

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

Petition #: 71-026-02-1-5-00113
Petitioners: Paul and Shirley Kinney
Respondent: Portage Township Assessor (St. Joseph County)
Parcel #: 18-6056-1921
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 St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 20, 2004.
2. The Petitioners received notice of the decision of the PTABOA on August 28, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on September 20, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 4, 2004.
5. The Board held an administrative hearing on May 24, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Paul Kinney, Property Owner
 - b) For Respondent: Rosemary Mandrici, Portage Township Assessor
David Wesolowski, St. Joseph County Assessor
Dennis Dillman, PTABOA Member
Ralph Wolfe, PTABOA Member
Ross Portolese, PTABOA Member

Terrance Wozniak appeared as counsel for the Portage Township Assessor and the St. Joseph County PTABOA.

Facts

7. The subject property is a single-family rental property on a lot measuring 44' x 125', located at 1101 33rd Street, South Bend, in Portage Township, St. Joseph County.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$4,200 for the land and \$61,600 for the improvements, for a total assessed value of \$65,800.
10. The Petitioners requested an assessment that was "fairer."

Issue

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend that the taxes on the subject property are too high. *P. Kinney testimony*. According to the Petitioners, the taxes on the property have risen from \$600 in 1995 to a current tax bill of \$3,300. *Id.* Although they testified that they charge \$950 per month in rent, the Petitioners contend that there is a mortgage on the subject property of approximately sixty thousand dollars, where they pay \$600 per month. *Id.* The Petitioners argue that they also pay more than \$300 a month in taxes. *Id.* Thus, the Petitioners assert, the property is not an investment but a loss. *Id.* The Petitioners, however, admitted that they do not have a mortgage exemption on the subject property which could be one reason why the taxes are higher. *Id.*
 - b. The Petitioners further contend that the taxes on the subject property are higher than on other properties in the same area. *P. Kinney testimony*. In support of this contention, the Petitioners submitted real estate listings for thirteen properties that sold in the River Park area. *P. Kinney testimony; Petitioner Exhibits 15, and 19 – 29.*¹ According to the Petitioners, the property at 602 30th Street sold for \$96,000 on April 27, 2006. *Id.* The Petitioners contend that the taxes on this property are \$2,293. *Id.* Similarly, the Petitioners argue, the property at 820 28th Street sold for \$85,900 and the taxes are \$703. *Id.* The Petitioners allege that the property at 924 27th Street sold for \$77,900 on July 7, 2005, and the taxes on the property are \$1,195. *Id.* Similarly, the property at 1234 33rd Street sold for \$89,500 on August 5, 2005, and the taxes are \$779. *Id.* According to the Petitioners, 3402 Pleasant sold for \$75,000 on March 31, 2006, and the taxes are \$534. *Id.* Likewise, the Petitioners contend that 754 24th Street sold for \$64,900 on November 10, 2005, and the taxes are \$335. *Id.* Further, 925 36th Street sold for \$37,500 on December 22, 2005, and the taxes are \$862 and 1119 25th Street sold for \$94,900 on August 17, 2005, and the taxes are \$948. *Id.* According to the Petitioners, 3110 Vine sold for \$64,900 on June

¹ Respondent's counsel objected to the admission of the Petitioner's evidence of the 2005 and 2006 sales of these thirteen properties on the basis of their relevancy to the 2002 assessment. The ALJ determined that the Respondent's objection goes to the weight of the evidence and not the admissibility and admitted the exhibits.

3, 2005, and the taxes are \$758 and 706 35th Street sold for \$89,900 on April 27, 2006, and the taxes are \$1,004. *Id.* Finally, the Petitioners contend, 702 35th Street sold for \$86,400 on March 28, 2006, and the taxes are \$796; 926 27th Street sold for \$89,900 on July 21, 2005, and the taxes are \$1,104; and 626 25th Street sold for \$79,000 on February 28, 2006, and the taxes are \$1,710. *Id.* The Petitioners testified that the sale properties varied in size, amenities, lot sizes and “other things that go to make up the sale price.” *P. Kinney testimony.* The Petitioners also stated that the properties could not be compared to one another because they were “up and down.” *Id.* In response to questioning, the Petitioners testified that they did not know whether the sale properties were owner occupied or a rental unit like the subject property. *P. Kinney response.*

- c. Finally, the Petitioners claim that the assessed value for the subject property was excessive because the neighborhood was not an expensive one. *P. Kinney testimony.* According to the Petitioners, even though the property may be the nicest house in the area there are drawbacks such as the lots being too narrow (40 – 45 feet) to be built on. *Id.*

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

- a. The Respondent contends that the current assessed value of \$65,800 is appropriate for the subject rental property. *Mandrici testimony.* The Respondent testified that the cost approach was used to determine the assessed value for the subject property. *Id.* Even under the gross rent multiplier (GRM) method of valuing rental properties of 1 – 4 units, however, the Respondent argues that the subject property was assessed correctly. *Id.* According to the Respondent, based on the application of an average GRM of 6² for the township and applied to the monthly rent for the subject property³, the values determined would be \$64,800 at \$900 per month and \$68,400 at \$950 per month. *Id.*
- b. The Respondent further contends that the subject property is assessed fairly when compared to other properties in the subject property’s neighborhood. *Mandrici testimony.* In support of this contention, the Respondent submitted a real estate listing price sheet for a number of properties located on 33rd Street, which is the subject property’s street. *See Respondent Exhibit 8.* The Respondent asserts that the \$65,800 assessed value of the subject property falls within the \$39,900 to \$98,900 range of the listing prices for the properties on 33rd Street. *Mandrici testimony.*
- c. Finally, the Respondent argues that the Petitioners’ sales “comparables” were not relevant to the 2002 assessment year. *Mandrici testimony.* According to the Respondent, the sale prices of properties in 2005 and 2006 have no bearing on the

² Ms. Mandrici testified that the GRM range for the Township of Portage was 5 – 7 with the average of “6” being used.

³ Ms. Mandrici testified that at the PTABOA hearing the Petitioners indicated that their monthly rent received was \$900 for the subject property and at this hearing the Petitioners are indicating that they are receiving \$950.

assessed valued assigned to the subject property for the 2002 assessment year under appeal which is based on a January 1, 1999, valuation. *Id.*

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 #6239,
- c. Exhibits:⁴

Petitioner Exhibit 1 - Evidence cover letter dated May 23, 2006,
Petitioner Exhibit 2 thru 6 - Form 131 Petition,
Petitioner Exhibit 7 thru 9 – Form 115 dated August 28, 2004,
Petitioner Exhibit 10 & 11 – Letter to the Board dated September 15, 2004,
Petitioner Exhibit 12, 13, 14 – Copies of tax bills for 2000 pay 2001,
Petitioner Exhibit 15 – Listing data for 602 30th Street from the Association of Realtors,
Petitioner Exhibit 16 – Assessor data for 1101 33rd Street,
Petitioner Exhibit 19 thru 29 – Listing data for multiple properties from the Association of Realtors,
Petitioner Exhibit 30 – Letter to Kinney family from Ryan Dvorak dated February 2003,
Petitioner Exhibit 31 – Form 11 for the subject property dated December 1, 2003,
Petitioner Exhibit 32 – Form 114 for the subject property dated August 12, 2004,
Petitioner Exhibit 33 – Letter to the Assessor from Paul Kinney dated January 5, 2004,
Petitioner Exhibit 34 – Letter to Representative Dvorak from Paul Kinney Dated July 28, 2004.

Respondent Exhibit 1 – Form 131 petition,
Respondent Exhibit 2 – Notification of Final Assessment Determination (Form 115),
Respondent Exhibit 3 – PTABOA Record of Hearing,
Respondent Exhibit 4 – Letter to John Voorde dated January 5, 2004,
Respondent Exhibit 5 – Letter to taxpayer from Rosemary Mandrici dated July 21, 2004,
Respondent Exhibit 6 – Subject property record card (PRC),
Respondent Exhibit 7 – Letter the Board from Paul and Shirley Kinney dated September 15, 2004,
Respondent Exhibit 8 – Remax property listings

Board Exhibit A - Form 131 petition,

⁴ The Petitioners' exhibits are designated by the page numbers. Several pages may make up a single document.

Board Exhibit B - Notice of Hearing,
Board Exhibit C – 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 Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioners contend that the real estate taxes paid on the subject property are higher than those on other properties within the subject property's neighborhood. *P. Kinney testimony*. The Petitioners further contend that the current increase in their taxes is excessive when compared to other properties that have sold. *Id.*; *Petitioner Exhibits 19 – 29*.
 - b. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001), *citing Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E.2d 1018, 1021 (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 tax

assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction over matters involving local tax rates.⁵

- c. Real property in Indiana is assessed on the basis of its “true tax value.” See Ind. Code § 6-1.1-31-6(c). The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. See MANUAL at 5. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
- d. To the extent that the Petitioners’ arguments can be seen to raise an objection to the property’s assessed values, the Petitioners essentially present sales comparison evidence. MANUAL at 2 (the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). To introduce evidence of comparable properties, however, a taxpayer must explain how the properties are comparable. See *Blackbird Farm Apartments v. Department of Local Government Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain how the properties were comparable). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* See also *Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make a prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries v. Department of Local Government Finance*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make a prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

⁵ Further, each tax year stands on its own. *Barth v. State Board of Tax Commissioners*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). Consequently, what taxes the Petitioners paid in prior years would have no relevance or probative value in determining the Petitioners’ 2002 taxes or assessment.

- e. Here the Petitioners presented Assessor's information and MLS listings for thirteen properties. In addition, the Petitioners testified as to the address of each property, the sale price and the date of sale, and the taxes paid on each property. While the Petitioners submitted evidence on thirteen properties, the Petitioners made little, if any, attempt to explain why or how the properties were comparable to the subject property as required by the court in *Long*. Further, the Petitioners failed to show how sales of properties that the Petitioners themselves admit cannot be compared, that sold for prices ranging from \$37,500 to \$96,000, are probative of the assessed value of the subject property. The Petitioners provided no comparison of square footages, lot sizes, or amenities such as attics, basements, number of bathrooms, garages or occupancy. Moreover, the sales cited by the Petitioners all occurred in 2005 and 2006. This is far too remote from the January 1, 1999, statutory valuation date to be probative of the subject property's 2002 assessed value. Thus, to the extent that the Petitioners can be seen as objecting to their assessed value, the Petitioners failed to raise a prima facie case that their assessment is in error.
- f. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the 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>.