

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

Petition #: 48-027-03-1-5-00451
Petitioners: Danny & Judith Whetsel
Respondent: Pipe Creek Township Assessor (Madison County)
Parcel #: 41816
Assessment Year: 2003

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 Madison County Property Tax Assessment Board of Appeals (PTABOA) by written document dated August 10, 2004.
2. The PTABOA’s Notification of Final Assessment Determination was mailed to the Petitioners on September 17, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on October 21, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 18, 2005.
5. The Board held an administrative hearing on May 23, 2005, before the duly appointed Administrative Law Judge (ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Danny Whetsel, Property Owner
Judith Whetsel, Property Owner
 - b) For Respondent: Cheryl Heath, County Chief Deputy Assessor
Lloyd Brumback, County Deputy Assessor

Facts

7. The property is classified as residential, as is shown on the property record card (PRC) for parcel # 41816.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Values of subject property as determined by the Madison County PTABOA:
Land \$4,700 Improvements \$28,100
10. Assessed Values requested by Petitioners per the Form 131 petition:
Land \$2,350 Improvements \$14,050

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The subject dwelling is a cement block house with stone on it. The dwelling is only 870 square feet and it is built in two sections. *D. Whetsel testimony.*
 - b) The subject property is valued higher than are comparable properties. The Petitioners submitted information sheets for three properties that sold for \$19,750, \$24,000, and \$25,000, respectively. The Petitioners also submitted information regarding the assessment of another property that they asserted was comparable to the subject property. The dwelling on that property consists of 870 square feet, and the property is assessed for a total of \$13,300. *D. Whetsel testimony; Petitioner Exhibit 2.*
 - c) The Petitioners paid \$3,500 for the subject property in the 1960's. The Petitioners paid \$275 for the lot next to the subject property. *D. Whetsel testimony.*
 - d) Taxes for the subject property previously were only \$538, whereas they currently are \$1,006. The taxes have almost doubled despite the fact that the Petitioners did nothing to improve the property. *D. Whetsel testimony; Petitioner Exhibit 3.*
 - e) The Petitioners lease the subject property for \$400 per month. *D. Whetsel testimony.*
 - f) At the hearing, Petitioner, Danny Whetsel, indicated that the Petitioners were seeking an assessment of one-half the amount of the current assessment. *D. Whetsel testimony.*
12. Summary of Respondent's contentions in support of the assessment:

- a) Assessed values increased when Indiana changed to a system of taxation based upon market value. Homeowners were eligible for a homestead credit of the lesser of \$35,000 or 50% of assessed value. People who own rentals were not eligible for that credit. *Brumback testimony.*
- b) In light of the rent generated by the subject property, the PTABOA, which includes two (2) realtors, felt that the assessment was fair. *Brumback testimony.*

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 # 6180.
- c) Exhibits:

Petitioner Exhibit 1: Notification of Final Assessment Determination
Petitioner Exhibit 2: Comparable properties – MLS listings
Petitioner Exhibit 3: Copies of Taxes 1999-2005
Petitioner Exhibit 4: Article from the Herald Bulletin
Petitioner Exhibit 5: Photograph of subject dwelling

Respondent: No documentary evidence submitted

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing on Petition

- 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").

- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut Petitioner's evidence. *See American United Life Ins. 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 479.
15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend that the subject property is small and that it is constructed in two sections. While these factors may affect the market value-in-use of the subject property, the Petitioners did not present any evidence to quantify that effect.
 - b) The Petitioners also contend that they purchased the subject property for \$3,500 in the 1960's. The Petitioners, however, failed to explain how that purchase price related to the market value-in-use of the subject property as of the relevant valuation date of January 1, 1999. Consequently, the amount for which the Petitioners bought the subject property is not probative of its true tax value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment based upon January 1, 1999, values).
 - c) The Petitioners also submitted listing information for three purportedly comparable properties, which sold for \$19,750, \$24,000, and \$25,000 respectively. The Petitioners further submitted information concerning another property that is assessed for \$13,900. In doing so, the Petitioners appear to rely on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 3 (incorporated by reference at 50 IAC 2.3-1-2)(stating that 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."); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
 - d) In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. 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*, 821 N.E.2d 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.

- e) Here, the Petitioners did not compare the characteristics of the purportedly comparable properties to the characteristics of the subject property. Similarly, the Petitioners failed to explain how any differences between the properties affected their relative market values-in-use. Consequently, the information presented by the Petitioners regarding the sale prices and assessments of other properties does not constitute probative evidence.
- f) Finally, the Petitioners contend that their taxes increased following the 2002 reassessment. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*
- g) Based on the foregoing, the Petitioners failed to establish a prima facie case for a change in assessment

Conclusion

16. The Petitioners 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: _____

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.