

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

Petition #: 32-015-04-1-5-00001
Petitioner: Baldev Virdi
Respondent: Lincoln Township Assessor (Hendricks County)
Parcel #: 08-1-08-62E 242-009
Assessment Year: 2004

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 Hendricks County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 9, 2005.
2. The PTABOA mailed notice of its decision on September 15, 2005.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Hendricks County Assessor on October 21, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 17, 2006
5. The Board held an administrative hearing on April 6, 2006, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Baldev and Sukhleen Virdi, Petitioners
 - b) For Respondent: Lester Need, Gordon McIntyre, and Ronald Faulkner, Hendricks County PTABOA

Gail Brown, Hendricks County Assessor¹

- c) Also present to observe the hearing was Tina Stoutenour, deputy assessor for Hendricks County.

Facts

7. The subject property is located at 5875 Courtyard Crescent, Indianapolis, Indiana.² The property is classified as residential, as is shown on the property record card for parcel 08-1-08-62E 242-009.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined that the assessed value of subject property is \$22,800 for the land and \$172,000 for the improvements for a total assessed value of \$194,800.
10. The Petitioner requests a value of \$22,800 for the land and \$145,000 for the improvements for a total value of \$167,800.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The assessed value of the subject property is excessive when compared to the level of assessment of nearby properties. *Viridi argument*. The Petitioner compared the assessed values and sale prices of eighty-two (82) properties, including the subject property. Of those eighty-two (82) total properties, only one property other than the subject property was assessed for more than its sale price. *Viridi testimony; Pet'r Exs. 1-2*. The average difference between sales price and the assessed value was \$27,385. *Id.* In fact, the property located next door to the subject property is assessed for approximately \$45,000 less than its sale price. *Id.*
 - b) The Petitioner has listed the subject property for sale with an asking price of \$212,910. *Viridi testimony; Resp't Exs. 1-3*. The Petitioner based his asking price

¹ The Lincoln Township Assessor is the proper Respondent in this case because she made the original assessment determination. *See* Ind. Code § 6-1.1-15-3. The Lincoln Township Assessor did not appear at the hearing, nor did she provide written authorization for any other local governmental officials to represent her. *See* Ind. Admin. Code tit. 52, r. 3-1-4 (allowing a party to appear before the Board on his or her own behalf or by a representative that is expressly authorized by the party in writing to appear on the party's behalf). Thus, the Hendricks County Assessor and the three members of the PTABOA were not authorized to appear on behalf of the Respondent. The Hendricks County Assessor was statutorily authorized to appear as an additional party by filing a notice of appearance prior to the hearing. Ind. Code § 6-1.1-15-3(p); *see also*, Ind. Admin. Code tit. 52, r. 2-6-6(b). The County Assessor, however, did not file such an appearance. Nonetheless, given that this issue was not raised prior to or at the hearing, the Board will consider the arguments of the Hendricks County Assessor and PTABOA members as if they had properly appeared on behalf of the Respondent.

² Although the subject property has an Indianapolis address, the parties do not dispute that the property is located in Hendricks County.

on the property's current assessed value, although he added a margin to cover the cost of using an agent. *Id.* The subject property has been on the market for over a year, and it has attracted little interest. *Id.* The Petitioner attributes the lack of interest to the high property taxes assessed to the property. *Id.* The Petitioner's mortgage payment has increased \$800 due to those property taxes. *Id.*

- c) The assessed value of a property owned by a friend of the Petitioner was reduced by \$19,000. *Viridi testimony; Pet'r Ex. 4.* The Petitioner does not understand why the Respondent cannot reduce the assessment of the subject property in a similar manner. *Viridi testimony.*
- d) The Petitioner modified the original plans for his home, making the garage smaller and the living area larger. *Viridi testimony.* Other homes have a separate garage with no living space above it. *Id.*
- e) When building a home, there is a base price for the initial plan, and costs are added for extra features. *Id.* A smaller home can be more expensive than a larger home, depending on the quality of the home. *Id.*

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

- a) The subject property sold for \$191,815 on November 19, 2003. *Faulkner testimony; Resp't Exs. 4, 8.* The assessed value as of March 1, 2004, is \$194,800. This amounts to a difference of only 1.5% between the subject property's sale and its assessed value. *Id.*
- b) The Petitioner has listed the subject property for sale with an asking price of \$212,910, which is \$17,200 more than its current assessed value. *Faulkner testimony; Resp't Exs. 1-3, 8.* This indicates that the actual value of the subject property is higher than the amount for which the property is assessed. *Faulkner argument.*
- c) According to both Article X of the Indiana Constitution and *State Bd. of Tax Comm'rs v. Town of St. John* 702 N.E.2d 1034, 1038 (Ind. 1998) (*Town of St. John V*), there is no personal substantive right of uniformity in assessments, and absolute and precise exactitude as to the uniformity and equality of each individual assessment is not required. *Brown argument.* When working with a mass-appraisal system, assessing officials cannot obtain fee-level appraisals for each property. The Respondent assessed the subject property properly under the Real Property Assessment Guidelines for 2002 – Version A. *Brown argument.*
- d) It is likely that “creative financing” was used in many of the sales cited in Petitioner Exhibit 1, but there was no evidence to that effect. *Faulkner testimony.* The term “creative financing” refers to circumstances where the sale price of a home is inflated to cover the lack of a down payment from the purchaser. *Id.*

- e) The Petitioner did not establish that the properties referenced in Petitioner's Exhibit 1 are truly comparable to the subject property. *McIntyre argument*. The dwelling on one such property, parcel 0810862E242010, is 630 square feet smaller than is the subject dwelling. *Faulkner testimony; Resp't Exs. 6, 8-17*. Others differ from the subject property in terms of the quality grade assigned to the dwellings. *Id.* The property referenced by the Petitioner in his Exhibit 4 is in a different neighborhood than the subject property, and the entire neighborhood was overvalued. *Brown testimony*.

Record

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

- a) The Form 131 petition and attachments
- b) The digital recording of the hearing
- c) Exhibits:

Petitioner Exhibit 1: Table of sales price and assessed values for properties in Williamsburg Village

Petitioner Exhibit 2: Property Record Cards (PRCs) and sales disclosures for 82 properties in Williamsburg Village

Petitioner Exhibit 3: Written findings from Form 115

Petitioner Exhibit 4: Assessment information for parcel 0810562E349030

Petitioner Exhibit 5: Part of subject PRC

Petitioner Exhibit 6: Map of subject neighborhood

Respondent Exhibit 1: MIBOR listing for subject property dated May 19, 2005³

Respondent Exhibit 2: MIBOR listing for subject property dated September 19, 2005

Respondent Exhibit 3: Sales flyer for subject property

Respondent Exhibit 4: Sales disclosure form for subject property dated November 19, 2003

Respondent Exhibit 5: Printout of Hamilton County website

Respondent Exhibit 6: Table comparing some of Petitioner's comparable properties and subject

Respondent Exhibit 7: Table of comparable properties from Petitioner

Respondent Exhibit 8: Property Record Card and information (PRC) for parcel 08162E242009 (subject property)

Respondent Exhibit 9: PRC and information for parcel 0810862E242010

³ The Respondent presented its exhibits in a packet with consecutively numbered pages. That packet contains several pages (nos. 10-11, 16-18, 20) summarizing its arguments. The Respondent neither labeled those pages as exhibits nor identified them in its exhibit list. The Board does not consider those documents as evidence.

Respondent Exhibit 10: PRC and information for parcel 0810862E242013
Respondent Exhibit 11: PRC and information for parcel 0810862E477018
Respondent Exhibit 12: PRC and information for parcel 0810862E478020
Respondent Exhibit 13: PRC and information for parcel 0810862E478016
Respondent Exhibit 14: PRC and information for parcel 0810862E242005
Respondent Exhibit 15: PRC and information for parcel 0810862E227017
Respondent Exhibit 16: PRC and information for parcel 0810862E229003
Respondent Exhibit 17: PRC and information for parcel 0810862E242012

Board Exhibit A: Form 131 petition and attachments

Board Exhibit B: Notice of Hearing

Board Exhibit C: Hearing 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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. The Petitioner did not provide sufficient evidence to support his contentions. The Board reaches this conclusion because:

- a) The Petitioner does not contend that the subject property is assessed for an amount that significantly exceeds its market value. Similarly, the Petitioner does not appear to contend that the subject property is assessed differently than are physically comparable properties. To the extent that the Petitioner was to make such a claim, that claim would fail because the Petitioner did not attempt to

compare the physical characteristics of the subject property to the characteristics of the other eighty-two properties in question. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005) (holding that the petitioners failed to explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).

- b) Instead, the Petitioner argues that, while other properties are assessed well below their respective market values, the subject property is assessed slightly in excess of its market value. The Petitioner apparently requests that the Board adjust his assessment to bring it in line with the level of assessment of the eighty-two (82) other properties he identified.
- c) In *Indiana Dep't of Local Gov. Fin. v. Commonwealth Edison Co.* 820 N.E.2d 1222 (Ind. 2005) (*Commonwealth Edison II*), the Indiana Supreme Court addressed a claim by a taxpayer that it was entitled to an "equalization adjustment" to bring its assessment in line with the level of assessment for other properties in Lake County. In deciding that case, the Court first addressed the threshold question of whether such a claim is available to individual taxpayers. The Court concluded that, although taxpayers have no state constitutional right to an individual equalization adjustment, they have a statutory right to show that their "property taxes were higher than they would have been had other property been properly assessed." *Id.* at 1227.
- d) After determining that an individual taxpayer generally may claim an "equalization adjustment," the Court turned to whether the taxpayer had established its entitlement to such an adjustment. The taxpayer compared the assessed values of certain residential and commercial properties in Lake County to the fair market values of those properties and found that such properties were assessed well below fair market value. *Id.* at 1228-29. The taxpayer then asserted that the assessed value of its own property, as determined by the State Board of Tax Commissioners, equaled its fair market value. *Id.* The taxpayer asked for an adjustment to the assessment of its property so that such assessment would bear the same ratio to the property's fair market value as the ratio of assessed value to market value borne by other properties in Lake County. *Id.*
- e) The Court rejected the taxpayer's claim essentially on grounds that the taxpayer was comparing apples to oranges. During the years in question in that case, Indiana did not assess property based upon market value, but rather upon "true tax value" (TTV) as defined by the State Board of Tax Commissioners' regulations. *Id.* at 1229. Thus, if certain classes of property had been "systematically underassessed" as the taxpayer claimed, it was because assessors had determined the true tax value of such property to be less than it would have been had the assessors properly applied the assessment regulations, not because such property was assessed for less than fair market value. *Id.* at 1229-30. Consequently, the taxpayer's use of fair market value as the standard by which to measure

uniformity was not relevant to the determination of its entitlement to an adjustment. *Id.* Instead, the taxpayer was required to show that the assessment of the taxpayer's property in proportion to its TTV was not uniform and equal in comparison to the assessed valuation of other taxable property in the county in proportion to the TTV of that property. *Id.* at 1230.

- f) Under Indiana's current system, TTV is defined as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). Thus, it appears that a taxpayer asserting the type of claim contemplated under *Commonwealth Edison II* must determine the ratio of the subject property's assessment to its market value-in-use and compare that ratio to the ratios of assessments to market values-in-use for other properties in the geographic area being examined.
- g) *Commonwealth Edison II*, however, leaves open significant questions relating to the contours of an individual's right to an equalization adjustment. For example, the Court did not address what types of statistical comparisons might be relevant or what levels of disparity might merit an adjustment. The rules promulgated by the Department of Government Finance setting forth equalization standards governing class wide relief for lack of uniformity and equality in assessment incorporate sophisticated statistical methodologies as set forth in the Standard on Ratio Studies published by the International Association of Assessing Officials in July 1999 (IAAO Standard). *See* Ind. Admin. Code tit. 50 r. 14-2-1. Although the Court held that the DLGF's rules did not provide a procedure for individuals to seek an equalization adjustment, they arguably may provide some guidance for determining the substance of such claims. The Court similarly did not specify how broadly the analysis must sweep. For example, the Court did not address whether a taxpayer must analyze all or only some classes of property within a township, or if taxpayer may confine its analysis to smaller divisions, such as individual neighborhoods.
- h) In light of the above guidance, the Board turns to the facts at hand. The Petitioner did not use a straightforward ratio of assessed value to sale price as the basis for his comparative analysis. Instead, the Petitioner determined the difference between the sale price and assessed value for each property, which he expressed both in terms of an absolute number and as a percentage of assessed value.⁴ The Petitioner then found that, on average, the other properties were assessed for \$27,385 less than their sale prices, while the subject property was assessed for \$11,185 more than its sale price.⁵ *Pet'r Ex. 1 at 103; Viridi testimony.* The

⁴ For example, the first property examined by the Petitioner (parcel no. 008-108621-240006) sold for \$174,900 and was assessed for \$152,600 – a difference of \$22,300. *Pet'r Ex. 1 at 1.* That difference amounted to 14.61% of the property's assessed value. *Id.*

⁵ The Petitioner computed the \$11,185 difference based upon the assessment of the subject property prior to changes made by the PTABOA. With those changes, the difference between the November 19, 2003, sale price and the subject property's assessment is \$2,985.

Petitioner did not compute an average for the difference between assessed value and sale price as a percentage of assessed value. *See id.*

- i) As explained above, *Commonwealth Edison II* leaves open the question of what particular statistical methodologies a taxpayer may employ to demonstrate his right to an equalization adjustment. The Board, however, need not decide that question to find that, whatever those methodologies may be, simply averaging the difference between sale prices and assessed values is not sufficient.
- j) Even if the Petitioner's methodology were statistically sound, it suffers from an additional flaw. Pursuant to the Manual, a property's TTV is based upon the property's value as of January 1, 1999. MANUAL at 4, 8; *see also* 821 N.E.2d at 471. The rules provided in the Manual are applicable to real property assessments for the March 1, 2002, assessment date through the March 1, 2005, assessment date. MANUAL at 2. Thus, for the March 1, 2004, assessment date at issue in this case, a property's TTV must reflect its market value-in-use as of January 1, 1999. In order to engage in a meaningful comparison for purposes of equalization, a taxpayer must adjust the sale prices upon which he relies to reflect values as of January 1, 1999. Here, the Petitioner relies upon prices from sales that occurred from 2002 to 2004 without any explanation as to how sale prices relate to January 1, 1999 values. Thus, much like the taxpayer in *Commonwealth Edison II*, the Petitioner is comparing apples to oranges.
- k) Finally, the evidence in the record demonstrates that the Petitioner bought the subject property for \$191,815 on November 19, 2003. *Pet'r Ex. 1 at 1; Resp't Ex. 4*. The sale price is only \$2,985 less than the current assessment of \$194,800. *Id.; Board Ex. A*. The Petitioner did not explain how the sale price relates to the subject property's market value-in-use as of January 1, 1999, nor did he request the Board to reduce his assessment to an amount equal to the sale price. Under those circumstances, the Board does not find that the November 19, 2003, sale price establishes an error in assessment.
- l) For the reasons set forth above, the Board finds that the Petitioner failed to establish a prima facie case of error in the subject property's assessment.

Conclusions

16. 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. 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>.