

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

Petition #: 18-003-02-1-5-00345
Petitioner: Earl H. & Bessie M. Jones
Respondent: Center Township Assessor (Delaware County)
Parcel #: 18-11-21-151-008.000-003
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 Delaware County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document.
2. The PTABOA’s Notification of Final Assessment Determination (Form 115) was issued on November 13, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on December 9, 2003. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 26, 2004.
5. The Board held an administrative hearing on April 28, 2004, before the duly appointed Administrative Law Judge Brian McKinney. This hearing was held at the same time as hearings for four other parcels owned by the Petitioner.¹
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Charles Lancaster, Power of Attorney for Bessie Jones
Alice Lancaster
 - b) For Respondent: Charles Ward, PTABOA and Township representative

Facts

7. The property is classified as a residential, one-family dwelling, as is shown on the property record card for parcel #18-11-21-151-008.000-003.

¹ Petition Numbers: 18-003-02-1-5-00340, 18-003-02-1-5-00342, 18-003-02-1-5-00343, and 18-003-02-1-6-00344.

8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Values of subject property as determined by the Delaware County PTABOA:
Land \$4,600 Improvements \$36,800.
10. Assessed Values requested by Petitioner on the Form 131 petition:
Land \$4,000 Improvements \$10,000.

Respondent's Objections

11. At the hearing, the Respondent objected to certain evidence offered on behalf of the Petitioner (*Petitioner's Exhibit 2*) due to the Petitioner's failure to exchange evidence prior to the hearing as required by 52 IAC 3-1-5(f).
12. However, 52 IAC 3-1-5(f) requires parties only to ***make available*** to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing.
13. The Board interprets this to mean that unless a party asked for the documents, and the other party refused to make copies available, the requesting party would have no basis for objecting to the documents being submitted at the hearing.
14. The Respondent failed to establish that it requested the evidence and the Petitioner refused to furnish it. Accordingly, the Respondent's objection is overruled.

Issue

15. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner was denied due process in that the County Board did not conduct a property viewing or dispute the certified appraisal. *Lancaster testimony.*
 - b) The local assessor has assessed the subject property at \$41,400. A professional appraisal indicates the subject property is \$14,000. *Lancaster testimony; Attachment to Board Exhibit A. Property's value.*
 - c) The property was listed in 2001-2002 for \$19,900; this included both 1517 W. 16th and 1519 W. 16th. The original assessment on both properties totaled \$54,100. It was adjusted to \$48,900. *Lancaster testimony.*
 - d) A similar property, 1442 W. 15th, has two lots and 1571 square feet; it sold for \$16,000 and is assessed at \$19,200. Combining 1517 and 1519, the subject property has two lots and 840 square feet. It listed for \$19,900 and did not sell. The total adjusted assessed value for both is \$48,900. *Lancaster testimony; Petitioner's Exhibit 1; Attachment to Board Exhibit A.*
 - e) In comparing assessments, the property located at 120 N. Mulberry is a brick office building, zoned commercial, with 3,600 square feet; the assessed value is

\$41,200. The subject property is concrete block covered with vinyl siding, zoned residential, with 840 square feet; the assessed value is \$41,400. *Lancaster testimony; Petitioner's Exhibit 1.*

16. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent contends that the Petitioner's appraisal is not reliable as comparable #1 is a repossessed property that later sold for \$40,000. The median sale for the area is \$35,000. *Ward testimony; Respondent's Exhibit 5.*
- b) The downtown property the Petitioner used for comparison is not really comparable; the building hasn't been rented in years. *Ward testimony.*
- c) The Respondent acknowledged that the current assessed value of \$41,400 is not justified; the value range should be from \$28,000 to \$32,000. *Ward testimony.*

Record

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

- a) The Petition (*Board Exhibit A*), and all subsequent pre-hearing and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR # 5789.
- c) Exhibits:

Petitioner Exhibit 1: Group of Documents and photographs; and
Petitioner Exhibit 2: Group of rebuttal evidence presented, including comparable property data.

Respondent Exhibit 5: Packet of Evidence, including comparable property data.²

Board Exhibit A: Form 131 petition
Board Exhibit B: Notice of Hearing

- d) These Findings and Conclusions.

Analysis

18. The most applicable governing law:

- a) A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).

² As indicated, five parcels were discussed at this hearing. Respondent Exhibits 1-4 concern different parcels and are not considered a part of the record for the appeal of this parcel.

- 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. Wash. 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.
19. The Petitioner did provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner presented an appraisal in support of the Petitioner’s contention. The appraisal indicates a value of \$14,000.³
 - b) The property, along with 1519 W. 6th Street, was listed on the market in 2001-2002 for \$19,900.
 - c) The evidence presented by the Petitioner is sufficient to establish a prima facie case and shift the burden to the Respondent.
20. The Respondent rebutted Petitioner’s evidence. This conclusion was arrived at because:
- a) The Respondent presented a sales disclosure statement indicating that a sale relied on by the appraisal was a bank sale of a repossessed property. This impacts the weight given to the appraisal.
 - b) The Respondent also presented information from the subject property’s neighborhood such as comparable properties and sales of properties to rebut the evidence presented by the Petitioner. This data indicates the median sale for the neighborhood was \$35,000 and comparable properties have sold in a range of \$27,800 to 32,400.
 - c) By the Respondent’s own admission, the property is currently over assessed. The Respondent testified that a more reasonable True Tax Value would be between \$28,000 and \$32,000.
 - d) Respondent's Exhibit 5 includes a chart of comparable properties. Comparable No. 1 is designated as being in the same neighborhood, and seems to be statistically similar. Comparable No. 1 sold for \$28,000. Given the statement of Respondent's representative about the appropriate range, Respondent's identification of Comparable No. 1, and the fact that Comparable No. 1 is closest to the value sought by Petitioner, the Board finds the record supports a True Tax Value of \$28,000.

Conclusion

21. The Petitioner made a prima face case, shifting the burden to the Respondent. The Respondent rebutted the Petitioner’s evidence. However, the Respondent acknowledged

³ The appraisal was attached to the Form 131 petition filed in this matter and is part of the record.

that there was an error in the original assessment. The Board finds that the True Tax Value should be changed to \$28,000.

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.