

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

Petition #: 48-003-04-1-5-00225
Petitioner: Tommy T. & Carol A. Whetsel
Respondent: Anderson Township Assessor (Madison County)
Parcel #: 18 899-10-01
Assessment Year: 2004

The Indiana Board of Tax Review (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 (PTABOA) by written document dated June 21, 2005.
2. The PTABOA mailed notice of its decision on July 25, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Madison County Assessor on August 23, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated July 14, 2006.
5. The Board held an administrative hearing on August 31, 2006, before the duly appointed Administrative Law Judge, Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Tommy Whetsel, Taxpayer
 - b) For Respondent: Patricia Davis, Anderson Township Chief Deputy Assessor
Dennis Plackard, Anderson Township Deputy Assessor
Lloyd Brumback, Madison County Deputy Assessor

Facts

7. The subject property is classified as a residential property, and it is located at 517 East 5th Street, Anderson, as shown on the property record card for parcel 18 899-10-01.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined that the assessed value of the property is \$4,800 for the land and \$36,100 for the improvements for a total assessed value of \$40,900.
10. The Petitioners request a value of \$4,800 for the land and \$25,000 for the improvements for a total value of \$29,800.

Issue

11. Summary of the Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners bought the subject property in June 2003 for \$36,500. *Whetsel testimony; Pet'rs Ex. 3.* While the settlement statement appears to show an additional \$5,000 contract payment for a total purchase price of \$41,500, Mr. Whetsel testified that he did not pay an additional \$5,000 for the property. *Id.*
 - b) The Petitioners use the subject property as a rental property. *Whetsel testimony.* Many homes in the subject property's area were rented to Anderson University students, but after Anderson University built dorms and Park Place School closed, it is very difficult to find tenants. *Id.* The Petitioners charge \$450 per month in rent. *Id.* In 2005, the subject property generated only \$2,705.19 of income after subtracting insurance premiums, taxes and some maintenance costs. *Pet'rs Ex. 5.* That amount does not include several other expenses, such as labor and depreciation of the furnace and roof. *Id; Whetsel testimony.*
 - c) The subject home has two bedrooms and one bath, with no shower. *Whetsel testimony.* It has old windows, an old roof, and it lacks central air. *Id.* The home also had termite problems, although the Petitioners hope that those problems have been resolved. *Id.* The subject lot is very small, and the back door of the home is only five (5) feet from the back of the property. *Id.* The property is located in a flood plain. *Id.* In addition, the streets and curbs outside the subject home are in poor condition. *Id.*
 - d) Other properties in the subject property's area are assessed in the low \$30,000 range. *Id; Pet'rs Ex. 4.* The subject property should be assessed for a similar amount. *Whetsel argument.* The Respondent lowered the subject property's assessment to \$30,000 for 2006. *Id.*
 - e) The Petitioner's taxes are much higher than those paid by the previous owner.

Whetsel testimony. In 2003-04, the taxes were \$173.30. Those taxes increased to \$1224.26 in 2005-06. *Id.; Pet'rs Ex. 7.*

12. Summary of the Respondent's contentions in support of the assessment:
- a) The current assessment of \$40,900 is close to the purchase price, whether that price was \$36,500 or \$41,500. *Plackard argument.*
 - b) The Respondent adjusted assessments in 2006, which resulted in a reduction in the subject property's assessment. *Plackard testimony.* Such a change was not justified in 2004 or 2005. *Id.* In 2006, the grade and condition were "put in line with the market." *Brumback testimony.*

Record

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

- a) The Form 131 petition,
- b) The digital recording of the hearing labeled BTR 6196,

Petitioners' Exhibit 1: Copy of Form 131 Petition,
Petitioners' Exhibit 2: Parcel information,
Petitioners' Exhibit 3: Settlement Statement,
Petitioners' Exhibit 4: Comparable property data,
Petitioners' Exhibit 5: Expense report on property,
Petitioners' Exhibit 6: Property photographs,
Petitioners' Exhibit 7: Real estate tax statements,
Petitioners' Exhibit 8: Copy of Form 115s for 2004 and 2005.

Respondent Exhibit 1: Notice of Township Representation for Patricia Davis and Dennis Plackard.

Board Exhibit A: Form 131 Petition,
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 the county Property Tax Assessment Board of Appeals 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. Washington Twp. Assessor*, 802 N.E.2d 276 (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 Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:
- a) 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.
 - b) 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, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *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.
 - c) The Petitioners first rely on one of the types of evidence specifically recognized by the Manual as being relevant to establish true tax value – the sale price for the subject

- property. Mr. Whetsel testified that the Petitioners paid \$36,500 for the property in June 2003. *Whetsel testimony*. While the settlement statement offered by the Petitioner confirms that the contract sale price was \$36,500, however, it also refers to an “additional contract payment” of \$5000 from the buyer. *Pet’rs Ex. 3*. This is a significant point in light of the fact that the assessment under appeal is for \$40,900, which is \$600 less than the total sale price if the \$5000 additional contract payment is included. On cross-examination, Mr. Whetsel was unable to identify the purpose of the \$5000 additional contract payment, but testified that he did not pay an additional \$5000 for the property. *Whetsel testimony*. Given Mr. Whetsel’s inability to explain the significance of the \$5,000 entry on the settlement statement, the Board finds Mr. Whetsel’s testimony concerning the June 2003 sale price is insufficient to demonstrate that the subject property is assessed in excess of its true tax value.
- d) The Petitioners also rely upon information concerning the net income produced by the subject property in 2005. *Whetsel testimony, Pet’rs Ex. 5*. According to the Petitioners, the subject property generated \$2,705.19 of income after subtracting insurance premiums, property taxes and certain maintenance costs. *Id.; Whetsel testimony*. At best, the information provided by the Petitioners demonstrates that the subject property did not produce a significant amount of income during a one-year period. The Petitioners, however, did not capitalize the net income or otherwise attempt to quantify the market value of the subject property based upon the income and expense information they submitted. Thus, the income and expense information submitted by the Petitioners lacks probative value.
- e) The Petitioners further point to information concerning four (4) houses located in the subject property’s neighborhood with assessments ranging from \$25,500 to \$32,500. *Whetsel testimony; Pet’rs Ex. 4*. In doing so, the Petitioners apparently contend that the subject property is not assessed in a uniform and equal manner in comparison to other properties in the same neighborhood. To establish a prima facie case that a property has not been assessed in a uniform and equal manner, a taxpayer must present probative evidence demonstrating that comparable properties are assessed and taxed differently than is the subject property. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). In doing so, the taxpayer must explain how relevant features of the other properties compare to those of the subject property. *Id.; See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005) (holding that taxpayers failed to establish a prima facie case using the sales comparison analysis where they did not explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).
- f) Here, the Petitioners concede that the other properties to which they seek to compare the subject property differ from the subject property in various respects. Nonetheless, the Petitioners contend that the other properties have certain features that are superior to the subject property, such as vinyl siding, new windows, central air, and larger lots. *Whetsel testimony; Pet’rs Ex. 4*. The Petitioners, however, do not explain the extent

to which those differences contribute to differences in value, nor do they compare the subject property to the other properties in terms of numerous other features relevant to the computation of assessments under the Real Property Assessment Guidelines for 2002 – Version A. The Petitioners therefore failed to establish a prima facie case that the subject property is not assessed in a uniform and equal manner in comparison to similar properties.

- g) The Petitioners also rely upon various problems with the subject property identified by Mr. Whetsel. Those problems include issues concerning the design and layout of the subject home, such as the facts that the home has only one bathroom and no shower and that the back door of the home is only five (5) feet from boundary of the property. *Whetsel testimony*. Mr. Whetsel also testified that the subject home's roof and windows are "old," that its furnace is thirty (30) years old, that it has wood rather than vinyl siding, and that it had "termite problems" at one point. *Whetsel testimony*. The Petitioners, however, failed to present any market-based evidence to quantify the effect of the problems identified by Mr. Whetsel on the market value-in-use of the subject property. Moreover, Mr. Whetsel's testimony was largely conclusory. The Petitioners did not present any evidence to support Mr. Whetsel's testimony regarding the condition of the subject home. Although the Petitioners submitted photographs of the exterior of subject property, those photographs do not reveal significant deterioration in the windows and roof or damage from termites. *See Pet'rs Ex. 6*. Thus, Mr. Whetsel's testimony concerning the condition and layout of the subject property lacks probative value.
- h) Finally, the Petitioners argue that the subject property's March 1, 2004, assessment should be lowered in light of the Respondent's decision to reduce the property's assessment to \$30,000 for 2006. Each assessment and each tax year, however, stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001). Thus, evidence as to a property's assessment in one tax year is not necessarily probative of its true tax value in a different year. *See, id.* ("[E]vidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.").

Conclusion

15. The Petitioners failed to prove by a preponderance of the evidence that the assessment under appeal is in error. 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 for the subject property should not be changed.

ISSUED: November 30, 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 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>.