

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

Petition #: 88-022-04-1-5-00034
Petitioners: Morris & Martha Rosenbaum
Respondent: Washington Township Assessor (Washington County)
Parcel: 0223056316
Assessment Year: 2004

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 Petitioners initiated an assessment appeal with the Washington County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated December 13, 2004.
2. Notice of the PTABOA’s decision was mailed on January 14, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 petition with the county assessor on February 4, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 10, 2005.
5. The Board held an administrative hearing on October 4, 2005, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Morris Rosenbaum, Owner
 - b) For Respondent: Eugene Trueblood, Washington County Assessor¹
Jim Davis, President, Washington County PTABOA

¹ The Respondent, Washington Township Assessor, filed written notice authorizing the Washington County Assessor to represent him at the hearing. *See* Ind. Code § 6-1.1-15-4(p)(2).

Facts

7. The property identified as Parcel 0223056316 is located at 118 Walker Blvd, Salem, and is identified as residential family dwelling.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Washington County PTABOA:
Land \$6,100 Improvements \$204,800 Total \$210,900
10. Assessed Value requested by Petitioners on the Form 131 petition:
The Petitioners did not specify the amount for which they request that the subject property be assessed.

Issues

11. Summary of Petitioners’ contentions in support of alleged error in assessment:
 - a) The measured area of the subject dwelling is incorrect. The Petitioners contend the total finished area of the dwelling should be 3,442 square feet, not 4,168 square feet as shown on the property record card (“PRC”) for the subject property. The Petitioners believe they are being assessed for living area that does not exist. *Rosenbaum testimony; Pet’r Ex. 1.*
 - b) The subject dwelling is a 1 ½-story home. The first floor is 1,762 square feet, the ½ story is 800 square feet, and the finished basement area is 880 square feet. The incorrect measurements also affect the price assigned for heating and air conditioning. *Rosenbaum testimony.*
 - c) The Petitioners do not understand the assessment of the two porches. The front porch is 558 square feet and it was built to make the house more attractive. The front porch is valued at \$23.83 per square foot. The back porch is screened-in and is valued at \$50 per square foot, which is more than the price per square foot of the finished downstairs portion of the house. The Petitioners contend that the porches are frame rather than masonry as shown on the subject PRC. The Petitioners also contend the amounts of brick and vinyl on the subject dwelling as reflected on the subject PRC are incorrect. *Rosenbaum testimony.*
 - d) The Windy Heights and Eastern Hills subdivisions are far superior to the subject neighborhood, yet properties in those neighborhoods have market adjustments (neighborhood factors) that are lower than the market adjustment applied to the subject property. The Petitioners’ neighborhood factor is 100%. The Petitioners presented property record cards showing that properties within Windy Heights have a neighborhood factor of 82% and properties within Eastern Hills have a neighborhood factor of 64%. *Rosenbaum testimony; Pet’r Exs. 1 – 4.*

- e) The Petitioners presented a PRC for a comparable house owned by Doug and Susan Katt located in Eastern Hills. The Petitioners contend the Katt home is almost identical to the subject property in that it is a 1½-story home with 3,990 square feet. The Katts' house has a "grade adjusted value" of \$210,700, but a market adjustment (neighborhood factor) of 64%. The Katts' house therefore is assessed for \$141,700, despite the facts that the Katts' house is newer and larger than the subject dwelling and that the Katts' property has a pool and a detached building. *Rosenbaum testimony; Pet'r Ex. 2.*
- f) The Petitioners presented a PRC for the home owned by Gary and Marta Myszak located in Windy Heights. The Petitioners contend the Myszaks' home is larger than the subject dwelling is and that it has a "grade adjusted value" of \$242,230. After the neighborhood factor is applied, Myszaks' house is assessed for only \$195,900. The home was built in the same year as the subject property and is graded the same at C+2. *Rosenbaum testimony; Pet'r Ex. 3.*
- g) The Petitioners presented a PRC for the home owned by Randy and Janet Pepmeier located in Eastern Hills. The Pepmeier home is an executive-type house and has 3,444 square feet. The "grade adjusted value" is \$230,080, but after the neighborhood factor is applied, the house is assessed for only \$166,200. The Pepmeier house was built in 1994. *Rosenbaum testimony; Pet'r Ex. 4.*
- h) The homes in the subject neighborhood are modest at best and do not compare to Windy Heights or Eastern Hills, yet the homes in the subject neighborhood are assessed for more than are homes in either of those other two neighborhoods. *Rosenbaum testimony.*
- i) The Petitioners have been told that if one house in a neighborhood sells for 103% then all of the houses in that neighborhood are valued at 103%. The Petitioners do not understand how one house selling for 103% makes all of the other homes worth 103%. *Rosenbaum testimony.*

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

- a) The County has tried numerous times to explain to the Petitioners how the measured area of the subject dwelling was computed. The system is confusing; it uses the footprint of the first floor even though the ½ story does not have as much usable area. The pricing takes into consideration the fact that the upper floor does not have as much useable area. *Davis testimony.*
- b) The porches are listed as masonry. The County will verify the construction of the porches and the issue of the amount of brick and vinyl. If necessary, the County will make changes on the subject PRC for future assessment information. *Davis testimony.*

- c) The current assessment is based on the construction cost provided to the PTABOA by the Petitioners. The assessment is based on the construction cost of \$166,300 with a 1½ % per year adjustment for time for a value of \$204,800. The subject PRC shows that the subject dwelling has a computed value of \$213,600. Under the Summary of Improvements, the property record card shows the computed value of \$213,600 and then a sound value (SV) of \$204,800 as the total improvement value. The sound value of \$204,800 includes garage and porches. Using the actual construction cost with the adjustment for time appeared to be the best way to value the subject improvements. *Davis testimony; Trueblood testimony; Pet'r Ex. 1.*
- d) There should be no changes to the PRC at this time because the subject property is valued using actual construction costs. *Davis testimony; Trueblood testimony.*
- e) The sales data for a particular neighborhood is used to determine the neighborhood factor. In Eastern Hills it is 64%. The neighborhood factor for the subject property is 100%. *Davis testimony; Trueblood testimony.*

Record

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

- a) The Petition;
- b) The compact disc containing a digital recording of the hearing;
- c) Exhibits:

Petitioner Exhibit 1: Copy of subject property record card
Petitioner Exhibit 2: Copy of Comparable Property #1 (Katt)
Petitioner Exhibit 3: Copy of Comparable Property #2 (Myszak)
Petitioner Exhibit 4: Copy of Comparable Property #3 (Pepmeier)

Respondent: No exhibits presented.

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Notice of County Representation for hearing
Board Exhibit D: Sign In Sheet; and

- 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 did not provide sufficient evidence to support their request for a reduction in assessment. This conclusion was arrived at because:

Errors on Property Record Card

- a) The Petitioners contend that the property record card (“PRC”) for the subject property contains numerous errors, including errors in setting forth the measured area of the top ½ story of the subject dwelling, and the amount of brick and vinyl used to construct the dwelling. *Rosenbaum testimony*. The Petitioners also contend that the Respondent erred in computing the price per square foot for the porches attached to the subject dwelling. *Id*.
- b) Under normal circumstances, errors such as those alleged by the Petitioners could affect the valuation of a property, because they involve significant components used to compute the replacement cost of a dwelling under the cost approach to value set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”). *See generally*, REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, intro at 1-2. The Guidelines utilize cost tables based upon publications of Marshall & Swift, L.P. *Id*. Those tables, in turn, depend heavily upon identifying the correct materials used in the construction of improvements and the correct measured area of those improvements. *See* GUIDELINES, ch. 3, at 18-55, Appendix D.
- c) In the instant case, however, the PTABOA reduced the original assessment to reflect the actual costs of constructing the subject improvements rather than the amount derived from the cost tables contained in the Guidelines. *Davis testimony*;

Trueblood testimony; Board Ex. A. The Petitioners themselves supplied information regarding the actual cost of constructing the improvements. *Id; Rosenbaum testimony.* The Petitioners do not argue that the PTABOA erred in changing the assessment based upon actual construction costs. Indeed, the 2002 Real Property Assessment Manual (“Manual”) recognizes that evidence of actual construction costs may be introduced to establish a property’s true tax value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 5 (incorporated by reference at 50 IAC 2.3-1-2).

- d) Consequently, the Petitioners’ evidence regarding the alleged errors contained on the PRC for the subject property is insufficient to establish a prima facie case of error in assessment.

Neighborhood Factor

- e) The Petitioners also contend that homes in more desirable locations than the subject property have lower neighborhood factors than the 100% factor applied to the subject property.
- f) Pursuant to the Guidelines, all property within a township must be established as part of neighborhood. GUIDELINES, ch. 2 at 8. Under the Guidelines, township assessors are required to define neighborhoods according to various factors, including, among other things: distinctive geographic boundaries, any manmade improvements that significantly disrupt the cohesion of adjacent properties, and sales statistics. *Id.*
- g) The Guidelines require assessors to engage in a similar process to account for the impact on the value of improvements caused by the physical, economic, governmental and social characteristics of a neighborhood. *See* GUIDELINES, Appendix B at 8-9. This is accomplished through applying a neighborhood factor to each property. *Id.* In order to compute the neighborhood factor, the Guidelines direct assessors to examine sales within the neighborhood for the period between January 1, 1998, and December 31, 1999, and to determine the portion of each sale price attributable to improvements. *Id.* The Guidelines then instruct assessors to divide the total amount allocated to improvements from those sales by the total of the depreciated replacement costs new of the improvements as determined by application of the cost tables set forth in the Guidelines. The amount yielded by that calculation is the neighborhood factor. *Id.*
- h) The Petitioners submitted PRCs for the purportedly comparable properties receiving lower neighborhood factors than the factor applied to the subject property. *Pet'r Exs. 2 – 4.* As the Petitioners acknowledge, however, the subject property and the purportedly comparable properties are not located in the same neighborhood for purposes of tax assessment. The subject property is in neighborhood 92206. The comparable properties are located in neighborhoods 81310 and 81305, respectively. *Pet'r Exs. 1 - 4.*

- i) The Petitioners rely solely upon Mr. Rosenbaum's assertions that the purportedly comparable properties are located in more desirable neighborhoods than the subject property. Those assertions amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998). The Petitioners did not present any evidence to demonstrate that the Respondent improperly applied the factors identified in the Guidelines when drawing the neighborhood boundaries or that the Respondent incorrectly calculated the neighborhood factor for the subject neighborhood.
 - j) Consequently, the Petitioners have failed to present a prima facie case that the neighborhood factor applied to the subject property is too high.
16. The Petitioners have the burden of proving that the current assessment is incorrect. The Petitioners have not met their burden.

Conclusion

17. The Petitioners have failed to establish a prima facie case of error. 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>>.