

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

Petition #: 91-021-02-1-5-00055; 91-021-02-1-5-00056; 91-021-02-1-5-00060
Petitioner: Philip L. Vogel Revocable Trust
Parcel #: 021-29300-00; 021-29270-00; 021-29260-00
Respondent: Union Township Assessor (White County)
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. Petitioner initiated an assessment appeal with the White County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated January 6, 2004.
2. The PTABOA mailed notice of its decision on December 14, 2004.
3. Petitioner initiated an appeal to the Board by filing a Form 131 petition with the White County Assessor on January 10, 2005. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 12, 2006.
5. The Board held a consolidated administrative hearing with regard to the above referenced petitions on March 1, 2006, before the duly appointed Administrative Law Judge, Joan Rennick. The ALJ also heard evidence concerning another petition¹ filed by Philip and Greg Vogel at the same hearing. Because the Petitioner in those cases is different from the Petitioners in the instant case, the Board addresses those petitions in a separate written decision.
6. Philip Vogel², property owner, and Scott Potts, consultant for Union Township, appeared at the hearing and were sworn as witnesses.

¹ Petition No. 91-021-02-1-5-00044.

² Mr. Vogel referred to himself as the owner of the subject properties both on the Form 131 petitions and at the hearing. The owner, as listed on the Form 131 petitions, is the Philip L. Vogel Revocable Trust. It is not clear under what capacity Mr. Vogel appeared at the hearing. Given the clear inference that Mr. Vogel is the beneficiary, if not also the trustee of the Philip L. Vogel Trust, however, the Board will assume that Mr. Vogel was authorized to appear at the hearing on behalf of the Petitioner.

Facts

7. Parcel 021-29300-00 is located at 305 Heritage Road. Parcel 021-29270-00 is located at 300 Heritage Road. Parcel 021-29260-00 is located at 308 Heritage Road. All three parcels are classified as residential one-family dwellings, and are located in Monticello, Union Township, White County.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the subject parcels.
9. The PTABOA determined the following assessed values for the subject parcels:

Parcel 021-29300-00

Land: \$15,500 Improvements: \$46,400 Total: \$61,900

Parcel 021-29270-00

Land: \$14,800 Improvements: \$40,100 Total: \$54,900

Parcel 021-29260-00

Land: \$15,500 Improvements: \$36,800 Total: \$52,300

10. The Petitioner requests the following values for the subject parcels:

Parcel 021-29300-00

Land: \$10,000 Improvements: \$46,400 Total: \$56,400

Parcel 021-29270-00

Land: \$10,000 Improvements: \$40,000 Total: \$50,000

Parcel 021-29260-00

Land: \$9,500 Improvements: \$36,800 Total: \$46,300

Issues

11. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a) A comparable property, located at 313 Heritage Road (Parcel 021-19820-00), sold for \$52,000, on June 26, 2002. *Vogel testimony; Pet’r Ex. 1, 2.* The dwelling on the comparable property is similar to the subject dwelling in terms of square footage and exterior condition. *Vogel testimony.* The comparable property has two full baths, while the subject dwelling has only one. *Id.* Additionally, the interior condition of the comparable dwelling is superior to the interior condition of the subject dwelling. *Id.* Thus, the values of the subject properties should be lower than the value of the comparable property. *Vogel argument.*

- b) A second comparable property, located at 1114 Poplar Drive, sold for \$58,000, on November 8, 1999. *Vogel testimony; Pet'r Ex. 3*. The dwelling on that property is in better condition than the subject dwelling, and it is located in a much nicer neighborhood than is the subject dwelling. *Vogel testimony*. The comparable property's neighborhood has curbs and sidewalks, and is closer to the hospital than the neighborhood in which the subject properties are located. *Id*. Therefore, the site values should reflect a \$5,000 to \$6,000 difference between the two neighborhoods. *Vogel argument*.
- c) Mr. Vogel is a realtor, and he has sold several properties in the neighborhood in which the subject properties are located. *Vogel testimony*. Therefore, Mr. Vogel has been inside some of these properties, while the Respondent has not. *Vogel argument*.

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

- a) The subject neighborhood is very homogenous, and the houses are very similar. *Potts testimony*. As a result, the sales are very similar. *Id; Resp't Ex. 3*. The sales and assessments are very close in the subject's neighborhood, with a coefficient of dispersion of only 6.88, which is well within the permissible limit of 15. *Id*. Inspections showed no discernible difference between the properties that sold and the subject properties. *Potts testimony*. The subject properties are average for their neighborhood. *Id*.
- b) Assessing officials rarely get the opportunity to go inside houses. *Id*. Therefore, exterior inspections are the fairest way to compare grade and condition. *Id*.

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled IBTR - 6224.
- c) Exhibits:³
 - Petitioner Exhibit 1: Property Record Card for Parcel 021-19820-00 at 313 Heritage
 - Petitioner Exhibit 2: Sales Disclosure for 313 Heritage
 - Petitioner Exhibit 3: Property Record Card for Parcel 021-20840-00

 - Respondent Exhibit 1: Form 131
 - Respondent Exhibit 2: Property Record Card of parcel under appeal

³ Respondent submitted separate packets of exhibits for each Form 131 petition. The exhibits are identical except the Form 131 and the PRC are parcel specific.

Respondent Exhibit 3: Neighborhood Sales Ratio Study

Board Exhibit 1: The Form 131 Petition with attachments.

Board Exhibit 2: Notice of Hearing.

Board Exhibit 3: Notice of Appearance of Consultant

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. Wash. 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 Petitioner did not provide sufficient evidence to support its contentions. The Board reaches this conclusion for the following reasons:

- a) The Petitioner contends that the Respondent has assessed the subject properties in excess of their respective market values. *See Vogel testimony*. The Petitioner bases its claim on the sale prices of two purportedly comparable properties.
- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth

in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess real property.

- c) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, a taxpayer may rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- d) The Petitioner relies upon the sales comparison approach to demonstrate that the assessed values assigned to the subject properties exceed their market values. The sales comparison approach is based on the assumption that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute improved property already existing in the market place. MANUAL at 13. The appraiser locates sales of comparable improved properties and adjusts the selling prices to reflect the subject property’s total value. *Id.* The adjustments represent a quantification of characteristics that cause prices to vary. *Id.* The appraiser “considers and compares all possible differences between the comparable properties and the subject property that could affect value,” using objectively verifiable evidence to determine which items have an influence on value in the market place. *Id.* The appraiser quantifies the contributory values of the items affecting value in the market place and uses those contributory values to adjust the sale prices of comparable properties. *Id.* at 13-14.
- e) Thus, in order to use the sales comparison approach as evidence in a property assessment appeal, the proponent 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax. Ct. 2005). Instead, the proponent must identify the characteristics of the subject property 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-in-use. *Id.*
- e) The Board therefore turns to the evidence offered by the Petitioner concerning the comparability of the properties at 313 Heritage Road and 114 Poplar Drive to the subject properties. Mr. Vogel testified that the dwelling at 313 Heritage Road is similar to the subject dwellings in terms of exterior condition, but that the 313 Heritage Road dwelling has two (2) baths, while the subject dwellings have only one bath. *Vogel testimony*. One of the baths in the 313 Heritage Road dwelling

was renovated in 1997 or 1998. *Id.* Mr. Vogel also testified that the interior of the dwelling at 313 Heritage Road is in better condition than are the interiors of the subject dwellings, and that the dwelling at 313 Heritage Road is larger than the subject dwellings. *Vogel testimony.* Similarly, Mr. Vogel testified that the dwelling at 114 Poplar Drive is in better condition than the subject dwellings because it has vinyl siding and updated windows. *Id.* The Petitioner did not submit photographs of the subject dwellings or of either of the purportedly comparable dwellings.

- f) The Petitioner did not provide a meaningful comparison of features of the subject properties and those of the purportedly comparable properties. Mr. Vogel's testimony regarding the similarity of the properties was largely conclusory and, at best, focused on a limited number of characteristics. In fact, the Petitioner provided almost no information about the subject properties from which a comparison could be made. While the property record cards for the subject properties contain information concerning the physical characteristics of those properties, the Petitioner did not discuss the information contained on those property record cards or attempt to compare that information to the information contained on the property record cards for the purportedly comparable properties. It is not the Board's responsibility to review all of the documents submitted by the Petitioner to determine comparability – that duty rests with the Petitioner. *Long*, 821 N.E.2d at 471.
- g) Moreover, even a cursory examination of those property record cards reveals difference between the subject properties and the purportedly comparable properties. Those differences include the presence of an attached garage on each of the subject dwellings as opposed to an attached carport for the dwelling located at 313 Heritage Road and differences between the subject dwellings and the purportedly comparable dwellings in terms of exterior features. *See Board Ex. A; Pet'r Ex. 1.* The Petitioner did not explain how those differences affect the relative market values of the properties as required by the Manual and *Long*, *supra*. Mr. Vogel did identify a few differences between the subject dwellings and the purportedly comparable dwellings that he contended made the comparable dwellings more valuable. Mr. Vogel, however, did not present any evidence to quantify the effect of those differences on the relative values of the respective properties.
- g) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in the assessment. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E. 2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus, no change in the assessment is warranted.

Conclusions

16. The Petitioner failed to make a prima facie case. 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. 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>.