

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

Petition #: 79-902-02-1-5-01669
Petitioner: Schilli Leasing, Inc.
Respondent: Fairfield Township Assessor (Tippecanoe County)
Parcel #: 902-00201-0096
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 Petitioner initiated an assessment appeal with the Tippecanoe County Property Tax Assessment Board of Appeals (the PTABOA) by written document.
2. The Petitioner received notice of the decision of the PTABOA on November 19, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on December 18, 2003. The Petitioner elected to have this case heard according to small claim procedures.
4. The Board issued notice of hearing to the parties dated February 17, 2006.
5. The Board held an administrative hearing on May 16, 2006, before the duly appointed Administrative Law Judges Carol Comer and Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Gordon D. Gulliford, Sr., Employee of the Petitioner
 - b. For Respondent: Nancy Moore, Tippecanoe County Assessor
Ginny Whipple, County Representative
Jan Payne, Fairfield Township Assessor

Facts

7. The subject property is a 2,454 square foot, two-story wood frame dwelling located at 3541 Creekridge, Lafayette, Fairfield Township in Tippecanoe County.
8. The Administrative Law Judges did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of the subject property to be \$20,000 for the land and \$218,600 for the improvements, for a total assessed value of \$238,600.
10. The Petitioner requested a value of \$20,000 for the land and \$168,000 for the improvements for a total value of \$188,000.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends that the assessed value exceeds the market value for the subject property. *Gulliford testimony*. In support of this contention, the Petitioner submitted a limited summary appraisal report for the subject property prepared by Deborah Cook, Don R. Scheidt & Co., Inc., a certified appraiser. *Petitioner Exhibit 1*. The appraisal is dated December 11, 2003, and estimates the value of the subject property to be \$185,000 as of December 31, 1999. *Id.*
 - b. The Petitioner argues that the subject property is over-assessed in comparison with comparable properties located in the subject neighborhood. *Gulliford testimony*. In support of this contention the Petitioner submitted an article prepared by the Journal and Courier that appeared on the internet. *Petitioner Exhibit 4*. The article compares the 2002 and 2003 assessed values and taxes of eighteen properties located on Creekridge. *Id.* Thus, the Petitioner argues, this shows the subject property has been over-valued for the area. *Gulliford testimony*.
 - c. Finally, the Petitioner argues that the sales disclosure submitted by the Respondent into evidence should be given little weight. *Respondent Exhibit 7; Gulliford testimony*. The Petitioner testified that, although the sales disclosure shows the subject property sold on December 15, 1999, for \$252,000, the sale price included approximately \$60,000 worth of personal property assets such as a piano, paintings and furniture. *Gulliford testimony*.
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the subject property is correctly assessed with land at \$20,000 and improvements at \$218,600, for an overall assessed value of

\$238,600. *Respondent Exhibit 1*. In support of this contention, the Respondent submitted a sales disclosure that shows the subject property was sold on December 15, 1999, for \$252,000 and property record cards for four properties that sold in the subject property's neighborhood in 1996 through 2003 ranging from \$161,050 to \$185,000. *Respondent Exhibits 6 – 8; Whipple testimony*. According to the Respondent, the comparables sold for \$95.93 per square foot to \$101.87 per square foot. *Id.* The Respondent argues that the subject property's assessed value is close to the sales comparables at \$102.69 per square foot. *Id.*

- b. The Respondent also argues that the Petitioner's appraisal should be given little weight. *Respondent Exhibit 8; Whipple testimony*. According to the Respondent, two of the five comparables in the appraisal were not located in the subject property's neighborhood. *Id.* Further, the Respondent argues that the appraiser failed to adequately account for differences between the subject property and the comparables. *Id.* For example, the Respondent argues, the appraiser only adjusted comparable #1 \$11,600 to compensate for the lack of a finished basement area. *Id.* According to the Respondent, a finished basement typically adds approximately \$25,305 to \$36,105 or \$35 to \$50 per square foot. *Id.* In addition, comparable #1 shows that the added living area was only adjusted by \$5,800, or \$20.06 per square foot. *Id.* However, the Respondent alleges, when you compare the square foot cost of the market value for the five comparables in the appraisal it averages out to be \$85.48 per square foot. *Id.* Therefore, the Respondent concludes, the adjustment for the additional 289 square foot of living area should have been \$24,703. *Id.* According to the Respondent, if the appropriate adjustments were made to the comparables, the market values of the five comparables in the appraisal would range from \$226,258 to \$237,103. *Id.*
- c. Finally, the Respondent testified that the subject property's current market value-in-use was not based upon the sale of the property on December 15, 1999, but rather the subject property was valued using mass appraisal techniques that were then adjusted using local market sales and data. *Whipple testimony*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled STB 5181,
 - c. Exhibits:

Petitioner Exhibit 1 - Limited summary appraisal report prepared by Don R. Scheidt & Co. Inc.,

Petitioner Exhibit 2 - Form 131 petition,
Petitioner Exhibit 3 - Notification of Final Assessment Determination –
Form 115,
Petitioner Exhibit 4 - Journal and Courier article on “Property Tax
Assessment” in CreekrIDGE,
Petitioner Exhibit 5 - Business Tangible Personal Property Returns – 104
and 103-Long for March 1, 2004,
Petitioner Exhibit 6 - Excerpts from the limited summary appraisal report
with the comparable properties highlighted,

Respondent Exhibit 1 - Subject property record card and three exterior
photographs of the subject property,

Respondent Exhibit 2 – PTABOA meeting minutes from October 22,
2003, and November 6, 2003,

Respondent Exhibit 3 – Form 130 petition,

Respondent Exhibit 4 – Notification of Final Assessment Determination –
Form 115,

Respondent Exhibit 5 – Form 131 petition,

Respondent Exhibit 6 – Four comparable property record cards

Respondent Exhibit 7 – Sales disclosure on the subject property from
Thomas Schilli to Schilli Leasing, Inc., dated
December 15, 1999,

Respondent Exhibit 8 – Respondent’s review of Petitioner’s appraisal
report, analysis of sales of four comparable
properties, subject property record card and three
exterior photographs of the subject property,

Board Exhibit A – Form 131 petition,

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 Township 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 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.
15. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in value. This conclusion was arrived at because:
- a. The Petitioner contends that the assessment is excessive based on an appraisal. In support of this contention, the Petitioner submitted an appraisal which estimated the market value of the subject property to be \$185,000 as of December 31, 1999.¹ *Petitioner Exhibit 1*.
 - b. Real property in Indiana is assessed on the basis of its “true tax value”. *See 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 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter 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.*
 - c. 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.*

¹ We note that the Petitioner, on its Form 131, mistakenly states that the Petitioner hired an appraiser that appraised the property for \$188,000. Based on that error, the Petitioner requested an assessed value of \$188,000. The evidence, however, shows that the appraised value of the property is \$185,000. *Petitioner Exhibit 1*.

- d. Here, the Petitioner submitted an appraisal, prepared by a licensed appraiser, which values the subject property as of December 31, 1999.² *Petitioner Exhibit 1*. The appraiser attests the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* The appraiser used the sales comparison approach 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).
- e. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach Petitioner's case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted).
- f. Here, the Respondent submitted property record cards and sales prices for four comparable properties that sold in the Petitioner's neighborhood to support the assessment. *Respondent Exhibits 6 & 8*. The Respondent, however, failed to identify characteristics of the comparable properties or explain how those characteristics compared to characteristics of the subject property. Similarly, the Respondent failed to identify or explain the differences between the properties that might affect their relative market values-in-use. *See Long*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of comparability of the two properties. *Long*, at 470. Thus, the Respondent's

²While the appraisal did not value the property as of the January 1, 1999, valuation date, the appraisal's valuation date and all of the comparable properties used as sales comparables were within 18 months of that date. *See Petitioner Exhibit 1*. To determine the land value for each neighborhood, a township assessor selects representative sales disclosure statements or written estimations of property value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, chap. 2, pg. 8 (the GUIDELINES). According to the GUIDELINES, "representative disclosure statements selected must refer to a transaction, or written estimations of value must refer to an estimation of value, that is dated no more than eighteen (18) months prior or subsequent to January 1, 1999." Accordingly, an appraisal dated within eighteen months of the January 1, 1999, assessment date or an appraisal comparing sales that occurred within eighteen months of the January 1, 1999, assessment valuation date must, therefore, have some evidentiary value.

“comparable” properties are insufficient to impeach or rebut the Petitioner’s evidence.³

- g. The Respondent also argues that the appraisal report is based on only three sales that occurred in the subject property’s neighborhood, while the other two sales used were over five miles away from the property. *Whipple testimony*. The Respondent also alleges the appraiser failed to adequately account for the differences between the subject property and the comparable sales and the Respondent questioned the price per square foot used for the basement and the living area adjustments made to the comparable properties. *Respondent Exhibit 8; Whipple testimony*.
- h. The Board does not find persuasive the argument that the appraisal should be given little weight because the appraiser only used three sales from within the neighborhood and used two sales that were five miles away from the subject property. It is well within an appraiser’s expertise to choose the sales they deem “most comparable” to the subject property.⁴ The Board finds the comparables chosen by the appraiser to be reasonable absent any evidence to the contrary. Further, it is uniquely within the expertise of an appraiser to apply adjustments to properties to value the differences between them. Thus, it was appropriate for the Petitioner’s appraiser to determine the adjustments to be applied to the comparables in determining the market value of the subject property. The Respondent’s allegations concerning the appraiser’s valuation of the basement and additional square footage were unsupported and conclusory and do not change this conclusion. “Open-ended questions” and “conclusory statements” are not sufficient to rebut the Petitioner’s case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) (“In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Russell’s calculations. Rather, he merely asked open-ended questions or made conclusory statements.”).
- i. Finally, the Respondent submitted a sales disclosure form that shows the subject property was sold by Thomas Schilli to Schilli Leasing, Inc. on December 15, 1999 for \$252,000. *Respondent Exhibit 7*. While the sale of a property for an amount in excess of the appraised price may be sufficient to rebut or impeach the appraisal, here the Petitioner testified the sale price listed on the sale disclosure form was incorrect. *Gulliford testimony*. According to the Petitioner, the sale

³ Even if the Board were to assume that the Respondent had engaged in an acceptable sales comparison analysis, the Respondent did not explain how the sales prices of the purportedly comparable properties support the current assessment. The highest sale price is \$185,000, which is \$53,600 less than the current assessment of the subject property. *Respondent Exhibits 6 & 8*.

⁴ Further, the Board notes that the two comparables located five miles away from the subject property were used as supporting weight to the market value of the subject property.

price included approximately \$60,000 in personal property assets such as a piano, paintings and furniture. *Id.* Further, the four comparables submitted by the Respondent tend to support that the neighborhood market values range from \$161,050 to \$185,000. *Respondent Exhibit 8.* Thus, while the Respondent provided some evidence to indicate the market value-in-use of the subject property, the Board finds the weight of the evidence demonstrates that the market value-in-use of the subject property is the appraised value of \$185,000.

Conclusion

16. The Petitioner provided sufficient evidence to establish a prima facie case for a change in the assessment. The Board finds in favor of the Petitioner and determines that the assessment should be changed to \$185,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

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>>.