

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

Petition #: 49-930-02-1-5-03453
Petitioner: Michael Browning
Respondent: Wayne Township Assessor (Marion County)
Parcel #: 9011396
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 Marion County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated July 3, 2003.
2. The Petitioner received notice of the PTABOA decision dated January 23, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on February 3, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 11, 2004.
5. The Board held an administrative hearing on April 28, 2004, before the duly appointed Administrative Law Judge (ALJ) Paul Stultz.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Michael Browning

- b) For Respondent: Tara Acton, Residential Supervisor
Michael Thompson, Assistant Deputy Assessor

Facts

7. The property is classified as residential, as is shown on the property record card for parcel #9011396.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Marion County PTABOA:
Land \$6,500, Improvements \$44,400, Total \$50,900.
10. Assessed Value requested by Petitioner: Land \$6,500, Improvements \$38,900,
Total \$45,400.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Petitioner contends subject property is below fair condition, it is in poor condition.
 - b) The basement gets wet when it rains and has water damage. Petitioner provided photos to support the claims of water damage. Petitioner provided an estimate of the cost to fix the basement of \$4,650. *Browning testimony and Petitioner's Exhibits 1 & 5.*
 - c) Petitioner stated that six windows need replaced. *Browning testimony.*
 - d) Petitioner stated that the subject house needs vinyl siding. Petitioner provided an estimate of the cost to vinyl side the house of \$2,805. *Browning testimony and Petitioner's Exhibit 4.*

- e) Petitioner stated the area in attic is not a room. Petitioner claimed area was used for storage only and access to attic was boarded up January 2004. *Browning testimony and Petitioner's Exhibit 1.*
- f) Petitioner stated that the comparable sales used by the Respondent are good comparables and that the comparable sales he submitted with the Form 131 petition should not be used to value subject property. *Browning testimony and Petitioner's Exhibits 2 & 3.*

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

- a) Respondent contends the condition rating of fair is the correct condition rating.
- b) Respondent provided worksheets showing the sales used to compute the neighborhood factor and a worksheet showing the computation of the neighborhood factor. *Acton testimony and Respondent's Exhibits 2 & 3.*
- c) Respondent claimed a field person from the Wayne Township Assessor's office made a site inspection. This inspection resulted in a change of the condition from average to fair. Respondent stated the field person found the subject house to be in fair condition. It is below average, but did not meet criteria for a condition rating of poor. *Acton testimony.*
- d) Respondent stated that photos of subject house are not sufficient evidence to challenge the condition of subject house. Condition of subject house is relative to the condition of the surrounding houses in the neighborhood. *Acton testimony.*
- e) Respondent revealed that the Form 131 prepared by Petitioner states subject property is insured for \$50,000. Respondent inquired of Petitioner if the amount of insurance on subject house was \$50,000. Petitioner acknowledged subject house was insured for \$50,000 and further stated that house was worth \$50,000. Petitioner claimed \$50,000 was the lowest amount the insurance company would write a policy for. *Thompson and Browning 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 #3349.

c) Exhibits:

Petitioner Exhibit 1: Fourteen photos of the subject property

Petitioner Exhibit 2: Multiple listing service of 25 properties listed for sale by Propertylinx

Petitioner Exhibit 3: Multiple listing service of 15 properties by Propertylinx

Petitioner Exhibit 4: Copy of invoice from Patriots Home Repair for vinyl siding

Petitioner Exhibit 5: Copy (facsimile) contract Denny's Waterproofing

Petitioner Exhibit 6: Copy of estimate from Menards for vinyl siding and material

Respondent Exhibit 1: Property Record Card (PRC) for subject property

Respondent Exhibit 2: Copy of Township's N.H. Factor Sheet Breakdown with details of the parcels used to compute the neighborhood factors, also includes details of three of the Petitioner's comparable properties, and subject property

Respondent Exhibit 3: Copy of Wayne Township calculations of neighborhood factor for subject neighborhood

Respondent Exhibit 4: Copy of Base Lot Contribution done by W. J. Zinn, Inc.

Board Exhibit A: Form 131 petition

Board Exhibit B: Notice of Hearing on Petition

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and 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*, 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).
- c) Condition Rating is defined as:
 - A rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure within the subject's neighborhood.
 - Real Property Assessment Guideline Version A, Appendix B, page 5*
- d) Characteristics of Fair Condition Rating:
 - The structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood. It suffers from minor inutilities in that it lacks an amenity that the majority of the structures in the neighborhood offer. It is in a less desirable location within the neighborhood than the majority of structures.
 - Real Property Assessment Guideline Version A, Appendix B, Table B-1, page 7*
- e) Characteristics of Poor Condition Rating:
 - The structure suffers from extensive deferred maintenance. It suffers from major inutilities in that it lacks several amenities that the majority of structures in the neighborhood offer. It is in a poor location within the neighborhood.
 - Real Property Assessment Guideline Version A, Appendix B, Table B-1, page 7*

15. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions.

This conclusion was arrived at because:

- a) The Petitioner presented evidence to support his contention that the subject house basement has water damage, windows need replaced, and vinyl siding needs replaced. *Browning Testimony and Petitioner's Exhibits 1, 4, 5, & 6.* However,

evidence of water damage and the need for replacing windows and vinyl siding is not enough to support a condition rating less than fair.

- b) As the Respondent pointed out, the Petitioner's testimony and evidence concerning the condition of the subject house is incomplete without presenting evidence of the other houses in the neighborhood. Condition is determined by an inspection of the structure within the subject's neighborhood. *Real Property Assessment Guideline Version A, Appendix B, page 5*
- c) The Petitioner's estimates to make needed repairs do not demonstrate extensive deferred maintenance, and again, there is no evidence in the record to compare deferred maintenance of the subject house with the deferred maintenance of other houses in the neighborhood.
- d) The Petitioner did not explain how boarding up the access to the attic in January 2004, relates to the condition rating for the March 1, 2002 assessment date.
- e) The Petitioner presented comparable properties (Petitioner's Exhibits 2 & 3), but did not explain how the properties were comparable to the subject property. In fact, the Petitioner stated that his comparable properties should not be used to value to subject property. The Petitioner stated that the Respondent has good comparables. *Browning Testimony.*
- f) The record shows the subject property is assessed for \$50,900 including land. The Petitioner stated subject property is worth \$50,000 and that it is insured for \$50,000. *Browning Testimony.*
- g) The Petitioner did not provide sufficient evidence to show that the subject property has the characteristics of a poor condition rating.

Conclusion

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: _____

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.