

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

Petition: 74-016-14-1-5-10104-15
Petitioners: Don and Rosetta Feistel
Respondent: Spencer County Assessor
Parcel: 74-18-03-200-019.000-016
Assessment Year: 2014

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter and finds and concludes as follows:

Procedural History

1. Don and Rosetta Feistel appealed their assessment to the Spencer County Property Tax Assessment Board of Appeals (“PTABOA”). On January 9, 2015, the PTABOA issued its determination. The Feistels then filed a Form 131 petition with the Board.¹ They elected to proceed under our small claims procedures.
2. On February 17, 2016, Administrative Law Judge Gary Ricks (“ALJ”), held a hearing on the Feistels’ petition. Neither the Board nor the ALJ inspected the subject property.
3. The following people were sworn as witnesses: Don Feistel; Samuel A. Monroe, a contractor with the Assessor’s reassessment vendor;² and Jane McGinnis, Spencer County Assessor.
4. The subject property is a 5.2 acre lot with improvements located at 2265 County Road 700 West in Rockport.

¹ The Feistels did not file their Form 131 petition until March 25, 2015, more than 45 days after the mailing date reflected on the PTABOA’s determination. According to Mr. Feistel’s affidavit, which was filed with the Feistels’ Form 131 petition, he did not receive notice of the PTABOA’s determination until March 4, 2015, after his attorney inquired about the status of the appeal. *See Bd. Ex. A.* The Assessor did not move to dismiss the petition, nor did she contest its timeliness at the Board’s hearing. Under those circumstances, we find the petition was timely filed.

² The Assessor purported to have Mr. Monroe represent her. Mr. Monroe did not affirmatively show he is authorized to practice before us. While it is at least possible that he would qualify as a local government representative, he did not file the required verification. *See 52 IAC 2-2-4* (defining who is an authorized representative); *see also, 52 IAC 1-1-3.5* (defining who may be a local government representative and laying out verification requirements). Nonetheless, the ALJ allowed Mr. Monroe to present the Assessor’s case, and the Assessor attended hearing. Under those circumstances, we impute Mr. Monroe’s actions to the Assessor. We remind Mr. Monroe and the Assessor to comply with our procedural rules in the future.

5. The PTABOA determined the following values:
 Land: \$22,000 Improvements: \$73,000 Total: \$95,000.
 6. The Feistels asked for a total assessment of \$75,000.
 7. The official record includes the following:
 - a. A digital recording of the hearing.
 - b. Exhibits:
 - Petitioner Exhibit 1: Photograph of newly constructed building on subject property,
 - Petitioner Exhibit 2: Photograph of interior of newly constructed building,
 - Petitioner Exhibit 3: Photograph of subject home's foundation,
 - Petitioner Exhibit 4: Photograph of home,
 - Petitioner Exhibit 5: Photograph of home,
 - Petitioner Exhibit 6: Photograph of building on nearby property,
 - Petitioner Exhibit 7: Photograph of building on nearby property,
 - Petitioner Exhibit 8: Photograph of outbuilding,
 - Petitioner Exhibit 9: Photographs of property owned by Brian and Rachel Isabell together with information concerning the taxes and deductions on the property and part of a property record card,
 - Petitioner Exhibit 10: Photographs of property owned by Amber Nicole Wilkinson together with assessment, deduction and payment information,
 - Petitioner Exhibit 11: Photograph of property owned by Jeffrey and Holly Thompson together with assessment information and property record card,
 - Petitioner Exhibit 12: PRC for parcel 72-14-32-100-006.011-016 with post-it notes attached
 - Petitioner Exhibit 13: PRCs for the subject property with handwritten notes and post-it notes.
 - Respondent Exhibit A-1: PRC for subject property with 2013 highlighted,
 - Respondent Exhibit A-2: PRC for subject property with 2013 informal highlighted,
 - Respondent Exhibit A-3: PRC for subject property with 2014 highlighted,
 - Respondent Exhibit B: Description of assessment changes,
 - Respondent Exhibit C: Photograph of detached garage built on subject property,
 - Respondent Exhibit D: Copy of form 134 for 2013.
- Board Exhibit A: Form 131 petition and accompanying documents,

Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions.

Objections

8. The Assessor objected to several of the Feistels' exhibits, all of which the ALJ took under advisement. We address each in turn.
9. The Assessor objected to Petitioners' Exhibits 6-7, photographs of a building located on a neighboring property, on grounds that the tax bill and property record card the Feistels' had identified in connection with the photographs were not for the same property. Mr. Feistel acknowledged that point, but explained he was not offering the tax bill or property record card, but only the photographs. We overrule the objection, although we agree that without accompanying sale or assessment information, the photographs have little relevance.³
10. The Assessor objected to Petitioners' Exhibit 9—photographs of a neighboring property owned by Brian and Rachel Isabell, together with information concerning the taxes and deductions on the property, and part of a property record card—on grounds that the Feistels did not offer the complete property record card and that it was unclear whether Mr. Feistel was claiming the property was comparable to the subject property. We overrule the objection, although we once again agree the exhibit has little relevance.
11. Finally, the Assessor objected to Petitioners' Exhibit 10—photographs of a neighboring property owned by Amber Nicole Wilkenson, together with information concerning the assessment, taxes, and deductions and a property record card—on grounds that it lacks probative value. That objection appears to address the exhibit's weight rather than its admissibility. We therefore overrule it.

Feistels' Contentions

12. The Assessor has never properly assessed the home for what it is. Mr. Feistel originally put a trailer on pads he had poured on the property. The trailer was old and deteriorating, so he built a pole-barn-type structure around the trailer and put a roof over it. He later spent his weekends cutting the old trailer out of the structure. *Feistel testimony.*

³ Part of the confusion stems from the fact that Mr. Feistel repeatedly referred to photographs and documents without marking them for identification or offering them as exhibits. Indeed, Mr. Feistel only offered items as exhibits after the ALJ prompted him to do so. The ALJ similarly had to assign them numbers, although he did not mark those numbers at the hearing. It was Mr. Feistel's obligation, not the ALJ's, to mark and offer the Feistels' exhibits. We send out instructions for doing so with our hearing notices. To the extent the Feistels had evidence that did not make its way into the record, the responsibility lies with Mr. Feistel.

13. The Assessor also ignored the fact that a gas pipeline runs across the property. A pond separates the front of the property from the back. That devalues the back part of this property. A “junkyard” across the street also hurts the value. *Feistel testimony; Pet’rs Exs.3, 10.*
14. The property is assessed too high when compared to the assessments for nearby properties. The subject property has a recently constructed building that the Assessor has classified as a detached garage, but there is no driveway leading to the building. Thus, it should more properly be classified as a pole barn or utility shed. Regardless of how it is classified, the building is assessed higher than larger, similar buildings on nearby properties. *Feistel testimony; Pet’rs Exs. 1, 6-7, 11.*
15. According to Mr. Feistel, some neighbors get exemptions and deductions that the Feistels do not. Also, the Assessor keeps putting information on the county’s website that is later removed. And the information does not go back in time past a certain point. Mr. Feistel does not believe the Assessor wants people to see the information. *Feistel testimony and argument; Pet’rs Exs. 9, 11.*

Assessor’s Contentions

16. The subject property is correctly assessed. The property has a single-family, one-story home with 1,898 square feet. The Feistels filed an appeal for 2013, which led to several adjustments. A walk-through of the home revealed changes that affected its value, such as lack of paint, trim, finish, and floor covering in certain areas. The Assessor further learned that the home had actually been built in 1995 rather than 2001 as her records previously indicated. She also made an adjustment to account for an unfinished area within the home. As a result of those factors, the Assessor reduced the home’s quality grade from D to D-1. *Monroe testimony, Resp’t Exs. A-1 – A-3.*
17. The parties agreed to informally settle the 2013 appeal by valuing the property at \$22,000 for the land and \$59,800 for the improvements for a total of \$81,800. The assessment increased for 2014 because the Feistels built a 24' x 40' structure on the property. It has features that are consistent with a garage rather than a utility shed, such as a large roll-up door, four walls and a roof, and a foundation. Contrary to what Mr. Feistel believes, a driveway is not a prerequisite to classifying a building as a garage. The Assessor used the state’s cost tables to compute the garage’s value and assigned it a D grade. Aside from adding the garage, the Assessor did not change the assessment between 2013 and 2014.⁴ *Monroe testimony, Resp’t Exs. B-D.*
18. The Feistels offered nothing to show the garage’s value, nor did they provide

⁴ While adding the building the Assessor describes as a garage accounts for most of the difference between the 2013 and 2014 assessments, it does not account for all of it. For example, the replacement cost new for the home was \$104,930 in 2013 but was \$107,670 in 2014. Similarly, the Assessor computed slightly different values for exterior features between the two years. *See Resp’t Ex. A-2 – A-3.*

construction costs when asked to do so. Although Mr. Feistel claimed the local building inspector had not approved the garage for use, he did not provide support for that claim. *Monroe testimony.*

Burden of Proof

19. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property or (2) the taxpayer successfully appealed the prior year's assessment and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). Even where those circumstances exist, the burden remains with the taxpayer if assessment that is the subject of the appeal was based on structural improvements, zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-1.1-15-17.2(c). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
20. The subject property's assessment increased between 2013 and 2014, going from \$81,800 (as determined in the 2013 appeal) to \$95,000. The Assessor acknowledged she had the burden of proof. We note that most of the increase between 2013 and 2014 stemmed from the Assessor adding a value for the building she characterized as a detached garage. Thus, the Assessor might have had an argument that the burden should not have shifted because the 2014 assessment was based on a structural improvement that was not considered in the 2013 assessment. But she did not make that argument, and by agreeing she had the burden, she dissuaded the Feistels from making any counter arguments on that question. Under those circumstances, we accept the Assessor's acknowledgement that she had the burden of proof.

Analysis

21. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the rules of the Department of the Local Government Finance ("DLGF"). I.C. § 6-1.1-3-16(c). The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to the uniform standards of professional appraisal practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction

costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use)

22. The Assessor did not offer any market-based evidence to prove the property's true tax value. At most, her witness, Samuel Monroe, explained that that the assessment increased because the Feistels' built a structure that has at least some features of a detached garage. He claimed that the Assessor valued the garage using the "state's cost tables," presumably referring to 2011 Real Property Assessment Guidelines, although he did not offer any details about how those Guidelines were applied. In any case, strictly applying the guidelines does little to show true tax value in an assessment appeal. *See Eckerling*, 841 N.E.2d at 678.
23. For those reasons, the Assessor failed to make a prima facie case to support the assessment, and the Feistels are entitled to have it revert to its 2013 level of \$81,800. To the extent the Feistels sought an even lower value, they had the burden of proving it. We therefore turn to their evidence.
24. Much of the Feistels' evidence consists of photographs of the subject property and nearby properties, as well as some assessment and tax information for the nearby properties. While a party may offer evidence of comparable assessments to prove the market value-in-use of a property under appeal, the determination of comparability must be made "using generally accepted appraisal and assessment practices." I.C. § 6-1.1-15-18(c). Thus, the party must explain how relevant characteristics of the other properties compare to those of the property under appeal and how any relevant differences affect values. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *see also, Indianapolis Racquet Club, Inc. v. Marion County Ass'r*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014).
25. Aside from demonstrating some basic resemblance between buildings on nearby properties and the newly built structure on the subject property, the Feistels did little to show how the properties were comparable. And they did not even attempt to explain how any relevant differences affected values. Under those circumstances, their comparative assessment evidence does not make a prima facie case for reducing the assessment below \$81,800.
26. The same is true for the Feistels' evidence concerning the home's construction and the presence of what Mr. Feistel characterized as a "junkyard" across the street. While both those things might affect the property's value, the Feistels offered no market-based evidence to quantify the extent to which they do so, or to show any particular value or even a likely range of values for the property.

Final Determination

In accordance with these findings of fact and conclusions of law, the 2014 assessment must be changed to \$81,800.

Issued: May 17, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

-APPEAL RIGHTS-

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 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 Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.