

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

Petition #: 18-003-02-1-5-00745
Petitioner: Roberta A Farmer
Respondent: Center Township Assessor (Delaware County)
Parcel #: 18-11-14-408-019.000-003
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 Delaware County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 29, 2003.
2. The PTABOA’s Notification of Final Assessment Determination (Form 115) was mailed to Petitioner on November 11, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on December 8, 2003. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 26, 2004.
5. The Board held an administrative hearing on May 19, 2004, before the duly appointed Administrative Law Judge (ALJ) Patti Kindler.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Roberta A. Farmer, Taxpayer
 - b) For Respondent: Charles Ward, Authorized County PTABOA and Center Township Representative

Facts

7. The property is classified as a residential dwelling as is shown on the property record card (PRC) for parcel #18-11-14-408-019.000-003.

8. The ALJ did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the PTABOA:
Land \$6,200 Improvements \$28,200 Total: \$34,400
10. Assessed Values requested by Petitioner as reported on the Form 131 petition:
Land \$5,000 Improvements \$20,000 Total: \$25,000

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject property's assessed value is overstated and does not represent its fair market value. The property is 50 years old, needs new siding, and has had few improvements to warrant the excessive taxes. *Farmer testimony.*
 - b) The property was offered at public auction on August 26, 2003, but only one (1) bid for \$25,000 was received at that time. *Petitioner Ex. 1.* This bid was turned down because the sales price should have been closer to \$30,000. *Farmer testimony.*
 - c) A letter from Wilbur L. Puckett, Auctioneer and Realtor, who offered the property at public auction on August 26, 2003, indicated that the subject property was purchased at auction eleven (11) years prior to 2003 for \$20,000. Since that purchase very few improvements had been made. *Petitioner Ex. 1.*
 - d) In addition, Puckett's letter stated the property taxes in the amount of \$510.33 per half were a definite deterrent in the sale of the subject property. *Petitioner Ex. 1.*
 - e) Without a homestead credit or other deductions available for the subject property, the taxes limit its marketability as a rental. *Farmer testimony.*
 - f) The party that was interested in the property at the auction wanted to use the property for a rental, and like the Petitioner, would not benefit from a homestead credit. *Farmer testimony.*
 - g) Some of the properties in the subject's neighborhood are not well maintained, which further results in a reduced value for the subject. For example, complaints have been filed against a neighboring property for the accumulation of trash in their yard. *Farmer testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The assessment on the subject property of \$34,400 is reasonable and is based upon comparable sales in the neighborhood. *Ward testimony; Respondent Ex. 3.*
 - b) The equalization study for subject neighborhood #131300, showed sales that ranged from \$31,000 to \$69,000, with a median sale of \$46,300, and a mean sale of \$48,200. *Ward testimony; Respondent Ex. 5.*
 - c) PRCs for three (3) comparable properties were utilized in developing a comparable sales grid in support of their assessment. *Respondent Ex. 6, 7, 8.*
 - d) The comparables listed on the comparable grid consist of three (3) one-story properties with less than 1,000 square feet, which sold in 1998 and 1999. The

sale prices of the three (3) comparables range from \$31,000 to \$49,500.

Respondent Ex. 5.

- e) The Indicated Values of the three (3) neighborhood comparable properties, which were adjusted for differences from the comparable, ranged from \$32,800 to \$39,300. The subject property's assessment at \$34,400 falls within this range. *Ward testimony; Respondent Ex. 9.*
- f) An auction sale is not considered an arm's length transaction and does not comply with the definition of market value. *Ward testimony.* Further, the Auctioneer gave no indication of what the property was worth in his letter only that one (1) bid was made of \$25,000 which was not accepted. *Ward testimony; Petitioner Ex. 1.*
- g) The subject property's assessment at \$34,400 is correct based upon the comparable sales in the neighborhood. *Ward testimony.*
- h) Taxes on the subject property may appear to be excessive because the owner is unable to file a homestead credit on the property since the property is non-owner occupied (rental property). The Petitioner resides in another property and has the benefit of the homestead credit on that property (Petitioner's residence). *Ward 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 # 5313.
- c) Exhibits:
 - Petitioner Exhibit 1: Copy of a letter from Wilbur L. Puckett, Auctioneer.
 - Respondent Exhibit 1: Front and rear photographs of the subject property
 - Respondent Exhibit 2: General information about the subject property
 - Respondent Exhibit 3: Subject PRC for 2002
 - Respondent Exhibit 4: International Association of Assessing Officers (IAAO), Property Assessment Valuation (Second edition), pages 19 and 20, Market Value defined
 - Respondent Exhibit 5: Neighborhood sales used in the equalization study
 - Respondent Exhibit 6: PRC for parcel #18-11-14-408-016.000-003
 - Respondent Exhibit 7: PRC for parcel #18-11-14-407-016.000-003
 - Respondent Exhibit 8: PRC for parcel #18-11-14-407-020.000-003
 - Respondent Exhibit 9: Comparable assessment grid
 - Respondent Exhibit 10: Tax Representative's Authorization from County
 - 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, statute, and rules 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) 2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (incorporated by reference in 50 IAC 2.3-1-1). Market value is defined as:
"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:
 - a. The buyer and seller are typically motivated;
 - b. Both parties are well informed or advised and act in what they consider their best interests;
 - c. A reasonable time is allowed for exposure in the open market;
 - d. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
 - e. The price is unaffected by special financing or concessions."

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

- a) The subject property currently has a Total True Tax Value (land and improvements) of \$34,400. *Respondent Exhibit 3*. The Petitioner claims the assessed value is overstated and does not represent its fair market value. *Farmer testimony; Board Exhibit A*. The Petitioner indicated on the Form 131 that the appropriate value for the property should be \$25,000 (land and improvements). *Board Exhibit A*.
- b) The only evidence submitted by the Petitioner, was a letter from Mr. Wilbur L. Puckett, Auctioneer and Realtor, who advertised and held a public auction of the subject property in August 2003. *Petitioner's Exhibit 1*. Mr. Puckett stated the following in his letter: 1) only one (1) bid for \$25,000 was made on the property

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the day of the auction; 2) the property was purchased at auction eleven (11) years prior for \$20,000; 3) very little improvement had been made to the property since that time; and, 4) the taxes are a deterrent in the sale of the property. *Petitioner's Exhibit 1*.

The Petitioner's assertion that the subject assessment is excessive was not sufficiently supported with reliable evidence. Mr. Puckett gives no indication in his letter whether the bid for \$25,000 was a fair price for the property or how much the subject property's value should have increased or decreased since its purchase eleven (11) years prior to the August 26, 2003, auction. *Petitioner Ex. 1*. Mr. Puckett concluded that there was a lack of interest in the property due to *excessive taxes* with only one (1) bid being received on the day of the auction. In addition, Mr. Puckett stated that little had been done to improve the property in the last eleven years. *Petitioner Ex. 1*. These opinions do not establish the appropriate market value-in-use for the subject property and are conclusory in nature. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1119 (Ind. Tax 1998).

- c) Assuming *arguendo*, that a public auction bid and the acceptance of that bid does offer some indication of a property's value in the marketplace, it would be necessary for the sale to be consummated with the passing of title from seller to buyer in order for the sale to be considered in any degree as an indicator for true market value. See 2002 REAL PROPERTY ASSESSMENT MANUAL at 10. In the case at bar, the bid was not accepted by the Petitioner. The Petitioner testified she did not accept the \$25,000 auction bid because she believed the property's value to be closer to \$30,000. *Farmer testimony*.
- d) The Petitioner opined that some forms of credit or deductions are warranted on income producing properties. Per Ind. Code 6-1.1-20.9-2(a) and (g) - Homestead Credit; eligibility, it states in part that a taxpayer is entitled to the credit provided *if an individual uses the residence as their principle residence*. This is not the case in this appeal. The property under review is non-owner occupied rental property.
- e) The Respondent presented sufficient evidence to support the assessment. Respondent asserts that an *auction sale* does not fall within the definition of market value. *Ward Testimony*. Further, an unconsummated auction sale – a mere bid – is far less reliable. *Respondent's Ex. 4; Ward Testimony*. The Respondent argues that the definition of market value specifies that a reasonable amount of time needs to be allowed for exposure to the market, which disqualifies the subject auction sale. *Respondent's Ex. 4*. The Respondent contended that although a bid was made on the property, no sale actually occurred. *Ward Testimony*.
- f) The Respondent offered evidence that the subject property's value is based on comparable sales within the neighborhood. *Respondent's Ex. 5, 6, 7, 8, 9*. The

Respondent stated that the adjusted comparable properties indicate a value range from \$32,800 to \$39,300, with the subject property falling within that range at \$34,400. *Ward Testimony*. The Petitioner did not offer any evidence to rebut the Respondent's comparables or to rebut any of the Respondent's determined values.

Conclusion

16. The Petitioner failed to make a prima facie case by offering market evidence to support its contentions. The Respondent rebutted petitioner's evidence. 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.