For the 2002 reassessment, an assessment is to reflect the value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different date, the Petitioner is required to provide some explanation how that value demonstrates, or is relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) The Petitioners presented three kinds of evidence to establish what the assessment should be. (1) Purchase documents and a sales disclosure form show the actual purchase price of the property was \$85,000 on December 23, 1999. (2) A certified appraisal report values the property at \$90,000 as of November 12, 1999. (3) A comparative market analysis lists a value for the property of \$84,648 as of November 1, 1999. *Pet'rs Exs. 2, 3, 5*.
- d) The appraisal and comparative market analysis represent estimates of value. The 1999 purchase price is not an estimate, but rather, an actual, timely sale of the subject property. The Respondent did not dispute when the Petitioners bought the property or how much they paid. Furthermore, the Respondent disputed none of the other pertinent facts surrounding that transaction (such as reasonable exposure on the open market and arm's length transaction). The Board finds the Petitioners' purchase price is the most persuasive evidence in this appeal and gives it the greatest weight.
- e) The Respondent asserted that, according to the MANUAL, the ask price is the best indication of value for a property. The sentence upon which the Respondent relies, however, cannot be read in isolation. The MANUAL also specifically states that, in markets where there are regular exchanges of property (such as the residential single-family housing market) so that ask and offer prices converge, true tax value will equal value in exchange. MANUAL at 2. In the current appeal, the Petitioners have shown that an offer and a counter-offer between the buyers and sellers converged. The negotiations resulted in a purchase price (value in exchange) of \$85,000. The 1999 purchase price of \$85,000 is the best indicator of true tax value.
- f) The argument that the assessment of \$88,300 should be sustained because it is within four percent of the actual sale price implies that there is an acceptable range of value for assessment purposes. This argument, however, does not overcome probative evidence that is more precise. The taxpayer is specifically permitted to offer evidence relevant to the market value-in-use of a property that includes actual construction costs, sales and appraisals. Respondent's position

that the current assessment is somehow close enough to be acceptable or that it outweighs the actual sale price is wrong. MANUAL at 5.

- g) The Respondent relied on the *Toms* and *Cole* Final Determinations previously issued by the Board, contending these determinations demonstrate the Board gives greater weight to appraisal values than other types of evidence. The facts in those two determinations, however, are readily distinguished from the facts in this appeal. In *Toms*, neither party presented evidence of the sale price of the home. The Board found the Petitioners' appraisal more credible than evidence of purported comparable properties presented by the Respondent. In *Cole*, the sale of the property occurred in November 2001 and the sale price was not trended to the January 1999 valuation date. The Board gave greater weight to the appraisal, which had been trended to January 1, 1999. Both of these determinations are fact sensitive and nothing in either of them suggests the Board will invariably give greater weight to an appraisal rather than the actual sale price of a property.

Conclusion

17. The Board finds in favor of the Petitioners.

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 \$85,000.

ISSUED: **July 20, 2007**

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>