

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

Petition #s: 48-003-03-1-5-00191
48-003-03-1-5-00192
48-003-03-1-5-00193
48-003-03-1-5-00194

Petitioners: Richard and Nancy Sowers

Respondent: Anderson Township Assessor (Madison County)

Parcel #s: 18-1301-3
18-1301-4
18-1301-5
18-1301-6

Assessment Year: 2003

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 assessment appeals with the Madison County Property Tax Assessment Board of Appeals (PTABOA) by written documents.
2. The Petitioners received notices of the decisions of the PTABOA on October 5, 2004.
3. The Petitioners filed appeals to the Board by filing Form 131s with the county assessor. The Board received the petitions November 8, 2004. Petitioners elected to have these cases heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 12, 2005, for Petition #48-003-03-1-5-00191. Through an oversight, notices of hearing were not issued for three other properties (Petition #s 48-003-03-1-5-00192, #48-003-03-1-5-00193 and #48-003-03-1-5-00194) also owned by the Petitioners. At the hearings, the parties waived the thirty day notices of hearing for these properties in order to conduct the hearings for all four petitions concurrently. *See Board Exhibits D, E, and F.*
5. The Board held administrative hearings on October 27, 2005, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.

6. Persons present and sworn in at hearing:
 - a) For Petitioners: Richard Sowers, Petitioner
 - b) For Respondent: Dennis Plackard, Anderson Township Deputy Assessor
Lloyd Brumback, Madison County Deputy Assessor
7. At the hearing, the Petitioners indicated that there was some confusion regarding the effective assessment dates for the appeals filed. The Petitioners stated that their Form 130 petitions dealt with the properties' assessments as of March 1, 2002, however, the responses they received from the County (Form 115s) showed effective dates of March 1, 2003. The Respondent explained that there are deadlines for filing petitions and the subject petitions were not filed in time to be heard for 2002 pay 2003.¹ The Respondent stated that the petitions were untimely filed on July 28, 2004, for 2002 and that is why they were considered 2003 petitions.² The Petitioners failed to present any documentation showing that the petitions under review were filed in a timely manner for the March 1, 2002, assessment date. In addition, the Petitioners stated that they did not know when the Form 130s were filed and that they would not dispute the filing date indicated by the Respondent – July 28, 2004.

Facts

8. The subject properties are classified as residential, as is shown on the property record cards (PRCS) for parcels # 18-1301-3 (Parcel 3), 18-1301-4 (Parcel 4), 18-1301-5 (Parcel 5) and 18-1301-6 (Parcel 6).
9. The ALJ did not conduct an on-site visit of the properties.
10. The PTABOA determined the assessed values of the subject properties to be \$11,400 for the land and \$200 for the improvements, for a total assessed value of \$11,600 for Parcel 3; \$15,700 for the land and \$215,200 for the improvements, for a total assessed value of \$230,900 for Parcel 4; \$10,800 for the land for Parcel 5; and \$11,400 for the land for Parcel 6. There are no improvements on Parcel 5 and Parcel 6.

¹ IC 6-1.1-15-1(b) states in part, "In order to appeal a current assessment and have a change in the assessment effective for the most recent assessment date, the taxpayer must request in writing a preliminary conference with the county or township official referred to in subsection (a): (1) not later than forty-five (45) days after notice of a change in the assessment is given to the taxpayer; or (2) on or before May 10 of that year: whichever is later."

² IC 6-1.1-15-1(d) states, "A taxpayer may appeal a current real estate assessment in a year even if the taxpayer has not received a notice of assessment in the year. If an appeal is filed on or before May 10 of a year in which the taxpayer has not received notice of assessment, a change in the assessment resulting from the appeal is effective for the most recent assessment date. If the appeal is filed after May 10, the change becomes effective for the next assessment date."

11. The Petitioners requested a total assessment for all four parcels of \$194,400 as reflected on the 2004 pay 2005 tax bill.³ See *Petitioner Exhibit 4*.

Issues

12. Summary of Petitioner's contentions in support of an error in assessment:
- a) The Petitioners contend that the assessed values exceed the market value-in-use of the subject properties. *R. Sowers testimony*. In support of this contention the Petitioners submitted an appraisal with an effective date of September 23, 2004, indicating a value of \$206,500. *Petitioner Exhibit 6*.
 - b) In addition, the Petitioners argue that the current assessed values should apply to previous years. *R. Sowers testimony*. In support of this contention, the Petitioners presented a Summary Sheet showing that the total assessed value of the four subject properties under review were reduced from \$233,400 for 2002 to \$194,400 for 2004.⁴ *Petitioner Exhibit 5*.
 - c) Further, the Petitioners contend that even though the subject home is a nice home, it is located in an area of less expensive homes and thus was over valued for its location. *Id.* The Petitioners claim that when they purchased the subject property twelve years ago, they had difficulty obtaining a mortgage for \$70,000 through a national mortgage company but eventually were able to get a mortgage through a local firm. *Id.*
 - d) The Petitioners conclude that due to both the difficulty in obtaining a mortgage for the subject property and due to the reduction in the total assessed value of the subject property since 2002, that it is appropriate to go back as far as 2002 to lower the total assessed value to a more reasonable value of \$194,400. *Id.*
13. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent contends that the Petitioners' petitions were not filed in a timely manner to be considered for the March 1, 2002, assessment date. *Brumback testimony*. According to the Respondent, the petitions were filed July 28, 2004. *Id.* Therefore, Respondent argued, the Petitioners can only seek review of the March 1, 2003, assessment date. *Id.*

³ The \$194,400 that the Petitioners seek is a net assessed value for the four properties after the exemptions are deducted.

⁴ The summary sheet shows the net assessed value of all four parcels after the exemptions have been deducted. The correct assessed values prior to any deductions should be \$269,200 for 2002 payable 2003, \$269,200 for 2003 payable 2004 and \$232,400 for 2004 payable 2005.

- b) The Respondent further argued that the value of the subject parcel with the residence, Parcel 4, for the March 1, 2003, assessment date is \$198,600 and not the \$194,400 alleged by the Petitioners. *Brumback testimony*. According to the Respondent, the Petitioners' value is a net value after exemption deductions were made. *Id.*
- c) The Respondent claimed that the assessed values of four other properties located in the same one-hundred block as the subject property (1300 block of 9th Street), supported the value determined by the assessor for the subject parcel with the residence (Parcel 4). *Plackard testimony and Respondent Exhibit 1*. Here, according to the Respondent, the subject residence is 3,596 square feet and the next largest home on the same street was 2,316 square feet. *Id.* Thus, the Respondent argued that the assessed values determined for these properties reflect the significant difference in square footage. *Id.*
- d) Finally, the Respondent submitted PRCs for the four subject properties showing changes made by the PTABOA for 2003 payable 2004. *Respondent Exhibit 2*. According to the Respondent, a negative influence factor of 50% was applied to Parcel 3, Parcel 5 and Parcel 6 for being vacant. Further, for Parcel 4, a negative 15% market adjustment was applied to the assessment of the home. The assessed values were determined to be \$11,600, \$10,800, \$11,400 and \$198,600, respectively. *Brumback testimony and Respondent Exhibit 2*.

Record

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

- a) The Petitions.
- b) The tape recording of the hearings labeled BTR # 6192.
- c) Exhibits:

Petitioner Exhibit 1: Form 130 for March 1, 2002
Petitioner Exhibit 2: Form 115 for March 1, 2003
Petitioner Exhibit 3: Tax statement for 2003 payable 2004
Petitioner Exhibit 4: Tax statement for 2004 payable 2005
Petitioner Exhibit 5: Summary sheet
Petitioner Exhibit 6: Appraisal for subject property as of September 23,
2004

Respondent Exhibit 1: Comparison sheet with four comparable
neighborhood properties with PRCs
Respondent Exhibit 2: Subject properties' PRCs

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of hearing for Petition #48-003-03-1-5-00191
Board Exhibit C: Waiver of Thirty Day Notice for Hearing for Petition
#48-003-03-1-5-00192

Board Exhibit D: Waiver of Thirty Day Notice for Hearing for Petition
#48-003-03-1-5-00193

Board Exhibit E: Waiver of Thirty Day Notice of Hearing for Petition
#48-003-03-1-5-00194

- d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:
- a) The Petitioner 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 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 Township 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
16. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a) The Petitioners contend that the assessments for the subject properties exceed their market value-in-use. In support of these contentions, the Petitioners allege (1) that the properties should be assessed as they are in 2004; (2) the location of the subject properties negatively impact the value of the properties; and (3) an appraisal shows the properties’ market value is lower than the assessed values assigned to the subject properties as a whole.

2004 Assessed Value

- b) The Petitioners argue that the assessed value determined for March 31, 2004, of \$194,400 is a “reasonable” value for the subject properties. *R. Sowers testimony*.

According to the Petitioners, this value should apply to previous years. *Id.* In support of this argument, the Petitioners submitted a summary sheet for the four subject properties that listed the assessed value for 2002, 2003 and 2004, and the amount of property taxes paid for those years. *Petitioner Exhibit 5.* In addition, the summary sheet identified the property taxes that would have been paid if the March 31, 2004, rate was used, and the difference between the taxes paid. *Id.*

- c) The Petitioners are mistaken in their reliance on the 2004 Notice. 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 of its true tax value in a different tax year. *See, Id.*
- d) Further, Petitioners argument that the 2004 assessed value is "reasonable" is unsupported by any evidence.⁵ Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998). Thus, the Petitioners have failed to raise a prima facie case that the assessment is over-valued on the basis of the subject properties' 2004 assessment.

Location

- e) The Petitioners also argued that because the subject properties were located among lesser priced homes, that the value of the subject properties were negatively impacted by their location. *R. Sowers testimony.* In support of this allegation, the Petitioners testified that they were denied a mortgage from a national lender because the subject properties were too expensive for the neighborhood. *Id.*
- f) Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." PROPERTY ASSESSMENT GUIDELINES OF 2002, glossary at 10. Petitioner has the burden to produce "probative evidence that would support an application

⁵ In fact, Petitioners are incorrect in this value. A review of Petitioner Exhibits 3 – 5 and Respondent Exhibit 2, indicated that the values used by the Petitioners in their summary sheet were total *net* assessed values after exemptions were deducted. The correct total assessed values for the four subject properties should have been: \$269,200 for 2002 payable 2003, \$269,200 for 2003 payable 2004 and \$232,400 for 2004 payable 2005.

of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). While the properties' "over-improvement" for their location, or misimprovement for the location may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value-in-use of the subject properties. *See Talesnick*, 756 N.E.2d at 1108

Appraisal

- h) Finally, the Petitioners alleged that the assessments on the subject properties are over-valued on the basis of an appraisal. *R. Sowers testimony*. In support of this allegation, the Petitioners submitted an appraisal that determined the market value for the subject properties to be \$206,500 as of September 23, 2004. *See Petitioner Exhibit 6*.
- i) Real property in Indiana is assessed on the basis of 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 (MANUAL) at 12 (2001 (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 Township 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.*
- j) 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. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
- l) Here, the Petitioners failed to show the relevance of the September 23, 2004, appraisal to the January 1, 1999, valuation date. The Petitioners did not relate the appraised value back to January 1, 1999, pursuant to *Long*, nor were the sales comparables used in the appraisal trended back to 1999. Thus the Petitioners failed to raise a prima facie case based on the requirements of *Long*.
- m) Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not

triggered. *Lacy Diversified Industries v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusions

17. The Petitioners 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 should not be changed.

ISSUED: **March 20, 2006**

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>.