

REPRESENTATIVE FOR THE PETITIONERS: Matthew F. Purol, Pro Se

REPRESENTATIVES FOR THE RESPONDENT: Frank Corsaro, Deputy Assessor
Jack Parnell, Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MATTHEW F. AND SUZANNE R.)	Petition No.: 49-101-02-1-5-09334
PUROL,)	
)	Marion County
Petitioners,)	
)	Center Township
v.)	
)	2002 Assessment
CENTER TOWNSHIP)	
ASSESSOR,)	Parcel: 1-057728
)	
Respondent.)	

Appeal from the Final Determination of the
Marion County Property Tax Assessment Board of Appeals

May 15, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law on the following issues:

- I. Does the current assessment reflect the market value-in-use of the property?
- II. Was the deduction for a residentially distressed area computed correctly?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The subject property is a residential dwelling located at 842 Broadway Street in Indianapolis. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued an assessment determination for it on August 26, 2005.
2. On September 23, 2005, the Petitioners filed a Form 131 Petition seeking an administrative review of that assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The PTABOA determined the assessed value of the property is \$40,500 for land and \$242,700 for improvements. According to the PTABOA, the total assessed value is \$283,200.
4. The Petitioners contended the assessed value should be \$27,600 for land, \$146,675 for improvements, and a total of \$174,275.
5. Paul Stultz, the Administrative Law Judge authorized by the Board, held the hearing in Indianapolis on November 29, 2006. He did not conduct an on-site inspection of the property.
6. The following persons were sworn as witnesses:
For the Petitioners – Matthew F. Purol, property owner,
For the Respondent – Frank Corsaro, Center Township Deputy Assessor,
Jack Parnell, Center Township Deputy Assessor.
7. The Petitioners presented the following exhibits:
Petitioners Exhibit 1 – Exhibit list and summary of testimony,
Petitioners Exhibit 2 – None,
Petitioners Exhibit 3 – None,

Petitioners Exhibit 4 – None,
Petitioners Exhibit 5 – Statement of contentions,
Petitioners Exhibit 6 – Petitioners’ calculation of the correct assessed value,
Petitioners Exhibit 7 – Sketch of the subject improvement,
Petitioners Exhibits 8 & 9 – Original property record card (PRC) for the subject property, parcel 1-057728, before corrections by township officials,
Petitioners Exhibits 10, 11 & 12 – Statement of contentions regarding residentially distressed areas,
Petitioners Exhibits 13 & 14 – Map of the Chatham Arch neighborhood boundaries and contentions concerning the neighborhood factor,
Petitioners Exhibit 15 – List of neighborhood comparable properties,
Petitioners Exhibit 16 – Petitioners’ calculation of assessed value and neighborhood factor for property located at 846 North Broadway,
Petitioners Exhibit 17 – Sketch of the improvements at 846 North Broadway,
Petitioners Exhibits 18 & 19 – PRC of property at 846 North Broadway,
Petitioners Exhibit 20 – PRC of the Petitioners’ half lot at 840 Broadway, parcel 1-101657,
Petitioners Exhibits E1 through E1C – Maps of the Chatham Arch area,
Petitioners Exhibit E2 – Assessment comparison between 9th Street property and the Petitioners’ property,
Petitioners Exhibit E3 – Petitioners’ calculation of value based on purchase price,
Petitioners Exhibits E4A – Aerial photographs of the subject and neighboring properties,
Petitioners Exhibits E4B – Aerial photographs and map of the neighborhood.

8. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Building permit record for subject property,
Respondent Exhibit 2 – List of all neighborhoods in Center Township showing the neighborhood factor for each one,
Respondent Exhibit 3 – Current PRC and photograph of subject property,
Respondent Exhibit 4 – PRC, photograph, and form 11 for 826 Broadway,
Respondent Exhibit 5 – PRC, photograph, and three sales disclosure forms for 830 Broadway,
Respondent Exhibit 6 – PRC, photograph, and two form 11's for 836 Broadway,
Respondent Exhibit 7 – PRC, photograph, sale disclosure form, and form 11 for 846 Broadway,
Respondent Exhibit 8 – Copy of Real Property Assessment Guidelines for 2002 – Version A, ch. 2 at 7 – 10.

9. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

10. The Petitioners presented the following evidence:

- a) Market value evidence and differing assessments for comparable properties demonstrate that the assessment is in error. The use of an incorrect neighborhood factor caused the assessment to be too high. Also, the deduction for a residentially distressed area is incorrectly calculated. *Purol testimony.*
- b) The most recent sale of the property was in February 1986. At that time, the Petitioners purchased it for \$45,000. That value can be related to the January 1, 1999, valuation date by using the federal government's national consumer price index for homes. This calculation results in a value of approximately \$66,300. *Purol testimony; Pet'rs Exhibit E3.* In 1999 and 2000, the Petitioners added a carriage house that cost \$100,000. *Pet'rs Ex. 1.*
- c) A comparable property located on 9th Street is similar to the Petitioners' home in architecture, quality of materials, and window size. This property has a total assessed value of \$92,400. *Purol testimony; Pet'rs Ex. E2.*
- d) The property at 846 N. Broadway is also comparable to the subject property. The improvements on this parcel are currently assessed for \$214,400. *Purol testimony; Pet'rs Exs. 16, 17.*
- e) The current improvement value of the Petitioners' dwelling is mostly correct. Most of the errors were corrected during the preliminary conference with township officials. *Purol testimony.* There were some unfinished areas in the home as of the

- assessment date. *Id.* The correct pricing ladder calculation, accounting for the unfinished areas, would result in an improvement value of \$146,675 before applying the neighborhood factor. *Purol testimony; Pet'rs Exs. 6, 7.*
- f) The current neighborhood factor of 1.85 should have been determined using the entire Chatham Arch area as defined by the Indianapolis Historic Preservation Commission. Some of the adjoining neighborhoods have a factor as low as 1.0. *Purol testimony; Pet'rs Ex. 15.* The Petitioners' neighborhood factor, however, was based on one sale in one subdivision. The Petitioners recalculated the assessed value of that one home located at 846 North Broadway. Based on that calculation, its neighborhood factor should have been 1.32. *Purol testimony; Pet'rs Ex. 16.*
- g) The Petitioners own an adjacent half lot that has an assessed land value of \$13,800. *Pet'rs Ex. 20.* The land under appeal is a full lot. It should be assessed for twice that amount, \$27,600. *Pet'rs Ex. 1.*
- h) An application for a deduction for a residentially distressed area was filed with the county auditor, but the amount granted was not correct. *Purol testimony; Pet'rs Exs. 10 - 12.* The PTABOA determination did not address this issue. *Pet'rs Ex. 1; Bd. Ex. A, Notification of Final Assessment Determination.*

11. The Respondent presented the following evidence:

- a) The original assessment was corrected based on the preliminary conference with the Petitioners. *Corsaro testimony.*
- b) The Petitioners presented no appraisal to show the current assessment is incorrect. *Corsaro testimony.*
- c) The neighborhoods in Marion County were defined based on subdivisions because typically the homes in a subdivision are platted and built at approximately the same

time. *Corsaro testimony; Resp't Ex. 2*. The Petitioners' neighborhood factor was determined using four properties, not just a single sale. *Corsaro testimony; Resp't Exs. 4 - 7*.

- d) The Petitioners built the carriage house in 1999. The building permit shows the estimated value of this addition was \$158,000. *Resp't Ex. 1*.

JURISDICTION

12. The Board conducts an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

ANALYSIS

13. Any 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).
14. In making its case, a petitioner 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”).
15. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut that evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind.

Tax Ct. 2004). At that point, the assessing official must offer evidence that impeaches or rebuts a petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Market Value-In-Use Assessment

16. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
17. In challenging their assessment, the Petitioners identified alleged deficiencies in the procedures used to assess their property, including differing assessments for purportedly comparable properties, errors in the calculation of the neighborhood factor, and inaccuracies in the cost approach used to assess their improvements.
18. The goal under Indiana's new assessment system is to ascertain market value-in-use. The Petitioners focused on several purported errors regarding the methodology used to determine the assessment. Even if the Respondent's assessment of the subject property did not fully comply with the Guidelines, the Petitioners failed to prove how any of these

differences would change the market value-in-use. The Petitioners' arguments based on strict application of the assessment Guidelines, *e.g.* neighborhood factor, are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E. 2d 764, 768 (Ind. Tax Ct. 2006).

19. In addition, the Petitioners relied on purportedly comparable properties in an attempt to establish that the current assessment is too high. To establish probative evidence based on comparability, the Petitioners must explain the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affect the market value-in-use of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct. 2005). The Petitioners failed to do so. Without such an explanation, the purported comparable properties have no probative value for this case. The Petitioners' purported comparables failed to make their case.
20. As previously noted, the Guidelines permit using actual construction costs and sales information regarding the subject property as proof of market value-in-use. Such evidence must be compiled in accordance with generally accepted appraisal principles. MANUAL at 5. The Petitioners attempted to use that approach to make their case, but again, they failed to do so.
21. The Petitioners relied on the 1986 purchase price of their property and used the national consumer price index for homes to trend that price to January 1, 1999. Their calculations result in a purported value of approximately \$66,300 as of January 1, 1999. When the subject property is bought and sold on the open market, its price is often the best evidence of value. That general statement, however, is not always true. The main problem with this part of the Petitioners' case is the length of time between their purchase and the valuation date. Generally, an appraisal does not attempt to use sales that are so remote in time as a basis for any conclusions about value. In the event that an appraisal might do so, detailed justification and analysis is required. The Petitioners provided no such justification or analysis. In this case, the Petitioners failed to establish that spanning

approximately 13 years with the national consumer price index for homes is in accordance with generally accepted appraisal principles. The Petitioners failed to provide substantial evidence that might have established how their purchase price has any probative value.

22. The Petitioners admitted they added a carriage house to the original home during 1999 and 2000. The building permit issued for the construction of the carriage house indicates a construction cost of \$158,000. Testimony indicated the final cost of the addition was only \$100,000, but the Petitioners failed to provide any significant details or documentation to support that amount. The conclusory testimony about total cost is not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Obviously, the addition significantly increased the value of the property, but the Petitioners failed to prove what that amount should be. This failure also is fatal to making a prima facie case based on what the Petitioners paid.
23. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Residentially Distressed Area Deduction

24. Indiana Code § 6-1.1-12.1-4.1(b) provides a deduction for economic revitalization areas that are residentially distressed areas. This statute specifies that the amount of the deduction is the lesser of the assessed value of the improvement, or certain specific amounts that depend on the type of dwelling.
25. To receive this deduction, a property owner must file a certified deduction application with the county auditor. Ind. Code § 6-1.1-12.1-5(a). An owner can appeal a determination of the county auditor by requesting a preliminary conference with the

county auditor not more than forty-five days after notice of the determination was given. Ind. Code § 6-1.1-12.1-5(j). "An appeal initiated under this subsection is processed and determined in the same manner that an appeal is processed and determined under IC 6-1.1-15." *Id.*

26. The Petitioners' petition to the PTABOA (Form 130) raised several claims, including the following:

1.5 The new part and old part should be assessed separately for application of the Residentially Distressed Area property tax abatement and depreciation.

1.6 The Residentially Distressed Area property tax abatement was not applied.

The PTABOA's determination (Form 115) failed to address the deduction issue specifically, but it granted no relief regarding the deduction claim. Therefore, the Petitioners were entitled to appeal to the Board on that point. *See* Ind. Code § 6-1.1-15-3; Ind. Code § 6-1.5-4-1(a).

27. Nevertheless, the burden of proving that they are entitled to any relief on their deduction claim is on the Petitioners. Most fundamentally, the record fails to establish what the current status of the amount of the deduction is. While Petitioners' Exhibits 10, 11, and 12 contain a discussion that appears to explain their position, these exhibits alone are not sufficient to establish that any correction for the deduction is required. Many of those statements are unsupported conclusions or hearsay. Similarly, the testimony from Mr. Purol that the amount of the deduction allowed by the auditor is wrong was conclusory. Such statements are not probative evidence. *Whitley Products*, 704 N.E.2d at 1119. Furthermore, the Petitioners failed in their duty to walk the Board through every element of their analysis. *See Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n.4 (Ind. Tax Ct. 2002).

28. To make a prima facie case, the Petitioners would have had to present substantial, probative evidence that the amount of the deduction that the auditor applied to their property is wrong. They also would have had to present substantial, probative evidence to establish what the correct amount of deduction should be. They did neither.
29. Consequently, the duty to support the amount of the deduction with substantial evidence was not triggered. *See Lacy Diversified*, 799 N.E.2d at 1221-1222; *Whitley Products*, 704 N.E.2d at 1119.

SUMMARY OF FINAL DETERMINATION

30. The Petitioners failed to make a prima facie case for any assessment change.
31. The Petitioners failed to make a prima facie case for any change regarding their deduction for a residentially distressed area.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>.