

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

Petition #: 49-901-02-1-5-03389
Petitioner: Michael Browning
Respondent: Wayne Township Assessor (Marion County)
Parcel #: 9009509
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 Marion County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated July 3, 2003.
2. The Petitioner received notice of the PTABOA decision dated January 23, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on February 3, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 11, 2004.
5. The Board held an administrative hearing on April 28, 2004, before the duly appointed Administrative Law Judge (ALJ) Paul W. Stultz.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Michael Browning
 - b) For Respondent: Tara Acton, Residential Supervisor
Michael Thompson, Assistant Deputy Assessor

Facts

7. The property is classified as residential, as is shown on the property record card for parcel #9009509.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Marion County PTABOA:
Land \$4,300, Improvements \$79,300, Total \$83,600.
10. Wayne Township made a change in the subject assessment after the Form 115 Notice was sent to the Petitioner and before the Hearing. Both parties agreed that as of April 28, 2004, the Assessed Value of subject property is: Land \$4,300, Improvements \$77,700, Total \$82,000.
11. Assessed Value requested by Petitioner: Land \$4,300, Improvements \$50,700, Total \$55,000.

Issue

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Petitioner contends the subject property is assessed higher than the property's market value.
 - b) Petitioner purchased nine properties on land contract for \$276,000. The subject property is one of the nine properties purchased. Petitioner presented the first page of the four-page land contract. Petitioner stated that the sale price of the subject property is \$34,500. The land contract was recorded. *Browning testimony; Petitioner Ex. 1.*
 - c) Petitioner did an analysis of assessed values for two blocks of King Avenue. Petitioner provided a two-page listing of assessed values showing the owner, property address, county, and total assessed value for the properties. Petitioner stated that the average assessed value of the 49 properties located in the 1800 and 1900 blocks of King Avenue is \$65,629. *Petitioner Ex. 4 at 1, 2.*
 - d) Petitioner presented eight photos, one is the subject property, and the others are homes in the neighborhood. Petitioner stated that homes in the two block area are tract homes and were originally built as 24 by 32 square foot. Some homes have additions built on. Most additions are 8 by 12 foot or 8 by 15 foot. Petitioner stated that there are six homes that have 8 by 12 foot or 8 by 15 foot additions. The subject home has an 8 by 30 foot addition. Petitioner stated that there are two homes (1855 and 1929 King Avenue) with additions similar to the subject. *Browning testimony; Petitioner Ex. 2 at 1, 2.*
 - e) Petitioner searched from January 1999 to December 2003 and found sales of seven properties located on King Avenue. The average sale price of the seven properties is \$51,650. *Petitioner Ex. 4 at 3, 4.*

- f) Petitioner searched from January 1999 to December 2003 and found a total of 14 sales (including the 7 on King Avenue) for the neighborhood. The average sale price of the 14 properties is \$51,800. *Petitioner Ex. 4 at 6-8.*
- g) Petitioner presented the worksheet used by the Respondent to determine neighborhood factor. Petitioner contends that none of the assessments on the worksheet are close to the assessment of the subject property. *Petitioner Ex. 3.*

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

- a) Respondent presented the worksheet used to determine the neighborhood factor for the subject property. *Respondent's Exhibit 4.*
- b) Respondent opined that based on the publication *Mass Appraisal of Real Property*, page 54, land contracts are non-arms-length sales and should not be used as comparables. *Acton testimony and Respondent's Exhibit 5.*
- c) Respondent presented worksheets with a breakdown of the seven sales used to determine the neighborhood factor. The worksheet also lists the Petitioner's comparables, and the subject property. Respondent notes that two of the Petitioner's comparables are bad sales, and one did not sell. *Acton testimony and Respondent's Exhibit 3.*
- d) Respondent stated the Petitioner's land contract does not explain how the sale price was allocated between the nine properties. *Acton testimony.*
- e) Respondent stated she could not comment on Petitioner's comparable sales presented in Petitioner's Exhibit 4. Respondent could not verify that the sales were arms length transactions. Respondent could not verify the square footage of the properties or that the properties were true comparables. *Acton testimony.*
- f) Respondent questioned the Petitioner whether or not he checked the square footage of the properties to see if the properties were comparable. Petitioner stated that he did not. *Acton and Browning testimony.*
- g) Respondent pointed out that the Petitioner used current sales data and the Township used 1999 sales data. *Acton testimony.*

Record

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR #3348.
- c) Exhibits:
 - Petitioner's Exhibit 1: Copy of Conditional Sales Contract (one page)
 - Petitioner's Exhibit 2: Eight photos of subject and comparable properties
 - Petitioner's Exhibit 3: Copy of Township's Neighborhood Factor Sheet Breakdown showing details of the parcels used to compute the neighborhood factor with Petitioner's handwritten notes

Petitioner's Exhibit 4: Copy of eight page document containing MIBOR One Line Tax Listings and Residential/Condo Comparative Market Analysis reports

Respondent's Exhibit 1: Copy of subject Property Record Card (PRC) with values as shown of the Form 115

Respondent's Exhibit 2: Copy of subject PRC with values after Township corrections

Respondent's Exhibit 3: Copy of Township's Neighborhood Factor Sheet Breakdown with details of the parcels used to compute the neighborhood factors, also includes details of the Petitioner's four comparable properties and subject property

Respondent's Exhibit 4: Copy of Wayne Township calculations of neighborhood factor for subject neighborhood

Respondent's Exhibit 5: Copy of pages 53 and 54 of *Mass Appraisal of Real Property* by Robert Gloude-mans

Board Exhibit A: Form 131 petition

Board Exhibit B: Notice of Hearing on Petition

d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases and regulations are:

- a) The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
- b) The Board will not change the determination of the County Property Tax Assessment Board of Appeals (PTABOA) unless the petitioner has established a prima facie case and, by a preponderance of the evidence proven, both the alleged errors in the assessment, and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).

16. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions.

This conclusion was arrived at because:

- a) Petitioner purchased nine properties (including the subject) for \$276,000 on a land contract that is dated July 1, 1998. *Petitioner Ex. 1*. The contract shows a sale price for the subject property of \$34,500. *Browning testimony; Petitioner Ex. 1*. Petitioner did not provide a complete copy of the land contract, only the first

page. Petitioner did not provide any information as to what was contained on the remaining pages of the land contract. The record is not clear as to the method used by the buyer and seller to allocate the sales price to each of the nine properties. Petitioner asserted that the sale price was \$34,500, and that that figure represented fair market value for that time period. *Browning testimony*.

- b) Petitioner analyzed assessed values of all the properties located on King Avenue and computed the median assessed value. *Petitioner's Exhibit 4, at 1, 2*. Petitioner argues the assessment should be changed to be in line with this assessment. *Browning testimony*. Petitioner did not explain how these properties are comparable to the subject property other than being located on the same street. The listing does not show the square footage or physical features of each property, only a street address and total assessed value. Without this information, the Board cannot determine whether the properties are truly comparable. “[Petitioners’] conclusory statement that something is comparable does not constitute probative evidence. Because [Petitioners] did not present evidence that the [other dwellings] were comparable to its own, [they] did not present a prima facie case.” *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
- c) Petitioner stated that homes in the two blocks of King Avenue are similar. Some of the homes have additions of 8 by 12 foot or 8 by 15 foot. The subject has an 8-foot by 30-foot addition. Petitioner stated that properties located at 1855 King Avenue and 1929 King Avenue have additions similar to the subject property. *Browning testimony*. According to Petitioner’s Exhibit 4, 1855 King Avenue is assessed at \$104,700 and 1929 King Avenue is assessed at \$80,600. The subject property is assessed at \$82,000. *See Board Ex. 1; Acton testimony*. Petitioner did not explain how these two properties were comparable to the subject other than the addition.
- d) Petitioner also found sales of property located on King Avenue and the surrounding neighborhood. Petitioner computed the average sale prices. *Browning testimony; Petitioner Ex. 4 at 3, 4, 6-8*. Petitioner did not explain how the properties were comparable to the subject property. “[Petitioners’] conclusory statement that something is comparable does not constitute probative evidence. Because [Petitioners] did not present evidence that the [other dwellings] were comparable to its own, [they] did not present a prima facie case.” *Blackbird Farms Apts.*, 765 N.E.2d at 715.
- e) Petitioner did not explain the connection between the averages he computed and the assessed value of the subject property. The fact that the assessed value of the subject property is higher than the average assessed value and the average sale price is not probative evidence that the assessment of the subject property is incorrect. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. Conclusory statements are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
- f) Based on the Petitioner’s testimony, the subject property has more square footage than most properties on King Avenue. *Browning testimony*. The closest the

Petitioner came to providing comparables was the two properties with similar additions. The properties are assessed at \$104,700 and \$80,600. The subject is assessed at \$82,000. Petitioner failed to establish that these properties were comparable to the subject other than the square footage – and the assessments are reasonably close to the assessment of the subject. This evidence does not indicate any error in the assessment.

- g) Petitioner did not present probative evidence that subject property was incorrectly assessed and therefore did not make a prima facie case.

Conclusion

- 17. The Petitioner failed to make a prima facie case. The Board finds in favor of 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.