

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

Petition #: 01-022-06-1-5-00026
Petitioners: Garry, Jason & Joe Myers
Respondent: Washington Township Assessor (Adams County)
Parcel #: 01-05-02-301-096.000-022
Assessment Year: 2006

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 filed an appeal with the Adams County Property Tax Assessment Board of Appeals (PTABOA) on November 22, 2006.
2. The PTABOA mailed a notice of its determination on February 16, 2007.
3. The Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment on March 15, 2007. The Petitioners elected to have their appeal heard in small claims.
4. The Board issued a notice of hearing to the parties dated September 12, 2007.
5. On November 15, 2007, the Board held an administrative hearing on the Petitioners’ appeal before its duly appointed Administrative Law Judge, Jennifer Bippus (“ALJ”).
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Garry Myers, Taxpayer
 - b) For Respondent: Rex King, Washington Township Assessor,
Jeffrey Kiess, Appraisal Research
Judith Affolder, Adams County Assessor

Facts

7. The property is classified as a residential property, located at 903 Parkview, as shown on the property record card for Parcel No. 01-05-02-301-096.000-022.
8. The ALJ did not inspect the subject property.
9. The PTABOA determined the assessed value of the subject property to be \$11,500 for the land and \$43,800 for the improvements, for a total assessed value of \$55,300.
10. The Petitioners requested an assessment of \$11,500 for the land and \$32,900 for the improvements, for a total assessed value of \$44,400.

Parties' Contentions

11. Summary of the Petitioners' contentions:
 - a) The Petitioners contend that the property was not properly assessed. *Myers testimony*. According to Mr. Myers, the comparable properties used by the Respondent to value the property, are not comparable because the subject property was flooded with eight inches of water and the comparable properties were not. *Myers testimony; Respondent Ex. 4*. The Petitioners argue that dry houses are not comparable to wet houses because a flooded house carries a stigma with it that does not appeal to buyers. *Myers testimony*. Further, the property located at 1027 Parkview was a mortgage foreclosure and the property located at 957 Parkview was a "flipped" house. *Petitioner Ex. 1; Myers testimony*. Thus, the Petitioners contend, neither sale reflects the true tax value of the houses and they should not be used as comparables. *Id.*
 - b) The Petitioners argue that the subject property should be valued pursuant to its 2004 assessment. *Myers testimony*. Mr. Myers contends that the land value should remain at the prior assessed value of \$11,500 and the improvements should remain valued at \$32,900 resulting in an assessed value of \$44,400. *Respondent Ex. 2; Board Ex. A*. Alternatively, the Petitioners contend that the property's assessed value should be reduced by 25%. *Myers testimony*. Mr. Myers testified that the subject property was placed on the city's condemned list as a result of flooding. *Id.* The Petitioners chose not to participate in the FEMA buy-out and Mr. Myers repaired the property. *Id.* The houses on either side of the subject property, however, were condemned by the city and destroyed. *Respondent Exhibit 3*. According to Mr. Myers, the city paid fair market value less 25% for 20 houses damaged by the 2003 flood. *Myers testimony*.
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent testified that, in the summer of 2003, a flood occurred along the St. Mary's river and the subject property's neighborhood was affected. *Kiess testimony*;

Respondent Ex. 2. Mr. Kiess testified that the properties were re-evaluated at that time and the neighborhood factor was dropped from 99% to 70% to reflect the decrease in value of the properties for 2004. *Id.* Accordingly, the subject property was lowered to an assessed value of \$44,700. *Id.* For 2005, however, the neighborhood factor was .93 which raised the property value to \$55,300 after trending for 2006. *Kiess testimony; Respondent Ex. 2.*

- b) The Respondent contends that it used the best available comparables to value the property. *Kiess testimony.* The Respondent presented the sales of the properties located at 957 Parkview and 1075 Angus Drive.¹ *Respondent Ex. 4.* According to the Respondent's witness, the two sales were the only sales made after the flood.² *Kiess testimony.* Mr. Kiess argues that, while the comparables were both larger and in better shape than the subject property, the Respondent valued the subject property at only 82% and 73% of the sale values of the properties. *Kiess Testimony.*

Record

13. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) The digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1: Copy of MLS record from 1027 Parkview,
Petitioners Exhibit 2: Copy of Notice of Trending of Assessment from Assessor to the taxpayer,
Petitioners Exhibit 3: Copy of subject property record card.

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Copy of Form 131,
Respondent Exhibit 3: Record of PTABOA appeal hearing,
Respondent Exhibit 4: Appraisal grid of comparable properties,
Respondent Exhibit 5: Photo of subject property,
Respondent Exhibit 6: Photo of comparable 1,
Respondent Exhibit 7: Photo of comparable 2,
Respondent Exhibit 8: Summary of hearing comments.

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,

¹ According to Mr. Kiess, the Respondent did not use 1027 Parkview as a comparable. *Kiess testimony.*

² Mr. Kiess admitted that the city purchased flooded houses and tore them down. *Kiess testimony.* He claims, however, that the city paid pre-flood values. *Id.*

Board Exhibit C: Notice of Appearance for County Assessor,
Board Exhibit D: Hearing Sign In Sheet.

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a) A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs.*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b) In making its case, the petitioner must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 276 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board... through every element of the analysis”).
 - c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:
- a) The Petitioners contend that the subject property was assessed incorrectly. According to Mr. Myers, the subject property was renovated after a flood. *Myers testimony*. Because the Respondent’s “comparable” properties had never flooded, the Petitioners argue, they are not comparable to the subject property. *Id.* While the Petitioners raise a potentially valid concern with the comparable properties that the Respondent used to value the subject property, the Petitioners must do more than show that the assessment is incorrect. The Petitioners have a two-pronged burden of proof. As stated above, a Petitioner must not only prove the current assessment is incorrect, he must also prove what the correct assessment should be. *Meridian Towers*, 805 N.E.2d, 478; *Clark*, 694 N.E.2d 1230. Thus, the Petitioners’ evidence regarding the Respondent’s valuation method is insufficient to raise a prima facie case.
 - b) The Petitioners also argue that the proper value of the subject property should be its 2004 assessed value of \$44,400. *Myers testimony*. The Petitioners contention, however, is misplaced. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs.*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing

Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative evidence of its true tax value in a different tax year. *Id.*

- c) Finally the Petitioners contend that if the value of the property is not \$44,400, then the true tax value should be fair market value less 25% because that is what the Petitioners would have received if they had sold the subject property to the city. *Myers testimony*. Thus, the Petitioners argue, if the fair market value is the property's assessed value of \$55,300, the true tax value of the property should be 25% less or \$41,475. *Id.* Here the Petitioners presented no appraisal, sales information, or other market data in support of this argument. Conclusory statements regarding the property's value are not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Thus, the Petitioners failed to raise a prima facie case.

Conclusion

16. The Petitioner failed to provide sufficient evidence to establish 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 for the subject parcel should not be changed.

ISSUED: February 5, 2008

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.