

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

Petition #s: 35-014-04-1-5-00053
35-014-04-1-5-00054
Petitioners: Rosella & Thomas Stouder
Respondent: Huntington Township Assessor (Huntington County)
Parcel #s: 0140760300
0140765500
Assessment Year: 2004

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

Procedural History

1. The Petitioners initiated assessment appeals concerning each of the above referenced parcels with the Huntington County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated May 31, 2005.
2. The PTABOA mailed notice of its decisions on November 29, 2005.
3. The Petitioners initiated appeals to the Board by filing Form 131 petitions with the Huntington County Assessor on December 29, 2005. The Petitioners elected to have the cases heard in small claims.
4. The Board issued notices of hearing to the parties dated May 3, 2006.
5. The Board held an administrative hearing on both Form 131 petitions on June 21, 2006,¹ before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Rosella Stouder, Taxpayer
Thomas Stouder, Taxpayer
 - b) For Respondent: Julie Newsome, Huntington Township Deputy Assessor

¹ The parties also addressed a third petition – Petition No. 35-014-04-1-4-00052. The Board addresses that Petition in a separate written decision.

Facts

7. The properties are adjacent residential parcels located at 110 Pershing Drive, Huntington. Parcel # 0140760300 contains a detached garage. Parcel # 0140765500 contains a single-family dwelling. The Board will refer to the parcels collectively as the “subject property” unless otherwise indicated.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject properties as determined by the Huntington County PTABOA:
- | Parcel # | Land | Improvements | Total |
|------------|---------|--------------|-----------|
| 0140760300 | \$6,100 | \$19,700 | \$25,800 |
| 0140765500 | \$4,900 | \$105,600 | \$110,540 |
10. Assessed Value requested by Petitioners on the Form 131 petitions:
- | Parcel # | Land | Improvements | Total |
|------------|---------|--------------|----------|
| 0140760300 | \$4,136 | \$9,298 | \$13,434 |
| 0140765500 | \$4,136 | \$85,389 | \$89,525 |

Issue

11. Summary of the Petitioners’ contentions in support of alleged error in assessment:
- a) There are two parcels involved in this appeal. The garage is situated on parcel 0140760300 (Lot 149) and the residence is situated on parcel 0140765500 (Lot 150). *Resp’t Exs. 2-3; T. Stouder testimony.*
 - b) The Petitioners submitted an appraisal that they contend values both parcels. The appraisal was prepared by Michael J. Hughes, a licensed residential appraiser, and it estimates the market value of the subject property at \$103,000 as of November 22, 2003. *Pet’r Ex. 1; T. Stouder testimony.*
 - c) According to Mr. Stouder, the appraisal values the garage at only \$4,000 to \$5,000. *T. Stouder testimony.* The Respondent, by contrast, valued Lot 149 (including the land and the garage) at \$25,800. *Id.*
 - d) Removing \$4,000 for the garage from the appraisal value leaves a total of \$98,000 for the land and residence located on Lot 150. *T. Stouder testimony.*
 - e) The Petitioners, however, contend that the appraisal overestimates the value of the subject property. There are no properties in the neighborhood, including the subject property, worth \$100,000. *T. Stouder testimony.* According to the Petitioners, a bank appraiser has to look at a house no matter where it is located, and he cannot look at how the property will sell. *Id.* Assessors, by contrast, are supposed to look at the value of a house in the area in which it is located. *Id.* The Petitioners have an older appraisal, but they did not bring it to the hearing. *Id.* That appraisal was for less than

\$100,000, but the inside of the subject home was not complete at the time of the appraisal. *T. Stouder testimony.*

- f) The Petitioners submitted information concerning the assessment of other parcels in the subject property's neighborhood. *Pet'rs Exs. 2-9.* The Petitioners acknowledge that the houses on the other properties are small in comparison to the subject house, but they contend that the assessments show what the neighborhood is like. *T. Stouder testimony.*
- 205 Cecil Street is located across the street from the subject property and is assessed for \$60,500. *Pet'r Ex. 2.*
 - 215 Circle Drive is adjacent to the subject property and is assessed for \$30,800. *Pet'rs Ex. 3.*
 - 240 Circle Drive is a mobile home with additions, and it is assessed for \$65,800. *Pet'r Ex. 4.*
 - 200 Circle Drive is a new mobile home with a garage addition, and it is assessed for \$59,700. *Pet'r Ex. 5.*
 - 185 Circle Drive is a modular home that is assessed for \$85,000. *Pet'r Ex. 6.*
 - 227 Circle Drive is a stick-built house that is assessed for \$40,900. *Pet'r Ex. 7.*
 - 233 Circle Drive is a rental property that is assessed for \$11,700. *Pet'r Ex. 8.*
 - 239 Circle Drive is being condemned and torn down. That property is assessed for \$30,700. *Pet'r Ex. 9.*
- g) In 1989, the Petitioners built a 1,200 square foot addition around a mobile home. *T. Stouder testimony; Pet'rs Ex. 11.* The Petitioners added a second 1,200 square foot addition in 1994. *T. Stouder testimony; Pet'rs Ex. 12.* In December 2003, the Petitioners borrowed \$82,000 to remodel the home. *T. Stouder testimony; Pet'rs Ex. 10.* The Petitioners contend they are being taxed for a completely new house when the house actually consists of add-ons. *T. Stouder testimony.*
- h) The purportedly comparable properties identified by the Respondent are not comparable to the subject property. Those properties are from a different neighborhood that has sidewalks and streets. *T. Stouder testimony; Resp't Exs. 4, 7a - 7c (00054).*

12. Summary of the Respondent's contentions in support of the assessment:

- a) The appraisal presented by the Petitioners is for refinancing purposes. *Newsome testimony; Pet'rs Ex. 1.* Moreover, the appraisal is unclear regarding whether it includes the parcel containing the Petitioners' garage (Lot 149). *Id.* For example, the appraisal lists only the parcel number for the Petitioners' residence (Lot 150).² While the appraiser values a garage in performing his analysis under the cost approach, he

² Ms. Newsome's testimony on that point is incorrect. While the appraisal lists only one parcel number, the number listed is 0140760300. *Pet'rs Ex. 1; Resp't Ex. 6 (00054).* According to the Respondent's own exhibits, that is the parcel number for Lot 149, which contains the garage. *See Resp't Ex. 3 (00053 & 00054).*

does not reflect the presence of a garage in his analysis under the sales comparison approach. *Id.* Furthermore, in his cost approach analysis, the appraiser lists the garage as containing 480 square feet, whereas the Respondent measured the garage at 1,200 square feet. *Id.*; *Resp't Ex. 6 (00054) at 3.*

- b) There are other discrepancies in the appraisal. The appraisal indicates that the subject house sits upon a slab, but the property record card reflects the presence of a crawl space. *Newsome testimony; Resp't Ex. 6(00054) at 2-3.* Moreover, the appraiser did not adjust the sale prices of the purportedly comparable properties to reflect differences between the ages of the houses contained on those properties and the age of the subject house, despite the fact that the purportedly comparable houses were built in 1933, 1900, and 1924, respectively. *Newsome testimony; Pet'rs Ex. 1; Resp't Exs. 7a-7c.*
- c) Lot 149 does not have access to water or sewer services. *Newsome testimony; Resp't Ex. 2(00053).* That parcel therefore is entitled to a negative adjustment of \$570, which would reduce the assessment from \$6,100 to \$5,800. *Newsome testimony.*
- d) The Respondent had to use comparables from outside the neighborhood because the Petitioners have overbuilt for their neighborhood. *Newsome testimony.* The Respondent presented information regarding the sale of two properties comparable in size and age to the subject property. *Newsome testimony; Resp't Exs. 4a, 4b (00054).* The first comparable property is located at 2035 Willow Bend and sold for \$124,900 in 2000. *Resp't Ex. 4a.* The second comparable property is located at 1969 Bedford Ct. and sold for \$140,000 in 2000. *Resp't Ex. 4b.*

Record

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

- a) The Form 131 petitions,
- b) The recording of the hearing,
- c) Exhibits:

Petitioners' Exhibits for Petition #s 35-014-04-1-5-00053 and 00054:

Petitioners Exhibit 1: Appraisal for subject property dated November 14, 2003
Petitioners Exhibits 2 - 9: Parcel reports for properties in the same neighborhood
Petitioners Exhibit 10: A settlement statement dated 12/30/03
Petitioners Exhibit 11: Application for zoning permit dated August 31, 1989
Petitioners Exhibit 12: Application for building permit dated July 1, 1994

Respondent Exhibits for Petition #35-014-04-1-05-00053

Respondent Exhibit 1: Form 131 petition
Respondent Exhibit 2: Property record card of subject property

- Respondent Exhibit 3: Form 115
- Respondent Exhibit 4: GIS 2005 Aerial View
- Respondent Exhibit 5: Copy of insurance
- Respondent Exhibit 6: Form 130
- Respondent Exhibit 7: Notice of Appearance of Deputy Assessor

Respondent Exhibits for Petition # 35-014-04-1-05-00054

- Respondent Exhibit 1: Form 131
- Respondent Exhibit 2: Form 115
- Respondent Exhibit 3: Property Record Card of subject property
- Respondent Exhibit 4a & 4b: Township comparables with sales disclosures
- Respondent Exhibit 5: Form 130
- Respondent Exhibit 6: Appraisal submitted by taxpayer with Form 130
- Respondent Exhibit 7a - 7c: Sales disclosures from appraisal comparables
- Respondent Exhibit 8: Notice of Appearance of Deputy Assessor

Board Exhibits for Petition #s 35-014-04-1-5-00053 and 00054:

- 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

- 14. 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.

15. The Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:
- a) The 2002 Real Property Assessment Manual (Manual) defines the “true tax value” of real property as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (Guidelines), to assess real property.
 - b) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - c) The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4, 8. That is also true for succeeding assessment years between 2002 and 2005. *See* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002 through March 1, 2005, assessment dates); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the Department of Local Government Finance to adopt rules for annually adjusting assessments to account for changes to value in years since the general reassessment, with such adjustments to begin in 2006). Consequently, in order to present evidence probative of a property’s true tax value for the 2002 through 2005 assessment years, a party relying on an appraisal performed substantially after January 1, 1999, must explain how the value estimated by the appraiser relates the property’s market value-in-use as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

- d) The Petitioners submitted an appraisal prepared by Michael J. Hughes, a licensed residential appraiser, pursuant to which Mr. Hughes estimates the market value of the property to be \$103,000 as of November 12, 2003. *Pet'r Ex. 1*. Mr. Hughes applied two generally recognized methods of appraisal – the sales comparison and cost approaches – and he certified that he performed his appraisal in conformity with USPAP. Thus, Mr. Hughes' appraisal is the type of evidence recognized by the Indiana Tax Court and the Manual as being relevant to a determination of the subject property's true tax value.
- e) Nonetheless, the Respondent points to significant problems that affect the probative value of Mr. Hughes' appraisal in the instant property tax appeal. As the Respondent notes, the appraisal is internally inconsistent regarding whether Mr. Hughes was valuing both parcels under appeal or just the parcel containing the subject home. On the one hand, the appraisal lists "Riverside Add. Lot 149 & 150" when describing the property being appraised, and it set forth a value for a garage under Mr. Hughes' cost approach analysis. *Pet'rs Ex. 1*. On the other hand, the appraisal lists the subject property as having no garage in the section setting forth Mr. Hughes' analysis under the sales comparison approach, and the sale prices for the comparable properties reflect substantial downward adjustments due to the presence of garages on those properties. *Id.*
- f) As the Respondent also notes, the appraisal lists the age of the subject home as 13 years, whereas he describes the ages of the comparable homes as 70, 103, and 79 years, respectively. *Id.* Mr. Hughes did not adjust the sale prices of any of the comparable homes to reflect the substantial age disparity. Moreover, the Petitioners themselves question the reliability of Mr. Hughes' appraisal, albeit for different reasons than the Respondent. *See Stouder testimony*.
- g) The Board need not decide whether the above-described factors, by themselves, would completely impeach the reliability of Mr. Hughes' appraisal, because the appraisal suffers from an additional problem that deprives it of probative value in this appeal. The appraisal estimates the market value of the subject property as of a date more than four (4) years after the relevant valuation date of January 1, 1999. The Petitioners, however, offered no evidence or explanation regarding how Mr. Hughes' opinion of value related to the market value-in-use of the subject property as of January 1, 1999, other than Mr. Stouder's assertion that prior appraisals had valued the subject property at less than \$100,000. *Stouder testimony*. Mr. Stouder, however, testified that the inside of the house was not finished at the time of those prior appraisals. *Id.* Thus, the fact that the appraised value increased over time may stem more from physical changes to the subject home than from time-based appreciation.
- h) Based on the foregoing, the Board finds that Mr. Hughes' appraisal of the subject property lacks probative value and is therefore insufficient to establish an error in the subject property's assessment.

- i) The Petitioners also presented assessment information for eight properties located in the same neighborhood as the subject property. The Petitioners acknowledge that the homes situated on those properties are much smaller than the subject home. *T. Stouder testimony*. Thus, the Petitioners do not appear to claim a lack of uniformity and equality in assessments. In any event, such a claim would fail, because the Petitioners did not establish the other properties are comparable to the subject property. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004)(rejecting taxpayer's claim that its land was not assessed in a uniform and equal manner where the taxpayer did not establish that its property was comparable to other properties that were assessed and taxed differently).
- j) The Petitioners instead appear to rely on the assessments of the neighboring properties as general support for their claim that no property in the neighborhood is worth close to the amount for which the subject property is assessed. *See T. Stouder testimony*. Examining the *assessments* of neighboring properties, however, is not a generally accepted method of establishing the market value of a subject property. While an examination of the *sale prices* of neighboring properties might be relevant to the inquiry, the Petitioners would have been required to establish comparability between those properties and the subject property. *See Long* 821 N.E.2d at 471-72 (Ind. Tax Ct. 2005)(holding that the taxpayers failed to explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use). As explained above, the Petitioners failed to do so.
- k) For the reasons set forth above, the Petitioners failed to meet their burden of proving that the current assessment is incorrect or what the correct assessment should be. Nonetheless, the Respondent conceded that the Petitioners should receive a negative adjustment to the land assessment for parcel # 0140760300 in order to reflect a lack of water and sewer service. *Newsome testimony; Resp't Ex. 2(00053)*. According to the Respondent, application of such adjustment would lower the land portion of that parcel's assessment to \$5,800. Based on the Respondent's concession, the Board finds that the land assessment for parcel # 0140760300 should be reduced from \$6,100 to \$5,800.

Conclusion

16. The Petitioners failed to establish that the current assessment is in error. Based on the Respondent's concession, however, the land assessment for parcel # 0140760300 shall be reduced from \$6,100 to \$5,800.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the land assessment for parcel # 0140760300 shall be changed to \$5,800. In all other respects, the assessment shall remain unchanged.

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>>.