

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

Petition #: 84-002-04-1-5-00063
Petitioners: Michael & Virginia Zari
Respondent: Harrison Township Assessor (Vigo County)
Parcel #: 118-06-16-437-011
Assessment Year: 2004

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 Vigo County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 8, 2005.
2. The PTABOA issued notice of its decision via a Form 115 Notification of Final Assessment Determination dated November 22, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Vigo County Assessor on December 22, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 6, 2006.
5. The Board held an administrative hearing on November 14, 2006, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioners: Michael Zari, Petitioner,
 - b. For Respondent: Larry Auler, Harrison Township Assessor,
Richetta Hale, Harrison Twp. Chief Deputy.

Facts

7. The subject property is a single-family residence located at 670 Third Avenue, Terre Haute, Harrison Township, Vigo County.

8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$6,400 for the land and \$17,600 for the improvements, for a total assessed value of \$24,000.
10. The Petitioners requested an assessment of \$1,000 for the land and \$10,500 for the improvements, for a total assessed value of \$11,500.

Issues

11. Summary of the Petitioners' contentions in support of alleged error in the assessment:
 - a. The Petitioners contend that the subject property is assessed in excess of its market value. In support of their claim, the Petitioners submitted two (2) opinions of value from realtors. *Pet'rs Exs. 2-3; Zari testimony*. The first opinion is contained in a letter dated May 26, 2005, from Wayne Collins to Michael Zari. *Pet'rs Ex. 2*. In that letter, Mr. Collins identified six (6) properties that had recently sold for prices ranging from \$2,000 to \$21,000. *Id.* Based on the sale prices of those properties and the condition of the subject property, Mr. Williams suggested that the Petitioners list the subject property between \$12,900 and \$14,900 in hopes of actually closing a sale between \$10,000 and \$11,000. *Id.*
 - b. The second opinion is contained in a letter dated November 10, 2006, from Jessica Winter. *Zari testimony; Pet'rs Ex. 3*. Based on her "competitive market analysis," Ms. Winter believed that \$14,900 would be a fair price for the subject property. *Pet'rs Ex. 3*.
 - c. The Petitioners further contend that the blighted condition of neighboring properties, one of which bears a "condemned" notice, lowers the value of the subject property. In support of this contention, the Petitioners submitted copies of photographs depicting properties to the east, west and south of the subject property. *Zari testimony; Pet'rs Ex. 1*.
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the subject property is located in a "lower" type neighborhood as reflected by its neighborhood adjustment factor of .78. *Hale testimony*.
 - b. The Respondent further contends the Petitioners' evidence, especially the comparable sales cited by Mr. Collins, demonstrates that the subject property's assessment should be lowered. *Auler testimony*. The Respondent, however, did not specify the amount by which the assessment should be lowered. *See id.*

Record

13. The official record for this matter is made up of the following:
- a. The Form 131 petition,
 - b. The compact disk recording of the hearing labeled 84-002-04-1-5-00063Zari-11-14-06,
 - c. Exhibits:

Petitioners Exhibit 1 - Five photographs of improvements on adjoining parcels,
Petitioners Exhibit 2 - Copy of letter from Wayne Collins dated May 26, 2005,
Petitioners Exhibit 2 - Copy of letter from Jessica Winter dated November 10,
2006,

Respondent Exhibits - None submitted

Board Exhibit A - Form 131 petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - 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 an assessing official 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 taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (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). The assessing official must offer evidence that impeaches or rebuts the petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners failed to establish a prima facie case for a reduction in value. The Board reaches this decision for the following reasons:
- a. Real property in Indiana is assessed based upon its “true tax value.” See I.C. § 6-1.1-31-6(c). “True tax value’ is defined as “[t]he 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.*, at 3; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar or comparable properties that have sold in the market.” *Id.*
 - b. In order to use the sales comparison approach as evidence in a property assessment appeal, however, the proponent of that evidence must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property that are relevant to market value and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values. *Id.*
 - c. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4, 8. That is also true for succeeding assessment years through 2005. *See* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002 through March 1, 2005, assessment dates); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the Department of Local Government Finance to adopt rules for annually adjusting assessments to account for changes to value in years since general reassessment, with such adjustments to begin in 2006). Consequently, a party relying on evidence concerning a property’s market value as of a date substantially removed from the relevant valuation date of January 1, 1999, must explain how that evidence demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
 - d. Here Petitioners rely on conclusory opinions of value from Ms. Winters and Mr. Collins. Ms. Winters did not identify how she arrived at her opinion of value other than to reference a “competitive market analysis” that she had performed. *Pet’rs Ex. 3*. Ms. Winters, however, did not explain whether she based that analysis on a generally accepted approach to value, such as the sales comparison approach. Mr. Collins at least purported to base his opinion on the sales comparison approach. *See Pet’rs Ex. 2*. Mr. Collins, however, did not compare any relevant characteristics of the purportedly comparable properties to those of the subject property other than the

- sizes of the respective dwellings. *See id.* Similarly, Mr. Collins did not adjust the sale prices of the purportedly comparable properties to account for any relevant differences between those properties and the subject property. *See id.* Moreover, neither Mr. Collins nor Ms. Winters attempted to relate his or her opinion of value to the subject property's market value-in-use as of January 1, 1999. For all of the above stated reasons, the opinions of value set forth in the letters from Ms. Winters and Mr. Collins are not probative of the subject property's true tax value.
- e. The Petitioners further contend the subject property is located in a blighted area. *Zari testimony.* While that may be true, the Petitioners did not present any probative evidence to quantify the effect of the subject property's undesirable location on its market value-in-use.
 - f. Based on the foregoing, the Petitioners failed to establish a prima facie case for a reduction in the subject property's assessment. In so finding, the Board recognizes the Respondent's concession regarding the first prong of the Petitioners' prima facie case – that the assessment is incorrect. *See Auler testimony.* The Respondent, however, did not identify what it believed the amount of that reduction should be, thereby leaving the second prong of the Petitioners' prima facie case in dispute. *See Meridian Towers* 805 N.E.2d at 478. Because the Petitioners failed to present probative evidence to establish the market value-in-use of the subject property, the Board is left with no choice but to deny the Petitioners' claim for relief.
 - g. Nonetheless, the Respondent's approach in defending this appeal is a matter of significant concern to the Board. If the Respondent believed that it had assessed the subject property improperly, it should have explored the possibility of settlement with the Petitioners. If unable to reach an agreement, the Respondent could have conceded what it thought the correct assessment should be at the administrative hearing. If the Respondent was unwilling to take either of those steps, it simply could have rested its case on grounds that the Petitioners failed to meet their burden of proof. The Respondent's chosen course of action – admitting that the assessment was wrong without identifying what the correct assessment should be - served no purpose other than to create false expectations for the Petitioners.

Conclusion

16. The parties agree that the assessment is incorrect. The Petitioners, however, failed to submit probative evidence demonstrating what the correct assessment should be.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review denies the Petitioners' claim for relief.

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. 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>.