

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions

Petition No.: 41-026-02-1-5-00158
Petitioner: Bart J. Cibor
Respondent: Pleasant Township Assessor (Johnson County)
Parcel No.: 2800060904400
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 initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 30, 2003.
2. The PTABOA’s Notification of Final Assessment Determination (Form 115) was mailed to the Petitioner on November 5, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 26, 2003.
4. The Board issued notice of hearing to the parties dated December 24, 2003.
5. The Board held an administrative hearing on March 9, 2004, before the duly appointed Administrative Law Judge (ALJ) Alyson Kunack.
6. Persons present and sworn in the hearings:
 - a) For Petitioner: Bart J. Cibor, taxpayer
Andrea Hutson, witness
 - b) For Respondent: Mark Alexander, Johnson County PTABOA.

Facts

7. The property is classified as residential, as are shown on the property record card (PRC) for Parcel No. 2800060904400.

8. The ALJ did not conduct an inspection of the property.
9. Total Assessed Value (land and improvements) of the subject property as determined by the Johnson County PTABOA is \$142,000.
10. Total Assessed Value (land and improvement) requested by the Petitioner is \$133,000.

Issues

11. Summary of Petitioner's contentions in support of alleged errors in the assessments:
 - a) Two (2) properties (Parcel Nos. 2900-08-03-041/00 and 2100-05-04-034/00) owned by the Petitioner and whose assessments were appealed to the PTABOA, had those assessments changed due to market activity. The same should be done for the subject property.
 - b) The assessed value is inconsistent with the market value of the subject property.
 - c) A home equity appraisal for the subject property dated January 18, 2002, indicates a value for the property of \$133,000. Though home equity appraisals are inflated values, the subject property should be valued based on this appraisal.
 - d) Market data from comparable properties show a marked decrease in market values as well as the value under review in this appeal.
 - e) Comparables for the years 2000 through 2003, show "average" selling prices declining from \$94,000 in 2000 to \$81,000 in 2001 to \$77,000 in 2002.
 - f) These changes in the market need to be taken into consideration, not what the market was three (3) or four (4) years ago.
 - g) This is a deteriorating area with many vacant homes and homes going into foreclosure.
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Petitioner, via repossession by the Secretary of Housing and Urban Development, acquired the two (2) properties (Parcel Nos. 2900-08-03-041/00 and 2100-05-04-034/00). The Petitioner was the second buyer after the lender took the properties back. (These properties are not under review but are being used as comparables by the Petitioner).
 - b) The home equity appraisals are deflated values and not inflated values. Lending institutions do not want properties with inflated values in case those properties would need to be repossessed.
 - c) The properties the Petitioner contends are comparable to the subject property are not accurate representations of market values. This evidence occurred outside the time frames studied for the reassessment, which were 1998 and 1999.
 - d) As directed, market conditions for 1998 and 1999 were studied to determine the assessed values as of the assessment date March 1, 2002.
 - e) Sales activity after the 1998 and 1999 were not considered to make adjustments to the March 1, 2002 assessment date values.
 - f) The PTABOA's position is two-fold: (1) market value was determined on the markets activity during the study period statewide effective January 1999; and (2)

the Petitioner's sales are distressed sales, repossessed sales, and do not reflect the fair market value as of January 1999.

Record

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

a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.

b) The tape recording of the hearing labeled BTR #5422.

c) Exhibits:

Petitioner Exhibit 1: Consisting of the following:

1. Copy of Form 130 petition, page 4 for Parcel No. 2900-08-03-041/00 (63 Snowflake Circle)
2. Notice of Correction of Assessment for Parcel No. 2900-08-03-041/00
3. Form 11 for Parcel No. 2900-08-03-041/00
4. Copy of Form 130 petition, pages 1 thru 4 for Parcel No. 2900-08-03-041/00
5. Copy of Form 130 petition, page 4 for Parcel No. 2100-05-04-034/00 (1431 Sanner Drive)
6. Notice of Correction of Assessment for Parcel No. 2100-05-04-034/00
7. Copy of Form 130 petition, pages 1 thru 4 Parcel No. 2100-05-04-034/00
8. PRC for Parcel No. 2100-05-04-034/00

Petitioner Exhibit 2: Packet of realtor information sheets for comparable properties for 2003

Petitioner Exhibit 3: Packet of realtor information sheets for comparable properties for 2002

Petitioner Exhibit 4: Packet of realtor information sheets for comparable properties for 2001

Petitioner Exhibit 5: Packet of realtor information sheets for comparable properties for 2000

Respondent Exhibits – None were submitted

Board Exhibits A: Form 131 Petition

Board Exhibits B: Notice of Hearing on Petition

d) These Findings and Conclusions.

Objections and Evidentiary Matters

14. The appeal under review in these findings and conclusions was consolidated at the same hearing, with the following additional appeals on properties also owned by the Petitioner:

41-026-02-1-5-00152

41-026-02-1-5-00153

41-026-02-1-5-00153
41-026-02-1-5-00154
41-026-02-1-5-00155
41-026-02-1-5-00156
41-026-02-1-5-00157

15. At the hearing, the Petitioner objected to the ALJ's request of the Respondent to make available to the ALJ copies of the PRCs of the subject properties. It is the Petitioner's contention that the Respondent failed to provide this exchange of information as required by Ind. Code 6-1.1-15-4(1)(1) and Rule 52 IAC 2-7-1. The Petitioner also indicated that the Respondent did not exchange information with the Petitioner and that the Petitioner obtained the information on their own from the assessor's office.
16. Under standard procedures (52 IAC 2-7-1(b)) the Petitioner's objection may be well taken, but it needs to be made clear that the small claims rules only state that "[t]he parties must **make available** to all parties copies of documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the hearing." Consequently, the obligation in small claims is for the party to give it to the other party IF THEY ASK for the evidence or names and addresses of witnesses. 52 IAC 3-1-5(f).
17. However, the ALJ's request for copies of the PRCs for properties under review, is not unusual or outside of the small claims scope of review. An ALJ is allow to request any information pertaining to the properties under review that would be deemed necessary to make a fair and accurate determination of the issues before him or her. Thus the Petitioner's objection is moot.

Analysis

18. The most applicable governing cases are:
- a) *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999): "The petitioner must sufficiently explain the connection between the evidence and petitioner's assertion in order for it to be considered material to the facts. Conclusory statements are of no value to the State in its evaluation of the evidence."
 - b) *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* 743 N.E. 2d 247, 253 (Ind. 2001), and *Blackbird Farms Apartment, LP v. Department of Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002): "The Petitioner must do two things: (1) prove the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct."

- c) Real Property Assessment Manual – Market Value defined
The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
 - a. The buyer and seller are typically motivated;
 - b. Both parties are well informed or advised and act in what they consider their best interests;
 - c. A reasonable time is allowed for exposure in the open market;
 - d. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
 - e. The price is unaffected by special financing or concessions.

- d) Real Property Assessment Manual - True Tax Value defined
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, less that portion of use value representing subsistence housing for its owner.

- e) Real Property Assessment Manual – Valuation Date defined
The date as of which a property’s value is estimated. The date as of which the **true tax value** of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999.

19. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The documents submitted in Petitioner’s Exhibit 1 are of limited value. The documents show only that the Petitioner filed petitions for review of the assessments of two (2) properties (not under review in this appeal) also owned by the Petitioner. The PTABOA made changes to these assessments but the reasons for the changes are stated only as changes due to “market activity”. No documentation is included that details the evidence reviewed by the PTABOA in making their determinations. Nor is there information that indicates that these properties are comparable to the property under review in this appeal.
- b) Petitioner’s Exhibits 2 through 5 (comparable sales) are of limited value. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show an error in the assessment. However, there is no information submitted detailing the actual conditions of the sales or any analysis showing that the properties are truly comparable in nature to the subject property. Without such information, an accurate determination regarding the comparability of the properties cannot be made.

- c) The appraisal submitted by the Petitioner is, as stated in the report, a limited appraisal. The appraisal is comprised of a very minimal amount of data. Such an appraisal should not be used for lending purposes. Per an agreement between the appraiser and the Petitioner, the sales comparison approach to value was the only approach used. As stated by the Petitioner, the appraisal was done for a home equity loan. This type of appraisal lacks detailed supporting documentation regarding the basis of the appraisal.

Conclusion

20. The Petitioners failed to make a prima facie case. The evidence submitted was insufficient to show an error in the assessed values assigned by the Respondent, or that there was a need for a change in those values. The Respondent rebutted the Petitioner's evidence. The Board finds in favor of 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.