
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Bradley Brown and Jerry R. Smith,	)	Petition No:	09-009-06-1-5-00003
)		
Petitioners	)	Parcel No:	0905070021
)		
v.)		
	)	County:	Cass
Cass County Assessor,	)	Township:	Harrison
)		
Respondent.	)	Assessment Year:	2006

Appeal from the Final Determination of
Cass Property Tax Assessment Board of Appeals

March 25, 2008

FINAL DETERMINATION

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

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the subject property is overstated due to surrounding properties in the area.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, Jerry R. Smith filed a Form 131 Petition for Review of Assessment on October 1, 2007, petitioning the Board to conduct an administrative review of the above petition. The Cass County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on August 23, 2007.
3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on January 17, 2008, in Logansport, Indiana.
4. Jerry R. Smith, one of the Petitioners, was sworn in as a witness at the hearing. No one appeared on behalf of the Respondent.¹
5. The Petitioners presented the following evidence:

Petitioner Exhibit 1 – Thirty-four exterior photographs of neighboring properties.²

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

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notices of Hearing, dated December 11, 2007,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Proof of mailing.

¹ Notice of Hearing on Petition was mailed to the County Assessor on December 11, 2007. The proof of mailing has been entered into the record as Board Exhibit D.

² The Petitioner numbered each picture 1 through 34 for identification purposes during the hearing. The properties in the photographs are located within ½ mile of the Petitioner's house.

FACTS

7. The subject property is a 1,868 square foot residential dwelling on .589 acres of land located at 15 West State Road 16, Lucerne, Harrison Township in Cass County.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. For 2006, the PTABOA determined the assessed value of the property to be \$11,300 for land and \$124,200 for the improvements, for a total assessed value of \$135,500.
10. Mr. Smith did not request a specific value on his Form 131 petition. At the hearing, however, Mr. Smith argued that his home was worth no more than \$80,000.

JURISDICTIONAL FRAMEWORK

11. 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.

PARTIES' CONTENTIONS

12. Summary of Petitioners' contentions:
 - A. The Petitioners contend that neighboring properties have diminished the value of the subject property because the properties are poorly maintained and covered in trash. *Smith testimony*. In support of this contention, the Petitioners submitted thirty-four photographs of properties in the surrounding area. *Petitioner Exhibit 1*. Mr. Smith testified that the photographs are from eight different properties. *Petitioner Ex. 1*;

Smith testimony. According to Mr. Smith, the pictures show the neighboring properties with over-grown weeds, shingles missing off a roof, fence columns falling down, junk vehicles in the yards, and building materials and garbage piled around the yards. *Id.* The Petitioners argue that, while their house is very nice, the character of the neighborhood adversely impacts its value. *Id.*

- B. The Petitioners further contend that neighboring properties are not comparable to the subject property because the parcels are larger and have more structures. *Smith testimony.* According to the Petitioners, the first comparable property is Mr. Timothy Pickens' property which is located at 788 West State Road 16. *Id.* The Pickens' property has 3.08 acres, a doublewide mobile home, and a pole building. *Id.* The second property is located a quarter of a mile south of the subject property. *Id.* Mr. Smith testified that the second property has a lot more land while the house and garage are basically the same square footage. *Id.* The last property also has more land but the dwelling was in such poor condition that it was demolished. *Id.* Mr. Smith testified that the subject property has a house, a pool and a utility shed on only .589 acres of land. *Id.* The Petitioners also contend that, at the time of the assessment, neighboring properties were selling at inflated prices. *Id.*
- C. Finally, the Petitioners contend that the subject property would not sell for what it is currently assessed. *Smith testimony.* According to Mr. Smith, he purchased the subject property in 1969 and he constructed all improvements located on the property. *Id.* The Petitioners argue that the market value-in-use of the property would be no more than approximately \$80,000. *Id.*

13. The Respondent did not appear or submit evidence in this matter.

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 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. Wash. 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”).
 - 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 failed to provide sufficient evidence to support their contentions. The Board reaches its conclusion for the following reasons:
 - A. The Petitioners contend that the value of the subject property is diminished by the condition and inadequacies of properties in the surrounding area. *Smith testimony*. External obsolescence is caused by an influence outside the property’s boundaries that has a negative influence on its value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. F at 4, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES), intro. at 1. For a Petitioner to show that he is entitled to receive an

adjustment for obsolescence, the Petitioner must first identify the causes of obsolescence the Petitioner believes is present then quantify the amount of obsolescence he believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioner must present probative evidence that the causes of obsolescence identified are resulting in an actual loss in value to the property. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Further, the Petitioner's quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure's overall value. *See Clark*, 694 N.E.2d at 1238.

B. Here, the Petitioners submitted thirty-four photographs of properties in the surrounding area. *Petitioner Ex. 1*. The Petitioners, however, did not show how over-grown weeds, junk vehicles, and building materials and garbage sitting in neighboring yards has caused a loss in the market value of the subject property. It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must explain how the purported causes of obsolescence cause the property to suffer an actual loss in value. *See Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied*. *See also Indian Industries, Inc. v. Dept. of Local Gov. Finance*, 791 N.E.2d 286, 290 (Ind. Tax Ct. 2003) (“All Indian has done in this case is provide the State Board with a laundry list of factors that may cause obsolescence to its improvements and then say ‘as a result, we’re entitled to a 70% obsolescence adjustment.’ However, Indian needed to link one with the other by showing an actual loss of value.”) Thus, in failing to tie the condition of neighboring properties to alleged causes of obsolescence, the Petitioners have failed to raise a *prima facie* case that the subject property's assessment was incorrect.

- C. The Petitioners also contend that the subject property should not be assessed based on the sales of neighboring properties because the surrounding properties are not comparable. *Smith testimony*. The Board, however, sees only a cost approach valuation on the property's property record card. The Petitioners' argument fails to show that the assessor applied a sales comparison valuation to the property, let alone that the assessor applied the sales comparison valuation in error. *See Indianapolis Racquet Club, Inc. v. Wash. 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”).
- D. Finally, the Petitioners contend that the property is valued incorrectly because the subject property would not sell for more than \$80,000. *Smith testimony*. The only evidence the Petitioners presented, however, was Mr. Smith's testimony that in his opinion the property would not sell for more than \$80,000. The Petitioners presented no appraisal, sales information, or other market data in support of this argument. Conclusory statements regarding the property's value are not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Therefore the Petitioners have failed to raise a prima facie case.

SUMMARY OF FINAL DETERMINATION

16. The Petitioners failed to raise a prima facie case. The Board finds in favor of the Respondent.

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

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, 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>>