

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

Petitions #: 54-017-02-1-5-00069 & 54-017-02-1-5-00069A
Petitioner: Kevin M. Lutes
Respondent: Madison Township Assessor (Montgomery County)
Parcels #: 0131200515 & 0131200516
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 the assessment appeals with the Montgomery County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated August 20, 2003.
2. The Petitioner received notice of the decision of the PTABOA on November 28, 2003.
3. The Petitioner filed the appeals to the Board by filing two Forms 131 with the county assessor on December 20, 2003. Petitioner elected to have these cases heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 8, 2004.
5. The Board held an administrative hearing on June 9, 2004, before the duly appointed Administrative Law Judge, Joan L. Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Kevin M. Lutes, Petitioner
C. Laverne Lutes, Father of Petitioner
 - b) For Respondent: Peggy Hudson, Montgomery County Assessor
Brian Thomas, Consultant to County Assessor

Facts

7. The properties are classified as residential, as shown on the property record cards for parcels # 0131200515 & # 0131200516.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Montgomery County PTABOA:

For Petition 54-017-02-1-5-00069 (Parcel 0131200515):
Land \$14,100 Improvements \$123,500 Total: \$137,600

For Petition 54-017-02-1-5-00069A (Parcel 0131200516):
Land \$11,400 Improvements \$600 Total: \$12,000

10. Assessed Value requested by Petitioner:

For Petition 54-017-02-1-5-00069 (Parcel 0131200515):
Land \$11,000 Improvements \$105,000 Total: \$116,000

For Petition 54-017-02-1-5-00069A (Parcel 0131200516):
Land \$4,700 Improvements \$400 Total: \$5,100

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Two Uniform Residential Appraisal Reports (URAR) were prepared for the subject property. (*Petitioner's Exhibits 1 and 2*).
 - b) These appraisals estimate the market value as \$115,000 on June 29, 2000, and \$116,500 on April 26, 2002.
 - c) The appraisals were for refinancing purposes, and show the fair market value for these time periods.
 - d) Both appraisers did interior and exterior inspections of the subject property.
12. Summary of Respondent's contentions in support of the assessment:
 - a) The assessor followed the instructions in the *Version A - Real Property Assessment Guideline* and applied local and state multipliers along with performing ratio and neighborhood studies.
 - b) The Respondent observed that the Cost Approach value of \$168,900 in both of the appraisals is closer to the assessment value than the Petitioner's proposed values.
 - c) The Respondent contends the insurance replacement cost (\$148,000) is also closer to the assessment value than the Petitioner's requested values.
 - d) The Respondent asserted the submitted appraisals are for refinancing purposes and may not reflect market value.

- e) In reviewing the assessment prior to the hearing, it was noted a negative 30% influence factor could be applied to each of the two lots for excess frontage. (*Respondent's Exhibit 1; Thomas Testimony*).

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 # 6001.
 - c) Exhibits:
 - Petitioner's Exhibit 1: URAR appraisal dated June 29, 2000.
 - Petitioner's Exhibit 2: URAR appraisal dated April 26, 2002.
 - Respondent's Exhibit 1: Witness List; Written statement of position; a copy of the 2002 Real Property Assessment Manual, Page 12; and Proposed changes to assessment.
 - d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases/regulations are:
- a) 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)
 - b) 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*, 684 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 provided sufficient evidence to support his contentions concerning the value of the improvements. This conclusion was arrived at because:
- a) The Petitioner presented two URARs of the subject property. The opinion of market value as of June 29, 2000, was \$115,000 and as of April 26, 2002, was \$116,500. *Petitioner's Exhibits 1 and 2*.
 - b) The appraisers inspected the home's interior and exterior in performing the appraisals. *K. Lutes testimony*. The appraisals show the properties' market value more accurately than the county's assessment. *Id.*
 - c) If Petitioner were to sell these properties, he does not anticipate being able to sell for more than the value given in the appraisals. *K. Lutes testimony*.

16. The Respondent did not provide evidence to rebut Petitioner's contentions concerning the value of the improvements. This conclusion was arrived at because:
- a) Respondent pointed out that the Cost Approach value determined by both of these appraisals actually exceeds the current assessment value. *Thomas testimony*. The appraisals state that they are weighted towards the sales comparison approach because it more accurately reflects the value of the property. *Petitioner Exs. 1, 2; K. Lutes testimony*. This is consistent with the assessment manual. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (“[w]hether a comparable sales approach or an income approach is a reliable indicator of the true tax value of commercial and industrial property under the value-in-use standard must be determined on a case-by-case basis”). The fact that the results of these two approaches are not consistent is explained by the appraiser and does not necessarily undermine the credibility of the appraisal.
 - b) Respondent contends that refinance appraisals are not credible or reliable. *Thomas testimony*. Petitioner's father testified that he has extensive experience with a lending institution, and that while that may have been true in the past, it is no longer correct. *L. Lutes testimony*. He testified that refinance appraisals performed today are based on and should accurately reflect market value. *L. Lutes testimony*.
 - c) The Respondent also observed that the Petitioner indicated on the Forms 131 petition that the insured value for replacement purposes is currently \$148,000, which also exceeds the current assessed value of the improvements. At the administrative hearing, the Petitioner testified that \$148,000 would not be enough to replace the home if it were destroyed. *Board Exhibit A; K. Lutes Testimony*. This only reflects the cost required to replace the subject property, it does not necessarily reflect the value the property may have in exchange. The comparable sales used in the appraisals are better indicators for this purpose.
 - d) Respondent did not present the market evidence upon which the assessment is based, and merely claimed that the guidelines were followed without further explanation. *Thomas testimony*.
17. The Respondent also testified that the land on each parcel should have received a negative 30% influence factor due to excess frontage. *See Respondent Ex. 1(B); Thomas testimony*. As the appraisal should already take into account any loss in value caused by this condition, there is no need to further adjust the value. The property should be assessed at \$115,000.

Conclusion

17. The Petitioner made a prima facie case concerning the value of the property. Respondent failed to rebut Petitioner's evidence. 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.

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.