

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

**Petition #:** 04-016-02-1-5-00001  
**Petitioners:** Patrick M. & Nina R. Tolen  
**Respondent:** Union Township Assessor (Benton County)  
**Parcel #:** 032680000100016  
**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 Petitioners initiated an assessment appeal with the Benton County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 25, 2003.
2. The Petitioners received notice of the decision of the PTABOA on April 8, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on April 28, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 9, 2004.
5. The Board held an administrative hearing on July 19, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. Persons present and sworn in at hearing:
  - a) For Petitioners: Patrick Tolen, Taxpayer  
Nina Tolen, Taxpayer  
Bob Kraft, State Government Director, Indiana Farm Bureau, Inc.
  - b) For Respondent: Janet C. Guimond, County Assessor  
Kelly Rose, Reassessment Deputy  
Phyl Olinger, Indiana Assessment Service representing Union Township and Benton County

## Facts

7. The property is classified as residential, as is shown on the property record card for parcel # 032680000100016.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Benton County PTABOA:  
Land \$14,400            Improvements \$171,800.
10. Assessed Value requested by Petitioners:  
Land \$14,400            Improvements \$130,000.

## Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a) Petitioners contend they will prove what the two closest houses have sold for in the last three years based on price per square foot. These houses compare in age, condition, and location.
  - b) Petitioners also contend they will prove that the market value of houses in rural areas has not kept up with values in city areas.
  - c) Upon advice from the Farm Bureau and the DLGF, the Petitioners found comparable houses that sold in the last two to three years. The Petitioners took the selling price and divided it by the square footage of finished living area. Included in the evidence is a location map to show proximity to Petitioners' property. Comparables included:
    - #1 - Ken Sarault house sold in 2000 for \$104,000 ÷ 2023 square feet (S.F.) = \$51.41 S.F.
    - #2 - Robert Hatke Trust sold in 2003 for \$95,000 ÷ 2210 S.F. = \$42.98 S.F.
    - #3 - Roy Tipton house sold in 2001 for \$34,900 ÷ 2148 S.F. = \$16.25 S.F.
    - #3 - Roy Tipton house sold in 2001 for \$74,900 ÷ 2148 S.F. = \$34.87 S.F.Comparable #3 was in bankruptcy and the asking price by the lender was originally \$74,900. After water damage was found, the price was lowered and it sold for \$34,900. The Petitioners used the \$74,900 value in their computation.
  - d) The average square foot price using all three comparable sales is \$43.09, and using only the first two comparable sales is \$47.20. The Petitioners' square footage is 2,733 x \$47.20 = \$128,997 and, rounded to \$130,000, is the improvement assessment requested.
  - e) There is another house in the neighborhood that started as a small National home and has been completely remodeled with more square footage added and it is assessed for less than the Petitioners' property because of a higher depreciation factor. The Petitioners wanted to use it as an example to show the unfairness of the assessments.

- f) Petitioners requested the homeowner insurance agent show them the amount of insurance required by his company for their house based on the charts for the area and the amount is \$128,700.
- g) Petitioners are not disputing the local officials followed the guidelines for assessing their property, but the process is a one size fits all approach and other factors enter into the assessment such as sales in a rural location.
- h) The ALJ asked if an appraisal had been done on the subject property recently and the Petitioners stated that one had been prepared. The Petitioners further stated the appraisal value was approximately ten percent (10%) higher than market value because the appraiser used comparable properties closer to Lafayette. The appraisal was not submitted into evidence.

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

- a) Respondent did not receive a copy of the Petitioners' Exhibits and could not comment on the house that was assessed for less (*Petitioner Exhibit 6*) without looking at the grade, condition and other variables.
- b) Respondent contends the houses sold in the last three years in this neighborhood are not comparable to Petitioners' house. Respondent prepared a table showing differences between the subject property and two of the Petitioners' comparable properties (Sarault and Tipton properties). *Respondent Exhibit 1, Summary*.
- c) No documentation was given in evidence to prove the sales price, date of sale, whether these sales were arm's-length transactions, or the terms and conditions of the sales.
- d) The Hatke sale (Petitioners' Comparable #2) was transacted, according to the Petitioners, in 2003 and that sale would not have been considered in the ratio study for the 2002 assessment.
- e) Petitioners requested a value of \$47.20 per square foot or a total value of \$130,000. Petitioners failed to calculate the entire square footage of the dwelling and did not include the square footage of the attached garage. Multiplying the entire square footage (3,853 S.F.) by the Petitioners' proposed \$47.20 results in a value approximately \$10,000 greater than the current assessed value of the improvements. *Respondent Exhibit 1, Summary*.
- f) Petitioners did not dispute any physical characteristics of his assessment at the PTABOA hearing and only questioned the final value. The Version A - Real Property Assessment Guidelines were followed and the parcel is assessed correctly with no changes to the assessment warranted.
- g) Neighborhood factors are applied to the assessment based on sales.

**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 # 6003.

c) Exhibits:

- Petitioners Exhibit 1: Newspaper articles showing homes should be assessed based on fair market value or sales prices.
- Petitioners Exhibit 2: Location map of comparable sales in relation to the subject property.
- Petitioners Exhibit 3: Comparable #1 Ken Sarault house (sold in 2000), photographs and property record card (PRC).
- Petitioners Exhibit 4: Comparable #2 Robert Hatke Trust house (sold in 2003), newspaper listing and PRC.
- Petitioners Exhibit 5: Comparable #3 Roy Tipton house (sold in 2001), photographs, newspaper listing and PRC.
- Petitioners Exhibit 6: Al Dewitt house (assessed lower than Petitioners' house), photographs and PRC.
- Petitioners Exhibit 7: Insurance carried on Petitioners' home as required by insurance company.
- Petitioners Exhibit 8: Calculations prepared by Petitioners to justify lower assessment.

Respondent Exhibit 1: Written summary of position and Letter of Authorization for Ms. Olinger to represent the Union Township Assessor.

Respondent Exhibit 2: Copy of subject PRC.

Respondent Exhibit 3: Photograph of subject property.

Respondent Exhibit 4: Copy of Sarault (Respondent Comparable #1; Petitioner Comparable #1) PRC.

Respondent Exhibit 5: Copy of Tipton (Respondent Comparable #2; Petitioner Comparable #3) PRC.

Respondent Exhibit 6: Copy of Page 3 of the 2002 Real Property Assessment Manual.

Respondent Exhibit 7: Copy of Form 115, Notification of Final Assessment Determination.

d) These Findings and Conclusions.

### **Analysis**

14. The most applicable governing cases 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 Petitioners did not provide sufficient evidence to support the Petitioners' contentions.

This conclusion was arrived at because:

- a) The Petitioners presented sales data of properties purported to be comparable in condition and age to the subject. However, the Petitioners did not establish that the properties were truly comparable to the subject property.
- b) The Respondent correctly contends that the properties differ in story height, construction type, square footage, and condition. For example, the subject property is a single story brick house. In contrast, two of the purported comparable properties are two story brick and frame houses, and the third purported comparable property is a brick and frame tri-level house.
- c) The Respondent also points out that the Petitioners did not provide documentation to support the sale prices of the alleged comparables. There is nothing in the record showing the terms and conditions of the sales or that the sales were arm's-length transactions. For example, the Petitioners claim that Comparable #2 sold for \$95,000, but presented a newspaper clipping showing "REDUCED \$120,000." *Petitioner Exhibit 4*. The Petitioners did not explain where they obtained the comparable sale prices and dates of sale.
- d) According to the Petitioners, Comparable #3 was a bankruptcy and the Lender was asking \$74,900. After water damage was found, the price was reduced to \$34,900. For their calculations the Petitioners used the \$74,000 value. *Petitioner Exhibit 5*. However, the Petitioners failed to explain the manner in which water damaged property in bankruptcy is comparable to the property under appeal.
- e) In support of their position, the Petitioners took the sales price for each of the three comparables and divided by the square footage of the finished living area to arrive at a price per square foot. The Petitioners then averaged the price per square foot to arrive at a price of \$43.09 per square foot. Using only Comparables #1 and #2, the Petitioners arrived at a price per square foot of \$47.20 per square foot. The Petitioners used \$47.20 per square foot multiplied by the finished living area of the subject property (2,733 square feet) to arrive at a value of \$128,997. The Petitioners contend this calculation supports their requested value of \$130,000.
- f) The Respondent correctly points out that the Petitioners' method does not take into consideration the entire square footage of the dwelling. The Petitioners did not include the two-car garage (1,120 square feet). The Petitioners also failed to include the basement (1,366 square feet) in their calculation. When these additional areas are included in the Petitioners' calculation, the new proposed value actually exceeds the current assessed value by approximately \$10,000.
- g) At the hearing the Petitioners contended that houses are sold by finished living area, not garages. However, garages, basements, and an all brick exterior affect the market value of property.
- h) The Respondent could not comment on the assessment of *Petitioner Exhibit 6*, which was presented into evidence at the hearing. However, the Respondent did

state that there were several variables to consider, such as grade, condition, and age.

- i) The insured value of a property does not establish market value, but could lend support to a Petitioners' claim regarding market value. However, it was unclear whether the insured value of \$128,700 included the garage. There is a separate line on the insurance document for Garage with an indicated value of \$17,330. *Petitioner Exhibit 7*. If the garage is not included in the insured amount, the value would have to be added and the result would be an insured value of \$146,030 (\$128,700 + \$17,330).
- j) The Petitioners acknowledged that an appraisal of the property had been prepared. The Petitioners further testified the appraisal value was approximately ten percent (10%) higher than market value because the appraiser used comparable properties located closer to Lafayette. This appraisal, however, was not submitted into evidence.
- k) The Petitioners failed to make a prima facie case that the assessment was incorrect.

### **Conclusion**

16. The Petitioners failed to make a prima facie case. The Board finds in favor of the 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: \_\_\_\_\_

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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.**