

REPRESENTATIVES FOR PETITIONERS:

Arthur Stratman, Petitioners' Representative

REPRESENTATIVES FOR RESPONDENT:

Susie Majors, Knight Township Real Estate Deputy Assessor

Candy Wells, Vanderburgh County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Saranne Winfield/Melvin Stratman,	)	Petition No.:	82-027-02-1-4-04109
	)	Parcel:	09-010-11-012-014
Petitioners,)		
)		
v.)		
	)	County:	Vanderburgh
Knight Township Assessor,	)	Township:	Knight
Vanderburgh County Assessor,)		
	)	Assessment Year:	2002
Respondent.)		

Appeal from the Final Determination of
Vanderburgh County Property Tax Assessment Board of Appeals

March 22, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The parties presented several issues, which the Board consolidates and restates as:

Did the Petitioners prove that the subject property is assessed in excess of its market value based upon a real estate agent's opinion of value and evidence that the property is located in a bad neighborhood?

PROCEDURAL HISTORY

2. On June 30, 2003, the Petitioners, Saranne Winfield and Melvin Stratman, filed a written request for a preliminary conference to review their property's March 1, 2002, assessment. The Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) issued its Form 115 Notice of Final Assessment Determination (Form 115 determination) on November 14, 2004. On December 13, 2004, the Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition).

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On September 29, 2006, the Board's duly authorized administrative law judge, Jennifer Bippus, conducted an administrative hearing in Evansville, Indiana. The ALJ conducted that hearing pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1.
4. The following persons were sworn and presented testimony at the hearing:
For the Petitioners:
Arthur Stratman¹

For the Respondents:
Susie Majors, Knight Township Real Estate Deputy Assessor
Candy Wells, Vanderburgh County Deputy Assessor
5. The following exhibits were presented for the Petitioners

¹ Arthur Stratman is Melvin Stratman's brother. Arthur did not file an appearance as an attorney and he is not a certified tax representative. Thus, it is not clear that the Board's procedural rules authorize Arthur Stratman to appear on behalf of the Petitioners. See Ind. Admin. Code tit. 52 r. 1-1-6, r. 1-2-1 and r. 3-1-4(b). Nonetheless, Arthur Stratman testified that he appeared on behalf of the Petitioners because Melvin Stratman was hospitalized. And neither the ALJ nor the Respondent questioned Arthur Stratman's authority to represent the Petitioners. On these unique facts, the Board will address the claims that Arthur Stratman raised on the Petitioners' behalf.

Petitioners' Exhibit 1: Letter of opinion from ERA Realtors
Petitioners' Exhibit 2: Power of Attorney (Social Security Number Redacted).²

6. The following exhibits were presented for Respondent, Knight Township Assessor:³

Respondent's Exhibit 1: Copy of 2002 Form 131,
Respondent's Exhibit 2: Copy of 2002 Form 130,
Respondent's Exhibit 3: Copy of Power of Attorney for Melvin Stratman,
Respondent's Exhibit 4: Township recommendation,
Respondent's Exhibit 5: Copy of 2002 Form 115,
Respondent's Exhibit 6: Copy of subject property record card,
Respondent's Exhibit 7A: Land comparable,
Respondent's Exhibit 7B: Land comparable,
Respondent's Exhibit 8: Copy of sales listing for subject property,
Respondent's Exhibit 9: List of changes to be made to subject property for 2006
trending,
Respondent's Exhibit 10: Land valuation,
Respondent's Exhibit 11: Petitioners' additional information,
Respondent's Exhibit 12: Neighborhood Map,
Respondent's Exhibit 13: Photographs of subject property.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The Form 131 petition and attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Notice of Appearance for County Assessor as Additional Party,
Board Exhibit D – Notice of Representation – Susie Majors for Knight
Township,
Board Exhibit E – Hearing Sign-In Sheet.

8. The subject property is classified as a commercial office building. It is located at 1012 Lincoln Avenue, Evansville, Knight Township, Vanderburgh County.

9. The ALJ did not inspect the subject property.

² Arthur Stratman also stated that Melvin Stratman “submitted information at the PTABOA hearing that he would like to have reviewed again.” But Arthur did not identify the nature of that information. The Board notes that the Petitioners attached three property record the Form 131 petition. The parties, however, did not reference those documents at the hearing much less offer them into evidence. Therefore, the Board does not consider those property record cards in reaching its final determination.

³ The Vanderburgh County Assessor did not present any exhibits.

10. The PTABOA determined that the assessed value of the subject property is \$19,700 for the land and \$49,700 for the improvements for a total assessed value of \$69,400.
11. The Petitioners request a value of \$2,000 for the land and \$45,000 for the improvements for a total value of \$47,000.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A petitioner seeking review of a determination of the county property tax assessment board of appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
14. 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 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”).
15. 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.

ANALYSIS

The Parties' Contentions

16. The Petitioners offered the following evidence and argument in support of their position:
- A. On September 26, 2006, Tami Conner, a sales associate with ERA First Advantage Realty, Inc., wrote a letter in which she indicated that “the current market analysis on [the subject] property is \$43,000 - \$47,000.” *Stratman testimony; Pet'rs Ex. 1*. Ms. Conner based her opinion on recent home sales from the subject area. *Pet'rs Ex. 1*.
 - B. The subject property has been listed for sale since 2001. *Stratman testimony*. There has been no interest in the property as a commercial property. *Id.* The current taxes have reduced the Petitioners' ability to sell the property. *Id.*; *Pet'rs Ex. 1*.
 - B. The subject property is located between a car wash and Highway 41. *Stratman testimony*. The neighborhood is bad; people have dumped trash in the yard and have broken windows in the back of the building. *Id.* In addition, a large tree limb hangs down onto the roof of the building. *Id.* The subject building is currently vacant. *Id.*
17. The Respondent offered the following evidence and argument in support of its position:
- A. The Knight Township Assessor viewed the subject property in 2005 at the Petitioners' request. That viewing revealed several things: (1) the building contained a wood-burning fireplace and a plumbing fixture that were not included on the property record card; (2) the building was in poor condition — it had water

damage from the roof being in disrepair and mold and mildew were evident throughout the building; and (3) the paving was in very poor condition. *Majors testimony, Resp't Ex. 13*. But there is no evidence as to the property's condition in 2002. *Majors argument*. Thus, while the Knight Township Assessor agrees that the subject property's future assessments should reflect its deteriorated condition, any such changes should not be retroactive to 2002. *Id.*

- B. In 2005, the Petitioners listed the subject property for sale at \$61,900, which is close to its current assessment. *Majors testimony; Resp't Ex. 8*. That list price is almost \$20,000 more than what the Petitioners requested at the hearing in 2006. The evidence submitted by the Petitioners, however, does not support a finding that the subject property's value dropped \$20,000 in one year. *Majors argument*.
- C. The Knight Township Assessor valued the subject land as commercial, but it used residential cost schedules to value the building. *Majors testimony*. The land is zoned as C-1 (commercial), and the assessor used the low end of the range for commercial values. *Id; Resp't Ex. 10*.

Discussion

- 18. 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 generally assess real property using a mass appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (Guidelines).

19. A property's market value-in-use, as ascertained through 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). But a taxpayer may offer evidence to rebut that presumption, provided such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. An appraisal prepared in accordance with the Manual's definition of true tax value generally will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).”). A taxpayer may also 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.
20. The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4, 8. Consequently, a party relying on evidence showing a property's value as of a date substantially removed from January 1, 1999, must explain how that evidence relates to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
21. Here, the Petitioners did not submit any of the types of market-based evidence contemplated by the Manual and Tax Court. The Petitioners did submit a letter from Tammy Conner, a real estate agent, in which Ms. Conner expressed her opinion that the subject property was worth \$43,000 - \$47,000. *Pet'rs Ex. 1*. Ms. Conner, however, is not a licensed appraiser. And Ms. Conner did not indicate that she arrived at her opinion using valuation methods that are generally recognized in the appraisal profession. At most, Ms. Conner referenced having examined recent home sales from the subject area, without providing any information about those sales. *See id.*

22. Moreover, Ms. Conner gave her opinion of the subject property's value in September 2006. The Petitioners therefore were required to explain how Ms. Conner's opinion related to the subject property's value as of the relevant valuation date of January 1, 1999. The Petitioners failed to do so. The Board therefore assigns no weight to Ms. Conner's opinion of the subject property's market value.
23. Mr. Stratman also testified about various problems with the subject neighborhood and vandalism to the subject building. *See Stratman testimony.* According to Mr. Stratman, the neighborhood's deteriorated state detracts from the subject property's value. While that may be true, the Petitioners did not present any market-based evidence from which to quantify the neighborhood's affect on the subject property's market value-in-use.
24. Based on the foregoing, the Petitioners failed to establish a prima facie case of error in the subject property's assessment.

SUMMARY OF FINAL DETERMINATION

25. The Petitioners failed to make a prima facie case. The Board therefore finds for the Respondents and orders that the assessment should not be changed.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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>.