

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

Petition #'s: 45-018-03-1-5-00030
45-018-03-1-5-00031
Petitioners: Thomas & Rosemarie Ehrhardt
Respondent: Hobart Township Assessor (Lake County)
Parcel #'s: 006271700140035
006271700140040
Assessment Year: 2003

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated two assessment appeals with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated March 31, 2005.
2. The PTABOA mailed notices of its decisions on June 13, 2005.
3. The Petitioners initiated two appeals to the Board by filing Form 131 petitions with the Lake County Assessor on June 20, 2005. The Petitioners elected to have these cases heard in small claims.
4. The Board issued notices of hearing to the parties dated August 15, 2006.
5. The Board held an administrative hearing on both petitions on October 24, 2006, before the duly appointed Administrative Law Judge (ALJ), Dalene McMillen.
6. Persons present and sworn in at hearing:
 - a. For Petitioners: Thomas Ehrhardt, Owner
 - b. For Respondent: Julia Wolek, Hobart Township Assessor

Facts

7. The properties under appeal consist of a 2,180 square foot, two-story, row-type, multi-family dwelling located at 1215-1217 East Jackson Street (Parcel #006271700140035, Petition No. 45-018-03-1-5-00030), and a 1,600 square foot, one-story, row-type, multi-family dwelling located at 1210 Cleveland Avenue (Parcel #006271700140040, Petition No. 45-018-03-1-5-00031). Both properties are located in the city of Hobart, Hobart Township in Lake County.
8. The ALJ did not conduct an on-site visit of the subject properties.
9. The PTABOA determined the assessed values of subject properties as follows:

<u>Parcel #006271700140035, Petition No. 45-018-03-1-5-00030</u>		
Land: \$20,200	Improvements: \$121,300	Total: \$141,500

<u>Parcel #006271700140040, Petition No. 45-018-03-1-5-00031</u>		
Land: \$21,400	Improvements: \$88,700	Total \$110,100.
10. The Petitioners did not request specific assessed values on their Form 131 petitions or at the hearing.

Issue

11. Summary of the Petitioners' contentions:
 - a. The Petitioners contend the subject properties are assessed for a greater percentage of their market values than are other properties in the same area. *Ehrhardt argument*. In support of their position, the Petitioners submitted information concerning nine (9) properties. *Id.*; *Pet'rs Exs. 1 – 9*. The Petitioners contend that those properties are assessed for 55% to 80% of their market values, as indicated by their list prices and/or Mr. Ehrhardt's estimate of their values, while the subject properties are assessed for between 92% and 94% of the amounts for which the Petitioners would agree to sell them. *Ehrhardt testimony*; *Pet'rs Exs. 1 – 11*.
 - b. The Petitioners contend that the list price of a property is an indication of what the owner or realtor believes the property is worth, and that the list price therefore is loosely equivalent to the property's market value. *Ehrhardt testimony*. The properties referenced in Petitioners' Exhibits 8 and 9 were not listed for sale. *Ehrhardt testimony*; *Pet'rs Exs. 8-9*. Mr. Ehrhardt estimated the market values of those properties based upon his knowledge of the area. *Id.*

- c. The Petitioners also contend that the taxes for the subject properties amount to 3.5% of the assessed values of those properties. *Ehrhardt testimony*. According to the Petitioners, that is an unreasonable and excessive level of taxation. *Ehrhardt argument*.
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends that the Petitioners' evidence concerning the assessments of purportedly comparable properties should be given little weight. *Wolek argument*. According to the Respondent, five of the nine properties contain single-family dwellings while the subject properties contain multi-family dwellings. *Id.* In addition, four of the nine comparable properties contain single-family dwellings that have been converted to add an extra living unit (i.e. apartment), whereas the subject properties contain row-type duplexes designed with two living units. *Id.* Finally, some of the purportedly comparable properties contain dwellings that are older than the subject dwellings and they are not located in the same neighborhood as the subject properties. *Id.*
 - b. The Respondent contends the current assessments are correct. *Wolek testimony*.

Record

13. The official record for this matter is made up of the following:
- a. The Form 131 petition,
 - b. The recording of the hearing labeled IBTR #6311.
 - c. Exhibits:
 - Petitioners Exhibit 1 – Multiple listing sheet (MLS), assessor's parcel record and treasurer's tax record for 1306 South Illinois, Hobart,
 - Petitioners Exhibit 2 – MLS, assessor's parcel record and treasurer's tax record for 1112 Devonshire Street, Hobart,
 - Petitioners Exhibit 3 – MLS, assessor's parcel record and treasurer's tax record for 1206 West 8th Street, Hobart,
 - Petitioners Exhibit 4 – MLS, assessor's parcel record and treasurer's tax record for 416 North Liberty Street, Hobart,
 - Petitioners Exhibit 5 – MLS, assessor's parcel record and treasurer's tax record for 1649 Minnesota Street, Hobart,
 - Petitioners Exhibit 6 – MLS and property record card (PRC) for 814 – 816 East 3rd Street, Hobart,
 - Petitioners Exhibit 7 – PRC and real property maintenance sheet for 1105 East Cleveland Avenue, Hobart,

Petitioners Exhibit 8 – PRC and real property maintenance sheet for 763
Lincoln Street, Hobart,
Petitioners Exhibit 9 – PRC and real property maintenance sheet for 1109
East Cleveland Avenue, Hobart,
Petitioners Exhibit 10 – Subject PRC for 1210 East Cleveland Avenue,
Hobart,
Petitioners Exhibit 11 – Subject PRC for 1215 – 1217 East Jackson Street,
Hobart

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing sign-in sheets,

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 Insurance Company 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 Petitioners failed to provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:
- a. The Petitioners claim that the subject properties are assessed unfairly in comparison to the assessments of nine other properties. The Petitioners, however, do not appear to claim a lack of uniformity and equality because the other properties at issue are physically similar to the subject properties. To the extent that the Petitioners were to make such a claim, that claim would fail because the Petitioners did not attempt to compare the physical characteristics of the

properties. See *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004); See also, *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72(Ind. Tax Ct. 2005)(holding that the taxpayers did not adequately engage in a sales comparison analysis where they 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 Petitioners argue that, while other properties are assessed well below their respective market values, the subject properties are assessed only slightly below their market values. The Petitioners apparently request that the Board adjust the subject properties assessments to bring them in line with the level of assessment of the other nine properties they identify.
- 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 fair 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 its 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 of property taxation, 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* may 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 Local Government Finance (DLGF) setting forth equalization standards governing class wide relief for lack of uniformity and equality in assessment incorporate sophisticated statistical methodologies 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 do 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. The Board, however, need not delve into those questions to determine that the Petitioners have failed to establish a claim for an individualized equalization adjustment in this case. The Petitioners did not submit probative evidence to establish the market value-in-use of any of the properties in question – a prerequisite to comparing the ratios of the properties' assessments to their market values-in-use. As to seven of the comparator properties, the Petitioners rely on the price for which those properties are listed for sale. *Ehrhardt testimony; Pet'rs Exs. 1-7*. At best, the list price presents the starting point from which the market value of a property may be determined. *See* MANUAL at 4 ("Typically, the bid price will be lower than the ask price, some negotiation will occur, and when the

two are equal an exchange will take place.”). The Petitioners, however, contend that the list price of a property is loosely equivalent to the amount for which that property ultimately will sell. While that may be true in some instances,¹ the Petitioners did not present any evidence to show that is necessarily the case with the seven properties at issue in this appeal. Consequently, the Board finds that the Petitioners failed to establish the market values-in-use of those properties.

- i. The Petitioners did even less to establish the market values-in-use of the two other comparator properties and the subject properties. As to the two comparator properties, Mr. Ehrhardt simply made the conclusory statement that he had estimated their market values based upon his knowledge of the area. *Ehrhardt testimony; Pet’rs Exs. 8-9*. Mr. Ehrhardt made equally conclusory statements about the amount for which the Petitioners would sell the subject properties without any evidence that the Petitioners had even listed those properties for sale. *See Ehrhardt testimony*.
- j. Finally, the Petitioners contend that the property taxes on the subject properties are excessive because they amount to 3.5% of their assessed values. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001)(citing *Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or county property assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. The Board, however, has no jurisdiction over the propriety of local tax rates.² Even if the Board had jurisdiction to decide the Petitioners’ claim in that regard, the Petitioners do not point to any authority for the proposition that local taxing districts cannot set aggregate tax rates of 3.5%.

Conclusion

16. The Petitioners failed to establish a prima facie case of error in assessment. The Board finds in favor of the Respondent.

¹ “For property types that are frequently traded, the bid and ask price are likely to be fairly similar.” MANUAL at 4.

² That is not to say that the Board lacks jurisdiction simply because the Petitioners’ claim implicates a local tax rate. In a budget driven taxation system, the Board may have jurisdiction over claims that implicate or affect tax rates, provided the claims concern assessed value. *See U.S. Steel Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 785 N.E.2d 1209, 1212-13 (Ind. Tax Ct. 2003) *aff’d in part and rev’d in part on other grounds, Lake County Property Tax Assessment Bd. of Appeals v. U.S. Steel Corp.*, 820 N.E.2d 1237 (Ind. 2005). In making their tax rate claim, the Petitioners do not contest the validity of the assessment, but rather the level of the tax rate applied to that assessment. Thus, the Board lacks jurisdiction over the Petitioners’ claim.

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>.