

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

Petition #: 82-027-02-1-5-00175
Petitioner: B & S Property Management
Respondent: Knight Township Assessor (Vanderburgh County)
Parcel #: 0938014026030
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 Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 27, 2003.
2. The Petitioner received notice of the decision of the PTABOA on July 30, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on August 27, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 10, 2004.
5. The Board held an administrative hearing on January 25, 2005, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: David Bartlett, B & S Property Management
 - b) For Respondent: Candy Wells, Vanderburgh County Hearing Officer
Tiffany Carrier, Vanderburgh County Deputy Assessor
Joe Gries, Knight Township Deputy Assessor

Facts

7. The property is classified as residential rental property, as is shown on the property record card for parcel #0938014026030.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Vanderburgh County PTABOA:
Land \$3,000 Improvements \$38,200.
10. Assessed Value requested by Petitioner:
Land \$3,000 Improvements \$25,500.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject property's assessed value of \$41,200 is too high. *Bartlett testimony.*
 - b) The Petitioner provided information concerning three comparable properties in close proximity to the subject property. *Id.; Board Ex. A.* The Petitioner testified that the comparable properties sold for the following amounts, all of which are less than the subject property's assessment:

1428 John Street sold for \$33,250 on July 23, 2004
902 Hercules sold for \$30,000 on September 12, 2003
1516 Illinois sold for \$35,000 on August 26, 2003

Id.
 - c) The subject property has a wooden front porch, old siding, a gravity flow furnace, no central air, and is not as well maintained as the comparable properties. *Bartlett testimony.* The comparable properties all have central heating and air conditioning. *Id.* In addition, the fixtures in the subject property are old and the tenants are pretty hard on the property. *Id.*
 - d) The Petitioner does not know if the comparable properties are rental properties. *Id.* The subject property rents for \$400 per month and is steadily rented. *Id.*
 - e) The grade applied to the subject property should be D-1, instead of D+1. *Bartlett argument.* The grade applied to the garage should be D-2, instead of C. *Id.*
 - f) The comparable properties relied upon by the township are in better shape than the subject property. *Bartlett testimony.* Those properties have updated windows and siding. *Id.*
12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent questioned the comparability of the properties identified by the Petitioner, noting that they may not be rental properties. *Gries argument*
- b) The Respondent presented information concerning several comparable properties, including: lot sizes, framing construction, the existence of an attic or basement, the existence of heating or air conditioning, and the number of baths and fireplaces. *Id.*; *Resp't Exs. 3-9*. The Respondent also presented information concerning the existence of exterior features of those properties and whether or not the properties have detached garages. *Id.* The comparable properties identified by the Respondent are in the same neighborhood as the subject property. *Gries testimony*.
- c) The comparable properties sold for between \$40,000 and \$52,000, and their assessments range from \$35,000 to \$41,000. *Gries testimony*; *Resp't Exs. 3-9*. The sales were in the appropriate time frame for the 2002 assessment. *Gries testimony*.
- d) The subject property's assessed value falls within \$200 of the highest assessment of the comparable properties. *Gries testimony*. The Respondent therefore believes that the subject property is within the proper assessment range. *Id.*
- e) The Respondent believes that the comparable properties identified by the Petitioner are similar to the subject property. *Gries testimony*. However, two of those properties are not in same subject neighborhood as the subject property. *Id.*; *Resp't Exs. 12, 14*. The properties in question are located at 1516 Illinois Street and 902 Hercules Avenue. *Id.*
- f) In addition, two of the properties identified by the Petitioner - 1428 John Street and 902 Hercules Avenue - were in possession of a bank at the time they were sold. *Gries testimony*. Therefore, the sales could be considered stressed sales and would not be arms length transactions. *Gries argument*.
- g) The Petitioner's statements on grade are conclusory. *Gries argument*. The Respondent contends that the bottom line value is what is most important in the new reassessment. *Id.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent pre-hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR #5888.
 - c) Exhibits:

The Petitioner did not present any new exhibits at the hearing, but referred to evidence attached to the Form 131 petition, which is made part of the Record as Board Exhibit A.

- Respondent Exhibit 1: Property record card for the subject property.
- Respondent Exhibit 2: Photograph of the subject property.
- Respondent Exhibit 3: Property record card for 1418 Olive Street.
- Respondent Exhibit 4: Photograph of 1418 Olive Street.
- Respondent Exhibit 5: Property record card for 1414 Olive Street.
- Respondent Exhibit 6: Photograph of 1414 Olive Street.
- Respondent Exhibit 7: Property record card for 1411 Walnut Street.
- Respondent Exhibit 8: Photograph of 1411 Walnut Street.
- Respondent Exhibit 9: Summary of comparable properties.
- Respondent Exhibit 10: List of specific details for the subject property and comparable properties.
- Respondent Exhibit 11: Property record card for 1428 John Street.
- Respondent Exhibit 12: Property record card for 1516 Illinois Street.
- Respondent Exhibit 13: Sales information for 1516 Illinois Street.
- Respondent Exhibit 14: Property record card for 902 Hercules Avenue.

Board Exhibit A: Form 131 petition with attachments including: Form 115; Form 130; Uniform Residential Appraisal Report for July 25, 1989; newspaper classified page; Information from Assessor's website for 1428 John St., 1516 Illinois St. & 902 Hercules Ave.; photographs; Information from Assessor's website for 1407 Olive St.

Board Exhibit B: Notice of Hearing.

- 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 Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

Sales Comparison

- a) The Petitioner seeks to establish the market value-in-use of the subject property by reference to the sale prices of three purportedly comparable properties located in close proximity to the subject property. *Bartlett testimony*; *Board Ex. A*.
- b) The market value-in-use of a property may be calculated by utilizing several approaches, all of which have been used in the appraisal profession. 2002 REAL PROPERTY ASSESSMENT MANUAL 3 (incorporated by reference at 50 IAC 2.3-1-2); *Long v. Wayne Township Assessor*, Cause No. 49T10-0404-TA-20, at 4 (Ind. Tax Ct. corrected original opinion dated January 28, 2005). One such approach used in the appraisal profession is known as the "sales comparison approach." *Id.* 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." *Id.*
- c) However, the 2002 Real Property Assessment Manual ("Manual") further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL, at 4. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal should explain how the purchase amounts for sales of comparable properties occurring at a time substantially removed from the relevant valuation date relate to the value of those properties as of January 1, 1999. *See Long*, slip op. at 8-9 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- d) Here, the Petitioner relies upon three sales of purportedly comparable properties. Those sales occurred on August 26, 2003, September 12, 2003, and July 23, 2004, respectively. *Bartlett testimony*. The Petitioner did not explain how those sale prices relate to the market values-in-use of the comparable properties, or to the market value-in-use of the subject property, as of January 1, 1999. Consequently, the Petitioner's evidence regarding the sales of those purportedly comparable properties is not probative of the subject property's true tax value for the March 1, 2002, assessment.

Condition

- e) The Petitioner also apparently contends that the subject property's assessment should be reduced because of its condition. In support of its position, the Petitioner referred to interior photographs of the subject property and opined that the property had very old fixtures and that the tenants do not take very good care of the property. However, the Petitioner's statements regarding the fixtures and the treatment of the subject property by its tenants are conclusory in nature. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998). The Petitioner likewise failed to explain how the photographs demonstrate the condition of the subject property. Photographs, without explanation, do not constitute probative evidence. *See Quality Farm & Fleet, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 88, 93 (Ind. Tax 2001) (stating that the tax court has repeatedly rejected attempts by parties to put forth evidence, such as photographs, without an explanation).
- g) Moreover, the Petitioner did not quantify how the age of the fixtures or the tenants' treatment of the property affects the market value-in-use of the subject property. The Petitioner likewise failed to explain how those issues relate to the assignment of a condition rating under the Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”).
- h) Based on the foregoing, the Petitioner failed to establish a prima facie case for a reduction in assessment due to the condition of the subject property.

Grade

- h) Finally, the Petitioner requests a reduction in the quality grade assigned to the subject dwelling from D+1 to D-1. The Petitioner likewise requests a reduction in the quality grade assigned to the detached garage from C to D-2.
- i) Under Indiana's true tax value system, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. *Sollers Pointe Co. v. Dep't of Local Gov't Fin.* 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003). “Construction quality and the resultant quality grade assigned is a composite characteristic.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. A at 3. The Assessment Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. In order to make a prima facie case for a reduction in grade, a taxpayer must do more than offer conclusory statements. *Sollers Pointe Co.*, 790 N.E. 2d at 191. Instead, a taxpayer can offer specific evidence tied to the descriptions of various grade classifications found in the Assessment Guidelines. *See Id.*
- j) Here, the Petitioner neither testified as to specific design and construction features contained in the subject improvement nor tied such features to the descriptions of the

various grade classifications found in the Assessment Guidelines. Consequently, the Petitioner failed to make a prima facie case for a reduction in the quality grades assigned to the subject improvements.

Conclusion

16. The Petitioner 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: _____

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.