

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

Petition #: 09-010-02-1-5-00001
Petitioners: Robert A. Brewer, Jr.
Respondent: Eel Township Assessor (Cass County)
Parcel #: 25-13-144-001
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 Cass County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 30, 2003.
2. The Petitioner received notice of the decision of the PTABOA on June 25, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on July 6, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 22, 2005.
5. The Board held an administrative hearing on June 8, 2005, before the duly appointed Administrative Law Judge Brian McKinney.
6. Persons present and sworn in at hearing:¹
 - a) For Petitioner: Robert A. Brewer, Jr.
Marta J. Brewer
 - b) For Respondent: Brian Thomas, Ad Valorem Solutions

Facts

7. The property is classified as Residential, one family dwelling, as is shown on the property record card for parcel # 25-13-114-001.

¹ Also present, but not sworn in were Judy Lewis, Cass County Assessor, and Sharon Campbell, 1st Deputy of Eel Township.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Cass County PTABOA:
Land \$10,200, Improvements \$206,000.
10. Assessed Value requested by Petitioner: Total Assessed Value of \$142,000

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The market value of the subject property as of November 21, 2001, is identified in the appraisal by Galloway Appraisal Service as \$142,000. *Pet'r Ex. 1; R. Brewer testimony.*
 - b) Evidence of comparable properties is difficult to come by, and the appraiser used the best information available. *R. Brewer testimony.*
 - c) There is a disconnect in the market between the assessed value of the subject property and two other properties and the actual market value of the subject property and two other properties. *Id.*
 - d) The property is entitled to obsolescence. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Petitioner did not present probative evidence regarding the causes or quantification of obsolescence. *Thomas testimony.*
 - b) The appraisal done by Galloway Appraisal Services has an effective date of November 2, 2001. For the 2002 general reassessment, the valuation date is January 1, 1999. The Petitioner did not present any evidence demonstrating how the value contended is relevant to the property value as of January 1, 1999. *Resp't Ex. B; Thomas testimony.*
 - c) The appraisal is a limited appraisal intended for a mortgage finance transaction only. The appraisal values the property under the definition of market value, not market value-in-use. *Thomas testimony.*
 - d) The Respondent contends the assessment was done in accordance with the 2002 Real Property Manual and 2002 Real Property Assessment Guidelines. *Id.*

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 digital recording of the hearing was transferred to a compact disc which is labeled IBTR 6085.
 - c) Exhibits:
 - Petitioner Exhibit 1: Appraisal of 803 E. Broadway by Galloway Appraisal Service (subject property);
 - Petitioner Exhibit 2: Form 115 dated June 25, 2004, for the subject property;
 - Petitioner Exhibit 3: Form 113 and Form 11 R/A-C/1 for subject property;
 - Petitioner Exhibit 4: Form 11 R/A-C/1 for 806 Market, Logansport
 - Petitioner Exhibit 5: Form 11 R/A-C/1 for 1530 E. Broadway, Logansport;
 - Petitioner Exhibit 6: Form 131 for subject property; and
 - Petitioner Exhibit 7: Written statement of contention.

 - Respondent Exhibit A: List of Exhibits;
 - Respondent Exhibit B: Written statement of testimony;
 - Respondent Exhibit C: Valuation Date definition;
 - Respondent Exhibit D: Sales disclosure for 730 E. Broadway;
 - Respondent Exhibit E: Contract recorded for 730 E. Broadway;
 - Respondent Exhibit F: Definition of market value;
 - Respondent Exhibit G: Picture of subject property and a picture of Sale #2 and Sale #3 of properties in the Galloway Appraisal; and
 - Respondent Exhibit H: Copy of the appraisal by Galloway Appraisal Service.
 - d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

- b) 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. Washington Township 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”).
 - c) 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 Insurance Company 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.
15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The appraisal presented by the Petitioner failed to show there was an error in the Assessment. The valuation date of the appraisal, November 2, 2001, was nearly 3 years after the January 1, 1999 valuation date established by the 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (2001) (the “Manual”) (incorporated by reference at IND. ADMIN. CODE tit. 50, r. 2.3-1-2 (2002 Supp.)). The Petitioner is “required to provide some explanation as to how [the appraisal value] demonstrates, or [is] relevant to the subject property’s value as of January 1, 1999.” *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). Because the Petitioner failed to provide this information, the appraisal does not carry any probative value. *Id.*
 - b) Had the petitioner provided some evidence indicating how the market did or did not change in the period from January 1, 1999 to November of 2001 the appraisal may have been sufficient to show an error in the assessment and what the correct assessment should be.
 - c) The Petitioner contended there was a disconnect between the actual market and the assessed values. In support of his contention, the Petitioner provided notices of assessment and property record cards for two properties. *Pet’r Exs. 4-5.*
 - d) The property located at 806 E. Market Street in Logansport was assessed for \$107,400. *Pet’r Ex. 4.* The property record card for this property indicated it had been sold in July of 1999 for \$52,000. *Id.*
 - e) The property located at 1530 E. Broadway in Logansport was assessed for \$101,200. *Pet’r Ex. 5.* The property record card for this property indicated it had been sold in May of 1998 for \$77,500 and then sold again in July of 2001 for \$53,000.
 - f) First, the Petitioner stated they were not contending these properties were comparable to the subject. They contended these are the best available properties

from the area to show the alleged disconnect between the market value and the assessed value.

- g) The Petitioner's evidence is insufficient to show the current assessment of the property is incorrect. First, in order to show there is a difference between the market value and assessed value of these comparable properties the Petitioner must first show what the actual market value of these properties are, as of January 1, 1999. The Petitioner failed to do so.
- h) The Petitioner did not present any evidence about the sales of these two properties to indicate they were arms length transactions. Without evidence that these sales were arms length transactions, they cannot be given any weight in establishing the actual market value of these homes.
- i) Lastly, the Petitioner claims the home is entitled to some form of obsolescence. In order to prevail in a claim for obsolescence, the Petitioner must make a two pronged showing: 1) they must identify the causes of the obsolescence; and 2) they must quantify the amount of obsolescence. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). The only evidence presented indicating some obsolescence may be warranted was the Petitioner's statement that there were many unused areas of the home and that it cost nearly \$600 a month this past winter to heat the home.
- j) First, the Petitioner did not sufficiently identify a cause of obsolescence. Merely saying there are unused areas does not constitute a cause of obsolescence. Furthermore, even if this were enough to identify a cause, the Petitioner failed to tie the cause to an actual loss in value. *Wal Mart Stores, Inc. v. Wayne Township Assessor, Wayne County*, 825 N.E.2d 485, 488 (Ind. Tax Ct. 2005).
- k) The Petitioner must present probative evidence showing how the alleged cause actually caused a loss in value. For example, the entire heating cost cannot be said to be a loss because the Petitioner would have had to paid some amount to heat their home.
- l) Next, even if the Petitioner had met the first prong by identifying a cause of obsolescence, the Petitioner did not quantify the amount of the obsolescence. The Petitioner did not request any percentage of obsolescence sought. The Petitioner did not identify any method used to quantify the obsolescence. Instead, the Petitioner stated the property is entitled to some obsolescence.
- m) To quantify obsolescence, the Petitioner must use generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case when it provided an appraisal quantifying obsolescence in accordance with generally recognized appraisal principles). The Petitioner made no such showing in this case.

- n) The Petitioner did not provide probative evidence satisfying the two prong test for obsolescence laid out in *Clark*. There is no change in the assessment as a result of this issue.
16. Because the Petitioner failed to establish a prima facie case of an error in the assessment and failed to show what the correct assessment should be, the burden never shifted to the Respondent to rebut the Petitioner's evidence.

Conclusion

17. 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.