

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

Petition #: 18-014-02-1-5-00031
Petitioners: Carlis B. and Lola Wilson
Respondent: Mt. Pleasant Township Assessor (Delaware County)
Parcel #: 18-10-10-377-033.000-014
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 Delaware County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 1, 2003.
2. The PTABOA's Notification of Final Assessment Determination was mailed to the Petitioners on November 24, 2003.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on December 23, 2003.
4. The Board issued a notice of hearing to the parties dated February 26, 2004.
5. The Board held an administrative hearing on May 19, 2004, before the duly appointed Administrative Law Judge Patti Kindler.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Carlis B Wilson, Taxpayer
 - b) For Respondent: Charles F Ward, Authorized County Representative
Deborah L Crosley, Mt. Pleasant Township Assessor

Facts

7. The property is classified as a residential dwelling located at 9105 West Lone Beech Drive, Muncie, as is shown on the property record card (PRC) for parcel #18-10-10-377-003.000-014.

8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Values of the subject property as determined by the Delaware County PTABOA are: Land \$13,300 Improvements \$90,600 Total \$103,900
10. Assessed Values requested by Petitioners as shown on the Form 131 petition are:
Land \$10,000 Improvements \$76,000 Total \$ 86,000

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The assessment applied to the subject property is inflated and higher than its market and appraised value. *Board Exhibit A and Petitioners Exhibit 1.*
 - b) The subject property was purchased in 1989 at a sheriff's sale for \$35,000. Prior to the 1989 sale, the subject property was on the market for several months with a listing price of \$45,000. When the property did not sell, the mortgage company foreclosed on the property, and a sheriff's sale was then held. *Wilson testimony & Petitioners Exhibits 2, 3, and 4.*
 - c) Only two people bid on the subject property the day of the sheriff's sale. The Petitioners' bid of \$35,000 was accepted even though the bank required a sum of \$37,443.84 to settle the foreclosure. *Wilson testimony & Petitioners Exhibit 4.*
 - d) The property was in very poor condition at the time of its purchase. There had been no heat in the property for several months or even years. Structural damage was evident because the second story was built over a ranch type structure, causing the structure to shift and the lower level windows and doors to stick. Repairs to the property took more than a year before it became livable. Under these circumstances, the property is overvalued. *Wilson testimony & Board Exhibit A.*
 - e) The Petitioners referred to three photographs of neighborhood properties.¹ The Petitioners contended that, although all three of the houses are in superior condition to the subject property, they offer an indication of value for the neighborhood. *Wilson testimony.*
 - f) The first of these properties, located directly across from the subject at 9104 Lone Beech Drive, was on the market for six months with a listing price of \$119,000. The best offer on the property was \$92,000 but the owners did not sell the property. The second property, located next to the subject, was advertised on the market for \$120,000 for several months, but the owner did not sell the property at that time. However, a sale did occur on this second property during its second listing. (The Respondent added that the owner was offered \$92,000 cash, but could not confirm what the actual sales price was.) The third property located at

¹ The Petitioners did not submit copies of the photographs for the record at the administrative hearing. The Petitioners stated the photographs should be in the record because they were given to the County officials before the hearing. The Respondent stated it had no knowledge of the photographs or of the Petitioners' submission of these items.

9110 Lone Beech was not listed for sale, but is similar to the subject property.
Wilson testimony.

- g) An appraisal performed by Benjamin Alexander, Licensed Trainee Appraiser from Alexander & Company, Appraisers, indicated a value of \$86,000 for the subject property, as of April 29, 2003. *Petitioners Exhibit 1.*
- h) The Petitioners testified that, at the preliminary conference with Township officials, the Mt. Pleasant Township Assessor said she could not lower the subject property's value unless there were errors evident on the PRC. However, she implied that a certified appraisal of the property, showing that the property was appraised for less than it was assessed for, might assist in getting the assessment lowered. *Wilson testimony.*
- i) Further, the Delaware County Assessor stated that foreclosed properties were to be dealt with in a special manner because foreclosed properties are not generally in good condition upon purchase. *Wilson testimony.*
- j) The Petitioners contended the subject property is not an average property and a median assessment is not a good assessment for the subject. The house needs a driveway, the garage door needs to be replaced, the windows on the first floor are rotted out, the stringers underneath the house will soon need to be replaced, the house has shifted, and nearly all the doors stick. These items will be very expensive to replace. The Petitioners further testified they would be willing to sell the house for \$80,000. *Wilson testimony.*
- k) When the property was purchased there were over \$8,000 in back taxes and an extensive sewer bill because the owners had not paid their taxes, made mortgage payments, or paid any other bills for eight years. *Wilson testimony.*
- l) Prior to the reassessment, the subject property was valued at \$48,000, which at that time was a third of the taxable value. When \$48,000 is multiplied times three to equal the full value, the result shows the subject property was over assessed even before the reassessment. The Petitioners contended the current assessment applied to the subject property at \$103,900 is about \$15,000 overvalued. *Wilson testimony.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The current PRC for the subject structure lists the dwelling in "fair" condition for its neighborhood. *Respondent Exhibits 1 & 4.*
- b) A definition of market value from the International Association of Assessing Officers (IAAO) Property Assessment Valuation (Second edition) was submitted in support of the Township Assessor's claim that a foreclosure sale is a sale under duress and does not represent market value. *Crosley testimony & Respondent Exhibit 5.*
- c) The property located at 9104 Lone Beech is not an indication of value for the subject. The Petitioners contended that this property was listed for \$120,000 for six months, but the highest offer received was \$92,000, which was unaccepted. However, the Petitioners had stated, prior to the appeal, that the 9104 Lone Beech property had problems with mold that may have hindered its sale. *Ward testimony.*

- d) The property identified as comparable property #1 in the Petitioners' appraisal, located at 5513 West Hessler Road, represents a foreclosure sale and is not a market value transaction. *Ward testimony & Respondent Exhibit 6.*
- e) Conseco Finance repossessed the West Hessler Road property on September 26, 2002, as shown on the PRC and the sales disclosure statement. Conseco Finance sold the West Hessler Road property to the current owners (the Petitioners) on April 1, 2003. The sales disclosure document, utilized by the County officials to help determine neighborhood values for property, identified the transaction as an "exempt sale," meaning it was not considered a market value sale. *Ward testimony & Respondent Exhibits 6, 7 and 8.*
- f) The property identified as comparable property #3, located at 8105 West Lone Beech, also represents a distressed sale (repossession). The Lone Beech property was transferred from the former owner to Mortgage Electronic Services and the sales disclosure statement shows that no money was involved in the transfer. *Ward testimony & Respondent Exhibits 10 and 11.*
- g) Both comparable property #1 and comparable property #3 represent sales that are not arm's-length transactions and are not within the definition of market value. *Ward testimony & Respondent Exhibit 5.*
- h) The property identified as comparable property #2 in the appraisal is the only sale that is an arm's-length transaction. However, comparable property #2 is considered to be in "good" condition while the subject is in "average" condition. Further, the appraisal has made several unexplained large adjustments concerning this property. *Ward testimony.*
- i) Because the appraisal is flawed by its use of comparable properties #1 and #3 as indications of market value, then the legitimacy of the unexplained adjustments to comparable property #2 is also questionable. *Ward testimony.*
- j) The Respondent submitted a copy of a 1998 and 1999 sales grid for Neighborhood #113174 (subject property's neighborhood) which was used in Delaware County's equalization study. The grid lists the sales that occurred in the subject's neighborhood, with the median sale at \$108,000 and the mean sale at \$111,632. *Ward testimony & Respondent Exhibit 12.*
- k) A sales comparison grid that was developed based on three sales in the subject's neighborhood, was submitted as additional rebuttal to the appraisal. *Respondent Exhibits 13, 14, 15 and 16.* All three comparables used in the Respondent's report represent one-story homes with partial second stories with total square footages ranging from 2,212 to 2,750 (Subject is a one-story home with a partial second story - 2,268 square feet). The sale prices of the three comparable properties ranged from \$124,900 to \$163,000, or \$45.78 to \$59.27 per square foot. After the comparable properties were adjusted to reflect the inferior condition of the subject property, the lack of air conditioning, smaller lot sizes, and outbuildings, the indicated value for the comparable properties ranged from \$92,200 to \$102,100. The subject assessment at \$103,900 is fair in relation to the indicated values of the adjusted comparable properties. *Ward testimony.*
- l) The grid of comparable properties indicates a value for the subject that is more reflective of the subject property's market value than does the appraisal value,

which included foreclosure sales in its analysis. *Ward testimony & Respondent Exhibit 13.*

- m) The assessment is correct as indicated by the neighborhood sales grid and the comparable properties sales grid. The appraisal is flawed because it employed data that was not comparable to the subject, as well as foreclosed sales that are not indicative of the definition of market value. In addition, the appraisal (dated April 29, 2003) is based on data from 2003, while the Respondent's sales information is more reflective of the January 1, 1999 valuation date. *Ward testimony & Respondent Exhibits 12 and 13.*
- n) The Township is aware of the condition of the subject property, which is shown as "fair" on the PRC. The PRC shows the subject improvements are graded from "C" to "D," while most of the properties in Westbrook Estates are graded "C+" to "B." *Crosley testimony & Respondent Exhibits 4, 14, 15 and 16.*

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 #5316.
- c) Exhibits:
 - Petitioners Exhibit 1: Residential Real Estate Appraisal, as of April 29, 2003.
 - Petitioners Exhibit 2: Conveyance of Title of foreclosed property, August 2, 1989.
 - Petitioners Exhibit 3: 1989 Multiple Listing Service (MLS) listing for the subject property at \$45,500.
 - Petitioners Exhibit 4: Foreclosure Decree of subject property, August 2, 1989.

 - Respondent Exhibit 1: General information for the subject property.
 - Respondent Exhibit 2: Photograph of front and utility sheds.
 - Respondent Exhibit 3: Photograph of the rear of the property.
 - Respondent Exhibit 4: Subject PRC.
 - Respondent Exhibit 5: IAAO, Property Assessment Valuation (Second edition), pages 18-19, market value defined.
 - Respondent Exhibit 6: PRC for 5513 W Hessler (Appraisal comparable property #1).
 - Respondent Exhibit 7: MLS sales disclosure sheet for 5513 W. Hessler.
 - Respondent Exhibit 8: MLS data with two sale dates for 5513 W. Hessler.
 - Respondent Exhibit 9: MLS sales disclosure sheet for 8105 W. Lone Beech.
 - Respondent Exhibit 10: PRC for 8105 W. Lone Beech (Appraisal comparable property #3).

Respondent Exhibit 11: MLS sales disclosure sheet for 8105 W. Lone Beech.
Respondent Exhibit 12: Neighborhood sales used in equalization studies.
Respondent Exhibit 13: Respondent's comparable sales grid.
Respondent Exhibit 14: PRC for Respondent comparable property #1 (304 N. Dogwood).
Respondent Exhibit 15: PRC for Respondent comparable property #2 (201 N. Aspen).
Respondent Exhibit 16: PRC for Respondent comparable #3 (9001 W. Redbud).
Respondent Exhibit 17: Tax Representative Authorization from County officials.

Board Exhibit A – Form 131 petition.
Board Exhibit B – Notice of hearing on Petition.

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and rules 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*, 694 N.E. 2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Board of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax Ct. 1997).
- c) 2002 Real Property Assessment Manual – Definitions, page 10 - Market Value: The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
 - a. The buyer and seller are typically motivated;
 - b. Both parties are well informed or advised and act in what they consider their best interests;
 - c. A reasonable time is allowed for exposure in the open market;

- d. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- e. The price is unaffected by special financing or concessions.

d) 2002 Real Property Assessment Manual – Definitions, page 12 – Valuation Date: “The date as of which a property’s value is estimated. The date as of which the **true tax value** of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999.” (Emphasis is that of the original).

15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The subject property is currently assessed at \$103,900. The Petitioners claim the assessed value is overstated and does not represent the property’s fair market value. *Wilson testimony; Petitioners Exhibit 1 & Board Exhibit A.*
- b) The Petitioners testified the subject property was purchased at a sheriff’s sale in 1989 for \$35,000 and required extensive repairs before it could become habitable. The Petitioners further contended the home is still in need of several improvements, which effectively reduces its market value. *Wilson testimony; Petitioners Exhibits 2 & 3.*
- c) No link was made to establish the relevancy of these events occurring in 1989 to the 2002 assessed value currently under review.
- d) In addition, the Respondent countered the Petitioners’ arguments by establishing that a foreclosure sale, which is subject to undue stimulus, is not indicative of the property’s market value as defined by the IAAO. *Ward testimony.*
- e) The Petitioners offered testimony concerning three neighboring properties.
- f) The record indicates that two of these properties were offered for sale, but no evidence was presented to establish the ultimate sales price. A rejected offer is not a sale and therefore is no indication of the market value of the property.
- g) Further, undisputed testimony indicated one of these homes suffered from a mold problem. Testimony indicated the third home was not even listed on the open market and no evidence was presented to establish its market value.
- h) In further support of their position, the Petitioners submitted a certified residential appraisal for the subject property prepared by Benjamin Alexander, Licensed Trainee Appraiser from Alexander & Company, Appraisers. The appraisal estimated the “as is” value of the subject property at \$86,000.
- i) However, the Respondent identified flaws in this appraisal that impact the weight to be given to the proposed value.
- j) The Respondent established that two of the three purported comparable properties (comparable properties #1 and #3) utilized in the appraisal were foreclosure sales. These were not arm’s-length transactions and therefore not indicative of market value. *Ward testimony; Respondent Exhibits 6 through 10.*
- k) The Respondent further testified that the third purported comparable property, comparable #2, has a number of large adjustments that are unsupported by any market data.

- l) In further rebuttal of the Petitioners' arguments, the Respondent submitted evidence of sales of three comparable properties (*Respondent Exhibit 13*) located within the Westbrook Estates and Westbrook Heights neighborhoods. (The property under appeal is located in Westbrook Estates.) The sale prices of these properties ranged from \$124,900 to \$163,000. All three comparable properties sold in 1999. After the sales prices of the comparable properties were adjusted, the indicated value for the comparable properties ranged from \$92,200 to \$102,100. The Petitioners did not contest the Respondent's sales data or the sales comparison grid.
- m) The Respondent's sales grid better reflects the value of the subject property because it uses arm's-length transaction sales rather than foreclosure sales. Additionally, the Respondent's neighborhood sales grid shows that the assessment is fair in relation to other neighborhood properties. Further, the Respondent's comparable properties are more reflective of the January 1, 1999 valuation date, while the appraisal valued the subject property as of April 29, 2003.
- n) Finally, the Petitioners claimed the subject property had some structural problems and needed several repairs including a new driveway, a new garage door, and windows. However, the Respondent testified that these deficiencies were accounted for in the current condition rating of "fair."

Conclusion

16. The Board finds the preponderous of the evidence to be 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

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- 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.