

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

Petition #: 84-013-02-1-5-00151
Petitioners: George T & Irma L. Timko
Respondent: Otter Creek Township Assessor (Vigo County)
Parcel #: 109-02-24-103-004
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 November 19, 2003.
2. The Petitioner received notice of the decision of the PTABOA on September 13, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on October 12, 2004. The Petitioner elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated May 12, 2005.
5. The Board held an administrative hearing on June 22, 2005, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn as witnesses at the hearing:
For Petitioner – Irene L. Timko, property owner,
Gerald M. Calvert, Jr.¹,
For Respondent – Ann Akers, Vigo County PTABOA,
Gloria Donham, Vigo County PTABOA,
Deana G. Chrisman, Vigo County Assessor’s Office,
Susan J. McCarty, Vigo County Assessor’s Office.

¹ Mr. Calvert, former Otter Creek Township Assessor, appeared for current Otter Creek Assessor Warren Soules who was taken ill hours before the hearing. Mr. Calvert testified with the concurrence of Petitioners and Respondents. Mr. Calvert appeared to support the taxpayer.

Facts

7. The property is a 1,098 square foot, single story residential dwelling on a lot measuring 0.63 acres located at 7921 N. Clinton Street in Terre Haute.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.
9. The assessed value as determined by the Vigo County PTABOA is:

Land \$11,600	Improvements \$64,800	Total \$76,400.
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10. The assessed value requested by Petitioner is:

Land \$11,600	Improvements \$51,400	Total \$63,000.
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Issue

11. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a) The current assessment for the subject property is over-stated compared to the value established by an appraisal of the subject property as of January 30, 1999, that was prepared by a certified appraiser for the purpose of this appeal. *Calvert testimony, Petitioner Exhibit 10.*
 - b) The market adjustment, or neighborhood factor, of 129 percent is excessive as demonstrated by the comparison of five nearby similar properties and shows that the current assessment is over-stated. Those five properties are around the subject property, but they are assigned different neighborhood codes with different market adjustment factors. These factors are lower than the factor assigned to the subject property and range from 68 percent to 100 percent. The entire area should be a single neighborhood. *Calvert testimony, Petitioner Exhibit 4, 5, 6, 7, 8, 9.*
 - c) The corrected assessment based on a Board determination of a similar property in the neighborhood also shows that the current assessment is excessive. *Calvert testimony, Petitioner Exhibit 11.*
12. Summary of Respondent’s contentions in support of the assessment:
 - a) The ratio study used during the 2002 reassessment process to determine the market adjustment or neighborhood factor in the subject neighborhood is correct based on the four sales presented. *Donham testimony; Respondent Exhibit 1, 4, 5, 6, 7.* The sales of those four comparable properties in the subject’s subdivision support the assessments of the comparables and the subject property. *Donham testimony, Respondent Exhibit 4, 5, 6, 7.*
 - b) Even though the comparables used in the appraisal and referred to by the Petitioner are near the subject property, the comparables used in the appraisal are located in different neighborhoods. *Donham testimony.*

- c) The appraisal used an adjustment of \$500 to account for a difference in land size even though one comparable has 1.09 acres and the other has 0.28 acres compared to the subject property's 0.63 acres. *Donham testimony; Respondent Exhibit 3.*

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 BTR 6204,
- c) Exhibits:
 - Petitioner Exhibit 1 – Copy of the Form 131,
 - Petitioner Exhibit 2 – Copy of the Form 130,
 - Petitioner Exhibit 3 – Copy of Form 115,
 - Petitioner Exhibit 4 – Subject property record card ("PRC"),
 - Petitioner Exhibit 5 – PRC for Parcel 109-02-24-103-009,
 - Petitioner Exhibit 6 – PRC for Parcel 109-02-24-103-010,
 - Petitioner Exhibit 7 – PRC for Parcel 109-02-24-103-011,
 - Petitioner Exhibit 8 – PRC for Parcel 109-02-24-103-012,
 - Petitioner Exhibit 9 – PRC for Parcel 109-02-24-251-001,
 - Petitioner Exhibit 10 – Appraisal of the subject property,
 - Petitioner Exhibit 11 – Copy of a Board determination issued to Paul Cherepkai,
 - Respondent Exhibit 1 – Page from sales ratio study for the subject neighborhood,
 - Respondent Exhibit 2 – Copy of the subject neighborhood plat map,
 - Respondent Exhibit 3 – Copy of a page from the subject appraisal,
 - Respondent Exhibit 4 – Copy of the sales disclosure form and property record card for 7769 Clinton Street,
 - Respondent Exhibit 5 – Copy of the sales disclosure form and PRC for 3181 E. Marquette Avenue,
 - Respondent Exhibit 6 – Copy of the sales disclosure form and PRC for 7745 N. Huntington Avenue,
 - Respondent Exhibit 7 – Copy of the sales disclosure form and PRC for 7801 N. Clinton Street,
 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Hearing Notice,
 - 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 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 Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
 - a) Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "the 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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- b) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c) The appraisal establishes the value of the subject property at \$63,000 as of January 30, 1999. The appraisal was prepared by a licensed Indiana Certified Appraiser following the Uniform Standards of Professional Appraisal Practice. *Petitioner Exhibit 10*. The introduction of an appraisal prepared in accordance with the generally recognized appraisal principles is sufficient to establish a prima facie case. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). This evidence is sufficient to establish that the current assessment is incorrect and what the correct assessment should be. The burden shifted to the Respondent to present evidence to rebut or impeach the Petitioner's evidence. *American*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
 - d) The property record cards for the subject property and surrounding properties were also presented by the Petitioner to establish that the neighborhood factor applied to the subject property is in error. While these properties all have different neighborhood factors, the evidence does nothing to establish that the neighborhood factor for the subject property is in error. Simply because the subject property's neighborhood factor is different from the neighborhood factors of surrounding property does not mean that the subject property's factor is incorrect. The record is void of any probative evidence explaining how or why the presentation of these property record cards demonstrates an error. The Petitioners have merely stated a conclusion. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Nevertheless, this failure is a moot point that does not diminish the validity of the case based on the appraisal.
16. The Respondent failed to rebut petitioner's evidence. This conclusion was arrived at because:
- a) The Respondent attempts to rebut the appraisal by pointing out alleged discrepancies in the adjustments made to the comparable properties used in the appraisal.
 - b) The Respondent points to the use of the same \$500 site size adjustment for Comparable #1 and Comparable #3 as an example of an alleged discrepancy. *Donham testimony; Respondent Exhibit 1, 2, 3*. While each of these comparables was adjusted by \$500 for the difference in site size, one of the comparables is adjusted upward \$500 because it is smaller than the subject, while the other

comparable is adjusted downward \$500 because it is larger than the subject. The Respondent did not contest the actual adjustment value of \$500, but merely questioned the propriety of using an adjustment of \$500 for each comparable. Such a conclusory statement has little, if any, probative value. It does not effectively rebut or impeach the appraisal.

- c) The Respondent attempted to rebut the Petitioner's case by establishing that the neighborhood assessments were correctly determined because the subject property and purportedly comparable properties have assessed values within an acceptable range of actual sale prices. The Respondent does not provide any authority or explanation for the conclusion that there is an acceptable range for establishing the value of the property for this assessment. Such a conclusory statement does not qualify as probative evidence. *Whitley Products*, 704 N.E.2d at 1119. Furthermore, because the taxpayer is specifically permitted to offer evidence relevant to the market value-in-use of a property that includes actual construction costs, sales and appraisals, an argument that generally the neighborhood assessments are correct or that the value determined from the cost approach in the guidelines is somehow close enough to be acceptable appears to be wrong. MANUAL at 5.

Conclusion

17. The Petitioner established a prima facie case. The Respondent did not rebut the 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: January 30, 2006

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>>. 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 days of the date of this notice.