

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

Petition #: 79-156-02-1-5-01467
Petitioner: Issac L. Whiteaker
Respondent: Fairfield Township Assessor (Tippecanoe County)
Parcel #: 156107000049
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 Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) by written document signed on May 25, 2003.
2. The PTABOA’s Notification of Final Assessment Determination (Form 115) was mailed to the Petitioner on November 24, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on December 23, 2003. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 5, 2004.
5. The Board held an administrative hearing on April 20, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Isaac Whiteaker
 - b) For Respondent: Jan Payne, Fairfield Township Assessor
Nancy Moore, Tippecanoe County Assessor and
Secretary of PTABOA

Facts

7. The property is classified as Residential, as is shown on the property record card for parcel # 156107000049.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The Assessed Value of the subject property as determined by the Tippecanoe County PTABOA is: Land \$ 13,000 Improvements \$ 125,400.
10. The Assessed Value requested by Petitioner is: Land \$ 9,750 Improvements \$ 89,800.

Issues

11. Summary of Petitioner's contentions in support of alleged errors in assessment:
 - a) The neighborhood poor rating was changed causing the assessment to be too high. The Petitioner provided prior Notices of Assessment of Land and Structures (Forms 11) to substantiate the fact that the subject neighborhood was previously rated as poor (*Petitioner Exhibit 2*). Petitioner contends older homes adjacent to his house sold for 50% less because of the poor neighborhood. The Petitioner contends the majority of lots in the neighborhood are not suitable for building homes because of the lack of sewer and the topography of the land.
 - b) The Restricted Appraisal Report (*Petitioner's Exhibit 1*) states the neighborhood rating is excessive and should be lowered. The appraisal states there is no sewer service and states it is illegal to have septic tanks in the city limits. The appraisal states the sewer access is approximately three (3) to four (4) blocks away and access would require a lift station at an approximate cost of \$20,000 to \$30,000.
 - c) The Petitioner contends construction costs used by the assessor are not reflective of a poor neighborhood. The Petitioner presented into evidence two pages of a model home brochure from a local builder with base prices for different models. The Petitioner explained how his house, lacking features such as air conditioning and a garage, differs from the model homes described in the brochure. The Petitioner stated his house is on a septic system that required a special exception from the Board of Public Works and Safety (*Petitioner Exhibit 3*). Petitioner stated his actual house costs were around \$78,000 and that includes some of his own labor. The appraisal did not use the Cost or Sales Approach to Value in the Restricted Appraisal Report (*Petitioner Exhibit 1*). Rather, the appraisal gave an opinion of value in narrative form and stated no comparable sales were available.
 - d) The appraisal contends a non-profit organization is the only buyer for lots in the neighborhood and is paying \$6,000 per lot. The appraisal uses a Purdue University land study to determine the market value of vacant lots in the neighborhood of \$220.
 - e) The appraisal states that the septic field for the subject is on three other lots and to sell the property those three lots would need to be purchased. The appraisal uses a market value of \$13,000 per lot in determining the cost to cure this defect.

12. Summary of Respondent's contentions in support of the assessment:
- a) Respondent contends the assessment was based on an analysis of sales in the designated and surrounding neighborhoods. Respondent stated the subject neighborhood was assigned a neighborhood factor of .98, meaning that 2% was removed from the replacement cost new.
 - b) Respondent contends the PTABOA reduced the total assessment to \$138,100 by using construction data from a local builder for a comparable home plus basement and land. (*Board Exhibit A, Attachment to the Form 131 petition, Notification of Final Assessment Determination, Form 115*).

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 IBTR # 5379.
 - c) Exhibits:
 - Petitioner Exhibit 1: Photograph of subject property and statement concerning the assessment, two pages from model home brochures, and a Restricted Appraisal Report.
 - Petitioner Exhibit 2: Copies of Notice of Assessment of Land and Structures (Forms 11) for 1998, 2000, 2001, and 2002.
 - Petitioner Exhibit 3: Approval of building permit for septic system from Board of Public Works and Safety on October 1, 1996.

 - Respondent Exhibit 1: PTABOA Meeting Minutes dated October 21, 2003.
 - Respondent Exhibit 2: PTABOA Meeting Minutes dated November 10, 2003.
 - d) These Findings and Conclusions.

Analysis

14. The most applicable governing law is:
- a) Neighborhood factors are assigned to each neighborhood based upon an analysis of residential properties that have sold within the neighborhood. (*Version A-Real Property Assessment Guideline, Book 1, Appendix B, Page 8*).
 - b) The Petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
 - c) The Board will not change the determination of the County Property Tax Assessment Board of Appeals (PTABOA) unless the Petitioner has established a prima facie case and, by a preponderance of the evidence, proven both the alleged errors in the assessment, and specifically what assessment is correct. *See Clark v.*

State Bd. of Tax Comm'rs, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).

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

- a) In support of his argument that the residence was assessed incorrectly, the Petitioner presented two brochures of homes offered by a local builder. The Petitioner acknowledged these homes varied in several features from his residence. Although the Petitioner's contentions seem well founded, no market data was presented to establish appropriate adjustments for these differences.
- b) The Petitioner's appraisal concluded that the total assessed value of the property should be \$99,550. (*Petitioner's Exhibit 1, page A1*).
- c) The appraisal identifies a \$45,000 'cost-to-cure' based on a conclusion that the property must be valued as not having septic facilities. However, the evidence (and the appraisal itself) makes clear that the property is served by septic facilities, and could not (presumptively speaking) be conveyed without septic service being available. The value attributed to the septic service should be accounted for in determining the assessment of the Petitioner's property¹.
- d) The total appraised value includes an improvement value of \$89,800.²
- e) No explanation was offered to explain the manner in which the proposed value of \$89,800 for the residence was determined. Indeed, the Form 131 petition acknowledges, "My appraiser could not appraise my house due to lack of comparables. He did however write an opinion that the house and lot might have a value of \$99,500." (*Board Exhibit A*). Without explanation or support, the opinion of value is an unsubstantiated conclusory statement of no probative value.
- f) The Petitioner also presented testimony the construction costs of the home were approximately \$78,000. The evidence suggests that some portion of the construction was performed by the Petitioner, but no accounting for the value of the Petitioner's labor was provided. The Board is unable to conclude what the \$78,000 figure represents. No explanation of how this number was determined was provided. Without explanation, such assertions are merely unsubstantiated conclusory statements and of little probative value. As noted, the Petitioner's own appraisal refutes the proposed construction costs, as did the construction brochure data from a local builder considered by the PTABOA. The data was used by the PTABOA to determine the total assessed value of the property (land and improvements combined) of \$138,100.
- g) In support of his assertion the land was assessed incorrectly, the Petitioner's appraisal further concluded the current assessed land value of \$13,000 should be reduced by 25% to create a new value of \$9,750. (*Petitioner's Exhibit 1, page 5*).

¹ There was no contention that the value the septic provides to the subject property should be attributed to the other, adjacent property owned by the Petitioner.

² Omitting maps, charts, and certifications, the appraisal consists of eight pages and two addenda pages. These ten pages of analysis purport to appraise 23 parcels of the Petitioner's property. (*Petitioner's Exhibit 1, pages 7-8*).

- h) No statement was made about this conclusion. The 25% reduction and resulting proposed value in the appraisal is completely unsubstantiated and conclusory.
- i) Further, in an addendum to the appraisal, the appraiser concluded the value of the land should be \$9,750, the current assessed value. (*Petitioner's Exhibit 1, page A1*). This inconsistency, coupled with a lack of market data in support of its conclusions, causes the Board to assign little probative value to the appraisal.
- j) Finally, the Petitioner contended the neighborhood rating of the subject property was excessive and should be changed to Poor. However, for the 2002 assessment, the determination of the neighborhood factor is a mathematical calculation based on an analysis of sales in the neighborhood. The Petitioner presented no alternative mathematical calculation of a proposed neighborhood factor.³

Conclusions

16. The Petitioner failed to make a prima facie case. 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: _____ [date] _____

Commissioner,
Indiana Board of Tax Review

³ Prior to the 2002 general reassessment, neighborhood ratings of Excellent, Very Good, Good, Average, Fair, and Poor were assigned to describe the overall desirability of the improvement's location. See 50 IAC 2.2-7-7.1(f)(7).

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.