

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

MAY ANDERSON,	)	Petition No.:	49-930-02-1-5-05944
	)	Parcel No.:	9003165
Petitioner,	)		
	)		
v.	)		
	)	County:	Marion
WAYNE TOWNSHIP ASSESSOR,	)	Township:	Wayne
	)	Assessment Year:	2002
Respondent.	)		

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Appeal from the Final Determination of  
Marion County Property Tax Assessment Board of Appeals

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**November 8, 2004**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the "Board") having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ISSUE**

1. The issue presented for consideration by the Board was:

*The assessed value of the property is higher than the market value of the property.*

**PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, Petitioner filed a Form 131 Petition for Review of Assessment, petitioning the Board to conduct an administrative review of the above

petition. The Form 131 was filed on February 8, 2004. The determination of the Marion County Property Tax Assessment Board of Appeals (the "PTABOA") was issued on January 23, 2004.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on June 24, 2004, in Indianapolis, Indiana before Paul Stultz, the duly designated Administrative Law Judge (the "ALJ") authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

May Anderson, Taxpayer  
Karen Warren, Real Estate Broker

For the Respondent:

Tara Acton, Deputy Township Assessor  
Michael Thompson, Deputy Township Assessor

5. The following exhibits were presented for the Petitioner:

Petitioner's Exhibit 1 – Purchase Agreement (with Counteroffer)  
Petitioner's Exhibit 2 – Settlement Statement  
Petitioner's Exhibit 3 – MIBOR Listing for Subject Property  
Petitioner's Exhibit 4 – Appraisal of Subject Property  
Petitioner's Exhibit 5 – "Complete Tax Report" for 6505 W. Ray  
Petitioner's Exhibit 6 – "Complete Tax Report" for 5141 W. Bertha  
Petitioner's Exhibit 7 – "Complete Tax Report" for 426 S. Norfolk  
Petitioner's Exhibit 8 – "Complete Tax Report" for Subject Property  
Petitioner's Exhibit 9 – Comparative Market Analysis for 25 properties  
Petitioner's Exhibit 10 – Comparative Market Analysis for 6 properties  
Petitioner's Exhibit 11 – MIBOR One Line Tax Listings for 67 properties  
Petitioner's Exhibit 12 – MIBOR One Line Tax Listings for 18 properties

6. The following exhibits were presented for the Respondent:

Respondent's Exhibit 1 – Property Record Card for subject property  
Respondent's Exhibit 2 – "Sales Factor Sheet"  
Respondent's Exhibit 3 – Chart showing addresses and features of properties from "Sales Factor Sheet"

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – The Form 131 Petition with cover letter and attachments
  - Board Exhibit B – Hearing Sign-In Sheet
  - Board Exhibit C – Notice of Hearing
  - Board Exhibit D – Request for Removal from Small Claims
8. The subject property is a single-family residence located at 515 South Vine, as described on the Property Record Card.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2002, the PTABOA determined the assessed value of the property to be:
  - Land: \$ 4,700          Improvements: \$ 83,100.
11. For 2002, the Petitioner contends the assessed value of the property should be:
  - Total: \$ 68,000.

#### **JURISDICTIONAL FRAMEWORK**

12. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

#### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

13. 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).

14. 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”).
15. 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.

#### ANALYSIS

*The assessed value of the property is higher than the market value of the property.*

16. Petitioner contends that the assessed value of \$87,800 exceeds the market value of her residence and that the assessment should be changed.
17. Respondent contends that the property is assessed in accordance with the mass assessment guidelines and fairly reflects the market value of the property.
18. The Petitioner presented the following evidence and testimony in regard to this issue:
  - A. Purchase agreement for subject property between Lykens and Petitioner, (*Pet’r Ex. 1.*), an attached Settlement Statement regarding the sale (*Pet’r Ex. 2.*), and an MLS listing for the property that includes information from the sale (*Pet’r Ex. 3.*).  
Petitioner claims these documents prove an actual sale that more accurately reflects the market value of the property. *Warren testimony.*

- B. An appraisal of the subject property dated April 9, 2003. *Pet'r Ex. 4*. Petitioner relied on the appraisal in deciding whether to purchase the property. She thinks it reflects what the property is actually worth on the open market. *Anderson testimony*.
  - C. A "Marion County Complete Tax Report" for each of three properties within the general vicinity of the subject (*Pet'r Exs. 5-7.*), and for the subject (*Pet'r Ex. 8.*).
  - D. A "Comparative Market Analysis" showing recent sale prices for 25 properties located within the "Westridge" neighborhood. *Pet'r Ex. 9.*
  - E. A "Comparative Market Analysis" showing list prices for 6 properties located within the "Westridge" neighborhood. *Pet'r Ex. 10.*
  - F. "MIBOR One Line Tax Listings" for 67 properties showing total assessed values. *Pet'r Ex. 11.*
  - G. "MIBOR One Line Tax Listings" for 18 properties showing total assessed values. *Pet'r Ex. 12.*
19. The Respondent presented the following evidence and testimony in regard to this issue:
- A. The Property Record Card for the subject property. *Resp't Ex. 1.*
  - B. A "Sales Factor Sheet" showing sales adjusted by a neighborhood factor. *Resp't Ex. 2.*
  - C. A comparison chart using the top five and bottom three properties from *Resp't Ex. 2* to compare to the subject property. *Resp't Ex. 3.*

Petitioner's Prima Facie Case

20. Taxpayers may offer evidence relevant to the fair market value-in-use of the property to rebut their assessment and to establish the actual true tax value of the property, using evidence of market value including, but not limited to, actual construction costs, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *See 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).*
21. Anderson presented evidence that she purchased the subject property for \$67,900 on or about April 30, 2003. *Anderson testimony; Pet'r Ex. 1-3.* A bona fide sale of the subject

property is typically the best evidence of the market value of a particular property. Petitioner contends that the value of the property on January 1, 1999, would be substantially the same as the purchase price. *Anderson testimony; Warren testimony.*

22. Anderson also presented an appraisal performed by a qualified expert. The appraisal is based on a sales comparison approach and uses three sales of comparable properties to estimate the property's market value at \$68,000 as of April 9, 2003. *Pet'r Ex. 4*. The appraisal and the sale constitute a prima facie case that the assessment of \$87,800 is too high, and that the value should be \$67,900.
23. Anderson presented other evidence to support the purchase price she paid for the property including data regarding the assessments, tax bills, and sales prices of numerous other homes throughout Wayne Township (*Pet'r Exs. 5-12*). The probative value of this evidence is discussed *infra* at ¶¶ 34-36.
24. As Anderson has established a prima facie case, the burden now 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.

#### Respondent's Evidence

25. Respondent first presented its evidence supporting the assessment. This evidence consisted of the property record card (*Resp't Ex. 1*), a "Sales Factor Sheet" showing calculations used to determine a neighborhood factor (*Resp't Ex. 2*), and a comparison of the properties used in *Resp't Ex. 2* and the subject (*Resp't Ex. 3*).
26. The property record card simply shows what the current assessment is and how certain features are valued under the assessment guidelines. Standing alone, it is not probative as to the correctness of the assessment. *See, e.g., Damico v. Dep't of Local Gov't Fin.*, 769 N.E.2d 715, 723 (Ind. Tax Ct. 2002).

27. Respondent's second piece of evidence, the "Sales Factor Sheet," similarly fails to prove anything regarding the correctness of the assessment. *Resp't Ex. 2*. Respondent simply presented this document without explaining its contents in any way.<sup>1</sup> *See Thompson testimony*. The Board cannot accept this exhibit as probative evidence without a detailed explanation regarding what it is and what it is supposed to prove. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
28. Respondent did provide some explanation of Respondent's Ex. 3. Thompson testified that it was generated using the top five properties and the bottom three properties used on the Sales Factor Sheet and shows a comparison of the features of those properties to the subject. *Thompson testimony*. This shows, for example, that 340 South Vine is 12 years older and approximately 100 square feet smaller and sold for \$78,900 – about \$10,000 more than what Petitioner paid for the subject. *Thompson testimony*. Respondent did not explain how these properties are comparable to the subject or how the comparison supports the assessment. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (taxpayer must explain how properties are comparable).

#### Respondent's Rebuttal of Petitioner's Prima Facie Case

29. Respondent attempted to rebut Petitioner's prima facie case by impeaching her evidence.
30. Respondent argues that the sale did not represent fair market value because "it is quite possible that she bought this for less than market value." *Thompson testimony*.

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<sup>1</sup> It appears that Wayne Township presents a similar document in each of their cases before the Board. It is likely that they explained it in a prior hearing to one of the Board's ALJs and assumed that explanation need not be given again. However, a party before the Board cannot rely on explanation of evidence given in one case to "carryover" to an entirely independent appeal. The parties need to explain every piece of evidence to the Board at each hearing. The administrative record for each case must be developed by the parties and must include detailed explanations of the party's evidence. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[The Indiana Tax] Court has rejected attempts by taxpayers to put forth evidence, such as photographs, calculations, or assessment rules, without an explanation. [Each Party is] required to make a careful, methodical, and detailed factual presentation to both the Indiana Board and [the Tax] Court." (internal citations omitted)).

Respondent did not offer any proof that the sale was tainted by unusual motivation, but merely asked open-ended questions such as “Is it possible that she got a deal? Is it possible that the seller was motivated?” *Thompson testimony*. Warren testified that the sale was not affected by outside factors such as these. *Warren testimony*. Thompson’s vague questioning and opining about the validity of the sale price fail to impeach or rebut Anderson's evidence. *See Meridian Towers E. & W. v. Wash. Twp. Assessor*, 805 N.E.2d 475, 480 (Ind. Tax Ct. 2003).

31. Respondent also argues that the sale fell outside of the 24-month window around the valuation date and therefore evidence of the purchase price of the home is not probative of the correct assessment. *Acton testimony*. The Respondent claims it is possible that the home depreciated in value from \$87,800 in 1999 to the purchase price of \$67,900 in 2003. *Acton testimony*. Neither party presented evidence of a substantial increase or decrease in values in this neighborhood for the intervening time period. The Board will not accept the theory that this property depreciated in value by \$20,000 in four years without evidence of loss of value. Respondent’s theory is simply not enough to rebut the purchase price evidence. *See Meridian Towers*, 805 N.E.2d at 480.
32. Respondent argues that the appraisal is not an accurate indicator of the property’s value because it lacks certain adjustments that should have been made. *Acton testimony*. Respondent argues that comparables 1 and 2 should have been adjusted for lot size. *Acton testimony*. Respondent also argues that adjustments should have been made for the difference between ranch and bungalow, and most importantly, a thirty-seven (37) year difference in year built. *Acton testimony*. Respondent also suggests that the appraisal was done loosely to support the loan value whereas the actual value might be higher. *Thompson testimony*.
33. The appraiser is the licensed expert who performed the appraisal in accordance with generally recognized appraisal principles. *Pet’r Ex. 4*. In his expert opinion of the properties value, he decided which comparables to use and how to adjust them. Respondent argues that better comparables could be used or that different adjustments



should be made. *Acton testimony; Thompson testimony*. However, Respondent has not offered evidence that rebuts the appraisal, such as an appraisal of its own or “better” comparables. *Meridian Towers*, 805 N.E.2d at 479.

34. The “Marion County Complete Tax Reports” for 6505 W. Ray (Pet’r Ex. 5), 5141 W. Bertha (Pet’r Ex. 6), 426 S. Norfolk (Pet’r Ex. 7), and the subject property (Pet’r Ex. 8) are documents that list the total assessed value, deductions and credits, semi-annual tax installments, and basic physical features<sup>2</sup> of each property. Petitioner offered these documents without explanation. Respondent testified that the three “comparables” are not in the same assessing neighborhood and thus should not be used in determining the assessment of the subject. *Acton testimony*. Without a detailed explanation of these documents, the Board cannot find them to be probative. *See supra, footnote 1*.
35. The Comparative Market Analyses, Petitioner Exhibits 9 and 10, show the list prices and sale prices of homes in the Petitioner’s neighborhood that sold between 2000 and 2004. The properties used vary in size and physical features. *Pet’r Ex. 9, 10*. The sale and list prices vary from \$43,500 to \$82,000. *See Pet’r Ex. 9, 10*. Petitioner argues that these documents show the stability of values in the neighborhood over the period between 2000 and 2004. *Warren testimony*. Respondent argues that the sales used in the analyses fall outside of the time period used by the assessing officials and therefore are irrelevant to the assessment. *Acton testimony*. Further, Respondent argues that the values would need to be trended or time-adjusted to have any bearing on the value of the property on January 1, 1999. *Acton testimony*. The Board finds these documents to have very little probative value due to the lack of information regarding their comparability. *Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (taxpayer must explain how properties are comparable).
36. Petitioner also offered the “MIBOR One Line Tax Listings” into evidence. The document marked as Petitioner’s Exhibit 11 shows the total assessed value of sixty-seven

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<sup>2</sup> The form has entries for, *inter alia*, living area, garage area, loft area, basement area, and attic area.

(67) homes throughout Wayne Township that were built between 1960 and 1970, have no garage, and range from 1,000 to 1,300 square feet. *Pet'r Ex. 11; Thompson testimony.* The document marked as Petitioner Exhibit 12 shows the total assessed values of eighteen (18) properties located on Vine Street in Wayne Township. *Pet'r Ex. 12.* Petitioner offered these documents to show that her home is assessed higher than almost all of the properties in her neighborhood. *Anderson testimony.* Respondent argues that these documents do not provide any information about the physical features of the properties and there is no way to compare the properties other than by general location. *Acton testimony.* Respondent is correct that these documents have no probative value and has rebutted these two exhibits.

#### **SUMMARY OF FINAL DETERMINATION**

37. Petitioner presented a prima facie case showing that the assessment was too high and should be changed to \$67,900. Respondent did not rebut Petitioner's case.

The Indiana Board of Tax Review issues this Final Determination on the date first written above.

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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.**