

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

Petition #: 82-029-02-1-5-00347
Petitioner: Kent Niemeier
Respondent: Pigeon Township Assessor (Vanderburgh County)
Parcel #: 1149027019013
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 Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 2, 2003.
2. The Petitioner received notice of the decision of the PTABOA on July 30, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 petition with the county assessor on August 30, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 10, 2004.
5. The Board held an administrative hearing on January 25, 2005, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Kent Niemeier, Taxpayer
 - b) For Respondent: Candy Wells, Vanderburgh County Hearing Officer
Tiffany Carrier, Vanderburgh County Deputy Assessor
Katherine Goy, Vanderburgh County Deputy Assessor
Judith Stricker, Pigeon Township Deputy Assessor
Jonah Sauer, Pigeon Township Deputy Assessor

Facts

7. The property is classified as a residential two (2) family dwelling, located at 1105-1107 Mary Street, Pigeon Township, Evansville, Indiana as is shown on the property record card for parcel #1149027019013.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Vanderburgh County PTABOA:
Land: \$3,700 Improvements: \$33,300 Total: \$37,000
10. Assessed Value requested by Petitioner:
Land: \$1,500 Improvements: \$8,500 Total: \$10,000

Issues

11. Summary of the Petitioner's contentions in support of alleged error in assessment:
 - a) The subject property has been sold three (3) times in the past three (3) years. The sale prices were \$8,450, \$5,000, and \$10,000, respectively. The prices for the subject property should be the best indicator of value. The sales also show that the current assessed value of \$37,300 is too high. *Niemeier testimony; Petitioner Ex. 2.*
 - b) The Petitioner paid \$5,000 for the subject property in August 2002. The subject property remained vacant for approximately one month. In October 2002, the Petitioner sold the subject property on contract for \$10,000. *Niemeier testimony.*
 - c) The contract buyer lives in one side of the building. The other side is a rental and the Petitioner does not know if it is currently occupied. The contract buyer had done some work for the Petitioner and needed a place to live. *Niemeier testimony; Petitioner Ex. 3.*
 - d) A house at 1118 Oakley was on the market for four (4) months and recently sold (in 2004) for \$16,500. Another house located at 1106 Edgar Street was on the market for forty-seven (47) days and recently sold (in 2003) for \$11,000. The original asking price for the house on Edgar Street was \$19,500. *Niemeier testimony; Petitioner Exs. 4-5.*
 - e) The subject dwelling needs: new windows, roof work, siding, and heating updates. The ceiling and walls also need a lot of work. There are many properties that are in better shape than the subject property. Resale values in the subject property's neighborhood are very low. *Niemeier testimony; Petitioner Ex. 6.*

- f) The purportedly comparable properties identified by the Respondent are more than a mile away from the subject property and are located in a better section of the neighborhood. The subject property is in a very depressed area. The Petitioner buys investment properties and knows the area. *Niemeier testimony.*

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

- a) Both units of the subject property were occupied when the Respondent inspected the property and took pictures on July 12, 2004. *Stricker testimony; Respondent Ex. 5.*
- b) The Respondent identified two properties as being comparable to the subject property. The first property is located at 743-745 Delaware St. and is in the same neighborhood as the subject property. That property contains a single-family home with two (2) living units. The house is in better condition than the subject dwelling and has more square footage than the subject dwelling. The property in question sold for \$55,000 in February 2000 and for \$36,000 in September 2002. *Stricker testimony; Respondent Exs. 8-11.*
- c) The second comparable property is located at 1107-1109 W. Indiana St. and is in the same neighborhood as the subject property. The building was constructed as a row type unit, but was converted to a four (4) unit apartment house. The property sold for \$23,300 in April 1997 and \$57,000 in October 1999. *Stricker testimony; Respondent Exs. 12-15.*
- d) Two of the sales of the comparable properties occurred within the time frame set by the Department of Local Government Finance (DLGF). These sales were the February 2000 sale of the first comparable property and the October 1999 sale of the second property. *Stricker testimony.*
- e) The purportedly comparable properties identified by the Petitioner were not sold within the time frame set by the DLGF. Both of the comparable properties identified by the Petitioner contain single-family homes, while the subject property contains a duplex. *Stricker testimony.*
- f) At the township assessor/petitioner conference, the Respondent proposed lowering the assessment by removing the interior finish and changing the condition rating assigned to the subject dwelling. The Respondent recommended an assessment of \$25,300. The Petitioner disagreed. No change was made as a result of the conference and the assessment remained at \$37,000. *Stricker testimony; Respondent Exs. 25-26.*
- g) The county recommended lowering the assessment of the subject property to \$10,000 without giving reasons for the change. The PTABOA determination shows that the PTABOA agreed with the Respondent and made no change to the

assessment. The PTABOA determined the assessment to be \$37,000. *Stricker testimony; Respondent Exs. 27-28.*

- h) The Petitioner is asking for a lot of relief, yet both sides of the building are occupied. *Stricker 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 #5890.
- c) Exhibits:

Petitioner Exhibit 1: Copy of Form 131 Petition.
Petitioner Exhibit 2: County recommendation and recent sales.
Petitioner Exhibit 3: Contract sale to Ed Kratzer for \$10,000.
Petitioner Exhibit 4: Market data 1118 Oakley (Sold for \$16,500).
Petitioner Exhibit 5: Market data 1106 Edgar (Sold for \$11,000).
Petitioner Exhibit 6: Photographs of subject property.

Respondent Exhibit 1: Copy of certified letter sent to Mr. Niemeier
January 13, 2004.
Respondent Exhibit 2: Copy of Township's Witness List.
Respondent Exhibit 3: Copy of the property record card of 1105 - 1107
Mary Street.
Respondent Exhibit 4: Photograph of 1105 - 1107 Mary Street.
Respondent Exhibit 5: Inspection report of 7/12/04.
Respondent Exhibit 6: Photographs of subject property dated 7/12/04.
Respondent Exhibit 7: Photographs of subject property dated 7/12/04.
Respondent Exhibit 8: 743 - 745 Delaware Street – Pigeon Twp.
comparable.
Respondent Exhibit 9: 743 - 745 Delaware Street – property record card.
Respondent Exhibit 10: 743 - 745 Delaware Street – sales disclosure of
2/16/00.
Respondent Exhibit 11: 743 - 745 Delaware Street – sales disclosure of
9/3/02.
Respondent Exhibit 12: 1107 - 1109 W. Indiana Street – Pigeon Twp.
comparable.
Respondent Exhibit 13: 1107 - 1109 W. Indiana Street – Pigeon Twp.
property record card.
Respondent Exhibit 14: 1107 - 1109 W. Indiana Street – sales disclosure
of 4/16/1997.

Respondent Exhibit 15: 1107 - 1109 W. Indiana Street – sales disclosure of 10/29/99.
Respondent Exhibit 16: 1118 Oakley St. – Petitioner’s comparable.
Respondent Exhibit 17: 1118 Oakley St. – Photograph.
Respondent Exhibit 18: 1118 Oakley St. – property record card.
Respondent Exhibit 19: 1106 Edgar St. – Petitioner’s comparable.
Respondent Exhibit 20: 1106 Edgar St. – photograph.
Respondent Exhibit 21: 1106 Edgar St. – property record card.
Respondent Exhibit 22: Copy of 130 Petition.
Respondent Exhibit 23: Copy of Notice of Hearing sent by Pigeon Twp. Assessor.
Respondent Exhibit 24: Copy of Petitioner’s Burden of Proof.
Respondent Exhibit 25: Copy of Twp. Assessor/Petitioner Conference Report.
Respondent Exhibit 26: Copy of Worksheet presented to Petitioner.
Respondent Exhibit 27: Memorandum/Recommendation by County Assessor.
Respondent Exhibit 28: Copy of Form 115 Notification of Final Assessment Determination.
Respondent Exhibit 29: Copy of the PTABOA minutes dated July 30, 2004.
Appendix: Paul Hatfield’s Resume and Professional Qualifications.

Board Exhibit A: Form 131 petition.
Board Exhibit B: Notice of Hearing.¹

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).

¹ The Board’s file also includes a letter dated February 2, 2005, from the ALJ to the Petitioner requesting that the Petitioner provide documents demonstrating whether he had paid the 2002 real estate taxes for the subject property. The Petitioner responded by letter dated February 5, 2005. It does not appear that the Petitioner served the Respondent with a copy of his response. Consequently, the Board will not consider the Petitioner’s February 5, 2005, letter or any documents enclosed therein as part of the record in this case.

- 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 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. As an initial matter, the Board notes that the ALJ questioned the Petitioner regarding whether he owned the subject property as of March 1, 2002. The Petitioner responded that he had purchased the property in August of 2002. The ALJ subsequently sent a letter to the Petitioner requesting documents showing whether he was responsible for the 2002 real estate taxes for the subject property. As explained in footnote 1, *supra*, the Board will not consider the Petitioner’s response because it does not appear that the Petitioner served his response on the Respondent. Regardless, the Respondent did not assert that the Petitioner lacked standing to bring the current petition as a result of not having owned the property on the March 1, 2002, assessment date. The Board therefore will address the merits of the Petitioner’s appeal.
15. The Petitioner did provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property sold for \$8,450 in 1999 and for \$5,000 and \$10,000 in 2002. According to the Petitioner, the sale prices of the subject property demonstrate that its current assessment is too high. .
 - b) The bona fide sale of a subject property is often the best evidence of its market value. The 2002 Real Property Assessment Manual (“Manual”), however, provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2); *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c) Here, the Petitioner presented evidence of three sales of the subject property, including one sale that occurred close in time to the relevant valuation date of January 1, 1999. *Niemeier testimony; Respondent Ex. 3*. While the Petitioner did not submit any evidence concerning the specifics of the 1999 transaction, there is no evidence to suggest that the transaction was anything other than an arms length transaction that met the general prerequisites of a market value sale. *See MANUAL* at 10. Moreover, the Petitioner’s purchase of the subject property for \$5,000 in August of 2002 strongly supports an inference that the 1999 sale did not represent an artificially deflated price. Thus, the Petitioner presented a prima facie case that

the current assessment is too high and that the correct assessment should be \$8,500 (the 1999 sale price rounded to the nearest \$100 interval).

- d) The burden therefore shifted to the Respondent to present evidence to impeach or rebut the Petitioner's evidence concerning the sale prices of the subject property.
- e) The Respondent relied upon the sale prices of two properties that it contends are comparable to the subject property. In doing so, the Respondent attempted to prove the market value of the subject property through a sales comparison approach to valuation. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (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*, 821 N.E.2d at 469.
- f) In order to effectively 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. *Id.* 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.*
- g) The Respondent provided a photograph and property record card for the subject property and for each purportedly comparable property. *Respondent Exs. 3-9, 12-13*. The Respondent, however, did not explain how the characteristics of those purportedly comparable properties compare to the characteristics of the subject property beyond testifying that the properties are all located within the same neighborhood. *Stricker testimony*. Equally important, the Respondent did not explain how any significant differences between the characteristics of the purportedly comparable properties and those of the subject property affect their relative market values. Consequently, the Respondent's evidence concerning the sale prices of purportedly comparable properties lacks probative value.
- h) Moreover, even if the Respondent's comparable sales analysis had some probative value, the actual sale price of the subject property would be entitled to greater weight. The evidence before the Board therefore supports a finding that the current assessment is incorrect, and that the correct assessment is \$8,500.

Conclusion

16. The preponderance of the evidence demonstrates that the current assessment is incorrect, and that the correct assessment is \$8,500. The Board finds in favor of the 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 accordingly.

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>.