

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions

Petition No.: 79-132-02-1-1-01344
Petitioner: Nathaniel D. & Rebeckah L. Pfeiffer
Respondent: Eleanor J. Mlynarik, Wabash Township Assessor
Parcel No.: 132-04200-0035
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 dated June 8, 2003.
2. The PTABOA's Notification of Final Assessment Determination (Form 115) was mailed to the Petitioner on October 28, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 26, 2003.
4. The Board issued a notice of hearing to the parties dated December 18, 2003.
5. The Board held an administrative hearing on February 11, 2004 before the duly appointed Administrative Law Judge (ALJ) Joan L. Rennick.
6. Persons present and sworn in at hearing:
 - a. For Petitioner:
Nathaniel D. Pfeiffer, Taxpayer
 - b. For Respondent:
Eleanor J. Mlynarik, Wabash Township Assessor
Nancy Moore, Tippecanoe County Assessor, Secretary of PTABOA
Ira H. Roudebush, PTABOA member

7. The property is classified as agricultural land with a dwelling, as shown on the property record card (PRC) for Parcel # 132-04200-0035.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. Assessed Values of subject property as determined by the Tippecanoe County PTABOA are:
Land \$19,200 Improvements \$34,100
10. Assessed Values requested by Petitioner are:
Land \$11,900 Improvements: \$15,600

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The subject property was purchased on May 13, 1999, for \$27,500, which is close to the Valuation Date¹ of January 1, 1999.
 - b. The subject property was purchased from an estate and is an arm's length transaction. There is no better measure of market value than sale price.
 - c. Two (2) appraisals were presented to the Township Assessor and the PTABOA estimating the market value to be \$53,500 on January 3, 2000, and \$73,000 on December 12, 2002, respectively. However, the purchase price in 1999 should be the value used for the 2002 assessment because it is closer to the valuation date.
12. Summary of Respondent's contentions in support of the assessment:
 - a. The 2002 assessment figures are based on cost and valid sales near the January 1, 1999, date. The 2002 assessment is still based on the improvements as of March 1, 2002.
 - b. The sale on May 5, 1999, was an "estate sale" which usually brings lower sales prices.
 - c. Improvements made to the subject property were listed on the 2000 appraisal that was made "subject to" being completed. The 2002 appraisal was made "as is" and assumes "average" condition.
 - d. The improvements were not made per building permits and were not picked up by the Township.

¹ The date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12, (incorporated by reference in 50 IAC 2.3-1-1(a)).

Record

13. The official record for this matter is made up of the following:

a. The Petition, and all subsequent pre-hearing, or post-hearing submissions by either party.

b. The tape recording of the hearing labeled BTR # 5613.

c. Exhibits:

Petitioner Exhibit 1 - Letter to Petitioner from Larry D. Morehead, dated October 5, 1998

Petitioner Exhibit 2 – Letter to Petitioners from John S. Damm, Miller, Tolbert, Muehlhausen, Muehlhausen, Groff & Damm, P.C., dated April 13, 1999

Petitioner Exhibit 3 – Purchase Agreement for the subject property dated May 5, 1999

Petitioner Exhibit 4 - Settlement Statement for subject property dated May 13, 1999

Petitioner Exhibit 5 – Form 11 for the subject property, effective March 1, 2002

Petitioner Exhibit 6 – Form 130 for the subject property, filed June 9, 2003

Petitioner Exhibit 7 – Form 115 for the subject property, mailed October 28, 2003

Respondent Exhibit 1 – PRC reflecting PTABOA decision

Respondent Exhibit 2 – Uniform Residential Appraisal Report, dated December 23, 2002

Respondent Exhibit 3 – Uniform Residential Appraisal Report, dated January 3, 2000

Respondent Exhibit 4 & 4a – Reassessment Summary for subject property

Respondent Exhibit 5 & 5a – Comparable property reassessment summary

Respondent Exhibit 6 & 6a – Comparable property reassessment summary

Respondent Exhibit 7 & 7a – Comparable property reassessment summary

Respondent Exhibit 8 – Minutes PTABOA hearing, dated October 29, 2003

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 statutes/rules/case law 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 error(s) 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. 2002 REAL PROPERTY ASSESSMENT MANUAL – "Market Value" defined: The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
 - The buyer and seller are typically motivated;
 - Both parties are well informed or advised and act in what they consider their best interests;
 - A reasonable time is allowed for exposure in the open market;
 - Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
 - The price is unaffected by special financing or concessions.
- d. 2002 REAL PROPERTY ASSESSMENT MANUAL – "True Tax Value" defined: The market value in use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property, less that portion of use value representing subsistence housing for its owner.
- e. 2002 REAL PROPERTY ASSESSMENT MANUAL – "Valuation Date" defined: The date as of which a property's value is estimated. The date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999.

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

- a. It was Petitioner's contention that the assessed value of the subject property should be that which he paid for the property through an estate sale. *Pfeiffer testimony*. The Respondents stated that in their experience, estate sales generally do not bring market prices. *Mlynarik testimony*; *Roudebush testimony*. While the sales price of the subject property was presumably between a willing buyer and a willing seller, market value also assumes the subject property has been previously exposed for sale in an open market for a reasonable length of time. *See 2002 REAL PROPERTY ASSESSMENT MANUAL* at 10, (incorporated by reference in 50 IAC 2.3-1-1(a)). The Petitioner responded that he believed the property was exposed to the market, stating that anyone could have taken the action that he took in obtaining the property – when he saw people moving out of the subject property, he called a number listed on a sign² on the property. *Pfeiffer testimony*. The record was void of evidence regarding the length of time that the sign was posted.
- b. The Board finds the evidence insufficient to conclude that the estate sale met was properly exposed on an open market and is thus indicative of a “market value” as defined in the Manual. *See 2002 REAL PROPERTY ASSESSMENT MANUAL* at 10, (incorporated by reference in 50 IAC 2.3-1-1(a)). While the reassessment is based on value in use, certain standards must be met to comply with approved appraisal techniques. The Petitioner's sale, while a good purchase for him,³ would not have met the criteria to be included in the ratio studies required for evaluating the reassessment. The definition of market value lists conditions that need to be present for a valid sale, including:
 1. The buyer and seller are typically motivated;
 2. Both parties are well informed or advised and act in what they consider their best interests;
 3. A reasonable time is allowed for exposure in the open market;
 4. Payment is made in terms of cash or in terms of financial arrangements comparable thereto; and
 5. The price is unaffected by special financing or concessions.

In an estate sale, the seller is not typically motivated. The seller is generally attempting to liquidate the assets of the estate for distribution to the heirs. As mentioned above, there is not sufficient evidence to discern whether the sale was exposed to the market. The Board concludes that the May 13, 1999 sale of the property is not probative evidence of the true tax value of the property.

² Apparently a sign was placed in front of the property. The sign explained that the farm land around the dwelling would be sold at an auction. *Pfeiffer testimony*.

³ Petitioner acknowledged on the record that “he got a heck of a deal.” *Pfeiffer testimony*.

- c. Petitioner also submitted two (2) appraisals to the Township Assessor and the PTABOA, in an attempt to establish a value lower than the 2002 reassessment figure (Total Assessed Value \$80,200).⁴ *Respondent's Ex. 2 & 3*. The first appraisal was dated January 3, 2000, with an estimate of value of \$53,500. *Respondent's Ex. 2*. This 2000 appraisal states that it is made subject to repairs, alterations and inspections. The appraisal was contingent in part on finishing the kitchen with new cabinets, walls, etc., new windows and exterior doors, new bath, new interior paint, new wood stove, and new roof with decking, insulation, and rewiring. It is assumed that once these improvements were made, the subject property would be in "average" condition. *Id.* Respondents testified that they found this appraisal to be the most persuasive evidence and that it carried the most weight in their decision-making. *Roudebush testimony*.
- d. The second appraisal is dated December 23, 2002, with an estimate of value of \$73,000. *Respondent's Ex. 3*. This 2002 appraisal was an "as is" appraisal and the condition of the improvements, depreciation, repairs needed, quality of construction, remodeling/additions, etc. were contained in an *addenda*.⁵ As stated on the appraisal, the subject property has two (2) LP wall heaters, wood stove, no central air, and no garage. *Id.* The Township Assessor stated the improvements were not made with building permits and not picked up by the Assessor's Office. *Mlynarik testimony*.
- e. The PTABOA lowered the assessment based on the January 3, 2000, appraisal that shows improvements that would have been present on the March 1, 2002 assessment date. *Respondent's Ex. 8; Roudebush testimony*.

Conclusion

- 16. The Petitioner failed to make a prima facie case that the 1999 sales price should be used as the true tax value of the property. The Respondent adequately rebutted the Petitioner's evidence and provided support for the PTABOA's determination. The Board finds in favor of the Respondent.

⁴ Based on the exhibits, it appears that the Township Assessor originally assessed the property at \$80,200 for land and improvements. The PTABOA changed the total assessed value to \$53,500 based on the two appraisals submitted by the Petitioner. *See Respondent's Ex. 8*.

⁵ There were no addenda attached to the appraisal submitted to the Board for review.

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: May 5, 2004

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.