

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

Petition #: 91-021-02-1-5-00059
Petitioner: Philip L. Vogel
Respondent: Union Township Assessor
Parcel #: 0212928000
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 White County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated January 6, 2004.
2. The Petitioner received notice of the decision of the PTABOA on December 14, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 petition with the White County Assessor on January 10, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 12, 2006.
5. The Board held an administrative hearing on March 1, 2006, before the duly appointed Administrative Law Judge Joan Rennick.
6. Persons present and sworn in at hearing:

For Petitioner: Philip L. Vogel, Taxpayer

For Respondent: Scott Potts, Representative for Union Township

Facts

7. The subject property located at 706 N. Illinois Street, Monticello and is classified as residential as is shown on the property record card for parcel # 0212928000.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the White County PTABOA:
Land: \$22,100 Improvements: \$26,300 Total: \$48,400.
10. Assessed Value requested by Petitioner on the Form 131 petition:
Land \$ 12,500 Improvements \$26,300 Total: \$38,800.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The assessed value of the subject property, whether it is the land or improvements, is too high. *Vogel testimony.*
 - b) A comparable property located at 724 N. Illinois Street ("Illinois Street Property"), only three doors from the subject property, sold for \$37,500 in 1998. The Petitioner was involved in that sale. The condition of the Illinois Street Property at the time of the 1998 sale was similar to the condition of subject property. The Petitioner describes the condition of both properties as "fair" to "average" at that time. The Illinois Street Property sold again in 1999 for \$50,000. Before the 1999 sale, however, the Illinois Street Property had benefited from several improvements, including the installation of a new furnace and vinyl siding. At the time of the sale in 1999, the Illinois Street Property was better condition than the subject property. *Vogel testimony; Pet'r Ex. 1.* The Respondent included the 1999 sale of the Illinois Street Property in its Neighborhood Sales Ratio Study (Respondent Ex. 3). *Vogel testimony.*
 - c) The Petitioner also presented evidence concerning the sale of a property located at 120 S. Railroad Street ("Railroad Street Property."). That property sold for \$48,000 in 1999. The Railroad Street Property has roughly 1454 square feet and a detached garage. The Railroad Street property is comparable to the subject property in that the houses on both properties had original windows from the 1900s, forced-air heating systems, and porches. The Railroad Street Property is located in a different neighborhood than the subject property, but that dwelling is situated on a city lot, has city utilities, and is similar in design to the subject dwelling. It would not be difficult to adjust the sale price of the Railroad Street Property to the "low forties." *Vogel testimony; Pet'r Ex. 2.*
 - d) In 2002, the Petitioner made several repairs and improvements to the subject dwelling. Those repairs and improvements included installing a new roof where the rafters were broken, vinyl siding, new windows, and floor coverings. The Petitioner also made a "kitchen upgrade." The Petitioner spent \$17,000 to \$18,000 for the improvements and repairs, which completely changed the appearance of the home. The subject dwelling also contained asbestos siding that had to be encapsulated or torn off as hazardous waste, and the Petitioner encapsulated it. *Vogel testimony.*

- e) The Respondent used comparable sales for the 2002 reassessment that ranged from \$53,000 to \$77,500. There is no information about the condition of the properties upon which the Respondent based its analysis. Those properties may have been in better condition than the subject property. *Vogel testimony.*
- f) The subject property is located across the alley from the old RCA/Jordan Manufacturing plant that burned down. The plant was dilapidated. The neighborhood in which the subject property is located is fair to average. *Vogel testimony.*

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

- a) The 1998 sale of the Illinois Street Property is no longer valid. At the time of the 2002 reassessment, the dwelling on that property had been remodeled. The assessment changed with the remodeling and the 1999 sale. The Illinois Street Property also backed-up to the Jordan Manufacturing plant. *Potts testimony.*
- b) The Railroad Street Property identified by the Petitioner is located in a different neighborhood than the subject property. *Potts testimony.*
- c) The Respondent submitted a ratio study for the neighborhood in which the subject property is located. The Median Ratio of the neighborhood is .94 which is within +/- 10% of 1. The Coefficient of Dispersion ("COD") is a little high at 19.86. If the sales are stratified by location, however, there is a distinct difference between properties located below 500 north and those located above 500 north. By stratifying the sales by location and removing the properties at St. Mary and south, the Median ratio is .87 and the COD is 6.32. This indicates that if one looks at the properties north of St. Mary, the overall assessments are a bit low compared to the standard, but the precision is good. *Potts testimony; Resp't Ex. 3.*

Record

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

- a) The Petition.
- b) The recording of the hearing.
- c) Exhibits:

Petitioner Exhibit 1: Property record card ("PRC") for 724 N. Illinois St.
Petitioner Exhibit 2: Listing & PRC for 120 S. Railroad

Respondent Exhibit 1: Form 131 Petition
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Neighborhood Sales Ratio Study

Board Exhibit 1: The Form 131 Petition with attachments
Board Exhibit 2: Notice of Hearing
Board Exhibit 3: Notice of Appearance of Consultant on Behalf of Assessor

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 Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends the assessed value of the subject property is too high in comparison to the sale prices of the Illinois Street and Railroad Street properties. *Vogel testimony*.
 - b) In The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess real property.

- c) A property's market value-in-use, as ascertained through application of the Guidelines' cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. Thus, a taxpayer may rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- c) The Petitioner relies upon the sales comparison approach to demonstrate that the assessed value assigned to the subject property exceeds its market value. The sales comparison approach is based on the assumption that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute improved property already existing in the market place. MANUAL at 13. The appraiser locates sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value. *Id.* The adjustments represent a quantification of characteristics that cause prices to vary. *Id.* The appraiser "considers and compares all possible differences between the comparable properties and the subject property that could affect value," using objectively verifiable evidence to determine which items have an influence on value in the market place. *Id.* The appraiser quantifies the contributory values of the items affecting value in the market place and uses those contributory values to adjust the sale prices of comparable properties. *Id.* at 13-14.
- d) Thus, in order to use the sales comparison approach as evidence in a property assessment appeal, 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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.*
- e) The Petitioner did not engage in a meaningful comparison of the features of the purportedly comparable properties and those of the subject property. The Petitioner made the conclusory assertion that the Illinois Street Property was similar to the subject property in terms of condition when it sold in 1998, but he did not otherwise explain how those two properties were comparable. While the property record cards submitted by the Petitioner contain some information concerning features of the two properties, it is not the Board's responsibility to review the documents submitted by the Petitioner to determine comparability – that duty rests with the Petitioner. *Long*, 821 N.E.2d at 471. The Petitioner did identify three isolated examples of similarities between the subject property and the Railroad Street Property, noting that both

dwellings have original windows from the 1900s, forced-air heating systems, and porches. *Vogel testimony*. The Petitioner's limited comparison, however, falls short of the type of analysis contemplated by the Manual and *Long, supra*.

- f) Moreover, the Petitioner testified that he made substantial improvements and repairs to the subject dwelling sometime in 2002. If those renovations occurred before March 1, 2002, they would have to be taken into account in the assessment. Thus, it is not clear that the Petitioner's conclusory assertion that the subject property and the Illinois Street Property were in similar condition at the time of the 1998 sale of the Illinois Street Property is even relevant.
- g) In addition, the Petitioner did not explain how any differences between the subject property and the two purportedly comparable properties affect their relative market values. The Petitioner simply made conclusory assertions as to why the difference in the neighborhoods in which the subject property and the Railroad Street Property are located should not have any effect on the relative market values of the properties. The Petitioner then claimed, without explanation, that it would not be difficult to adjust the sale price of the Railroad Street Property down to "the low forties." *Vogel testimony*. Once again, this falls short of the type of analysis contemplated by the Manual and *Long*.
- h) Based on the foregoing, the Petitioner failed to establish a prima facie case. Where the Petitioner has not supported the 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 Gov't Fin.*, 799 N.E. 2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus, no change in the assessment is warranted

Conclusion

16. The Petitioner failed to make a prima facie case. The Board finds for 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>>.