

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Small Claims

Petition #: 18-003-02-1-5-00557
Petitioner: David Hugh Eiler
Respondent: Center Township Assessor (Delaware County)
Parcel #: 18-11-09-452-004.000-003
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 Petitioner initiated an assessment appeal with the Delaware County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 30, 2003.
2. The notice of the decision of the PTABOA was signed on October 30, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on December 2, 2003.
4. The Board issued a notice of hearing to the parties dated December 16, 2003. On December 22, 2003, the PTABOA requested the Board to continue the hearing due to previously scheduled meetings. The Board granted the continuance and issued notice of rescheduled hearing on January 5, 2004. Petitioner elected to have this case heard in small claims.
5. The Board held an administrative hearing on March 25, 2004, before the duly appointed Administrative Law Judge Patti Kindler.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: David H. Eiler, Taxpayer
 - b) For Respondent: Charles E. Ward, Representative for Center Township and the PTABOA

Facts

7. The property is classified as a residential single-family dwelling, as is shown on the property record card for parcel #18-11-09-452-004.000-003.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Delaware County PTABOA:
Land \$9,400, Improvements \$55,200.
10. Assessed Value requested by Petitioner: Land \$6,500, Improvements \$45,000.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner contends the property's assessed value is overstated at \$64,600. The Petitioner claims that the assessed value exceeds the value of the property on the open market. (*Eiler Testimony*).
 - b) The Petitioner offered eleven (11) properties as comparable properties and asserted that the property's assessment is higher than the sales and listing prices provided for the alleged comparable properties. The sale and listing prices for the alleged comparable properties fell in a range from \$35,000 to \$63,900 and were between the years of 2001 and 2003. (*Board Ex. A, Attachment A.*)
 - c) The Petitioner maintains that the assessed values assigned to the alleged comparable properties are lower than the assessed value assigned to the property. (*Eiler Testimony*).
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent contends that the majority of the alleged comparable properties submitted by the Petitioner are not comparable because (1) ten of the alleged comparables are two-story structures and one is a single story structure like the property; (2) there are no sales submitted reflecting 1998 and 1999 market value; (3) the sales of two of the alleged comparable properties represented distressed foreclosure or tax sales and were not indicative of the definition of market value; (4) some of the alleged comparable property sales could not be verified as actual sales and; (5) the alleged comparable properties are not all located within the subject's immediate neighborhood. (*Resp. Ex. 4, 6, & 12; Ward Testimony*).
 - b) The Respondent offered a sales comparison grid for three (3) one-story properties located in the same neighborhood as the property under appeal. The Respondent asserts the adjusted comparable grid shows the property's assessment of \$39.22 per square foot is "in line" with the square foot price of the alleged comparable one-story properties and represents a fair and equitable assessment. (*Resp. Ex. 8 through 11; Ward Testimony*).

- c) The Respondent presented a listing of twenty-five (25) sales within neighborhood #131070 occurring between 1998 and 1999, which the local assessing officials utilized for the equalization study and developing neighborhood market factors. This listing indicates the median sale price is \$64,500 and the mean sale price is \$69,112 for this neighborhood. The property's assessed value of \$64,600 is comparable to both the mean and median sales for the neighborhood. The property is located in neighborhood #131070. (*Respondent's Ex. 7& 8; Ward Testimony*).

Record

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

- a) The Petition and all pre-hearing submissions by either party.
b) The tape recording of the hearing labeled BTR #5310.
c) Exhibits:

Petitioner Exhibit 1:¹ A realtor listing data sheet for a property located at 701 N. Wheeling in Muncie offered as a comparable property.

Respondent Exhibit 1: General information for the property under appeal.

Respondent Exhibit 2: Front and street view photographs of the property.

Respondent Exhibit 3: Rear view photograph of the property.

Respondent Exhibit 4: A copy of pages 18 and 19 from The International Association of Assessing Officials Property Assessment Valuation, 2nd Edition defining market value.

Respondent Exhibit 5: A property record card reflecting the assessed value established by the PTABOA for the property.

Respondent Exhibit 6: Information derived from the sales disclosure form for a property located at 613 W. Riverside in Muncie.

Respondent Exhibit 7: A listing of sales for neighborhood #131070 occurring between 1998 and 1999.

Respondent Exhibit 8: A property record card for a property located at 705 W. Ashland offered as a comparable property.

Respondent Exhibit 9: A property record card for a property located at 1104 W. University offered as a comparable property.

Respondent Exhibit 10: A property record card for a property located at 912 E. North offered as a comparable property.

Respondent Exhibit 11: An adjustment grid used to compare the property under appeal to the offered comparable properties.

¹ Throughout the hearing, Petitioner made reference to the sales information identified as Attachment A, Board Ex. A submitted with the Form 130 on May 30, 2003.

Respondent Exhibit 12: Information derived from the sales disclosure form for a property located at 2203 W. Jackson.

d) These Findings and Conclusions.

Analysis

14. The most applicable case law governing this issue is:

- a) The Board will not change the determination of the PTABOA unless the petitioner has established a prima facie case and, by a preponderance of the evidence prove (1) that the current assessed value is incorrect, and (2) that the specific assessed value the Petitioner seeks, is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax 1997).
- b) Once the petitioner has established a prima facie case the burden is on the respondent to rebut petitioner's prima facie case. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475 (Ind. Tax Ct. 2003).
- c) The Petitioner "must sufficiently explain the connection between the evidence and the petitioner's assertions in order for it to be considered material to the facts." Conclusory statements are of no value to the Board in its evaluation of the evidence. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329 (Ind. Tax 1999).

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

- a) In order to meet its burden of establishing a prima facie case, Petitioner must offer probative evidence concerning not only the errors in the existing system, but also what the correct assessment should be. The Petitioner presented eleven (11) properties he asserted were comparable to the subject residential one-story property.
- b) The Petitioner's comparable data sheets include: each comparable's address, sale or listing price, year of sale, square footage, lot size, number of bedrooms, baths, and the garage size. However, no adjustments were offered for variations between the above contributory items or for other contributors of value such as the year of construction, effective age and condition, and special features. The Petitioner failed to establish what effect, if any, the comparable properties have on the assessed value of the subject property.
- c) Additionally, the Respondent's testimony indicates that only one of the Petitioner's eleven (11) comparables represents a one-story property, two (2) of the comparable sales were questionable as to whether they were arm's length

transactions, five (5) of comparables represent listings, not verified sales, and no sales were submitted to reflect the January 1, 1999, valuation date.

- d) The Respondent offered several exhibits in support of the assessment including evidence that the property falls within recommended equalization levels for the mean and median neighborhood sale, and a comparison of the subject to three purported similar one-story properties. While these exhibits further support the assessment, they are not required since the Petitioner did not explain how he arrived at the request \$51,500 for the subject property. Because the Petitioner did not offer specific facts regarding the relationship between the comparables and the subject property, he failed to meet his burden of proof of the correct assessment.

Conclusion

- 16. The Petitioner has failed to make a prima facie case. Additionally, the Respondent presented substantial evidence to support the assessment. The Board finds in favor of 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.