

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

Petition #: 18-003-02-1-5-00242
Petitioners: Jeffrey W. and Ruth E. Kiger
Respondent: Center Township Assessor (Delaware County)
Parcel #: 18-11-14-477-014-000-003
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 Petitioners initiated an assessment appeal with the Delaware County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 16, 2003.
2. The PTABOA issued the notice of determination October 23, 2003.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 26, 2004.
5. The Board held an administrative hearing on April 28, 2004, before a duly appointed Administrative Law Judge.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Jeffrey W. Kiger
Ruth E. Kiger
 - b) For Respondent: Charles F. Ward, PTABOA and Township representative

Facts

7. The property is classified as a residential, single-family dwelling, as is shown on the property record card for parcel # 18-11-14-477-014-000-003.

8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Delaware County PTABOA: Land \$6,400; Improvements \$38,900.
10. Assessed Value requested by Petitioner: Land \$5,000; Improvements \$31,000.

Objection concerning the timeliness of the filing of the Form 131 Petition

11. The Respondent contended the Form 131 petition was not timely filed. The Petitioners had thirty days to appeal to the Board after issuance of the PTABOA determination. Ind. Code § 6-1.1-15-3.
12. As indicated, the PTABOA issued the notice of determination October 23, 2003. The Board received the Form 131 on December 8, 2003.
13. However, upon receipt of the Petitioners' appeal, the local officials failed to date stamp the Form 131.
14. This omission makes it impossible for the Board to determine when the petition was actually filed. The Respondent cannot be heard to complain about ambiguities caused by its own inactions. Accordingly, the Respondent's objection is overruled.

Issue

15. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners contend the subject property is assessed in excess of its market value-in-use.
 - b) The Petitioners presented an appraisal and a sales contract for the subject property.
16. Summary of Respondent's contentions in support of assessment:
 - a) The Respondent contends that the evidence submitted by the Petitioners is unreliable.
 - b) The Respondent further contends that the assessment of the subject property is correct based on sales of comparable properties.

Record

17. 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 #5786.
 - c) Exhibits:
 - Petitioners Exhibit 1: Appraisal of subject property.

Petitioners Exhibit 2: Real Estate Sales Contract for subject property.
Petitioners Exhibit 3: Newspaper listing for property near subject.

Respondent Exhibit 1: General Information regarding subject.
Respondent Exhibit 2: Property record card (PRC) for subject property.
Respondent Exhibit 3: One photograph of subject property.
Respondent Exhibit 4: Listing Detail for property (2600 E. 13th St).
Respondent Exhibit 5: Sales Disclosure form for 2600 E. 13th St (6-17-99).
Respondent Exhibit 6: Sales Disclosure form for 2600 E. 13th St (5-22-02).
Respondent Exhibit 7: Sales Disclosure form for 2600 E. 13th St (10-25-02).
Respondent Exhibit 8: Sales Disclosure form for 2600 E. 13th St (6-25-02).
Respondent Exhibit 9: Listing Detail for property (1505 S. Biltmore).
Respondent Exhibit 10: Listing Detail for property (1521 S. Biltmore).
Respondent Exhibit 11: Listing Detail for property (1612 S. Biltmore).
Respondent Exhibit 12: Two pages from Property Assessment Valuation, International Association of Assessing Officers, 2d Edition.
Respondent Exhibit 13: Printout identifying four properties.
Respondent Exhibit 14: PRC for 1800 S. Biltmore.
Respondent Exhibit 15: PRC for 1800 S. Manhattan.
Respondent Exhibit 16: PRC for 1521 S. Biltmore.
Respondent Exhibit 17: Spreadsheet comparing subject with three properties.

d) These Findings and Conclusions.

Analysis

18. The most applicable governing cases 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 Bd. of Tax Comm'rs*, 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 Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).
- c) In the event the Petitioner sustains his burden, the burden then shifts to the Respondent to rebut Petitioner's evidence with substantial evidence. Should the Respondent fail to rebut Petitioner's evidence, the Board will find for the

Petitioner. *Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475 (Ind. Tax 2003).

19. The Petitioners provided sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- a) The Petitioners presented an appraisal done by a certified appraiser that indicated the market value of the subject property was less than the assessed value. (*Petitioners Exhibit 1*).
 - b) The Petitioners presented a newspaper advertisement of a home in their neighborhood with an asking price of considerably less than the assessed value contended by Petitioner.¹ The advertisement (a photograph and subscript) appears to be a relatively similar type structure of roughly equivalent square footage, with the same number of bedrooms as the subject. (*Petitioners Exhibit 3*).
 - c) The Petitioners presented a sales contract selling the subject property for an amount less than what the appraisal identified as the market value of the home. (*Petitioners Exhibit 2*).
20. The Respondent did not provide sufficient evidence to rebut the Petitioners' prima facie case and to support the assessed value of the subject property.
- a) The Respondent introduced the International Association of Assessing Officers' definition of market value. In relevant part, this definition states "the price is not affected by undue stimulus" and the property is "sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale." (*Respondent Exhibit 12*).
 - b) The Respondent presented evidence indicating one of the three comparable properties used in the Petitioners' appraisal (*Petitioners Exhibit 1*) was a bank sale of a repossessed property. (*Respondent Exhibits 5-8*). The Respondent testified that generally banks look to sell the property as soon as possible, limiting their time and expense managing the property. Accordingly, this type of transaction does not meet the definition of market value because there is undue incentive to sell the property as quickly as possible. (*Ward testimony*). However, the Respondent's evidence shows that the property was listed for sale on July 19, 2002 and the sales contract was signed on September 5, 2002. (*Respondent's Exhibit 4*). It may be concluded from the Respondent's evidence that a "reasonable time [was] allowed for exposure in the open market." (*See Respondent's Exhibit 12*). The property was purchased from a financial institution, fairly raising the implication that the sale was not an arms length transaction. However, the record indicates that it was the opinion of the Petitioner's appraiser that the transaction was sufficiently comparable to consider, and includes no actual evidence that the seller made sales concessions or took other actions that support the implication. The Board does not find that the circumstances of the one transaction ought to serve to totally discount the value opinion in the appraisal.

¹ The property identified in the advertisement appears, based on the address, to be located next door to the subject property.

- c) The Respondent also questioned the probative value of the sales contract by which the Petitioner's purchased the subject property. (*Petitioners Exhibit 2*). The contract shows that the Petitioners purchased the home for the appraised \$32,000 from seller's that they were acquainted with. If the Petitioner's were asking for the assessed value to be \$32,000, this value of the sale would be suspect. However, the Petitioner requests the assessment be set in accordance with the appraisal at \$36,000. If the implication is that \$32,000 is too low because of the nature of the transaction, then the request that the assessed value be higher, i.e. \$36,000, only supports the Petitioner's request. (If the Petitioner's received a bargain purchase at \$32,000, it is reflected by the appraisal.)
- d) Regarding the newspaper advertisement (*Petitioners Exhibit 3*), the Respondent suggests that it represents only an ask price, and not being a sale price, should not be relied upon. (*Ward testimony*). This point would seem to be of more relevance if properties were known to typically sell for a price higher than that asked for, but it is common knowledge that property typically sells for less than the ask price. The fact that a purportedly like property is advertised for a less than the requested assessed value is worthy of some consideration (depending of course on its actual comparability.) The Respondent's rebuttal testimony was focused on the status of the advertisement, not the potential comparability of the property. The advertisement indicates the property may possess similar amenities as the subject property.
- e) Finally, the Respondent's rebuttal included three sales of other houses from the subject neighborhood. (*Respondent Exhibits 9-11*) The Respondent testified that these homes were similar to the subject property and established that the subject was assessed similarly. The Respondent presented a comparison of the assessment of the subject property and three other properties. (*Respondent Exhibits 14-17*). The Respondent used these properties to show the assessment per square foot of the subject is similar to the three comparable properties. (*Respondent Exhibit 17*). These sales were apparently utilized by the Respondent to arrive at the assessed value of the subject property, so naturally they tend to support the assessment of the subject property. However, the sales are not presented in an appraisal format and consequently, the analysis of the comparability of the properties is more difficult. It appears that two of the properties used sold for prices substantially higher than the assessed value of the subject property, requiring significant adjustments necessary to consider them comparable.

Conclusions

21. The Board cannot conclude that Respondent's arguments adequately discredit the Petitioner's evidence, that the Respondent's sales data is more comparable or reliable than that analyzed by the Petitioner's appraisal, nor that the Respondent's grid information sufficiently rebuts the Petitioner's appraisal.

22. Consequently, the Board finds the preponderance of the evidence to be in favor of the Petitioner.

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.