

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

Petition: 49-400-02-1-5-04115
Petitioners: Theratha and Louistine Fields
Respondent: Lawrence Township Assessor (Marion County)
Parcel: 4031664
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. Petitioners initiated an assessment appeal with the Marion County Property Tax Assessment Board of Appeals (the PTABOA) by filing Form 130 on July 11, 2003.
2. Petitioners received notice of the decision of the PTABOA on June 25, 2004.
3. Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on July 22, 2004. Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 13, 2005.
5. Administrative Law Judge Paul Stultz held an administrative hearing on August 10, 2005.
6. The following persons were sworn as witnesses at the hearing:
For Petitioner - Theratha Fields, property owner;
For Respondent - Beth Brown, Lawrence Township Deputy Assessor.

Facts

7. The property is a residential dwelling located at 6525 Charlevoix Circle in Indianapolis.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The assessed value of the subject property as determined by the PTABOA:
land \$44,600 improvements \$430,400 total \$475,000.
10. Petitioners requested a total assessed value of \$424,000.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) Petitioners introduced an appraisal prepared by Mr. Robert W. Moore, a licensed appraiser. The appraisal indicates a total value of \$424,000 for the property as of October 23, 1999. *Petitioners Exhibit 1.*
 - b) The three comparable properties used in Petitioners' appraisal are within two blocks of their property. *Fields testimony.*
 - c) The appraisal of the subject property is the best indicator of the property's true tax value. *Id.*

12. Summary of Respondent's contentions in support of the assessment:
 - a) Petitioners' appraisal value for their property is low. Approximately 40% of appraisals are bad appraisals. *Brown testimony.*
 - b) Three comparable properties are the best indicators of subject's true tax value. Parcel 4031613 sold on November 24, 1997, for a 1999 time adjusted sale price of \$470,000. Parcel 4031626 sold on June 1, 2000, for a 1999 time adjusted sale price of \$431,900. Parcel 4031597 sold on February 25, 2000, for a 1999 time adjusted sale price of \$495,100. *Brown testimony; Respondent Exhibit 1.*
 - c) Petitioners' parcel is located on water, but not the main body of water. Parcel 4031613 is similar in square footage, but not located on water. Parcel 4031626 is 800 square feet smaller than the subject and not on water. Parcel 4031597 is similar in square footage and located on water, but not the main body. *Brown testimony; Respondent Exhibits 1 through 8.*

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 5988,
 - c) Petitioners Exhibit 1 - Appraisal of subject property,
Petitioners Exhibit 2 - Form 130,
Petitioners Exhibit 3 - Letter from RE/MAX to Petitioners,
Petitioners Exhibit 4 - Form 131,
Petitioners Exhibit 5 - Settlement sheet for subject property dated May 23, 2005,
Petitioners Exhibit 6 - Letter from Fidelity Benefit Center to Petitioners dated February 3, 2005,

Petitioners Exhibit 7 - Letter to Senator T. Lubbers, dated March 8, 2004,
Petitioners Exhibit 8 - Letter to Senator T. Lubbers dated April 14, 2004,
Respondent Exhibit 1 - List of properties with parcel number, sale date and price,
Respondent Exhibit 2 - Aerial photograph of subject area,
Respondent Exhibit 3 - Photograph of subject property,
Respondent Exhibit 4 - Photograph of parcel 4031626,
Respondent Exhibit 5 - Sale disclosure form for parcel 4031613,
Respondent Exhibit 6 - Photograph of parcel 4031613,
Respondent Exhibit 7 - Sale disclosure form for parcel 4031597,
Respondent Exhibit 8 - Photograph of parcel 4031597,
Board Exhibit A - Form 131 Petition with attachments,
Board Exhibit B - Notice of Hearing on Petition dated June 13, 2005,

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 provided sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. Consequently, a party relying on market data to establish the market value-in-use of a property must provide some explanation as to how this market data demonstrates or is relevant to the property’s value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2).

- b) Petitioners presented an appraisal indicating the value of their property was \$424,000 on October 23, 1999, less than a year from the valuation date of January 1, 1999. *Petitioners Exhibit 1*. The proximity of the appraisal date to the valuation date is sufficient to establish a link between the two dates.
- c) Petitioners' evidence establishes a prima facie case the market value of the home on the valuation date was \$424,000.
- d) In rebuttal, Respondent presented a list of twenty-two sales in Petitioners' neighborhood to support the assessment. Respondent identified three sales as comparable to the subject property. *Brown testimony; Respondent Exhibit 1*.
- e) In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. A party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *See Long*, 821 N.E.2d at 471.
- f) Respondent presented photographs of the three purported comparable properties. Other than general statements regarding square footage and waterfront views, however, Respondent failed to present a comparison of the features of these homes to the characteristics of Petitioners' property. Photographs without explanation are merely conclusory statements and not probative. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133, 1136 (Ind. Tax Ct. 2000).
- g) Further, the three comparable properties used in Petitioners' appraisal are within two blocks of their property. All of these properties sold in 1999. Respondent did not contest the comparability of these three properties or offer any explanation as to the reason these properties were not given any weight in Respondent's analysis of comparable properties. No probative evidence supports the testimony that Petitioner's appraisal is low and that approximately 40% of appraisals are bad. Such conclusory statements have no probative value. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- h) Respondent failed to rebut Petitioners' prima facie case the total assessed value of the property should be \$424,000.

Conclusion

- 16. Petitioners made a prima facie case. Respondent did not rebut Petitioners' evidence. The Board finds in favor of Petitioners.

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 \$424,000.

ISSUED: **November 3, 2005**

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>>.