

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

Petition #: 84-002-03-1-5-00284
Petitioners: Garry E. & Calvin L. Tatlock
Respondent: Harrison Township Assessor (Vigo County)
Parcel #: 118-06-10-480-011
Assessment Year: 2003

The Indiana Board of Tax Review (the 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 Vigo County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 7, 2004.
2. The PTABOA mailed notice of its decision on June 8, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Vigo County Assessor on July 8, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 10, 2006.
5. The Board held an administrative hearing on June 22, 2006, before the duly appointed Administrative Law Judge, Joan Rennick.
6. Garry E. Tatlock, property owner, and Richetta J. Hale, Harrison Township Deputy Assessor, appeared at the hearing and were sworn as witnesses.

Facts

7. The subject property is classified as a residential single-family dwelling on two platted lots, as is shown on the property record card for parcel 118-06-10-480-011. The property is located at 1529 Woodleg, Terre Haute, Vigo County, Harrison Township.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined that the assessed value of subject property is \$10,300 for the land and \$16,400 for the improvements for a total assessed value of \$26,700.

10. The Petitioners request a value of \$2,000 for the land and \$13,000 for the improvements for a total value of \$15,000.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) Two realtors inspected the subject property and had similar opinions of value. *Tatlock testimony*. Charlie Bryan told the Petitioners that they could list the subject property on the open market for \$20,000, but that it would probably only sell for \$15,000. *Tatlock testimony; Pet'rs Ex. 2*. Mr. Bryan helped the Petitioners complete their Form 131 petition. *Id.* Mr. Bryan also provided information concerning four properties to compare to the subject property. *Tatlock testimony*. All of those properties are located in the same school district as the subject property. *Id; Pet'rs Ex. 4*. All four properties sold for much less than the current assessment of the subject property. *Id.*
 - b) Pam Hartman, another realtor, estimated the value of the subject property to be \$20,000. *Tatlock testimony; Pet'rs Ex. 3*.
 - c) The Petitioners bought the subject property for \$10,000-\$10,500 in 1994. *Tatlock testimony*.
 - d) While the outside of the subject dwelling is not in bad shape, the inside is "rough." *Tatlock testimony; Pet'rs Exs. 1a-1b*. The dwelling is livable, but it needs to be redone. *Id; Pet'rs Ex. 1c*. The kitchen and kitchen ceiling need to be redone. *Tatlock testimony; Pet'rs Ex. 1o*. The bathroom and bedroom also need to be redone. *Tatlock testimony; Pet'rs Exs. 1f, 1g, 1k*. The garage is in bad shape as well. *Tatlock testimony*.
 - e) Mr. Bryan told the Petitioners that it would be pointless to spend the money needed to repair the inside of the dwelling, because they would never recoup the costs of repair. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The sales upon which the Petitioners rely are not "good sales." One of the properties is a rental, and the other three properties were repossessions. *Hale argument*.
 - b) The Respondent submitted information concerning several properties from a two-block area surrounding the subject property. *Hale testimony; Resp't Ex. 2*. Some of the dwellings on those properties are the same size and age as the subject dwelling. *Id.* The sale prices vary greatly. *Id.* The highest sale price was \$46,000. That sale involved a property that had been redone. *Id.*

- c) The subject property is correctly assessed as being in fair condition relative to its neighborhood. *Hale argument.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled IBTR 6239.¹
- c) Exhibits:

Petitioners' Exhibit 1a – 1o: Fifteen (15) photographs of subject property
Petitioners' Exhibit 2: Business card of Charlie Bryan
Petitioners' Exhibit 3: Estimate of value by Pam Hartman dated January
28, 2004
Petitioners' Exhibit 4: Four (4) comparable sales²

Respondent's Exhibit 1: Aerial map
Respondent's Exhibit 2: Nine (9) property record cards of comparable
properties

Board Exhibit 1: The 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

¹ The ALJ also made a digital recording of the hearing.

² The Petitioner did not separately label and offer exhibits at the hearing. The ALJ asked the Petitioner if he intended to offer various documents into evidence. The ALJ then labeled as Petitioner's exhibits those documents that the Petitioner indicated he wished to offer as evidence. The Board received an envelope from the Vigo County Assessor's office containing four (4) multiple listing service (MLS) sheets concerning properties located at 1633 Locust, 1456 Grand, 1655 2nd Ave, and 2431 3rd Ave. with a note indicating that the Petitioner brought those documents to the assessor's office after the assessor had mailed the Petitioner's Form 131 petition to the Board. Although the ALJ referenced one of those MLS sheets (1633 Locust Avenue) at the hearing, it does not appear that the Petitioner offered any of those MLS sheets as evidence. Moreover, the Petitioner failed to explain the relevance of the information contained on those MLS sheets. *See infra*, ¶ 15(e)-(f). Consequently, even if the Board were to consider those MLS sheets as evidence, they would not alter the Board's determination in this case.

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. The Board reaches this conclusion because:
- a) Real property in Indiana is assessed based on its “true tax value.” 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 [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 rely on the following evidence to show support for their claim that the Respondent assessed the subject property for more than its market value: (1) opinions from two realtors regarding the market value of the subject property; (2) information concerning four properties that sold for amounts substantially less than the subject property's current assessment; and (3) photographs and testimony regarding the condition of the subject dwelling and garage.
- d) The opinions of value of the two realtors, Mr. Bryan and Ms. Hartman, do not constitute probative evidence of the subject property's market value. Those opinions are entirely conclusory, and there is no evidence to demonstrate that the realtors reached their conclusions by applying generally accepted appraisal principles. Instead, Ms. Hartman simply indicated that, "after researching the data on our MLS I feel that the property would sell in an open market with a willing and able buyer for \$20,000." *Pet'rs Ex. 3*. The Petitioners presented even less information concerning how Mr. Bryan reached his opinion of value. Moreover, the Petitioners did not provide any evidence concerning the qualifications of, or licenses held by, Mr. Bryan or Ms. Hartman.
- e) The Petitioners also attempt to establish the market value of the subject property by comparing it to four (4) other properties that sold for prices ranging from \$14,800 and \$18,000. *Pet'rs Ex. 4*. In doing so, the Petitioners essentially rely on a sales comparison approach to establish the market value-in-use of the subject property. See MANUAL at 2 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."); See also, *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- f) In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- g) The Petitioners did not compare the characteristics of the subject property to those of the purportedly comparable properties as required by the court in *Long*. While the listing sheets and assessment information submitted by the Petitioners contain some information concerning features of the purportedly comparable properties, the Petitioners were required to do more than simply present raw data. Instead,

the Petitioners were required to explain the relevance of that information to their contentions. *See Long*, 821 N.E.2d at 471 ([I]t was not the Indiana Board’s responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers].”); *See also Indianapolis Racquet Club*, 802 N.E.2d at 1022 (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).

- h) Finally, the Petitioners point to deterioration in the subject dwelling. *Tatlock testimony; Pet’rs Exs. 1a-1o*. The Petitioners, however, did not present any evidence to quantify the effect of such deterioration on the market value of the subject property. Moreover, the subject dwelling is assessed as being in “fair” condition. *Hale testimony*. The Real Property Assessment Guidelines for 2002-Version A (Guidelines) provide the following description of a dwelling in “fair” condition:

Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious

THE REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2). Thus, although the Petitioners have shown numerous instances of deterioration and the need for repair, the assessment already accounts for that deterioration.

- i) For the reasons set forth above, the Petitioners have failed to make a prima facie case of error in the subject property’s assessment. Where a petitioner fails to make a prima facie case, the Respondent’s burden of proof is not triggered. *Lacy Diversified Indus. v. Dept. of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to make a prima facie case. 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 should not be changed.

ISSUED: **September 20, 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>.