

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

Petition #: 53-009-02-1-5-00131
Petitioner: Rachid Maidi
Respondent: Perry Township Assessor, Monroe County
Parcel #: 0155361000
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 Monroe County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 14, 2003.
2. The Petitioner received notice of the decision of the PTABOA on September 23, 2003.
3. Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on October 23, 2003. Petitioner elected to have this case heard in the small claims docket.
4. The Board issued a notice of hearing to the parties dated March 10, 2004.
5. The Board held an administrative hearing on May 6, 2004, before the duly appointed Administrative Law Judge Debra Eads.
6. Persons present at hearing:

- a) For Petitioner: Rachid Maidi, Taxpayer
- b) For Respondent:¹ Judith Sharp, Monroe County Assessor
Joni Fishman, Deputy County Assessor
Travis Vencel, Certified Appraiser
Marilyn Meighen, Attorney

¹ Ms. Fishman and Ms. Meighen, while present for the hearing, were not sworn in to testify in this matter. All others were sworn in and gave their testimony under oath.

Facts

7. The property is classified as residential single family dwelling, as is shown on the property record card for parcel #0155361000.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Monroe County PTABOA: Land \$ 50,000, Improvements \$ 164,300.
10. Assessed Value requested by Petitioner: \$ 75,000.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The assessment is overstated based on a fee appraisal of the property. The fee appraisal estimates the value at \$75,000. (*Maidi testimony; Petitioner Exhibit 1.*)
 - b) Since approximately 1999, the subject property has been vacant and uninhabitable due to extensive remodeling. (*Maidi testimony; Petitioner Exhibit 2; Board Exhibit A.*)
 - c) The subject property lacks drywall, flooring, ceilings, kitchen and bathroom fixtures, trim and baseboard throughout the house. The subject property also requires insulation (walls and ceiling) and the replacement of the windows and doors as well as suffering from a mold problem in the basement area. (*Petitioner Exhibit 2; Board Exhibit A.*)
 - d) Ms. Sharp declined to inspect the subject property herself or to send a staff member to inspect the subject property. (*Board Exhibit A, Grounds for Appeal and Form 115, Section VII; Maidi testimony.*)
12. Summary of Respondent's contentions in support of the assessment:
 - a) The fee appraisal submitted by the Petitioner is a limited appraisal that only utilizes the sales comparison approach while disregarding the cost and income approaches. (*Vencel testimony.*)
 - b) The \$75,000 indicated in the Petitioner's appraisal as "deferred maintenance" is not tied to specific types of maintenance making it impossible to determine the accuracy of that dollar amount. (*Vencel testimony.*)
 - c) Mr. Vencel, in the course of business, has viewed the construction plans for the subject property. The plans showed the addition of a bathroom, a fireplace and central air. (*Vencel testimony.*)
 - d) The large addition to the subject property has been valued as incomplete for several years. The PTABOA valued the addition as complete. (*Sharp testimony.*)
 - e) A bed frame was visible on the upper floor of the subject property during a site inspection. (*Sharp testimony.*)

- f) A vacant .25 acre lot in close proximity to the subject, sold for \$ 53,000 in April 2003. (*Vencel testimony; Respondent Exhibit 3.*)

Record

13. 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 #5905.
- c) Exhibits:
 - Petitioner Exhibit 1: A fee appraisal for the subject property dated June 22, 2000.
 - Petitioner Exhibit 2: Nineteen (19) interior photographs of the subject property.

 - Respondent Exhibit 1: A property record card for the subject property reflecting the total assessment for the 2002 assessment year.
 - Respondent Exhibit 2: A property record card for the subject property reflecting the total assessment for the 1995 assessment year.
 - Respondent Exhibit 3: A sales disclosure form providing information for a 2003 sale of 0.25 acres of vacant land located on South High Street in Bloomington, Indiana.
- d) These Findings and Conclusions.

Analysis

14. The most applicable governing case law is:

- a. The Board will not change the determination of the 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).
- b. Once a taxpayer has met its burden establishing a prima facie case, the burden shifts to the local assessing official to rebut the taxpayer's evidence and justify its determination with substantial evidence. The burden upon the respondent requires more than merely claiming that the property was assessed correctly; rather, the respondent must impeach the evidence offered by the Petitioner or offer its own evidence and alternate calculations. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003); *see also Canal Square Ltd. Pshp. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 806 (Ind. Tax Ct. 1998).

15. The Petitioner provided sufficient evidence to support the Petitioner's contentions and made a prima facie case. This conclusion was arrived at because:

- a. The fee appraisal submitted by the Petitioner, which considers the negative impact caused by the unfinished renovation, or "deferred maintenance," assigns a value of \$75,000 to the subject property. (*Petitioner's Exhibit 1.*) The photographs clearly show an extensive need for renovation. The structure lacks interior wall and ceiling finish, plumbing and kitchen fixtures, electrical wiring, and other basic features. The photographs and testimony support the extent of the unfinished renovation addressed by the Petitioner in his claim and in the appraisal. (*Petitioner's Exhibit 2.*)
- b. The evidence presented by the Petitioner lends itself to the conclusion that the subject property is overvalued at \$214,300 and should be valued at \$75,000 as it suffers from considerable "deferred maintenance." (*Petitioner's Exhibits 1, 2.*)
- c. The Petitioner has established a prima facie case regarding the value of the subject property and shifted the burden to the Respondent to rebut the Petitioner's evidence.

16. The Respondent has not rebutted the Petitioner's prima facie case. This conclusion was arrived at because:

- a. The Respondent offered testimony pointing to potential flaws within the Petitioner's evidence such as the appraisal submitted is a limited appraisal that utilized the sales comparison approach but not the income or cost approach and questions the ability to verify the value assigned to the amount of "deferred maintenance" suffered by the subject property due to the unfinished renovation. (*Vencel testimony.*) However, this testimony does not go forward to explain why or how these "flaws" invalidate the Petitioner's evidence. In fact, these "flaws" are sufficiently explained in the appraisal.²
- b. The property record cards and the sales disclosure form (*Respondent's Exhibits 1-3*) do nothing for the Respondent's attempt to rebut the Petitioner's prima facie case. The property record cards merely show the mechanics used to value the subject for both the 1995 Reassessment period and the 2002 Reassessment period. This information does not explain why the value determined by the PTABOA is correct. The sales disclosure form provides information regarding the sale of a vacant parcel of land, but does nothing to lend support to the \$214,300 assessed value determined by the PTABOA. It is not enough to simply point to potential flaws in the evidence or assert the property was assessed correctly to rebut a prima facie case. The Respondent must bring forth evidence justifying its decision and make an authoritative explanation of its determination. *See Meridian Towers East & West*, 805 N.E.2d at 479; *Miller Structures, Inc. v. State*

² For example, the appraiser did not use the cost and income approaches because of "the age and lack of rental history. (*Petitioner Exhibit 1 at 6.*)

Bd. of Tax Comm'rs, 748 N.E.2d 943, 948 (Ind. Tax 2001). The Respondent fell short of this burden and failed to rebut the Petitioner's prima facie case.

Conclusion

17. The Petitioner made a prima facie case regarding the value of the subject property. The Respondent did not successfully rebut the Petitioner's evidence. The Board finds in favor of the 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: August 4, 2004

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.