

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

Petition #: 49-900-02-1-5-02463
Petitioners: Ronald & Cynthia Abner
Respondent: Wayne Township Assessor (Marion County)
Parcel #: 9011853
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
 - 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 demonstrated on the property record card for parcel #9011583.
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 \$5,500. The property was assigned a negative influence factor of 32% in arriving at the Assessed Value.

10. Assessed Value requested by Petitioners: Land \$500.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) Petitioners contended the assessed value for this parcel was inaccurate. *Abner testimony.*
 - b) Petitioners presented the Property Record Card for 5022 Rockville Road that has land assessed at \$800. *Abner testimony; Petitioners' Ex. 4.*
 - c) Petitioners presented the Property Record Card for 5020 Rockville Road that has land assessed at \$1,800. *Abner testimony; Petitioners' Ex. 4.*
 - d) Petitioners testified the subject parcel has a stream that runs the length of the subject parcel and provided photos of subject parcel. *Abner testimony; Petitioners' Ex. 5.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Respondent contended the assessment was correct.
 - b) Respondent stated that property located at 5022 Rockville Road is a small part of a larger area that is currently listed for \$279,900. Respondent presented a sales listing for 5022 Rockville Road. *Thompson testimony; Respondent's Ex. 5.*
 - c) Respondent stated the two properties presented as comparables are not in the neighborhood of the subject property but classified in a separate neighborhood. *Thompson testimony.*
 - d) Respondent stated the two properties presented as comparables are zoned as a commercial area and not similar in use to the subject property. *Thompson testimony.*
 - e) Respondent stated all lots in subject neighborhood are assessed on a front foot bases and are based on the Base Lot Contribution study done by W. J. Zinn, Inc. *Thompson testimony; Respondent's Ex. 4.*

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 attached to Findings.*
 - Respondent's Exhibits: *see Attachment B attached to Findings.*
 - Board Exhibits:
 - Board Ex. A- Form 131 Petition
 - Board Ex. B-Notice of Hearing on Petition Small Claims
 - Board Ex. C-Written request by Petitioners to hear four petitions at the same time
 - d) These Findings and Conclusions.

Analysis

13. The most applicable governing regulations and cases 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 (incorporated by reference by 50 IAC 2.3-1-2) “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. Version A -Real Property Assessment Guidelines, chapter 2, page 8 and 9 (incorporated by reference by 50 IAC 2.3-1-2(b) “The township assessor shall establish a base rate for pricing each neighborhood... The township shall also establish a base lot to represent the typical and average characteristics of lots in the neighborhood for the purpose of making pricing adjustments.”
 - f. 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).
14. The Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
 - a. Petitioners provided two properties (5020 and 5022 Rockville Road) he alleged were comparable to subject property that are not in the subject neighborhood. They are across the street from the subject neighborhood. *Abner testimony; Petitioners’ Ex.4.*
 - b. Petitioners’ Ex. 4 demonstrates both 5020 and 5022 Rockville Road parcels are assessed as commercial undeveloped, not platted land. Their assessments are based on a rate of \$5,550 per acre.
 - c. The subject property is residential property and is assessed as a platted lot on a front foot method at an adjusted rate of \$180 per front foot. *Petitioners’ Ex. 4.*
 - d. The Board finds that 5020 and 5022 are not comparable to the subject property. The subject property is assessed using a different method than the alleged comparables. The subject property is residential and the alleged comparables are commercial. Finally the subject and the alleged comparables are not in the same neighborhoods.

- e. Respondent stated all lots in subject neighborhood are assessed on a front foot basis and are based on the Base Lot Contribution study done by W. J. Zinn, Inc. *Thompson testimony; Respondent's Ex. 4*
- f. Respondent's Ex. 4 states the base lot is 15 Myron Avenue and the value is \$8,400. This base lot is used as a reference for all other lots in the neighborhood. *Version A Real Property Assessment Guideline, ch. 2, at 8, 9.* The Board notes Mr. Abner did not dispute the findings of the Base Lot Contribution study mentioned above.
- g. The Board finds the evidence presented by the Petitioners insufficient to establish a prima facie case indicating an error in the assessment. The properties submitted by the Petitioners as comparables are not similar enough to be considered comparables. The Assessed Value as determined by the Respondent stands.

Other Findings

- 15. Respondents objected to Petitioner 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.
- 16. 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.
- 17. The Board considered the Respondents' objection and found the Respondents were not harmed by Petitioner entering Petitioners' Exhibit 3 as evidence. Accordingly, the Board considered Petitioners' Exhibit 3 in making its determination.

Conclusion

- 18. The Petitioners failed to make a prima facie case. The Respondent showed by the preponderance of the evidence that all lots, including the subject lot, were assessed based on a typical lot (15 Myron Avenue) and were assessed using the same method. 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.