

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

Petition: 84-002-02-1-5-00334
Petitioner: William H. Tegeler
Respondent: Harrison Township Assessor (Vigo County)
Parcel: 118-06-10-104-013
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. Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated November 24, 2003.
2. Petitioner received notice of the decision of the PTABOA on October 27, 2004.
3. Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 24, 2004. Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 8, 2005.
5. The Board held an administrative hearing on October 12, 2005, before the duly appointed Administrative Law Judge, Rick Barter.
6. The following persons were sworn as witnesses at the hearing:
William Tegeler, Petitioner,
Larry Auler, Harrison Township Assessor,
Richetta Hale, Chief Deputy Assessor,
Ann Akers, Vigo County PTABOA,
Gloria Donham, Vigo County PTABOA.

Facts

7. The property is a single-family dwelling located at 3126 N. 10th Street in Terre Haute.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. The assessed value as determined by the PTABOA is:
land \$16,300 improvements \$184,300 total \$200,600.
10. The assessed value requested by Petitioner on the Form 131 is:
land \$10,000 improvements \$116,500 total \$126,500.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) Petitioner purchased the property for \$107,000 on December 3, 1997. *Pet'r Ex. 2.*
 - b) A comparative market analysis (CMA) dated July 24, 2002, prepared by Century-21 Real Estate Agent Ron Maxwell, concludes the market value was \$122,250. *Pet'r Ex. 3.*
 - c) A summary appraisal prepared by Howard Junker, an Indiana Certified Residential Appraiser, determined the market value of the property on May 27, 2003, was \$120,500. *Pet'r Ex. 4.*
 - d) A CMA by licensed real estate agent Bob Irwin, dated August 26, 2004, recommended a listing price of \$131,300. *Pet'r Ex. 5.*
 - e) A full residential property appraisal prepared by Stephen Junker, an Indiana Certified Residential Appraiser, determined the market value of the property on November 8, 2004, was \$126,500. This appraisal was prepared after a third bathroom was added to the home in 2003. *Tegeler testimony; Pet'r Ex. 6.*
 - f) Market values of homes in the neighborhood remained level during the period 1999 through 2004. *Tegeler testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The values established by the two appraisals are not trended back to the January 1, 1999, valuation date. *Donham testimony.*
 - b) The CMA prepared by Ron Maxwell is not based on appropriate sales of comparable properties. The properties are located in different townships and subdivisions with more expensive homes. *Id.*
 - c) The CMA prepared by Bob Irwin is based on homes currently listed for sale and does not represent market values on the valuation date, January 1, 1999. *Id.*
 - d) Market values of homes in Petitioner's neighborhood did not significantly change during the period 1999 through 2004. *Auler testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The compact disc recording of the hearing labeled Tegeler hearing,
 - c) Petitioner Exhibit 1 - Form 131,
Petitioner Exhibit 2 - Sales and settlement statement for subject dated December 3, 1997, for \$107,000,
Petitioner Exhibit 3 - A CMA of the subject property dated July 24, 2002,
Petitioner Exhibit 4 - A limited appraisal of the subject by Howard Junker, dated May 29, 2003, concluding a value of \$120,500,
Petitioner Exhibit 5 - A CMA of subject dated August 26, 2004,
Petitioner Exhibit 6 - A complete residential appraisal of the subject by Howard Junker, dated November 8, 2004, concluding a value of \$126,500,
Respondent Exhibit 1 - Statement of Contentions,¹
 - 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”).

¹ Petitioner objected to the introduction of the exhibit identified as “Statement of Contentions” because he did not receive a copy of it prior to the hearing. Petitioner cites Board Rule 52 IAC 3-1-5 as authority for this objection. The Administrative Law Judge sustained the objection at the hearing. As discussed at the hearing, the applicable small claims rule requires parties to “make available” their evidence prior to the hearing. While Respondents did not provide Petitioner with a copy of the exhibit prior to the hearing, the record does not establish that Petitioner requested copies of Respondent’s exhibits or that the Respondent failed to honor such a request. Therefore, upon further consideration, the Board hereby reverses the earlier ruling regarding Respondent’s Exhibit 1. The objection to Respondent’s Exhibit 1 is denied. The exhibit itself has little, if any, probative value. It merely summarizes points from the testimony offered by Respondent.

- 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. Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) Petitioner presented five pieces of evidence to establish that the subject property was improperly valued: (1) the purchase of the property for \$107,000 in December 1997; (2) a CMA valuing the property at \$122,250 in July 2002; (3) an appraisal valuing the property at \$120,500 as of May 2003; (4) a CMA valuing the property at \$131,300 as of August 2004; and (5) an appraisal valuing the property at \$126,500 as of November 2004. *Pet'r Exs. 2-6*.
- b) 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. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party presenting market evidence to establish the market value-in-use of a property must provide some explanation as to how the evidence demonstrates, or is relevant to, the property's value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) The parties agreed the market values remained stable in Petitioner's neighborhood during the period 1999 through 2004. *Tegeler testimony*; *Auler testimony*. This testimony is sufficient to link Petitioner's exhibits to the January 1, 1999, valuation date.
- d) The two appraisals were prepared by certified residential appraisers in compliance with the Uniform Standards of Professional Appraisal Practice. These appraisals are more persuasive than the two CMAs. Testimony established that the November 2004 appraisal value included an additional bathroom that did not exist on the assessment date. Accordingly, the May 2003 appraisal value of \$120,500 is considered the best evidence of value presented by Petitioner and is sufficient to establish a prima facie case.
- e) Respondent presented no probative evidence to rebut or impeach Petitioner's evidence or to support the current assessment. Respondent's conclusory statements are not probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- f) Respondent merely contended the appraisals did not reflect the property's value as of January 1, 1999. Nevertheless, the parties agreed no significant change in market values in this neighborhood had occurred during the period 1999 through 2004. Respondent failed to rebut Petitioner's prima facie case.

Conclusion

16. Petitioner established a prima facie case the total assessed value should be \$120,500. Respondent did not rebut or impeach Petitioner's evidence. The Board finds in favor of Petitioner.

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>.