

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

Petition #: 84-011-02-1-5-00050
Petitioner: Stephen Bussing Sr.
Respondent: Nevins Township Assessor (Vigo County)
Parcel #: 107-04-29-400-009
Assessment Year: 2002

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 Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 27, 2003.
2. The PTABOA's Notification of Final Assessment Determination was mailed to the Petitioner on September 13, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on October 12, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 23, 2005.
5. The Board held an administrative hearing on May 24, 2005, before the duly appointed Administrative Law Judge (the ALJ) Joan Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Stephen Bussing Sr., Petitioner
 - b) For Respondent: Gloria Donham, PTABOA member
Ann Akers, PTABOA member
Deborah J. Lewis, Nevins Township Assessor's Office

Facts

7. The property is classified as a single-family residence, as shown on the property record card (the PRC) for parcel # 107-04-29-400-009. The subject residence and utility sheds are located on leased ground.
8. The ALJ did not conduct an inspection of the property.
9. The Vigo County PTABOA determined the assessed value of the subject property to be \$30,900 for the improvements. The land is not owned by the Petitioner and is, therefore, not assessed to the Petitioner.
10. The Petitioner requested an assessed value of \$18,641 for the improvements.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject structures are located in an outdoor recreation area. According to the Petitioner, he does not own the land but leases it in five year increments. *Bussing testimony.*
 - b) The Petitioner alleges that the two sheds on the property are over-valued. According to the Petitioner, one shed is metal and the other wood. Neither of the sheds is on a concrete slab. The metal shed is 18 years old and rusted out at the bottom and on the roof. The wood shed is made from scrap lumber and has an 18 inch x 24 inch hole in the roof and has a wood floor. *Bussing testimony; Petitioner Exhibit 4.* In support of his allegation that the sheds were over-assessed, the Petitioner obtained two estimates from Menards. According to the Petitioner, the price for an 8' x 10' metal shed from Menard's is \$194. This is brand new and larger than the shed on the property. The price for an 8' x 8' wood shed is \$312.70. *Bussing testimony; Petitioner Exhibits 1 and 1A.*
 - c) The Petitioner further alleges that the fireplace is not functional and should not be assessed as a fireplace. According to the Petitioner, the fireplace is cemented over, but it cannot be torn down because it is part of the exterior wall. The fireplace leaks and the heat-a-lator is rusted and does not work. The fireplace has not worked since the house was purchased. *Bussing testimony; Petitioner Exhibit 4.*
 - d) The Petitioner further alleges that the cabin was purchased in 1993 for \$5,965. *Petitioner Exhibit 2; Bussing testimony.* The structure is a converted garage that sits on a slab. It has electric baseboard heat. It has a shower that is a plywood box with a shower head. There is no tub. There are a total of three rooms. *Id.*

- e) Finally, the Petitioner alleges that a brand new Fleetwood home that has modern cabinets, not on a slab, with appliances and everything except furniture is for sale at \$39,900. *Bussing testimony; Petitioner Exhibit 3.*

12. Summary of Respondent's contentions in support of the assessment:

- a) According to the township assessor, the grade and condition of the sheds were changed after the PTABOA hearing. This lowered values of the sheds to \$400 for the 8' x 8' and \$700 for the 10' x 12'. *Lewis testimony.*
- b) The Respondent also alleged that the fireplace was properly assessed. While the fireplace has been referred to as non-functional, the fireplace does exist and has not been removed. According to the Respondent, if the fireplace had been made inaccessible and not used it would not have been valued. *Id.*
- c) The Respondent contended that Petitioner's Bill of Sale for the subject property is from September 1, 1993 and is not relevant to the assessment valuation date of January 1, 1999. *Id.; Petitioner Exhibit 2.*
- d) Finally, the Respondent notes that although there were no sales available from 1997 to 1999, there were sales from 2000 and 2002 and three sales from 2003 that ranged from \$20,000 to \$30,000. *Id.; Respondent Exhibits 1 – 5.*

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 BTR #6035.
- c) Exhibits:

Petitioner Exhibit 1 & 1A: Estimates from Menards on storage sheds dated September 27, 2003

Petitioner Exhibit 2: Bill of Sale for the subject structures dated September 1, 1993

Petitioner Exhibit 3: Brochure from Homes Express of Fleetwood

Petitioner Exhibit 4: Photographs of subject property's cabin and sheds

Respondent Exhibit 1: Property Record Card (PRC) for parcel #107-04-29-400-029

Respondent Exhibit 2: PRC for parcel # 107-04-29-400-028

Respondent Exhibit 3: PRC for parcel # 107-04-29-400-020

Respondent Exhibit 4: PRC for parcel # 107-04-29-400-015

Respondent Exhibit 5: PRC for parcel # 107-04-29-400-014

Respondent Exhibit 6: Photographs of the fireplace, interior and exterior of the sheds, and exterior of the cabin

Respondent Exhibit 7: Form 131 Petition, page 2

Respondent Exhibit 8: Cost Schedule for Utility Sheds from Version A-Real Property Assessment Guidelines

Board Exhibit 1: Form 131 Petition with attachments

Board Exhibit 2: Notice of Hearing on Petition

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 Board of Tax Commissioners*, 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 Township 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 Petitioner provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the assessments on the subject structures are excessive. In support of these claims, the Petitioner discussed essentially three (3) areas of concern to establish that the subject was improperly valued: (1) utility sheds, (2) fireplace, and (3) purchase price/value.

Utility Sheds

- b) The Petitioner contends the assessments of the two sheds are excessive. According to the Petitioner, one 8’ x 8’ shed is metal that is rusted around the

bottom and on the roof and has a wood floor. The other shed is a 10' x 12' wood shed that is made from scrap lumber with a wood floor and has a hole in the roof. *Bussing testimony.* In support of his contention that the sheds are over-valued, the Petitioner presented into evidence estimates from Menards dated September 27, 2003. One estimate was for a 10' x 8' metal shed listed at \$194.00 and the other estimate is an 8' x 8' yard barn kit with additional components that is listed at \$312.70. *Petitioner Exhibit 3.*

- c) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. “Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles.” *Id.* Thus, a taxpayer may establish a prima facie case based upon construction cost or sales information. Here, the Petitioner submitted evidence that a new metal shed of the size of the Petitioner’s shed could be purchased for \$194. Further, the Petitioner showed that a wooden barn approximately the size of Petitioner’s wood shed could be purchased new for \$312.70. Thus, Petitioner has raised a prima facie case that the shed’s are over-valued.
- d) In Response, the Respondent alleged that the utility sheds were properly assessed. According to the Respondent, the Petitioner has two sheds that were constructed in 1985, both are graded “E+2” and considered in “average” condition. The original assessment on the sheds was \$800 and \$1,200, respectively. The local taxing official re-evaluated the sheds and lowered the grades and condition ratings. This re-evaluation reduced the assessed values of the sheds to \$400.00 for the metal shed and \$700.00 for the wood shed. *Lewis testimonies.* However, the Respondent did not dispute or impeach the Petitioner’s cost evidence. The Board therefore finds that Respondent’s evidence that the shed was appropriately assessed is insufficient to rebut Petitioner’s market value evidence. Based on the foregoing, the preponderance of the evidence supports a finding that the current assessment is in error, and that the assessed value of the subject sheds should be reduced to \$194 rounded to 200 and 312 rounded to 300.

Fireplace

- e) The Petitioner testified the fireplace was not functional and has been cemented over. *Bussing testimony.* According to the Petitioner, it has been nonfunctional since he purchased the structure in 1993. In support of this contention, the

Petitioner presented into evidence a picture of the exterior of the fireplace showing plastic wrapped around the top because it leaks. *Petitioner Exhibit 4*. The Respondent, however, argues that the fireplace is unquestionably part of the structure and would have to be removed for it not to be assessed. *Lewis testimony*.

- f) According to the Guidelines, “reproduction cost” is the cost of producing an exact replica of a structure...” Guidelines at 2. Under reproduction cost, the fireplace would have to be assessed because there was a cost to construct it. Under “replacement cost,” however, the value is the “cost of constructing a building having the same utility as the improvement being valued.” *Id.* Under the replacement cost model, no fireplace would be constructed because a nonfunctioning fireplace has no utility. The mass appraisal system “uses the concept of ‘replacement cost new’” to value properties.
- g) While there is no question that a fireplace is present on the structure, the Respondent did not dispute or impeach Petitioner’s evidence that the fireplace is cemented in and cannot be used. Thus, based upon a “replacement cost new” system, the Board finds that the fireplace should not be assessed to the structure.

Value

- h) The Petitioner argued that the assessed value of \$30,600 is too high for the structures. *Bussing testimony*. The Petitioner submitted a Bill of Sale for the cabin dated September 1, 1993 for \$5,965. The Petitioner claimed that the cabin was a converted garage on a slab. *Id.; Petitioner Exhibit 3*.
- i) Real property in Indiana is assessed on the basis of its “true tax value.” *See* I.C. § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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.” *MANUAL* at 2.
- j) The sale of a subject property is often the most compelling evidence of its market value. However, for the 2002 general reassessment, real estate is to be valued as of January 1, 1999. *See* *MANUAL* at 4. Here, Petitioner purchased the property in 1993 – more than five years prior to the assessment valuation date. The Petitioner submitted no evidence relating Petitioner’s sales price to the property value in 1999. Thus, the Board holds that Petitioner’s purchase price in 1993 is not probative of the property’s value in 1999.
- k) To further support his position that the assessment on the subject was incorrect, the Petitioner submitted a brochure from Homes Express that showed a brand new Fleetwood home for sale at \$39,900. *Petitioner Exhibit 3*. The Petitioner contended that these homes are all set up with modern cabinets, not on a slab, with appliances and everything except furniture. The Petitioner argued that the

subject structure with none of the features or conveniences of a new structure should not be valued anywhere near that of a new structure. *Bussing testimony.*

- l) In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* MANUAL at 3 (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). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, 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.*
- m) Here the Petitioner made no attempt to compare the available property to his own property. Nor did he provide evidence of the sales price of the manufactured home as of the January 1, 1999, valuation date. The Petitioner only alleged that the availability of a manufactured home for \$39,900 “proved” that the value of his property was too high. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).

Conclusion

16. The Petitioner made a prima facie case as it related to the values of the utility sheds and the assessment of the fireplace. The Board, therefore, finds in favor of the Petitioner on these matters. The Board finds in favor of the Respondent on all other matters.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.