

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

Petition #: 84-002-02-1-5-00832
Petitioner: G.X. Thompson
Respondent: Harrison Township Assessor (Vigo County)
Parcel #: 118-06-10-282-005
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 Vigo County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 18, 2003.
2. The Petitioner received notice of the decision of the PTABOA on October 25, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 24, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 7, 2005.
5. The Board held an administrative hearing on February 21, 2006, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: G.X. Thompson, Petitioner
Beverley Thompson, Petitioner's wife
Larry Bohnert, Witness for Petitioner
 - b) For Respondent: Larry Auler, Harrison Township Assessor
Richetta Hale, Harrison Township Chief Deputy

Facts

7. The subject property is vacant residential parcel located at 2811 N. 16th Street, Terre Haute in Harrison Township.
8. The ALJ did not conduct an on-site visit of the property.

9. The PTABOA determined the assessed value of the subject property to be \$4,200 for the land. The Petitioner was assessed for no improvements on the property.
10. The Petitioner requested an assessment of \$2,000.

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the subject parcel has a market value of \$2,000 or less. *G.X. Thompson testimony*. In support of this contention, the Petitioner submitted evidence of four other properties purchased by the Petitioner. The first property, parcel #18-06-27-426-04, is located at 515 S. 13th Street in Terre Haute, and was purchased for \$500 on April 18, 2004. *Petitioner Exhibit 1*. The second parcel, #18-06-23-236-00, located at 111 Oakland Street in Terre Haute was purchased for \$300 on April 18, 2004. *Petitioner Exhibit 2*. Finally, parcels #18-06-10-292-009 and #18-06-292-010, located at 2700 and 2708 N 18th Street in Terre Haute were purchased for \$1,000 on July 14, 2003. *Petitioner Exhibit 3*.
 - b. The Petitioner further contends that five photographs showing various views of the property are indicative of the property's low value because of the existence of a concrete pad from a previous improvement. *G.X. Thompson testimony; Petitioner Exhibit 4*. The Petitioner alleges that the concrete prevents the subject parcel from being used as a yard for the adjacent improved property which is also owned by the Petitioner. *G.X. Thompson testimony*.
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the subject is appropriately assessed for 2002 based on the County Land Order. *Hale testimony*. The Respondent testified, however, that the 2002 assessed value for the subject parcel is incorrect when market-value-in-use is considered. *Hale testimony; Auler testimony*. The Respondent contends the market value-in-use of the subject property is between \$1,500 and \$2,000. *Auler testimony*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The CD recording of the hearing labeled Thomson 84002021500832 022106,
 - c. Exhibits:

Petitioner Exhibit 1 - Copy of a purchase agreement to buy a lot at 515 S 13th
Street for \$500

Petitioner Exhibit 2 - Copy of a purchase agreement to buy a lot at 111 Oakland Street for \$300, and a quit claim deed for same,
Petitioner Exhibit 3 - Copy of a warranty deed and closing figures for the Purchase of lots located at 2700 and 2708 N. 18th Street for a total of \$1,000,
Petitioner Exhibit 4 - Copies of five photographs of subject property,

Respondent Exhibits – None were submitted,

Board Exhibit A - Form 139L petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - 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 Board of Tax Commissioners*, 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 failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Respondent, however, agreed the property was over-assessed. The Board reached this decision for the following reasons:
- a. The Petitioner contends that, based on the purchase price of other properties, the subject property is worth no more than \$2,000. *G.X. Thompson testimony; Petitioner Exhibits 1 – 3.*
 - b. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use,

as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL- VERSION A at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through cost and income capitalization approaches).

- c. Here, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* MANUAL at 3. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the 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 two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- d. Here, the Petitioner alleges that other properties which were purchased by the Petitioner are comparable to the subject property. Though the Petitioner alleges that the properties are comparable, the Petitioner made no comparison of those properties to that of the subject property. Further, while the Petitioner offered some testimony concerning the properties being residential properties with no sidewalks, the Petitioner offered no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine the lots presented by the Petitioner were “comparable” properties. *See Blackbird Farms Apartments, LP v. Dep’t of Local Gov’t Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Thus, the Petitioner has failed to raise a prima facie case that the subject property is over-valued on the basis of his purportedly “comparable” properties.¹

¹ The Petitioner also submitted photographs of the concrete pad on the property as evidence of the property’s low value. To the extent that the Petitioner can be seen as raising an issue relating to the condition or value of the concrete pad, we note that the Petitioner has not been assessed for any improvement.

- e. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Here the Respondent had no duty to support the current assessed value. Despite this, however, the Respondent agreed that the property was over-valued and that a more appropriate value for the property would be \$2,000. We commend the Respondent's candor and find that the subject property should be valued at \$2,000.

Conclusion

16. Though the Petitioner failed to provide sufficient evidence to establish a prima facie case, the Respondent agreed that the subject property's assessment was over-valued. The Board, therefore, finds 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](http://www.in.gov/judiciary/rules/trial%20proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.