

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

Petition #: 60-040-02-1-5-00125
Petitioners: S. Paul and Shirley Oberholtzer
Respondent: Marion Township Assessor (Owen County)
Parcel #: 04019000009100
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 Owen County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 29, 2003.
2. The PTABOA’s Notification of Final Assessment Determination (Form 115) was mailed to the Petitioners on December 5, 2003.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on December 29, 2003. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 10, 2004.
5. The Board held an administrative hearing on May 12, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. Persons present and sworn in at the hearing:
 - a) For Petitioners: S. Paul Oberholtzer, Taxpayer
 - b) For Respondent: Scott Potts, Consultant on behalf of Marion Township.
Ann Denney, Owen County Assessor.
Joseph Heinmiller, PTABOA member.
Kenneth W. Anderson, PTABOA member.
Margaret Tucker, PTABOA member.

Facts

7. The property is classified as agricultural, as is shown on the property record card (PRC) for parcel # 040-190-00009100.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Values of the subject property as determined by the Owen County PTABOA are: Land \$51,800 Improvements \$71,600
10. Assessed Values requested by Petitioners are:
Land \$51,800 Improvements \$41,600

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The subject dwelling is assessed too high when compared to the assessments of two older homes located within the township. *Oberholtzer testimony & Petitioners Exhibits 2a and 3a.*
 - b) The two purported comparable properties have more modern furnaces and central air conditioning systems, are better than the subject, and would sell for more than the subject. Based on age, the subject dwelling is assessed \$30,000 higher than everyone else. *Oberholtzer testimony.*
 - c) The township trustee stated that the grade of the dwelling (C-1) was high. *Oberholtzer testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) Respondent requested market evidence from the Petitioner to establish some basis of comparison. *Potts testimony.*
 - b) The two properties submitted by the Petitioner as comparable to the subject property are not comparable. *Potts testimony & Petitioners Exhibits 2a and 3a.*
 - c) The Respondent submitted six properties into evidence that are comparable to the subject property. *Potts testimony & Respondent Exhibits 2a through 2f.*
 - d) Township trustees throughout the County are not Level I or Level II certified to determine grade and thus have no experience in doing so. *Denney 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 # 5249.

- c) Exhibits:
- Petitioners Exhibit 1 – Four exterior photographs of the subject property.
 - Petitioners Exhibit 1a – Copy of data base information entitled Real Property Maintenance for the subject property.
 - Petitioners Exhibit 1b – Subject’s PRC.
 - Petitioners Exhibit 1c – Two street photographs of subject structure.
 - Petitioners Exhibit 2 – Two exterior photographs of Hart property.
 - Petitioners Exhibit 2a - Copy of data base information entitled Real Property Maintenance for Hart property.
 - Petitioners Exhibit 3 – Two exterior photographs of Herrington property.
 - Petitioners Exhibit 3a - Copy of data base information entitled Real Property Maintenance for Herrington property.

- Respondent Exhibit 1 – Notice of Appearance of Consultant.
- Respondent Exhibit 2 – Cover sheet for comparable properties.
- Respondent Exhibit 2a - PRC and photograph of comparable Dyer property.
- Respondent Exhibit 2b – PRC and photograph of comparable Vuke property.
- Respondent Exhibit 2c – PRC and photograph of comparable Franklin property.
- Respondent Exhibit 2d – PRC and photograph of comparable Nardi property.
- Respondent Exhibit 2e – PRC and photograph of comparable McCracken property.
- Respondent Exhibit 2f – PRC and photographs of comparable Spencer Restoration, Inc. property.

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases 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 Board of Tax Commissioners*, 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 Board of Tax Commissioners*, 684 N.E. 2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind Tax Ct. 1997).

15. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:

- a) The Petitioners acknowledged they had no evidence, such as an independent appraisal, indicating the fair market value of the subject structure.
- b) In support of their position, the Petitioners submitted into evidence two printouts entitled Real Property Maintenance (*Petitioners Exhibits 2a and 3a*) with two photographs each (*Petitioners Exhibits 2 and 3*) for two residential dwellings purported to be comparable to the subject property. The printouts showed the Total Land Assessment, the Total Improvement Assessment, the Total Assessed Value (land and improvement) and the Net Assessed Value, as well as Current Deductions. The photographs were exterior pictures of the two residential dwellings.
- c) According to the Petitioners, the assessment printouts are of properties that are much nicer, more modern and in better locations than the subject property. The Petitioners used the printout information to compare the subject property's assessment to the assessments of these purported comparable properties. Based on this comparison, the Petitioners concluded the assessment of the subject property was higher (by \$30,000) and therefore should be reduced.
- d) However, the conclusory statements made by the Petitioners about the unfairness of the assessments, or that one property is nicer or better than the subject, are matters of opinion. Unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998).
- e) Although the Petitioners submitted the printouts into evidence, no other information regarding square footage, story height, year of construction, grade, or condition of the two properties was presented for comparison. Further, the printouts indicate neither of the purported comparable homes is located in Bowling Green, as is the property of the Petitioners.
- f) The exterior photographs of the two residential dwellings failed to establish that the properties were in fact comparable in size and amenities to the subject structure. Photographs, without explanation, are not probative evidence. *Quality Farm & Fleet, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 88, 93 (Ind. Tax 2001).
- g) Further, the Respondent rebutted the assertion that the two properties identified by the Petitioners were comparable to the property under appeal. The Respondent testified that the subject is a full two-story dwelling over a basement, built in 1890, and consists of 2,562 square feet of living area. The Respondent also testified that one of the Petitioners' purported comparable properties (*Herrington property – Petitioners Exhibits 3 and 3a*) is a 1½-story dwelling with 1,730 square feet of living area. The second purported comparable property (*Hart*

property – Petitioners Exhibits 2 and 2a) is a single-story dwelling with a finished attic and 2,072 square feet of living area. Neither property would qualify as comparable to the subject. The Petitioners did not dispute the Respondent’s testimony regarding the Herrington or Hart properties.

- h) In further defense of the current assessment, the Respondent identified six properties considered comparable to the subject. The Respondent made an analysis of their comparability by comparing the story height, square footage and assessed values. In this analysis, the comparable dwellings are all two-story structures, with living areas ranging from 1,996 to 3,081 square feet and assessed values ranging from \$62,500 to \$86,700. As indicated, the subject is a two-story dwelling, with 2,562 square feet of living area, and assessed at \$64,600. This analysis indicates that the assessment of the subject dwelling is comparable to the assessments of other similarly situated dwellings.

Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of the 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.