

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

Petition #: 42-022-02-1-5-00003
Petitioners: Walter Lee Cary, Sr. & Flora Jo Cary
Respondent: Vincennes Township Assessor, Knox County
Parcel #: 022-012-D002-004-018
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 Knox County Property Tax Assessment Board of Appeals (PTABOA) by written document dated Dec. 9, 2003.
2. The PTABOA issued the notice of the decision on April 15, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on May 17, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 26, 2004.
5. The Board held an administrative hearing on August 17, 2004, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn in at hearing:

For Petitioners: Walter Lee Cary, Sr., Taxpayer

For Respondent: Rose Goodwin, Vincennes Township Assessor

Facts

7. The property is classified as improved residential, as is shown on the property record card for parcel #022-022-D002-004-018.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the Knox County PTABOA:
Land \$16,500 Improvements \$68,500 Total \$85,000

10. Assessed Value requested by Petitioners:
Land \$16,500 Improvements \$51,500 Total \$68,000

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. The assessed value is over-stated. A licensed fee appraiser determined the estimated market value to be \$68,000 as of September 26, 2003. *Cary testimony; Petitioners' Exhibit 1.*
 - b. The property was purchased in 1997 for \$64,000. It was appraised at that time for \$64,000. *Cary testimony; Petitioners' Exhibits 3-5.*
12. Summary of Respondent's contentions in support of the assessment:
- a. Subject was appraised utilizing software approved by the state and the manual and directives from the Department of Local Government Finance and the assessed value as confirmed by the PTABOA during its Form 130 appeal hearing is correct.
 - b. The subject has a brick exterior in front while the comparables do not. *Goodwin testimony.*

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 #5838.
 - c. Exhibits:
 - Petitioners' Exhibit 1: Appraisal of subject dated 9/26/2003
 - Petitioners' Exhibit 2: Form 131 petition
 - Petitioners' Exhibit 3: Purchase agreement for subject dated 3/10/1997
 - Petitioners' Exhibit 4: Settlement statement for subject dated 4/16,1997
 - Petitioners' Exhibit 5: Appraisal of subject dated 3/18/1997
 - Petitioners' Exhibit 6: Survey location report of subject dated 4/7/1997
 - d. Respondent Exhibits: None submitted
 - d. These Findings and Conclusions.

Analysis

14. The most applicable governing regulations and cases are:
- 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. 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).
 - c. The taxpayer can bring in any relevant evidence as long as it is “consistent with the definition of true tax value...true tax value may be said to be equivalent to market value in the residential context.” *2002 Real Property Assessment Manual*.
 - d. 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.
 - e. Simply raising questions about the opinion of a qualified expert does not serve to rebut the evidence or properly founded opinion of an expert. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. In order to make a prima facie case Petitioner is charged with bringing forth probative evidence that his current assessed value is incorrect and what the correct assessed value should be.
 - b. According to the Indiana manual, a taxpayer appealing his assessment can bring in any relevant evidence as long as it is “consistent with the definition of true tax value.” Value established by a valid fee appraisal is therefore considered a valid indicator of true tax value of the subject property. *2002 Real Property Assessment Manual* at 2-3.
 - c. Petitioners presented a fee appraisal of the subject property, by Jerry Blice dated September 26, 2003, that was performed for refinancing purposes. The appraisal expresses the real market value of the subject at \$68,000. *Petitioners’ Exhibit 1*.
 - d. Petitioners’ evidence also included a purchase agreement and settlement statement for the purchase of the subject property in 1997. The purchase took place in April of 1997, slightly less than two years prior to the valuation date of the 2002 reassessment – January 1, 1999. *Petitioners’ Exhibits 3, 4*.
 - e. Petitioners also presented an appraisal of the subject dated April 7, 1997, a fee appraisal performed by the same appraiser when the Petitioners purchased the subject. *Petitioners’ Exhibit 5*.

- f. The two appraisals and the purchase agreement demonstrate a consistent value of the subject from 1997 through 2003, including the 2002 reassessment, and constitute probative evidence that the current original assessment is excessive.
- g. Under Indiana manual guidelines, the fee appraisal is considered a valid indicator of value of the subject property, and makes a prima facie case through its probative evidence.
- h. Once Petitioner makes a prima facie case, the burden shifts to the assessing official to rebut the evidence.
- i. Respondent testified that subject was assessed according to the state issued manual and DLGF guidelines using state-approved software and is therefore correct. *Goodwin testimony*.
- j. Respondent noted that subject has some brick exterior finish while the three comparables cited in the appraisal do not. *Goodwin testimony*.
- k. While the Respondent raised the issue of brick exterior finish, she did not explain how this supported the assessment or invalidated the appraisal.
- l. Simply raising questions about the opinion of a qualified expert does not serve to rebut the evidence or properly founded opinion of an expert. *See Meridian Towers, 805 N.E.2d at 479*.
- m. As such, Respondent failed to rebut Petitioner's prima facie case.

Conclusion

16. The Petitioner made a prima facie case. The Respondent did not rebut Petitioner's evidence. The Board finds in favor of 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 to \$68,000.

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.