

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

Petition #: 49-900-02-1-5-02462
Petitioners: Ronald & Cynthia Abner
Respondent: Wayne Township Assessor (Marion County)
Parcel #: 9013485
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 Marion County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 24, 2003.
2. The Petitioners received notice of the decision of the PTABOA on December 19, 2003.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on January 15, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 28, 2004.
5. The Board held an administrative hearing on March 31, 2004, before the duly appointed Administrative Law Judge Paul Stultz.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Ronald Abner, taxpayer
 - b) For Respondent: Tara Acton – Deputy Wayne Twp. Assessor
Michael Thompson – Deputy Wayne Twp. Assessor

Facts

7. The property is classified as residential, as is shown on the property record card for parcel #9013485.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Marion County PTABOA:
Land \$9,800, Improvements \$65,500.

10. Assessed Value requested by Petitioners: Land \$8,900, Improvements \$36,100.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. Petitioners claimed property located at 5022 Rockville Road is more valuable than subject property but is assessed for less value. Petitioners presented a copy of the Property Record Card and photos of 5022 Rockville Road to support his contention. Petitioners testified to the following:
 1. 5022 Rockville Road is assessed at \$71,600
 2. 5022 Rockville Road is all brick, has two stories, has a two car detached, full brick fireplace, and is on a lot and a half.
 3. Subject property has one story, one detached garage, and is on one lot. *Abner testimony; Petitioners' Exhibit 5, 6.*
 - b. Petitioners stated he purchased subject property on November 10, 1998 for \$45,000. *Abner testimony; Petitioners' Exhibit 7, at 2.*
 - c. Petitioners asserted that the property at 17 South Lynnurst is the most comparable to the subject property and this property is assessed at \$39,600. *Abner testimony; Petitioners' Exhibit 3; Respondent's Exhibit 1.*
 - d. Petitioners introduced evidence, a comparative market analysis, that suggests the market value is \$54,135. *Petitioners' Exhibit 8, 10.*
12. Summary of Respondent's contentions in support of the assessment:
- a. Respondent presented evidence to show how the five sales in subject neighborhood compare as to square feet, attic, crawl, or basement square feet, grade, and type of garage. *Thompson testimony; Respondent's Exhibit 1.*
 - b. Respondent contended that the property at 4923 Jackson Street is the most comparable property to the subject property, noting that 4923 Jackson Street has 1,040 square feet. *Thompson testimony; Respondent's Exhibit 1.*
 - c. Respondent stated Petitioner's comparative market analysis did not conform to USPAP rules, was done by a real estate broker, not an appraiser. *Thompson testimony.*
 - d. Respondent asserted the comparative market analysis is dated October 2003. The market was flooded by October 2003 and does not reflect the seller's market January 1999. *Acton testimony.*
 - e. Respondent claimed the sale of subject home for \$45,000 was not a sale that could be used to analyze the market. Respondent claimed Petitioners stated the property was not listed and the sale was a neighbor buying a neighbor's home. *Thompson 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 recordings of the hearing labeled BTR #3344 and 3346.

- c) Exhibits:
 - Petitioners' Exhibits: *see* Attachment A
 - Respondent Exhibits: *see* Attachment B
- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations are:
- a) 50 IAC 2.3 -1-1(b) "All real property assessed after February 28, 2002, must be assessed in accordance with the 2002 Real Property Assessment Manual, incorporated by reference under section 2 of this rule."
 - b) 50 IAC 2.3 -1-1(d) "The purpose of this rule is to accurately determine "True Tax Value" as defined in the 2002 Real Property Assessment Manual, not to mandate that any specific assessment method be followed."
 - c) 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 – "True tax value is defined as: 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, ..."
 - d) 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).
 - e) 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).
15. The Petitioners did provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. The evidence in the record demonstrates the market value of the subject home to be less than the current assessment for the following reasons:
 - 1. Petitioners submitted evidence and testified property was purchased for \$45,000. *Abner testimony; Petitioners' Exhibit 7 at 2.*
 - 2. Petitioners submitted a market study claiming the property had a market value of \$54,135. *Petitioners' Exhibit 8, 10.*
 - 3. Respondent testified and submitted evidence that the most comparable property was 4923 Jackson Street that is assessed at \$59,700 – significantly lower than the subject assessment. *Thompson testimony; Respondent's Exhibit 1.*
 - b. Petitioners' opinion that 17 South Lynnurst was the most comparable property is probative, but without further evidence and explanation, this opinion is conclusory.
 - c. Respondent's criticism that Petitioners' market analysis (*Petitioners' Ex. 8*) is not done according to appraisal standards is correct. The analysis was not done using USPAP guidelines. However, this does not mean the evidence has no value.

- d. The Board determines the market analysis (*Petitioners' Ex. 8*) shows a sales comparison with reasonable adjustments using comparative properties and finds the said evidence probative and persuasive.
- e. Respondent notes that the sale dates used in the market analysis (*Petitioners' Ex. 8*) are October 2003 and are outside the time limits used for the January 1999 valuation date. However, the Respondent did not provide any information or evidence concerning the change in market from 1999 to 2003. Market Evidence from the 1999 time frame would be more accurate in determining the Assessed Value. However, just because Petitioners' evidence was not from the 1999 time frame does not mean it has no probative value.
- f. Respondent's criticism concerning Petitioners' sale price of subject home (*Exhibit 7 page 2*) is not supported by probative evidence and the Board finds Respondent's opinion concerning the Petitioners' purchase price to be conclusory.
- g. The Board finds the purchase price evidence offered by the Petitioners (*Petitioners' Exhibit 8, 10*) to be probative.
- h. The Board finds the comparison presented by the Respondent to be the most persuasive evidence. The comparison done by the Respondent included comparison of sizes, construction dates, and actual sale dates. The Comparison indicates similarity in size between the subject and the 4923 Jackson Street property. The Comparison indicates the 4923 Jackson Street property sold in July of 1999 for \$59,700.
- i. The evidence presented by the Petitioners established a prima facie case. The evidence presented by the Respondent indicated an error in the assessment as well. Because the Board found Respondent's comparison to be the best evidence of value for the subject for the 1999 valuation date, the Board determines the Assessed Value should be \$59,700.

Other Findings

16. Respondents objected to Petitioners entering into evidence Petitioner's Exhibit 3. This exhibit contains a two page statement entitled "Rebuttal," a Property Record Card of residence 15 S. Rebecca with photo attached, two photos of residence 33 S. Myron, and one photo of residence 17 S. Lynhurst.
17. The Board determined the following:
 - a. Respondents were given proper notice that Mr. Abner was going to testify. Respondents did not demonstrate that they were harmed by Petitioners reading testimony from a script.
 - b. Respondents did not demonstrate that they were harmed by a copy of a Property Record Card for 15 South Rebecca that was obtained from Respondents' office.
 - c. Respondents did not demonstrate that they were harmed by photos of other homes in the subject neighborhood.
 - d. Accordingly, the Board will allow Petitioner's Exhibit 3 into the record and the said exhibit will be granted the proper weight.

Conclusion

18. The evidence presented by the Petitioner established a prima facie case. The evidence presented by the Respondent indicated an error in the assessment as well. Because the Board found Respondents comparison to be the best evidence of value for the subject for the 1999 timeframe, the Board determines the Assessed Value should be \$59,700.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to assessed value of land \$9,800 and the assessed value of improvements \$49,900 for a total assessment of \$59,700.

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.