

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

Petition #: 49-900-02-1-5-02464
Petitioners: Ronald & Cynthia Abner
Respondent: Wayne Township Assessor (Marion County)
Parcel #: 9000984
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 #9000984.
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: \$9,200, Improvements: \$152,800 for a total assessed value of \$162,000.

10. Assessed Value requested by Petitioners: Total Assessed Value for parcel is \$95,500 plus the cost of the pool of 23,000.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. Petitioners provided 144 sales occurring in 1998 and 1999 in grid #33. Grid #33 is located in Wayne Township. *Petitioners' Exhibit 1*. No sale exceeds a sale price of \$100,000. *Petitioners' Exhibit 1; Abner testimony*.
 - b. Petitioners stated they had an appraisal for the subject property stating the subject property has a market value of \$95,500. *Abner testimony; Petitioners' Exhibit 8, 9*.
 - c. Petitioners claimed the following comparable properties had assessed values as follows:
 - i. 11 South Rebecca - assessed value - \$73,300
 - ii. 15 South Rebecca - assessed value- \$81,000
 - iii. 14 South Rebecca – assessed value-\$68,800
 - iv. 5022 Rockville Road –assessed value - \$71,600
Petitioners' Exhibit 4, 5, 6; Abner testimony.
 - d. Petitioners claimed if \$23,000 (cost of subject's pool) was added to above comparable properties the assessed value would be under \$100,000. *Petitioners' Exhibit 3 and Abner testimony*.
 - e. Subject property has \$100,000 of casualty insurance. *Form 131 Supplement, page 1*.
 - f. Petitioners contends subject property has a value of \$95,500 plus the \$23,000 cost of the pool. *Form 131, page 2, section II*. This would make the subject total value \$118,500.
12. Summary of Respondent's contentions in support of the assessment:
- a. Respondent points out subject property has 1,300 square feet ("sf") on first floor, 1,160 sf on second floor, and basement of 1,300 sf. *Thompson testimony*.
 - b. Respondent stated subject has an in ground pool assessed at \$23,300. *Thompson testimony*.
 - c. Respondent claimed the market analysis provided by the Petitioners does not conform to Uniform Standards of Professional Appraisal Practice ("USPAP"), and the analysis was done by a real estate broker, not by a licensed appraiser. *Thompson testimony*.
 - d. Respondent noted the market analysis was dated October 2003. The date of valuation is January 1999. Respondent alleged the market was flooded by October 2003 and does not reflect the seller's market at January 1999. *Acton 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 Petitioners' Exhibit list Attachment A
 - Respondent Exhibits: see Respondent's Exhibit list Attachment B
 - Board Exhibits:
 - A. Form 131 petition.
 - B. Notice of Hearing on Petition
 - C. Copy of Petitioners' request to combine four petitions
 - d. These Findings and Conclusions.

Analysis

14. The most applicable governing law:
- 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. 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 the Petitioners' contentions. This conclusion was arrived at because:
- a. There were no properties in the subject neighborhood or the surrounding area that exceeded \$100,000. *Abner testimony; Petitioners' Exhibit 1; Respondent's Exhibits 1 and 2.*

- b. Photos of subject home and comparable properties in subject neighborhood and the surrounding area demonstrate subject property is a one and a half story dwelling comparable and similar to other dwellings in the neighborhood. *Abner testimony; Petitioners' Exhibit 3, 6; Respondent's Exhibit 6.*
- c. The market analysis provided by Petitioners suggests a recommended list price of \$102,713. *Petitioners' Exhibits 8 and 9.*
- d. Petitioners stated subject property has \$100,000 of casualty insurance. *Form 131 Supplement, page 1.*
- e. Petitioners contend the subject property has a value of \$95,500 plus the \$23,000 cost of the pool. *Form 131, page 2, section II.* This would make the subject total value \$118,500.
- f. Respondent demonstrated that there were no sales in subject neighborhood exceeding \$100,000. *Respondent's Exhibits 1, 2.*
- g. Respondent asserted the market analysis (*Petitioners' Exhibit 8*) was done by a real estate broker and did not conform to USPAP standards. *Thompson testimony.*
- h. The Board notes that Petitioners' Exhibit 8 does not conform to USPAP standards. The Board finds the sales comparison approach in said Exhibit, though not perfect, is persuasive evidence that the market value of the subject improvements are less than \$152,800.
- i. Had the Respondent presented a market analysis supporting the assessed value, it may have rebutted the Petitioners' evidence. However, the evidence Respondent presented indicated there were no sales in the subject neighborhood exceeding \$100,000. *Respondent's Exhibits 1, 2.*
- j. Respondent opined the market analysis (*Petitioners' Exhibit 8*) was dated October 2003, and does not accurately reflect the market value for January 1999. Respondent claimed market was flooded by October 2003, and the market was a seller's market in 1999. *Acton testimony.*
- k. The Respondent should have presented *evidence* supporting the claim the market was flooded by October 2003 and prices had declined, and this may have rebutted the Petitioners' evidence. *See Meridian Towers East & West v. Washington Twp. Assessor, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).*
- l. Respondent's opinion concerning the market change from January 1999 to October 2003 was not supported by any probative evidence and therefore is conclusory. The Respondent did not present evidence to establish the differences in the subject market between January 1999 and October 2003. *Abner testimony; Thompson testimony.*

Other Findings

- 16. Respondents objected to Petitioners entering into evidence Petitioners' 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 Abner 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 allowed Petitioners' Exhibit 3 into the record and considered it in making its determination.
18. Respondent objected to Petitioners entering into evidence Petitioners' Exhibit 8. Respondent asserted she did not receive a copy of Petitioners' Exhibit 8 (note Petitioners' Exhibit 9 is a duplicate copy of Exhibit 8). This is the market analysis for subject property (5033 Rockville Road). *Acton testimony.*
19. The Board determined the following:
- a. Petitioners' Exhibit 9, which is a duplicate copy of Petitioners' Exhibit 8, was attached to the 131 Petition received by the Board.
 - b. The 131 Petition was forwarded to the Board by the Marion County Assessor.
 - c. The Board finds regrettable the fact that the Wayne Township Assessor's office did not receive a copy of Petitioners' 8. The Board finds the Petitioners submitted the said exhibit with the Marion County Assessor's office, and the Petitioners' responsibility to serve notice of contended evidence ended there.
 - d. Accordingly, the Board allowed Petitioners' Exhibit 8 into the record and considered it in making its determination.

Conclusion

16. The Petitioners made a prima facie case. The Respondent did not sufficiently rebut petitioners' evidence. The Board finds in favor of the Petitioners, and determines the preponderance of the evidence substantiate the market value of subject improvement to be \$ 109,300 and land to be \$ 9,200, for a total assessed value of \$ 118,500.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to \$118,500.

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.