

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

Petition: 05-006-02-1-5-00087
Petitioner: Thomas A. Brown
Respondent: Licking Township Assessor (Blackford County)
Parcel: 05-14-202-003-00005
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 Blackford County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated October 30, 2003.
2. Notice of the PTABOA’s decision was mailed to the Petitioner on May 7, 2004.
3. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on June 1, 2004. The Petitioner elected to have this case heard as a small claim.
4. The Board issued a notice of hearing to the parties dated May 5, 2005.
5. The Board held an administrative hearing on June 22, 2005, before the duly appointed Administrative Law Judge Patti Kindler.
6. Persons present and sworn as witnesses at the hearing:
Thomas A. Brown, owner,
Donald C. Goetz, Licking Township Assessor,
Fred Tobey, Blackford County Assessor,
Jeffery L. Kiess, District Supervisor, Appraisal Research Corporation.

Facts

7. The property is a 1,886 square foot 2-story brick home located at 215 West Water Street, Hartford City.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.

9. The assessed value as determined by the PTABOA is:
Land \$7,400 Improvements \$36,300 Total \$43,700.
10. The assessed value requested by the Petitioner on the Form 131 is:
Land \$5,000 Improvements \$20,000 Total \$25,000.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) Petitioner bought the subject property in 1989 for \$14,300. *Brown testimony.* Only a modest amount of repairs were made since that time. *Id.* The house was in need of repairs to the front and rear steps, back door, windows, interior moldings, and paint. *Id.* It was certainly not worth the initial assessment of \$59,100 or the revised assessment of \$43,700. *Id.* The local assessing officials did not consider the condition of the property when they made the assessment. *Petitioner Exhibit 1.*
 - b) The land is assessed at \$7,400, which is excessive. *Brown testimony.* The whole block could be purchased for that amount. *Id.* The land assessment should be lowered to \$5,000, which would still be excessive because it is located close to the downtown commercial district. *Id.*
 - c) An appraisal of the subject property was prepared by Elizabeth Hendricks, who has years of experience with the local real estate markets. The reassessment company's appraiser does not. The company employed for the reassessment is from Greensburg. It did not view the residence's interior and it has little knowledge about the depressed housing market in Hartford City. *Brown testimony; Attachment to Board Exhibit A, URAR at 1-2.* The appraiser estimated the market value of the subject property was \$25,000 as of October 22, 2003. *Id.*
 - d) The township is arguing year 2000 values, rather than present values. The years 1999 through 2000 were good years for local real estate values and sales, but years 2003 to 2005 have been bad years for the market. *Petitioner Exhibit 1.*
 - e) There is no comparison between the subject property and the comparables submitted by the township that all sold for above \$60,000. *Petitioner Exhibit 1.* The subject property is in a poor location for residential occupancy. *Id.* The township's value of \$43,700 is ludicrous. *Id.* It is doubtful that in 2005 the property even would sell for the 2003 appraised value of \$25,000. *Brown testimony; Petitioner Exhibit 1.*
 - f) The use of downtown commercial properties in the certified appraisal as comparables is correct because the subject property is located near the downtown business district and could be used for commercial purposes. *Brown testimony; Attachment to Board Exhibit A, URAR.*

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

- a) The certified appraisal presented by the Petitioner is flawed because the gross adjustments for the residential properties used as comparables ranged from 34% to 42%, thus indicating the comparables are not very similar to the subject property. *Kiess testimony; Respondent Exhibit 1*. Comparable #2 from the appraisal is flawed because it was a bank repossession and mortgage foreclosure, which is not considered an arm's length transaction. *Id.* Comparables #4, #5, and #6 are flawed because they are downtown commercial properties and do not relate to the subject property's value-in-use. *Kiess testimony*.
- b) The certified appraisal is further flawed because it is as of October 22, 2003, but the assessment is based on a value as of January 1, 1999. *Kiess testimony; Respondent Exhibit 8*. The appraiser did not attempt to trend or relate the appraisal back to January 1, 1999. *Id.*
- c) A comparable grid to rebut the subject appraisal was developed detailing six sales of properties in Hartford City used to determine the subject assessment. *Respondent Exhibit 3*. The average sale price of the comparables after adjustments was \$49,000, which exceeds the subject's assessment of \$43,700 and supports the subject's assessed value. *Kiess testimony; Respondent Exhibit 6*. Only one of the six comparables was inferior to the subject while the remaining five comparables were adjusted by \$15,000 to account for their superior condition. *Kiess testimony; Respondent Exhibit 1*. The \$15,000 adjustment for condition was derived from the adjustments made on the submitted certified appraisal. *Id.*
- d) The original assessment was \$51,700, but the assessor reduced the value to \$43,700 by changing the condition of the dwelling from "average" to "fair", the garage from "fair" to "poor", and by making a market adjustment of 22% to the total assessment based on the comparables found on the certified appraisal relative to the subject property. *Kiess testimony; Respondent Exhibit 1*.

Record

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

- a) The Petition and all subsequent post-hearing submissions by either party,
- b) The tape recording of the hearing labeled BTR 5354,
- c) Exhibits:

Petitioner Exhibit 1 – Rebuttal letter dated July 7, 2005 (See Paragraph 14),
Respondent Exhibit 1 – Summary of comments,

Respondent Exhibit 2 – Subject original and revised property record card with photograph of front view,
Respondent Exhibit 3 – Summary of sales data of comparables utilized by the appraiser and the township,
Respondent Exhibit 4 – Map showing location of the Respondents’ comparables,
Respondent Exhibit 5 – Property record cards and photographs of the appraiser’s comparables,
Respondent Exhibit 6 – Property record cards, photographs and sales disclosures for the Respondents’ comparables,
Respondent Exhibit 7 – Final decision of the county PTABOA,
Respondent Exhibit 8 – Rebuttal letter dated July 12, 2005 (See Paragraph 15),
Board Exhibit A – Form 131 petition with attached appraisal,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Request for Additional Evidence Form for Petitioner,
Board Exhibit D – Post-hearing Submission Waiver to Petitioner,
Board Exhibit E – Request for Additional Evidence Form for Respondents,
Board Exhibit F – Post-hearing Submission Waiver to Respondents,

d) These Findings and Conclusions.

14. The Petitioner requested additional time to view the data submitted by the Respondents at the appeal hearing because he did not request discovery in accordance with 52 IAC 3-1-5(f-h). The Petitioner was given a deadline of July 7, 2005, to submit his rebuttal. The Petitioner’s rebuttal postmarked July 7, 2005, was timely. That document is labeled as Petitioner Exhibit 1.
15. The Respondents were allowed until July 21, 2005, to review and rebut the Petitioner’s post hearing submission. The Respondents’ rebuttal was postmarked and received on July 13, 2005. That document is labeled Respondent Exhibit 8.

Analysis

16. 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.
17. The Petitioner did not provide sufficient evidence to support his claim based on the 1989 purchase price or the appraisal value. This conclusion was arrived at because:
- a) While an appraisal could be a valid indicator of the subject property's market value, the appraisal presented in this case is for the market value as of October 22, 2003.
- b) Taxpayers may present evidence of fair market value to establish an error in the assessment, but the evidence must relate to the valuation date established for the 2002 reassessment, which is January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) The Petitioner failed to establish how the appraisal is relevant to the value of his property as of January 1, 1999. The appraisal has no probative value in this matter. *Long* at 471.
- d) Similarly, the Petitioner failed to establish how his purchase price of \$14,300 in 1989 is relevant to the value of the property as of January 1, 1999. Therefore, his purchase price has no probative value in this matter. *Id.*
18. The Petitioner did not provide sufficient evidence to support his claim regarding condition. This conclusion was arrived at because:
- a) "Fair" condition is described as showing evidence of marked deterioration in the structure. The structure is rather unattractive or undesirable, but still useful. There is evidence of a need for substantial repairs and items needing refurbished, overhauled, and improved with obvious deferred maintenance. 2002 REAL PROPERTY ASSESSMENT GUIDELINE – VERSION A, ch. 3 at 60.
- b) "Poor" condition is described as showing definite deterioration. The structure is definitely undesirable or barely useable and needs extensive repair and maintenance on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities and extensive deferred maintenance. *Id.*
- c) Although the evidence does not lend itself to determining the desirability or usefulness of the property, the evidence does establish the need to repair items such as the backdoor and the steps, to replace windows and interior molding and for new paint. The evidence did not establish a need to replace or repair the roof,

or plumbing and heating systems. The evidence regarding the dwelling fits the description of fair rather than poor. The Petitioner has not shown that the condition rating should be anything other than fair, which is the condition rating currently assigned to the dwelling. *Kiess testimony; Respondent Exhibit 2.*

19. The Petitioner did not provide sufficient evidence to support his claim regarding the effect of location. This conclusion was arrived at because:
 - a) The Petitioner testified that the value is diminished because it is located in a commercial area, but has a residential use.
 - b) The Petitioner did not offer any probative evidence establishing or quantifying how the location adversely affected its market value-in-use. Such a conclusory statement does not provide substantial support for the claim. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119-1120 (Ind. Tax Ct. 1998).
20. When a taxpayer fails to provide probative evidence supporting a claim that an assessment should be changed, Respondent's duty to support the assessment with substantial evidence is not triggered. *Id.*
21. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondents.

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>.