

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

Petitions #: 84-002-02-1-5-00632
84-002-02-1-4-00633
82-002-02-1-5-00634
Petitioners: Larry J. & Rachel E. Smith
Respondent: Harrison Township Assessor (Vigo County)
Parcels #: 118-06-13-151-002
118-06-13-152-001
118-06-13-106-008
Assessment Year: 2002

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

Procedural History

1. The Petitioners initiated assessment appeals on three parcels with the Vigo County Property Tax Assessment Board of Appeals (the “PTABOA”) by written documents dated October 27, 2003.
2. The PTABOA mailed notices of its decisions regarding those appeals on August 9 and August 16, 2004.
3. The Petitioners filed appeals to the Board by filing Forms 131 with the county assessor on August 26, 2004. The Petitioners elected to have the cases heard as small claims.
4. The Board issued notices of hearing to the parties dated May 9, 2005.
5. The Board held an administrative hearing on June 21, 2005, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn as witnesses at the hearing:
 - a) For Petitioner – Larry J. Smith, property owner,
Rachel E. Smith, property owner,
 - b) For Respondent – Debbie Cagle, Representative for Harrison Township Assessor,
Richetta J. Hale, Harrison Township Chief Deputy Assessor,
Ann Akers, Vigo County PTABOA member,
Gloria Donham, Vigo County PTABOA member,
Deana Chrisman, Vigo County Assessor,
Susan McCarty, Vigo County Chief Deputy Assessor.

Facts

7. The subject properties are two vacant residential lots measuring 135 feet by 144 feet and 191 feet by 130 feet located at 1020 N. 36th Street and 921 N. 37th Street and a 4,416 square foot residence on a lot measuring 330 feet by 230 feet located at 3663 Sheridan Drive in Terre Haute.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.
9. The assessed value as determined by the Vigo County PTABOA:

Parcel 1180613151002		
Land \$11,800	Improvements \$0	Total \$11,800,
Parcel 1180613152001		
Land \$ 4,600	Improvements \$0	Total \$ 4,600,
Parcel 1180613106008		
Land \$24,700	Improvements \$184,200	Total \$208,900.
10. The assessed value requested by the Petitioners:

Parcel 1180613151002		
Land \$4,800	Improvements \$0	Total \$4,800,
Parcel 1180613152001		
Land \$4,000	Improvements \$0	Total \$4,000,
Parcel 1180613106008		
Land \$13,600	Improvements \$151,400	Total \$165,000.

Issue

11. Summary of the Petitioners’ contentions in support of alleged error in assessment:
 - a) The property located at 1020 N. 36th Street (the “N. 36th Street property”) is a vacant lot located on a corner. *L. Smith testimony; Petitioner Exhibit 4.* The appraisal prepared for this property establishes the market value at \$4,700 to \$4,800. *L. Smith testimony; Petitioner Exhibit 1.*
 - b) A new home was constructed on two lots near the N. 36th Street property. *L. Smith testimony.* Sean Keene purchased those lots for \$6,500. *L. Smith testimony.*
 - c) The property located at 921 N. 37th Street (the “N. 37th Street property”) is a vacant lot. *L. Smith testimony.* The appraisal for this property indicates a market value of \$3,900 to \$4,000. *L. Smith testimony; Petitioner Exhibit 2.*
 - d) The appraisal prepared for 3663 Sheridan Drive (the “Sheridan Drive property”) values the dwelling at \$151,400 and the land at \$13,600 for a total value of

\$165,000. *L. Smith testimony; Petitioner Exhibit 3.* The appraisal represents market value. *L. Smith testimony.*

- e) The Sheridan Drive property is located on a creek and the lot has an irregular shape. *L. Smith testimony.* The dwelling is located in a blue-collar neighborhood that would not support a home sale of \$208,000. *L. Smith testimony.* The house to the west of the Sheridan Drive property sold for \$43,000 and the house to the east sold for \$43,000. *L. Smith testimony.*

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

- a) The township assessor recommended applying a negative 30 percent influence factor to the land value to account for the topography of the N. 36th Street property in addition to the negative 30 percent influence factor for under improvement currently applied. The resulting value would be \$6,800. *Hale testimony.*
- b) The comparables used in the appraisal of the N. 36th Street property are the same comparables used in an appraisal presented in a previous matter. *Donham testimony.*
- c) The comparables used in the appraisal of the N. 36th Street property and the comparables used by the PTABOA are all located in the same area. Using these comparables, the current assessment is in the same ballpark. *Donham testimony.*
- d) The township assessor submitted a recommendation to change the land classification from "commercial" to "residential." With a negative 30 percent influence factor to account for restrictions, a negative 30 percent influence factor for under improvement, and applying a negative 30 percent influence factor to account for the woods and brush for the N. 37th Street property, the recommended value would be \$2,300. *Hale testimony.*
- e) For the N. 37th Street property, the PTABOA applied a negative 30 percent influence factor for the under improvement, a negative 40 percent influence factor for the shape and size of the lot, and a negative 10 percent influence factor for restrictions. The resulting value is \$4,600. *Donham testimony.*
- f) The comparables used in the appraisal of the N. 37th Street property are the same comparables used in an appraisal presented in a previous matter. *Donham testimony.*
- g) For the Sheridan Drive property, the township changed the valuation of the porches, reduced the grade and condition of the shed, corrected the plumbing charges, removed the charge for a fireplace, added a wood deck, and applied a negative 40 percent influence factor for the effects from the creek, and applied a

negative 30 percent influence factor for excessive frontage. The resulting value would be \$194,800. *Hale testimony.*

- h) The recommended changes were made by the PTABOA with the exception of the negative 40 percent influence factor to account for the creek. *Donham testimony.* The application of the negative 40 percent influence factor was overlooked and should be applied. *Donham testimony.*
- i) The appraisal prepared for the Sheridan Drive property notes that comparable properties were difficult to locate because 2-story homes are not common for the area. *Donham testimony.* The PTABOA also had difficulty locating 2-story comparable homes. *Donham testimony.* The comparable properties used in the appraisal are not a good representation of the Sheridan Drive property because one is a 2-story home and the others are ranch homes. *Donham testimony.*
- j) The appraisal for the Sheridan Drive property indicates a market value of \$151,400 on the cover page, but also states that the market value is \$165,000. *Donham testimony.* The value of the land was not included in the value listed on the cover page. *Donham testimony.*

Record

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

- a) The Petitions,
- b) The tape recording of the hearing labeled IBTR 6207,
- c) Exhibits:
 - Petitioner Exhibit 1 – Appraisal for the property located at 1020 N. 36th Street,
 - Petitioner Exhibit 2 – Appraisal for the property located at 921 N. 37th Street,
 - Petitioner Exhibit 3 – Appraisal for the property located at 3663 Sheridan Drive,
 - Petitioner Exhibit 4 – Plat map indicating the location of the subject properties and 3 pictures of the land,
 - Respondent Exhibit 1 – The sales disclosure forms and property record cards for seven comparable properties,
 - Board Exhibit A – Form 131 petitions,
 - Board Exhibit B – Notice 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 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); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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* (hereafter GUIDELINES). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to 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 value of the property as of January 1, 1999. 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. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) The Petitioners presented appraisals for the subject properties by an Indiana Certified Appraiser following the Uniform Standards of Professional Appraisal Practice. The appraisals establish the market value for the subject properties as of December 31, 1999. *Petitioner Exhibits 1, 2, 3*. The values established by those appraisals are close enough to the January 1, 1999, valuation date to have probative value. The Petitioner has established a prima facie case.
- d) The burden shifted to the Respondent to present evidence to rebut or impeach the Petitioners' case. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- e) The Respondent attempted to rebut the Petitioners' case by pointing to certain items within the appraisals such as the comparables used and the reported value. The Respondent's first point was that the comparables used within the appraisal were not representative of the Sheridan Drive property because the comparables included a 2-story house and ranch style houses. Nevertheless, the Respondent admitted that 2-story homes are not common in the area and that the Respondent also had difficulty locating 2-story homes to use as comparables. Therefore, while the use of ranch style homes may not be the most desirable choice, the Respondent's acknowledgement of a lack 2-story comparables provides a reasonable explanation for such a choice. The Respondent did not effectively rebut or impeach the appraisal on this basis.
- f) The Respondent's next point was that the cover page reported the market value as \$151,400. Elsewhere in the appraisal, the market value is reported as \$165,000. The market value reported on the cover sheet does not include the land value. The Petitioners clearly stated that the value sought in this appeal is \$165,000. That amount consists of \$151,400 for the improvements and \$13,600 for the land. Again, this point does not effectively rebut or impeach the appraisal.
- g) The Respondent failed to provide probative evidence to rebut or impeach the Petitioners' case. The Respondent has merely raised questions regarding certain portions of the appraisals. The Respondent has simply made conclusory statements that do not qualify as probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- h) The Respondent failed to offer any probative evidence in support of the current assessments.

Conclusion

16. The Petitioners made a prima facie case based on the appraisals. The Respondent did not overcome that evidence. The assessments should be changed as follows:

Parcel 1180613151002	Total \$4,800,
Parcel 1180613152001	Total \$4,000,
Parcel 1180613106008	Total \$165,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessment should be changed to conform to the appraisals for each parcel.

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>>.