

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

Petition: 71-026-02-1-5-00123
Petitioners: Gery Gorzynski
Raymond Gorzynski
Respondent: Portage Township Assessor (St. Joseph County)
Parcel: 18-2195-7330
Assessment Year: 2002

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

Procedural History

1. The Petitioners initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated December 23, 2003.
2. The PTABOA mailed notice of its decision on September 25, 2004.
3. The Petitioners filed a Form 131 appeal with the county assessor on September 30, 2004. The Petitioners elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing on April 10, 2006.
5. The Board held an administrative hearing on July 12, 2006, before Administrative Law Judge Joan Rennick.
6. Persons present and sworn as witnesses at the hearing:
 For Petitioner: Gery Gorzynski, Owner,
 Raymond Gorzynski, Owner,
 For Respondent: Rosemary Mandrici, Portage Township Assessor,
 Terrance F. Wozniak, Attorney for Township and PTABOA,
 Kevin J. Klaybor, PTABOA President,
 Dennis J. Dillman, PTABOA Member.

David E. Wesolowski, County Assessor and PTABOA Secretary, was present at the hearing, but he was not sworn and did not testify.

Facts

7. The property is a residential one-family dwelling located at 1530 Wilbur, South Bend.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. Assessed value as determined by the PTABOA:
Land: \$800 Improvements: \$33,100 Total: \$33,900.
10. The Petitioners did not complete the requested assessed values section of their petition.

Issues

11. Summary of Petitioners’ contentions in support of alleged error in assessment:
 - a) The Petitioners purchased the subject property from the Department of Housing and Urban Development (“HUD”). Everybody had a chance to bid on it. *R. Gorzynski testimony.* The Petitioners’ purchased the subject property for \$17,101 on February 20, 2003. The Petitioners made repairs and improvements to the subject property since then. *G. Gorzynski testimony.*
 - b) The subject property was constructed in 1947 and is 56 years old. As a rental property, it receives more wear and tear than a regular home. In addition, the subject property had termite damage in the past. *G. Gorzynski testimony.*
 - c) The Petitioners consider the value to be less than a comparable home on the market because of the age, general condition, and poor location of the subject property. *G. Gorzynski testimony.*
 - d) The property tax increase of \$374.22 (43%) is excessive. *G. Gorzynski testimony.*
 - e) The Petitioners have had problems with tenants. The subject property is not in the greatest neighborhood and is hard to rent. The current rent is \$650 per month. *G. Gorzynski testimony.*
 - f) The subject property was empty for almost 6 months. The Petitioners tried to sell the property. They put a sign in front, but they did not advertise in the newspaper or list the property with a realtor. In 6 months, there were 3 or 4 inquiries about the property, but the interest was for a price under \$20,000, so the Petitioners took the property off the market. *R. Gorzynski testimony.*
12. Summary of Respondent’s contentions in support of the assessment:
 - a) The Petitioners presented no evidence to show excessive wear and tear, or the condition of the interior of the subject property. *Wozniak argument.*

- b) The Petitioners presented nothing to prove the subject property is in a poor location. *Wozniak argument.*
- c) The Respondent used a gross rent multiplier (“GRM”) to determine the value. The Respondent used a rental rate of \$600 per month to determine the value of the subject property. The current rent is actually higher than the \$600 used to determine the value. *Mandrici testimony.*
- d) The HUD sales, sheriff sales, and foreclosures are distressed sales and are not considered in determining value. These types of sales tend to be less than fair market value. The income approach to value was used to determine the value for the subject property. *Mandrici testimony.*
- e) Mr. Dillman is a certified general appraiser in Indiana and has been for 45 years. It is possible that the subject property was vacant for 6 months because the Petitioners were asking too much for rent. If they lowered the rent, they may have found a tenant. It seems like a question of marketing. *Dillman testimony.*

Record

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

- a) The Petition,
- b) Digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: A two-page letter to the Board dated June 26, 2006,

Respondent Exhibit 1: Form 131,
Respondent Exhibit 2: Form 115,
Respondent Exhibit 3: Form 130,
Respondent Exhibit 4: Letter to taxpayer dated August 18, 2004,
Respondent Exhibit 5: Property Record Card (“PRC”),
Respondent Exhibit 6: PTABOA Record of Hearing,

Board Exhibit 1: Form 131 petition with attachments,
Board Exhibit 2: Notice of Hearing,
Board Exhibit 3: 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 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 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 did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
 - a) Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *117 Republic Ltd. P'ship v. Brown Twp. Assessor*, 851 N.E.2d 399, 400 n.2

(Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c) The Petitioners purchased the subject property on February 20, 2003, more than four years after the required valuation date of January 1, 1999. They presented no explanation that relates the \$17,101 purchase price to value as of January 1, 1999. Therefore, that evidence does not help to show what the assessment should be. *Id.*
- d) The purchase price lacks probative value for another reason. The Petitioners have not shown the HUD purchase is a reliable indicator of market value. *See* MANUAL at 10 (defining market value as a price in a competitive and open market that is unaffected by undue stimulus). Similarly, the Petitioners' attempt to sell is not probative evidence because this property did not have reasonable market exposure. It was not listed with a realtor and only a sign was posted in front. Therefore, limited interest at a price under \$20,000 and failure to sell under those circumstances are not probative facts in this case.
- e) The Petitioners also contend the age, general condition, and location of the subject property affect value. The only evidence presented by the Petitioners was testimony that these factors cause the subject property value to be less than a comparable home. The Petitioners, however, did not present probative evidence to substantiate that claim. In order to establish probative evidence based on comparability, one must explain the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affect the market value-in-use of the properties. *Long*, 821 N.E.2d at 471. Without such a comparison, statements that the properties are similar or comparable are conclusory and they have no probative value. *Id.*; *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f) The Petitioners did not quantify the effect of the age, condition, and location on the market value-in-use of the subject property. The Petitioners' contention amounts to nothing more than conclusory statements, which are not sufficient to establish an error in assessment. *Id.* Furthermore, a focus solely on the methodology by which an assessor determined an assessment fails to demonstrate that the assessment does not accurately reflect a property's market value-in-use. *O'Donnell v. Dep't of Local Gov't Fin.*, No. 49T10-00510-TA-79, 2006 Ind. Tax Lexis 51, at *8-11 (Ind. Tax Ct. Sept. 21, 2006).
- g) The amount or percentage of tax increase has no relevance to determining the market value-in-use of the subject property.
- h) Where a taxpayer fails to provide probative evidence supporting a claim, the duty to support the current assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

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

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: **October 4, 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>>.