

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

Petition: 71-026-02-1-5-00163
Petitioner: Joseph Walasinski
Respondent: Portage Township Assessor (St. Joseph County)
Parcel: 18-5036-1257
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 11, 2003.
2. The PTABOA mailed the notice of its decision on October 4, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 petition with the county assessor on October 29, 2004, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 17, 2006.
5. Administrative Law Judge Patti Kindler held the hearing in South Bend on October 18, 2006.
6. Attorney Terrance Wozniak represented the Respondent.
7. Persons present and sworn as witnesses at the hearing:
For Petitioner – Joseph Walasinski,
Cindy Warren,
For Respondent – Rosemary Mandrici, Portage Township Assessor,
Kevin Klaybor, PTABOA President,
Dennis Dillman, PTABOA member,
Ross Portolese, PTABOA member.

Facts

8. The subject property is a home with a detached garage. The lot measures 41 feet by 165 feet. It is located at 809 North St. Louis Boulevard in South Bend.
9. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
10. The PTABOA determined the assessed land value is \$8,100, the improvements value is \$55,000, and the total assessed value is \$63,100.
11. The total assessed value requested by Petitioner is \$33,000.

Issue

12. Summary of Petitioner's contentions:
 - a) The subject property was appraised for \$33,000 in 2002. That appraisal represents the correct value for the subject property. The comparable properties used in the appraisal of the subject property sold for \$33,000, \$35,000 and \$37,000. *Walasinski testimony; Pet'r Ex. 1, 2, 3, 4.*
 - b) The certified appraisal of the subject property was based on both interior and exterior inspection. *Walasinski testimony; Pet'r Ex. 1.* Assessing officials did not make inspection. Therefore, they cannot know the extent of damage and deterioration that exists. *Walasinski testimony.*
 - c) The photographs of the subject property show interior water damage to the ceilings, floors, basement and other areas. They also show rotting window frames, missing storm windows, plumbing leaks, damaged floor tile, and the poor condition of the garage. *Walasinski testimony; Pet'r Ex. 6.*
 - d) The comparable properties offered by the Respondent represent 2006 sales rather than 2002 sales. Furthermore, those properties are not in the same deteriorated condition as the subject property. *Walasinski testimony.*
 - e) The neighborhood is declining. Many of the homes in the neighborhood are dilapidated or vacant. Eight out of seventeen homes on the immediate block are vacant. The crime rate in the neighborhood is terrible. The subject property has been burglarized twice. *Walasinski testimony.*
13. Summary of Respondent's contentions:
 - a) The damage and deterioration to the subject property are the result of the Petitioner's lack of maintenance. Water damage under the sink, worn flooring, unpainted doors and windows all reflect deferred maintenance that is a detriment to the value of the subject property. *Wozniak argument.*

- b) The appraisal submitted by the Petitioner is flawed and is merely the opinion of one person. The comparables used by the appraiser are not in the same neighborhood as the subject property. One appears to be over three miles from the subject property, which is unacceptable according to USPAP standards. There is nearly a \$10,000 discrepancy between the value derived using the cost approach and the value derived using the sales approach in the appraisal. *Klaybor testimony.*
- c) The sales of similar properties located in the same neighborhood as the subject property support the subject property's assessment. The comparable located at 826 N. St. Louis has 1,100 square feet and sold for \$57,000. The comparable located at 917 N. St. Louis has 1917 square feet and sold for \$74,500. The sales disclosure form for 833 N. St. Louis indicates a sale price of \$60,000. The sales disclosure form for 830 N. St. Louis indicates a sale price of \$57,600. The sales disclosure form for 818 N. St. Louis indicates a sale price of \$63,000. *Mandrici testimony; Resp't Ex. 6.*
- d) The appraisal describes the condition of the subject property as average with no reference to any property deterioration. *Dillman testimony.*
- e) The condition of the home was changed to "fair." That downgrade accounts for the deferred maintenance issues. *Klaybor testimony.*
- f) The Petitioner has not met the burden of proof to show the value established by the township assessor is excessive. *Wozniak argument.*

Record

14. The official record for this matter contains the following items:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Appraisal for the subject property as of April 4, 2002,¹
Petitioner Exhibit 2 – Comparable Sale #1,
Petitioner Exhibit 3 – Comparable Sale #2,
Petitioner Exhibit 4 – Comparable Sale #3,
Petitioner Exhibit 5 – Form 131 Petition,
Petitioner Exhibit 6 – Nineteen interior and exterior photographs of the subject property,
Respondent Exhibit 1 – Form 131 Petition,
Respondent Exhibit 2 – Form 115,

¹ Petitioner Exhibits 2, 3, and 4 are photographs and sales information about the comparables on page 11 of the appraisal.

Respondent Exhibit 3 – Form 130 Petition,
Respondent Exhibit 4 – Copy of the 2002 payable 2003 property tax bill,
Respondent Exhibit 5 – Subject property record card,
Respondent Exhibit 6 – Sales listings and sales disclosures for five properties
offered as comparable properties,
Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

d) These Findings and Conclusions.

Analysis

15. 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.

16. The Petitioner did not provide sufficient evidence to support his contentions. The Board reaches this conclusion because:

- a) The Petitioner contends the current assessment of \$63,100 is excessive when compared to the 2002 appraisal, which was only \$33,000. *Walasinski testimony; Pet't Ex. 1.*
- b) The 2002 Real Property Assessment Manual (hereinafter MANUAL) provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). 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 that

property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner did not provide any evidence showing how the 2002 appraisal value is relevant to the valuation date, January 1, 1999. Because there is no evidence tying the appraised value to the valuation date, the appraisal has no probative value. *Id.*

- c) In addition to the appraisal itself, the Petitioner points to the comparables used for the appraisal's sales comparison approach as support for his claim. Again, the Petitioner failed to show how or why these sale prices relate to value as of January 1, 1999. Consequently, the sales have no probative value. *Id.*
- d) The Petitioner proved a certain amount of exterior and interior damage exists and the location is in a high crime neighborhood. The Petitioner testified that those condition and neighborhood issues reduce the value of his property. The Petitioner failed to quantify the effect of these condition and neighborhood problems on the market value-in-use of the subject property as of January 1, 1999. The Petitioner's testimony on these points is entirely conclusory. It does not establish that assessment must be changed. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *cf. O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006) (explaining that the goal of the assessment system is to ascertain a property's market value-in-use and that taxpayers cannot make a case by focusing solely on the methodology by which an assessment was determined).
- e) Where the Petitioner has not supported a claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

- 17. The Petitioner failed to make 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: January 19, 2007

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>>.