

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

Petition: 35-013-02-1-5-00009
Petitioners: Sansar S. & Gurcharn K. Pabla
Respondent: Dallas Township Assessor (Huntington County)
Parcel: 013-00345-00
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 Petitioners initiated an assessment appeal with the Huntington County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated December 30, 2003.
2. Notice of the decision of the PTABOA was mailed to Petitioners on May 28, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on June 10, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 14, 2005.
5. The Board held an administrative hearing on February 22, 2005, before the duly appointed Administrative Law Judge Patti Kindler.
6. Persons present and sworn as witnesses at the hearing:
For Petitioners – Sansar S Pabla, taxpayer,
For Respondent – Terri L Boone, county assessor.

Facts

7. The property is a two story frame home located at 536 South Briant Street, as is shown on the property record card for parcel 013-00345-00.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.

9. The assessed value of subject property as determined by the PTABOA:
Land \$4,000 Improvements \$30,600 Total \$34,600.
10. On the Form 131 Petitioners requested a total assessed value of \$25,400.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The subject property was purchased for \$7,400 in 1992. *Pabla testimony*. The sales disclosures for comparable properties in the subject neighborhood show that at \$34,600 the subject property is overvalued. *Pabla testimony; Board Exhibit A*.
 - b) The sale prices of seven comparable dwellings located in the neighborhood indicate an average value of \$16.44 per square foot. Based on the average square foot cost of the comparable properties, the value of the subject property should be \$25,400 (1,545 square feet at \$16.44 a square foot equals \$25,400). *Pabla testimony; Board Exhibit A*.
 - c) The subject property was purchased "as is" because it had termite infestation. The comparables presented by the Respondent are not comparable to the subject property because these properties do not represent "as is" transactions like the subject property. An "as is" purchase represents a non-guaranteed transaction. *Pabla testimony*.
12. Summary of Respondent's contentions in support of the assessment:
- a) The sales of comparable properties show the value of the subject property is in line with the values of other residential properties located in Andrews. *Boone testimony*.
 - b) The first comparable sale located at 280 South Clifton Street is assessed at \$35,500 and sold for \$33,500 on December 17, 1998. *Respondent Exhibits 3, 4, 5*. The second comparable sale located at 373 North Market Street, is assessed at \$29,400 and sold for \$40,900 on August 17, 1999. *Respondent Exhibits 6, 7, 8*. The third comparable sale located at 64 South Market Street is assessed at \$35,100 and sold for \$39,000 on September 4, 1997. *Respondent Exhibits 9, 10*.

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 5339,

- c) Exhibits:
- Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Photograph of subject property,
 - Respondent Exhibit 3: Property record card for the property at 280 S. Clifton,
 - Respondent Exhibit 4: Copy of the sales disclosure form for the property at 280 S. Clifton,
 - Respondent Exhibit 5: Photograph of the property at 280 S. Clifton,
 - Respondent Exhibit 6: Property record card for the property at 373 N. Market,
 - Respondent Exhibit 7: Copy of the sales disclosure form for the property at 373 N. Market,
 - Respondent Exhibit 8: Photograph of the property at 373 N. Market,
 - Respondent Exhibit 9: Property record card for the property at 64 S. Market,
 - Respondent Exhibit 10: Copy of the sales disclosure form for the property at 64 S. Market,
 - Respondent Exhibit 11: Form 115, Notification of Final Determination,
 - Board Exhibit A – Form 131 petition with attachments,
 - Board Exhibit B – Notice of Hearing,
 - 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. Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) Petitioners presented sales information for properties within the same neighborhood in an attempt to show that the current assessment of \$34,600 is excessive. While they claimed that these properties are comparable, the Petitioners did not prove specific facts to establish how or why these properties are comparable. Petitioners failed to provide probative evidence regarding size, amenities, age, condition, and so on. Petitioners merely opined they were similar to the subject property. Their conclusion of comparability is unsubstantiated. Therefore, that evidence has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005).
 - b) Petitioners also pointed to the title insurance as evidence of value. The title insurance pertains to the 1992 purchase of the subject property for \$7,400. This evidence, however, must be related to the value as of January 1, 1999, if it is to have any probative value for this case. *Id.* at 471. Petitioner did not present such evidence or explanation. Petitioners simply pointed to the 1992 purchase price and concluded that this evidence shows the subject property is overvalued at \$34,600. They offered only conclusory statements regarding the alleged assessment error. Such conclusions do not constitute probative evidence and they have no weight in determining what the assessment should be. *Id.*; *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - c) Similarly, Petitioners offered only conclusory testimony about the termite infestation. They did not offer probative evidence to establish how the problem might have lowered the market value of their home. Therefore, that testimony has no probative value for Petitioners' claim. *Id.*
16. Where Petitioners have not supported their claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

17. 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.