

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

Petition #: 84-002-02-1-5-00932
Petitioner: Christopher M. Harcourt
Respondent: Harrison Township Assessor (Vigo County)
Parcel #: 1180603227008
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 ("PTABOA") by written document dated October 27, 2003.
2. The Petitioner received notice of the decision of the PTABOA on July 7, 2004.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Vigo County Assessor on July 16, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 28, 2005.
5. The Board held an administrative hearing on August 9, 2005, before the duly appointed Administrative Law Judge ("ALJ") Joan Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: John Johantges, Tax Representative (Property Tax Group 1, Inc.)
 - b) For Respondent: Larry Auler, Harrison Township Assessor
Richetta Hale, Harrison Township Deputy Assessor
Gloria Donham, Vigo County PTABOA
Ann Akers, Vigo County PTABOA
Susan McCarty, Vigo County Deputy Assessor
Deana Chrisman, Vigo County Assessor Office

Facts

7. The subject property is classified as single-family residence, as is shown on the property record card (PRC) for parcel # 118-06-03-227-008. The subject property is located at 4512 N. 17th Street, Terre Haute Indiana, Harrison Township.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Values of subject property as determined by the Vigo County PTABOA:
Land: \$4,100, Improvements: \$94,200, Total: \$98,300
10. Assessed Value requested by Petitioner per the Form 131 petition:
Total: \$72,900

Objection

11. The Petitioner objected to the admission of the Respondent's exhibits, because the Respondent did not provide those exhibits to the Petitioner in advance of the hearing. *Johantges objection.*
12. The parties elected to contest this case under the procedures governing small claims. *See* Ind. Admin. Code tit. 52, r. 3. Those procedures are intended to make the administration of small claims "more efficient, informal, simple, and expeditious than those administered under 52 IAC 2." 52 IAC 3-1-1(b).
13. The small claims rules provide that "the parties shall *make available* to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing." 52 IAC 3-1-5(f) (emphasis added).
14. By contrast, the rules applicable to non-small claims proceedings state that a party to the appeal "*shall provide*" to the other parties: (1) copies of documentary evidence at least five (5) business days before the hearing; and (2) a list of witnesses and exhibits at least fifteen (15) business days before the hearing. 52 IAC 2-7-1(b).
15. The Board interprets the phrase "shall make available" contained in 52 IAC 3-1-5(f) to mean that the specified items must be provided to other parties if requested. The Board does not interpret that phrase to create an obligation to provide copies of documentary evidence to other parties independent of a request by one or more of those parties. This interpretation gives meaning to the difference between the language used in 52 IAC 3-1-5(f) and 52 IAC 2-7-1(b) and best reflects the principles underlying the more informal small claims procedures.

16. The Petitioner's representative did not request copies of the Respondent's exhibits prior to the hearing. *Johantges testimony*. Consequently, the Board overrules the Petitioner's objection.

Issue

17. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The present assessment of \$98,300 is incorrect and does not reflect the real market value of the subject property. *Johantges testimony; Respondent Exhibit 4*.
 - b) The subject dwelling was built by E & R Construction, Inc. The Petitioner purchased the subject property on September 5, 2000, for \$72,900. *Johantges testimony; Petitioner Exhibit 1*.
 - c) A fair market appraisal estimated the market value of the subject property to be \$75,000 as of September 30, 2002. This represents an increase of 1.4% per year between the date of purchase and the date of the appraisal. *Johantges testimony; Petitioner Exhibit 2*.
 - d) The Bartels purchased a home that is identical to the subject dwelling on October 24, 2000, for \$72,900. The Bartels' home also was built by E & R Construction, Inc. *Johantges testimony; Petitioner Exhibit 3*.
 - e) A fair market appraisal for the Bartels' estimated the market value of the Bartels' property to be \$75,000 as of July 30, 2003. This represents an increase of 1% per year between the date of purchase and the date of the appraisal. *Johantges testimony; Petitioner Exhibit 4*.
 - f) The Petitioner is requesting a total assessed value for the subject property of \$72,900, reflecting the real market value of the subject property. *Johantges testimony*
18. Summary of Respondent's contentions in support of the assessment:
- a) Comparable PRCs and a sales ratio study show that homes in the subject property's area are all assessed in the same manner. The Respondent used the same market adjustment and neighborhood factors in all of the assessments. The comparable homes are similar to the subject property and are graded between "D-1" and "D+1" with two being graded "C". *Donham testimony; Respondent Exhibits 1 - 5*.
 - b) Comparable #1 is located at 4502 N. 17th Street and is a little larger than the subject property, but basically has the same outline of the home. Comparable #1

was assessed in 2002 at \$120,200 and sold in February 2000, for \$125,000. The sale to assessment ratio was pretty much on the money. Donham testimony; Respondent Exhibit 1. Comparable #2 is located at 4518 N. 17th Street and was assessed in 2002 for \$96,500 and sold in 2000 for \$73,000. The Respondent is not sure whether the difference represents a problem with the grade assigned to that dwelling. Donham testimony; Respondent Exhibit 2. Comparable #3 is located at 4516 N. 17th Street and was assessed in 2002 for \$99,900. This is the same type of home as the subject, but it is a little larger than the subject. Donham testimony; Respondent Exhibits 3 - 4.

- c) Respondent Exhibit 5 contains the 1998 sales used in the ratio study. This spreadsheet showed how the Respondent calculated its neighborhood factors. *Donham testimony; Respondent Exhibit 5.*
- d) Arms length transactions from 1998 and 1999 were used in the ratio study that followed the guidelines for sales ratio studies from the International Association of Assessing Officers (“IAAO”). *McCarty testimony.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #6042.
- c) Exhibits:

Petitioner Exhibit 1: HUD Settlement Statement for the subject property dated September 5, 2000

Petitioner Exhibit 2: Appraisal dated September 9, 2002, for subject property

Petitioner Exhibit 3: HUD Settlement Statement for 4508 N. 17th Street

Petitioner Exhibit 4: Appraisal dated July 30, 2003, for 4508 N. 17th Street

Respondent Exhibit 1: PRC of Comparable located at 4502 N. 17th Street

Respondent Exhibit 2: PRC of Comparable located at 4518 N. 17th Street

Respondent Exhibit 3: PRC of Comparable located at 4516 N. 17th Street

Respondent Exhibit 4: Subject’s PRC

Respondent Exhibit 5: Sales Ratio Study for subject neighborhood (100)

Board Exhibit 1: Form 131 Petition with attachments.

Board Exhibit 2: Notice of Hearing on Petition

Board Exhibit 3: Hearing Sign-In Sheet

- d) These Findings and Conclusions.

Analysis

20. 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.
21. The Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the assessment of the subject property exceeds its actual market value. *Johantges testimony*. In support of this claim, the Petitioner relies primarily upon the facts that he purchased the subject property for \$72,000 on September 5, 2000, and that the subject property was appraised for \$75,000 as of September 30, 2002. *Johantges testimony; Petitioner Exhibits 1-2*.
 - b) A petitioner may offer evidence relevant to the fair market value-in-use of his or her property to rebut an assessment and to establish the actual true tax value of the property. This evidence includes, but is not limited to, actual construction costs, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *See 2002 REAL PROPERTY ASSESSMENT MANUAL 5* (incorporated by reference at 50 IAC 2.3-1-2).
 - c) The 2002 Real Property Assessment Manual (Manual) further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *MANUAL*, at 4. *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a

property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

- d) Here, the Petitioner submitted two pieces of evidence that are highly probative of the market value-in-use of the subject property – the September 5, 2000, sale price of the property, and an appraisal prepared in conformance with generally accepted appraisal methods estimating the market value of the property as of September 30, 2002. *Johantges testimony; Petitioner Exhibits 1-2.*
- e) Moreover, the Petitioner presented at least some evidence to explain how the values indicated by the sale and appraisal relate to the subject property's market value-in-use as of the relevant valuation date of January 1, 1999. The appraisal, performed two years after the sale of the subject property, estimated an increase in value of approximately 1.4% per year. *See Petitioner Exhibits 1 - 2.* In addition, the Petitioner presented evidence of the sale price and subsequent appraisal of a neighboring property indicating an increase of only 1% per year between 2002 and 2003. *See Petitioner Exhibits 3-4.* While this evidence does not specifically address the rate of appreciation or depreciation of the subject property between January 1, 1999, and its September 5, 2000, purchase date, it constitutes at least some evidence that the subject property was appreciating rather than depreciating in value. Consequently, the Petitioner established a prima facie case that the market value-in-use of the subject property did not exceed \$72,900 as of January 1, 1999.
- f) The burden therefore shifted to the Respondent to rebut or impeach the Petitioner's evidence. *See Meridian Towers*, 805 N.E.2d at 479.
- g) The Respondent did not attempt to impeach the validity of the sale price or appraisal submitted by the Petitioner. Instead, the Respondent relied upon the a comparison of the subject property to three purportedly comparable properties located on the same street as the subject property and a "sales ratio" study involving various properties from the subject property's neighborhood.
- h) The Respondent, however, wholly failed to present any evidence to demonstrate how the characteristics of the three purportedly comparable properties upon which it relied compared to those of the subject property. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005) (conclusory statements that properties are similar do not constitute probative evidence; instead, taxpayer must identify the characteristics of purportedly comparable properties and explain how they compare to the characteristics of the subject property). Moreover, even if one were to assume comparability, two of the three properties relied upon by the Respondent sold in July 2000 for \$72,125 and \$73,000, respectively. *See Respondent Exhibits 2-3; Donham testimony.* If anything, those sale prices would tend to support the Petitioner's claims.

- i) The Respondent's reliance on the sales ratio study of various properties from the subject neighborhood is equally unavailing. The Respondent apparently confuses the standards for examining whether equalization measures are required under 50 IAC 14-1, with the standards for determining whether an individual assessment is correct. The former govern the question of when it is necessary either to reassess one or more classes of property within a jurisdiction or to adjust individual assessments to attain greater uniformity and equality. The latter govern whether an individual taxpayer has established that his property is assessed in excess of its true tax value. The Manual clearly provides that a taxpayer may rebut the presumption that an individual assessment is correct by, among other things, offering evidence relevant to the market value-in-use of his property. 2002 REAL PROPERTY ASSESSMENT MANUAL 5 (incorporated by reference at 50 IAC 2.3-1-2). It does not provide for an assessor to overcome such evidence simply by showing that the assessment of property within the jurisdiction as a whole falls within acceptable standards for uniformity and equality.
- j) Based on the foregoing, the Petitioner established that the current assessment is incorrect, and that the subject property should be assessed for a total amount of \$72,900.

Conclusions

- 22. The Petitioner made a prima facie case. The Respondent did not rebut 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 to \$72,900.

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>.