

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

Petition #: 48-024-04-1-5-00002
Petitioners: Roger L. & Pamela K. Shoot
Respondent: Monroe Township Assessor (Madison County)
Parcel #: 3331715
Assessment Year: 2004

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 Madison County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 27, 2005.
2. The Petitioners received notice of the decision of the PTABOA on August 5, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on September 2, 2005. The Petitioners elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated April 3, 2007.
5. The Board held an administrative hearing on June 11, 2007, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.¹
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Roger L. Shoot, Owner

¹ The Petitioners appealed 36 properties. The Board heard evidence on 33 of the Petitioners' properties on May 30, 2007. This matter and two others were continued to allow the Respondent time to inspect the properties and review the Petitioners' documentary evidence. The parties agreed to the continuance and to the June 11, 2007, hearing date.

- b. For Respondent: Cheryl Heath, Madison County Assessor
Jack E. Norris, Madison County Deputy Assessor

Facts

7. The subject property is a single family residence located at 60 North Leota, Orestes, in Monroe Township, Madison County.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The PTABOA determined the assessed value of the subject property to be \$5,200 for the land and \$42,000 for the improvements, for a total assessed value of \$47,200.
10. At the hearing, the Petitioners requested an assessed value of \$1,000 for the land and \$14,000 for the improvements, for a total assessed value of \$15,000.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend that the subject property is valued in excess of comparable properties. *Shoot testimony*. In support of this contention, the Petitioners submitted a street map and an MLS sheet for 31 Superior which sold on August 12, 2005, for \$8,000, an MLS sheet for 49 E. Broadway which sold for \$12,500 on April 21, 2004, and an MLS sheet for 63 W. Oak Street which sold for \$15,000 on March 9, 2005. *Attachment to Board Exhibit A; Id.*
 - b. The Petitioners further contend that the property's condition is in error. *Shoot testimony*. According to the Petitioners, "the roof is very bad and the inside is horrible." *Id.* "The garage is just nasty." *Id.* Lighting fixtures are attached with extension cords and the property does not have a central heating system. *Id.* In addition, the roof has water damage and is falling in. *Id.* The Petitioners contend that it would take \$15,000 to \$20,000 to make the property habitable. *Id.* In support of this contention, the Petitioners submitted twenty-three interior and exterior photographs of the structure. *Petitioner Exhibit A-1.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that, after inspecting the property in June of 2007, it would recommend that the land be given a 20% negative influence factor. *Heath testimony*. Further, the Respondent recommends that the garage be changed to a poor condition and the dwelling grade be changed to "D". *Id.* Finally, the Respondent recommends that the condition of the home be changed to fair and a 20% market adjustment applied. *Id.* According to the Respondent, with these

changes, the subject property's adjusted assessed value would be lowered from \$47,200 to \$31,100. *Id.*

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit A-1 – Twenty-three interior and exterior photographs of the subject property,

Board Exhibit A – Form 131 petition with attachments,²
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

- 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 Township 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. 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

² Although labeled Board Exhibit A, the Petitioners specifically offered the attachments to the Form 131 petition as evidence in their appeal to the Board.

must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

15. 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:

Comparable Properties

- a. The Petitioners contend that the subject property is over-assessed based on comparable sales. *Shoot testimony*. In support of this contention, the Petitioners submitted a street map of the area and three MLS sales from April 2004 to August 2005 for properties that sold for \$8,000 to \$15,000. *Id.*; *Attachment to Board Exhibit A*.
- b. The 2002 Real Property Assessment Manual (the Manual) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL – VERSION A at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject property or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
- c. 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. MANUAL at 4, 8; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). This is also true for succeeding assessment years through 2005. *See* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the DLGF to adopt rules for annually adjusting assessments to account for changes to value in years since general reassessment, with such adjustments to begin in 2006). Consequently, a party relying on evidence concerning a property’s market value as of a date substantially removed from the relevant valuation date of January 1, 1999, must explain how that evidence demonstrates or is relevant to the property’s value as of January 1, 1999. *Id*
- d. Here, the Petitioners rely on a “sales comparison” method of establishing the market value of the property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, 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*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison

approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. This the Petitioners did not do. The Petitioners merely offered MLS sheets for each of the “comparable” properties. This falls far short of the showing required to prove comparability. Moreover, even if the Petitioners had sufficiently shown comparability between the subject property and the properties they offered as comparables, the Petitioners provided no evidence relating the sales, which occurred in 2004 and 2005, to the January 1, 1999, valuation date.

Condition

- e. The Petitioners further argue that the assessed condition of the property is in error. *Shoot testimony.* In support of this contention, the Petitioners submitted 23 interior and exterior pictures. *Petitioners Exhibit A-1.*
- f. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5, (incorporated by reference at 50 IAC 2.3-1-2) (The GUIDELINES).* A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* Here, the Petitioners submitted twenty-three interior and exterior photographs of the structure. *Petitioner Exhibit A-1.* The Petitioners contend that the photographs show that the dwelling and garage are in need of several repairs to make the property habitable. *Shoot testimony; Id.* The Petitioners, however, presented no evidence of the property’s current condition rating. Nor did the Petitioners provide evidence comparing the condition of their property to the condition ratings identified in the Guidelines. *GUIDELINES, Chap. 3, pg. 60.* Finally, the Petitioners failed to show that the condition of the subject property differs from other dwellings in the subject property’s neighborhood. The Board, therefore, finds that the Petitioner has failed to raise a prima facie case that there are “errors” in the subject property’s current assessment.
- g. Even if we were to accept Petitioners’ argument that the condition rating assigned to the subject property is in error, we find that the Petitioners have not shown that the assessed value of the property is not a reasonable measure of true tax value. *See 50 IAC 2.3-1-1(d)* (“failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of ‘True Tax Value[.]’”). The Petitioners’ arguments regarding a strict application of the *GUIDELINES* are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Township Assessor, 841 N.E.2d 764 (Ind. Tax Ct. 2006)* (“Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the

property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct”).

- h. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Despite having no duty to do so, the Respondent testified that the property appears to be over-valued and contends that the assessment should be lowered to \$31,100. We commend the Respondent for its candor and accept \$31,100 as a proper value for the subject property.

Conclusion

- 16. The Petitioners failed to provide sufficient evidence to establish a prima facie case. The Respondent, however, admitted the property is over-valued. The Board accepts the value the Respondent proposed for the subject property and orders the assessed value to be lowered to \$31,100.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.