

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

Petition: 71-026-02-1-5-00174
Petitioner: Leland Adams
Respondent: Portage Township Assessor (St. Joseph County)
Parcel: 18-7042-1674
Assessment Year: 2002

The Indiana Board of Tax Review (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 (PTABOA) by written document dated December 11, 2003.
2. The PTABOA mailed the notice of its decision on October 25, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 petition with the county assessor on November 23, 2004. Petitioner elected small claims procedures.
4. The Board originally denied the petition on June 22, 2005. The Petitioner requested a rehearing on June 30, 2005. The Board granted that request and subsequently scheduled a hearing for February 24, 2006. The Petitioner requested a continuance and the Board rescheduled the hearing for October 17, 2006.
5. Administrative Law Judge Patti Kindler held the hearing in South Bend on October 17, 2006.¹
6. Terrance Wozniak appeared as counsel for the Respondent.
7. The following individuals were present and sworn as witnesses at the hearing:
For the Petitioner – Leland Adams, taxpayer,
For the Respondent – Rosemary Mandrici, Portage Township Assessor,
Kevin Klaybor, PTABOA President,
Dennis Dillman, PTABOA member,
Ross Portolese, PTABOA member,
Sue Tranberg, PTABOA member,
Ralph Wolfe, PTABOA member.

¹ The parties agreed to a consolidated hearing for three petitions. Because they presented different testimony and exhibits regarding each of the parcels, separate Final Determinations will be issued.

Facts

8. The property is located at 309 East Dayton in South Bend. It is identified as a single-family residence on the property record card.
9. The Administrative Law Judge did not conduct an on-site inspection of the property.
10. The PTABOA determined the assessed value of the property is:
land \$2,100 improvements \$37,500 total \$39,600.²
11. The assessed value requested by the Petitioner is:
land \$500 improvements \$14,000 total \$14,500.

Issue

12. Summary of the Petitioner's contentions:
 - a) The subject two-unit dwelling is located in a deteriorating neighborhood with no off-street parking. These factors make it undesirable and difficult to rent. *Adams testimony; Bd. Ex. A*. The dwelling next door has been on the market for over a year with an asking price of \$7,500. *Id.*
 - b) The property is currently rented for \$300 for each unit. Utilities are included in the rent because there is a single furnace for both units. *Adams testimony*. Further, the typical renter interested in this property cannot afford to pay utilities outside of rental payments. *Id.*
 - c) The gross rent multiplier utilized by the county officials is not applicable because, unlike other rental properties in the township, the utilities are included in the rent. *Adams testimony*.
 - d) Three comparable properties are located within five to six blocks of the subject property. *Adams testimony*. The dwelling located at 218 Indiana sold for \$9,000 on March 28, 2003. The dwelling located at 1622 High Street sold for \$15,000 on January 22, 2003. The dwelling located at 630 East Indiana Street sold for \$20,000 on October 14, 2002. *Id.; Resp't Ex. 8*.
13. Summary of the Respondent's contentions:
 - a) The income approach was used to determine the assessed value using rents supplied by the Petitioner and a gross rent multiplier developed by the county for the subject neighborhood. *Wozniak argument*. The subject property's monthly income for two units is \$600. Using a gross rent multiplier of 5.5 times the

² The record shows the parties agreed to this total value on October 19, 2004. *Resp't Ex. 1*. Neither party explained why the appeal process continued.

annual rent results in the current assessed value of \$39,600 based on the income approach. *Mandrici testimony*.

- b) The gross rent multiplier is computed by dividing actual sale prices for several properties by the income generated from the same property. Many of the rents included utilities. *Dillman testimony*.
- c) The Petitioner presented evidence of comparable properties at the PTABOA hearing. The comparable identified by the Petitioner at 630 Indiana Street was an auction sale and the comparable at 1622 High Street was an "as is" sale. *Wozniak argument; Resp't Ex. 8*.
- d) The Petitioner has not shown that the current assessed value of \$39,600 is erroneous. *Wozniak argument*.

Record

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

- a) The Petition,
- b) The digital recording of the hearing,
- c) Respondent Exhibit 1 – The Form 131 Petition,
Respondent Exhibit 2 – The Form 115, Notification of Final Assessment Determination,
Respondent Exhibit 3 – PTABOA hearing record,
Respondent Exhibit 4 – Letter dated June 11, 2004, from the Portage Township Assessor regarding the subject property,
Respondent Exhibit 5 – Form 130 Petition,
Respondent Exhibit 6 – Subject property record card with exterior photograph,
Respondent Exhibit 7 - Subject assessment record and property record card, three comparable sales for properties at 218 East Indiana, 308 Dubail Street, and 213 Bowman Street and property income information submitted by the Petitioner for the PTABOA hearing (also marked "Petitioner's Exhibit #1"),
Respondent Exhibit 8 – Comparable properties presented by the Petitioner at the PTABOA hearing (also market "Petitioner's Exhibit #1),
Board Exhibit A – Notice of Defect, Form 131 Petition with attachments,
Board Exhibit B - Notices 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. This conclusion was arrived at because:
- a) The Petitioner testified the dwelling next door was on the market for over a year with an asking price of \$7,500. He presented no documentation or listing to support this statement. Furthermore, he presented no evidence that the neighboring property is comparable to the parcel under appeal. The Petitioner also presented evidence of the 2002 and 2003 sales for purportedly comparable properties. To give such evidence any relevance or probative value, the Petitioner must establish how the characteristics of his own property compare and contrast with those of the purportedly similar properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Here, the Petitioner provided only minimal comparison. He failed to present probative evidence explaining the impact that differences in size, condition, or number of units had on the values of the properties. The Petitioner did not establish that the properties he presented are comparable to the property under appeal. Conclusory statements that another property is similar or is comparable do not constitute probative evidence. *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b) 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 evidence of market value at some other time must establish how that evidence

relates to the subject property's value as of the required valuation date. *See Long*, 821 N.E.2d at 471. The Petitioner offered no such explanation regarding those other sales he relied on in this case.

- c) The Petitioner claimed the declining neighborhood and the lack of off-street parking affect the value of the property. He also claimed that he had to include utilities in the rent and that fact reduced the value of the property. While it may be true that these factors have a negative affect on value, the existence of such factors alone does not make a case for any assessment change. The Petitioner did not offer any probative evidence quantifying how those factors might affect the value of the property. His conclusory statements do not constitute probative evidence. *See Whitley*, 704 N.E.2d at 1119.
- d) The Petitioner failed to make a prima facie case that there is an error in the assessment. 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 Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003). There is no change in the assessment.

Conclusion

- 17. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent. There will be no change to the assessment

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>.