

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

Petition: 20-015-03-1-5-00055
Petitioner: Mary H. Loveland
Respondent: Elkhart Township Assessor (Elkhart County)
Parcel: 20-11-08-252-017.000-015
Assessment Year: 2003

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 Petitioner initiated an assessment appeal with the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The PTABOA issued its determination on January 19, 2005.
3. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on February 18, 2005, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 7, 2006.
5. Administrative Law Judge Patti Kindler held the hearing in Goshen, Indiana, on September 26, 2006.
6. The following persons were sworn as witnesses at the hearing:
For the Petitioner - Mary H. Loveland, taxpayer,
For the Respondent - Becca Briscoe, Elkhart Township Assessor.

Facts

7. The property is a residential dwelling located at 1505 Westmoor Parkway, Goshen.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of the subject property is:
Land: \$15,800 Improvements: \$84,900 Total: \$100,700.
10. The assessed value requested by the Petitioner on the Form 131 petition is:
Land: \$15,800 Improvements: \$50,000 Total: \$65,800.

Issue

11. Summary of the Petitioner's contentions in support of alleged error in the assessment:

- a) The property is a non-rental home occupied by the Petitioner's son. *Loveland testimony*. Property taxes on the property were \$1,995 in 2003, an increase of more than \$800 from 2002. *Loveland testimony; Pet'r Ex. 6*. The Petitioner's taxes are too high compared to the taxes paid on surrounding homes. *Loveland testimony; Pet'r Ex. 1 at 2*.
- b) The 2003 tax bill for the neighboring property at 1503 Westmoor Parkway was only \$1,904. This property, with a 2006 asking price between \$129,900 and \$149,876, is in mint condition with nearly an acre lot, screened-in porch, hot tub, fireplace, sunken family room, two car garage, and many more extra features. *Loveland testimony; Pet'r Ex. 7*. These amenities are far superior to those of the subject dwelling, which has only 1,215 square feet with one bath, two bedrooms, and a one-car garage. *Loveland testimony*.
- c) A random sampling of ranch homes located in the Park West subdivision, the same subdivision as the subject property, shows tax amounts that range from \$1,426.10 to \$2,555.32. These homes have larger lots than the Petitioner's parcel, full basements, three bedrooms, and two baths. *Loveland testimony; Pet'r Ex. 9*.
- d) A random sampling of properties located on Pike Street, the same street as the subject property, shows taxes ranging from \$1,583.40 to \$2,677.16. These homes have two baths, two car garages, finished basements, and are larger than the residence under appeal. *Loveland testimony; Pet'r Ex. 10*.
- e) A random sampling of nearby properties on Clinton Street includes homes that are approximately forty (40) years old with three bedrooms, finished basements, and large lots. The taxes on these comparable Clinton Street properties ranged from \$1,151.08 to \$2,100.12. *Loveland testimony; Pet'r Ex. 11*.
- f) The residence located at 316 Park Avenue had a listing price on September 23, 2006, of \$134,900. The listing describes the property as having three bedrooms, two baths, two partially finished basements with a recreation room, two kitchens, a large fenced yard, and a two car garage, all of which are superior to the features of the Petitioner's property. *Loveland testimony; Pet'r Ex. 8*.
- g) The properties at 1507 Westmoor Parkway and 1509 Westmoor Parkway are in the immediate vicinity of the Petitioner's parcel and are more favorable parcels, but they have lower true tax values. *Pet'r Ex. 2*.
- h) A review of random lot assessments for large lots located on West Pike Street shows assessed values between \$14,600 and \$15,800. *Pet'r Ex. 12*. The assessed values of these lots, which measure 100 feet wide by 190 to 200 feet deep, are the

same or lower than the subject lot, which measures 75 feet wide by 80 feet deep.¹
Loveland testimony.

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

- a) The property was assessed in accordance with the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The assessed value falls within the range established by the sales ratio study. *Briscoe testimony; Resp't Ex. 4.* The Petitioner did not have a dispute with the assessment on the property record card. *Briscoe testimony.* Rather than contending the assessment is incorrect, the Petitioner is asserting that the taxes are too high. *Id.*
- b) One reason the taxes on the Petitioner's parcel are higher than the taxes on other properties is because the subject property is not the taxpayer's primary residence and it does not benefit from the \$35,000 homestead exemption. *Briscoe testimony.*
- c) The land assessment was based on the land order. The Petitioner's lot is typical for its neighborhood. *Briscoe testimony; Resp't Ex. 3.* The properties identified by the Petitioner as comparable land assessments are larger and they are not located in the subject parcel's neighborhood. Therefore, they are not comparable to the Petitioner's property. *Briscoe testimony.*

Record

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

- a) The Petition,
- b) The digital recording of the hearing,
- c) Petitioner Exhibit 1 - General property description data,
Petitioner Exhibit 2 - Basis of belief of incorrect assessment,
Petitioner Exhibit 3 - Financial profile for 2006,
Petitioner Exhibit 4 - Newspaper article regarding investments,
Petitioner Exhibit 5 - Financial impact of Medicare plan for 2006,
Petitioner Exhibit 6 - Subject taxes paid in 1999 – 2005 (two pages),
Petitioner Exhibit 7 - Listing from newspaper and the taxes payable for the property at 1503 Westmoor Parkway,
Petitioner Exhibit 8 – Newspaper listing for the property at 316 Park Avenue,
Petitioner Exhibit 9 - Random sampling of Class "C" tax bills in the Park West subdivision,

¹ The property record card submitted by the Respondent shows the subject lot dimensions are 70 feet wide by 150 feet deep. *Resp't Ex. 2.* The appeal petition specifically stated the Petitioner is not disputing the parcel's land assessment. *Bd. Ex. A.*

Petitioner Exhibit 10 - Random sampling of Class “C” tax bills located on Pike Street,
Petitioner Exhibit 11 - Random sampling of tax bills of properties with large lots on Clinton Street,
Petitioner Exhibit 12 - Random sampling of Pike Street lot assessments,
Respondent Exhibit 1 - Photographs of the subject property (street view),
Respondent Exhibit 2 - Subject property record card,
Respondent Exhibit 3 - Copy of the neighborhood land order (valuation form),
Respondent Exhibit 4 - Copy of the sales ratio study for the subject neighborhood,
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 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 Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the taxes on this parcel are too high. The 2003 taxes for purportedly superior homes are less than the taxes on the subject property. *Loveland testimony; Pet’r Exs. 9 - 11*. The Petitioner failed to provide the kind of detailed evidence and analysis that might form the basis for any legitimate

comparison between these homes. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005)(stating that the taxpayers were responsible for explaining the characteristics of their own property, how those compared to the comparables, and how any differences affected the relevant market value-in-use of the properties). In addition, several factors such as deductions and exemptions can affect a property's taxes. Consequently, this kind of comparison has no probative value.

- b) The Petitioner's taxes increased significantly from 2002 to 2003. *Loveland testimony*. The Petitioner provided no authority or explanation to support how this fact is relevant. Each tax year stands on its own. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). The tax increase from 2002 to 2003 is not probative evidence.
- c) The Petitioner also contends that two more desirable properties on Westmoor Parkway are assessed for less than the property under appeal. 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* 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 3 (incorporated by reference at 50 IAC 2.3-1-2)(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*, 821 N.E.2d at 469. The primary difference between the Petitioner's methodology and the sales comparison approach is that the Petitioner seeks to establish the value of the subject property by analyzing the assessments of purported comparable properties rather than the sale prices of those properties. Nevertheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach.
- d) In order to use a comparison approach effectively, a 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 properties. *Long*, 821 N.E.2d at 470-71. While the Petitioner submitted minimal information regarding the square footage and condition of the properties at 1507 and 1509 Westmoor Parkway, she did not offer sufficient evidence to establish how the market value-in-use of these properties compares to that of her own property. This evidence has no probative value.
- e) Two purportedly superior properties had listing prices in 2006 between \$129,900 and \$149,876. *Pet'r Exs. 7, 8*. Each of these listing prices exceeds the current total assessment of \$100,700 for the subject property. Again, the Petitioner presented no substantial evidence or explanation of how the differences among the properties affect their relative market values-in-use. The Petitioner failed to establish that the listing prices are an accurate indication of what actual sale prices would be. Additionally, the assessment is to reflect the value of the property as of

January 1, 1999. MANUAL at 4. Evidence of value relating to a different time requires some explanation to establish how the value demonstrates, or relates to, the subject property's value as of January 1, 1999. *See Long*, 821 N.E.2d at 471. The Petitioner failed to establish any link between the 2006 listing prices of the homes and the valuation date of January 1, 1999. Therefore, these sales listings are not probative evidence.

- f) The Petitioner also presented a comparison of lot assessments for three properties on Pike Street. *Pet'r Ex. 12*. The Petitioner, however, specifically asserted on the appeal petition that she is not contesting her parcel's current land assessment. *Bd. Ex. A*. The Petitioner offered no explanation to demonstrate the relevance of the assessed land values of these lots to this appeal. Further, the Petitioner presented no detailed descriptions of these properties to show comparability. Without an explanation and facts to establish the properties are comparable and to account for how any differences affected the relevant market value-in-use of the properties, the evidence is conclusory and it has no probative value. *Long*, 821 N.E.2d at 471; *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- g) The Petitioner did not establish that the 2003 assessment was incorrect and did not establish what the correct assessment should be. When a taxpayer fails to provide probative evidence supporting its position, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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>.