

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

Petition #: 84-002-02-1-5-00871
Petitioner: Craig H. Bartels
Respondent: Harrison Township Assessor (Vigo County)
Parcel #: 118-06-03-227-009
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 Petitioner’s Certified Tax Representative initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated October 27, 2003.
2. The Petitioner received notice of the decision of the PTABOA on November 16, 2004.
3. The Petitioner’s Representative filed an appeal to the Board by filing a Form 131 with the county assessor on November 29, 2004. The Petitioner elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated May 12, 2005.
5. The Board held an administrative hearing on June 22, 2005, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn as witnesses at the hearing:
For Petitioner – John Johantges, tax representative,
For Respondent – Debbie Cagle, Harrison Township,
Richetta J. Hale, Harrison Township Chief Deputy,
Gloria Donham, Vigo County PTABOA member,
Deana Chrisman, Vigo County Assessor’s Office,
Susan McCarty, Vigo County Chief Deputy Assessor,
Ann Akers, Vigo Co. PTABOA member.

Facts

7. The property is a 1,112 square foot frame residential dwelling on a lot measuring 40 feet by 140 feet located at 4508 N. 17th Street in Terre Haute.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.
9. The assessed value determined by the Vigo County PTABOA:
Land \$4,100 Improvements \$94,400 Total \$98,500.
10. The Petitioner requested a total assessed value of \$71,400.

Issue

11. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a) The 120% market adjustment used for the assessment does not properly reflect the real market factors for this property. *Johantges testimony.*
 - b) The subject property was purchased by the Petitioner on October 4, 2000, for \$72,900. The current assessment of \$98,500 is excessive compared to the actual 2000 purchase price of the subject property. *Johantges testimony; Petitioner Exhibit 1, 2.*
 - c) An identical property located just across the street sold in October 2000 for \$72,900. *Johantges testimony.* Its appraised value was \$75,000 as of September 30, 2002. *Petitioner Exhibit 3.*
 - d) The appraised value of the subject property was \$75,000 as of July 30, 2003. *Petitioner Exhibit 2.* This appraisal shows an increase of less than 1% per year for the time between the purchase and the appraisal of the subject property. *Johantges testimony.*
12. Summary of Respondent’s contentions in support of the assessment:
 - a) There is a problem with the market adjustment used in this neighborhood. *Respondent testimony.*
 - b) A lot of studies showed that the neighborhood factor of 120% is correct. A comparable sale in the same neighborhood (same type of home built by the same people) sold in 2000 for \$125,000 and is assessed for \$120,000. This ratio shows the assessment is in line with the 2000 sale. *Respondent Exhibit 1; Respondent testimony.*
 - c) Assessments must be based on 1999 values, but Petitioners appraisals and sales are not. *Respondent testimony.*

- d) The market in Vigo county has not been going up. In fact, it has been going down. The property at 4502 North 17th Street sold for \$125,000 in 2000 and it sold for \$87,000 in 2004. *Respondent testimony; Respondent Exhibit 1.*

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 6205,
 - c) Exhibits:
 - Petitioner Exhibit 1 – A summary of contentions,
 - Petitioner Exhibit 2 – Appraisal of 4508 North 17th Street (subject property),
 - Petitioner Exhibit 3 – Appraisal of 4512 North 17th Street,
 - Respondent Exhibit 1 – The property record card for the property located 4502 N 17th Street¹,
 - Board Exhibit A – Form 131 petition,
 - 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 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”).

¹ The Petitioner objected to Respondent Exhibit 1, claiming that the evidence had not been provided to the Petitioner prior to the hearing. The Respondent stated that there had been no request for it prior to the hearing. The applicable small claims procedural rule requires evidence to be *made available* at least five days before the hearing. 52 IAC 3-1-5(f). The rule does not require such evidence to automatically be provided. The record does not establish that the rule was violated concerning Respondent's Exhibit 1. Therefore, Petitioner's objection is denied.

- 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 Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter GUIDELINES). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- b) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) The Petitioner's first claim is that the value established under the cost Guidelines is too high because the neighborhood factor is wrong. Probative evidence to support that claim, however, is not in the record. The conclusory testimony offered by Mr. Johantges support of that claim is not probative evidence. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Therefore, the Petitioner has not made a case based on any change for the neighborhood factor. Similarly, the Petitioner has not made a case for any changed based on the Guidelines.
- d) There are, however, other acceptable ways for the Petitioner to make a case. The Petitioner bought the subject property on October 4, 2000, for \$72,900. The

appraisal of the subject property establishes that the value of the subject property was \$75,000 as of July 30, 2003. The appraisal of an identical improvement located just across the street establishes a value of \$75,000 as of September 30, 2002. Both the actual purchase price and the professional, certified appraisal are valid and appropriate methods to establish value independently from the Guidelines.

- e) Testimony for Petitioner established that this particular market had been going up approximately 1% per year. The appraisals and purchase price can be related back to 1999 on that basis. With consideration of a 1% per year increase, both appraisals and the purchase price establish that the current assessment is far too high. They also provide substantial support for the value Petitioner requested. Thus, the Petitioner made a prima facie case.
- f) The burden shifted to the Respondent to present evidence to rebut or impeach the Petitioner's evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- g) The Respondent attempted to rebut the Petitioner's case by establishing that the neighborhood factor was correctly determined because a purportedly comparable property showed its assessed value was within an acceptable range of its actual sale price. Respondent does not provide any authority or explanation for the conclusion that there is an acceptable range for establishing the value of the property for assessment or what that range might be. Therefore, this conclusory statement does not qualify as probative evidence. *Whitley Products*, 704 N.E.2d at 1119. Furthermore, because the taxpayer is specifically permitted to offer evidence relevant to the market value-in-use of a property that includes actual construction costs, sales and appraisals, an argument that the value determined from the cost approach in the guidelines is somehow close enough to be acceptable appears to be wrong. MANUAL at 5.
- h) Assuming, *arguendo*, that the Guidelines were applied properly does not address the other aspects of the Petitioner's case. The Respondent presented no probative evidence to dispute the appraisal or the purchase price, except for pointing out that neither one established a value as of January 1, 1999.
- i) The Respondent offered testimony that the local market situation was unusual and that property values generally had declined during the time between January 1, 1999, the purchase of the subject property in 2000, and the subsequent appraisals. The Respondent pointed out the history of one property at 4502 North 17th Street (Respondent Exhibit 1) to support that conclusion.
- j) After considering all the evidence, the Board finds the Petitioner's evidence to be most persuasive regarding the general, local market movement during the years 1999 through 2003. The Board concludes that an annual adjustment reflecting a 1% increase for 1999 and 2000 is appropriate.

- k) The best indication of the market value-in-use of the subject property is the October 2000 purchase price with a 2% reduction to relate that value back to January 1, 1999. Therefore, the assessed value should be reduced to \$71,400.

Conclusion

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

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>>. 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 days of the date of this notice.