

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

Petition #: 82-027-02-1-5-00157
Petitioners: Earl Eugene & Beverly I. Purdue
Respondent: Knight Township Assessor (Vanderburgh County)
Parcel #: 0902011023005
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 Petitioners initiated an assessment appeal with the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 23, 2003.
2. The Petitioners received notice of the decision of the PTABOA on June 18, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 petition with the Vanderburgh County Assessor on July 30, 2004. *See Board Exhibit E.* The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 6, 2005.
5. The Board held an administrative hearing on February 10, 2005, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Gene Purdue, Taxpayer.
 - b) For Respondent: Joe Gries, Knight Township Real Estate Deputy.
Candy Wells, Vanderburgh County Hearing Officer.

Tiffany Carrier of the Vanderburgh County Assessor's Office observed the hearing.

Facts

7. The property is classified as a single-family residential dwelling, as is shown on the property record card for parcel # 0902011023005. The subject property is used as a rental.
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: \$7,800 Improvements: \$34,300 Total: \$42,100
10. Assessed Value requested by Petitioners on the Form 131:
Land: -- Improvements: -- Total: \$ 27,700

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners presented income and expense information for 1999 and 2000 at the request of the Respondent. Based on that information, the Respondent recommended changing the assessment from \$42,100 to \$27,700. The Petitioners agreed with the Respondent's recommendation. The recommendation is dated November 17, 2003. *Purdue testimony; Petitioner Exhibit 1.*
 - b) The Respondent later recommended reinstating the original assessed value of \$42,100. The Petitioners disagreed with the Respondent's second recommendation. The second recommendation is dated June 7, 2004. *Purdue testimony; Petitioner Exhibit 2.*
 - c) The market value-in-use of the subject property as of March 1, 2002, was much less than its assessed value due to the condition of the subject property and the decline of the neighborhood in which it is located. The subject property could not be sold for its assessed value. *Purdue testimony.*
 - d) In late 2001, the Petitioners rented the subject property to a couple that was involved with illegal drugs. In March 2002, the Petitioners were forced to pursue an eviction action. The Petitioners obtained a money judgment against the tenants for non-payment of rent and damage to the subject dwelling. The Petitioners were not able to clean the property and rent it to a good family until late 2002. *Purdue testimony; Petitioner Exhibits 3-4.*
 - e) The Petitioners presented a listing of addresses between McConnell and Hawthorne on the south side of Covert Avenue. The Petitioners contend that the assessments of those properties would reflect the value of the subject property more closely than the sales of the purportedly comparable properties identified by the Respondent. *Petitioner Exhibit 5.*

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

- a) The Respondent's original recommendation that the assessment be reduced to \$27,700 was based on supplemental income and loss statements from the Petitioners' federal income tax returns for 1999 and 2000. The Respondent used that information to calculate the market value of the subject property using the income approach to value. *Gries testimony.*
- b) The Respondent's calculation, however, did not comply with the guidelines set forth by the International Association of Assessing Officers (IAAO), because it relied solely upon income and expense information from the subject property. IAAO guidelines require an assessor to use market information regarding income, expenses, vacancy rates and capitalization rates in estimating the market value of a property under the income approach. *Gries testimony; Respondent Exhibit 10.*
- c) Because the Respondent had not properly applied the income approach, the county assessor asked the Respondent to look at sales of comparable properties. The Respondent then analyzed sales of properties comparable to the subject property from around the January 1, 1999, valuation date. Based upon that sales comparison analysis, the Respondent submitted a new recommendation to the PTABOA, pursuant to which the Respondent indicated that the assessment should not be changed. *Gries testimony; Respondent Exhibits 1-9.*

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 # 6036.
- c) Exhibits:

Petitioner Exhibit 1: Recommendation from Knight Township Assessor dated November 17, 2003.

Petitioner Exhibit 2: Recommendation from Knight Township Assessor dated June 7, 2004.

Petitioner Exhibit 3: Vanderburgh Superior Court Small Claims Division – Judgment of Possession dated March 14, 2002.

Petitioner Exhibit 4: Rent and damage report dated April 4, 2002.

Petitioner Exhibit 5: Addresses of properties on south side of Covert Avenue.

Petitioner Exhibit 6: Photographs of condition of subject property in 2002, labeled A-Z and A1-A7.

Respondent Exhibit 1: Subject property record card (PRC).
Respondent Exhibit 1A: Photograph of subject.
Respondent Exhibit 2: PRC of 1706 McConnell Avenue.
Respondent Exhibit 2A: Photograph of 1706 McConnell Avenue.
Respondent Exhibit 3: PRC of 3607 Covert Avenue.
Respondent Exhibit 3A: Photograph of 3607 Covert Avenue.
Respondent Exhibit 4: PRC of 3625 Covert Avenue.
Respondent Exhibit 4A: Photograph of 3625 Covert Avenue.
Respondent Exhibit 5: PRC of 2219 Covert Avenue.
Respondent Exhibit 5A: Photograph of 2219 Covert Avenue.
Respondent Exhibit 6: PRC of 2100 Covert Avenue.
Respondent Exhibit 6A: Photograph of 2100 Covert Avenue.
Respondent Exhibit 7: PRC of 2278 Covert Avenue.
Respondent Exhibit 7A: Photograph of 2278 Covert Avenue.
Respondent Exhibit 8: Sales comparison analysis.
Respondent Exhibit 9: Sales Comparison Property Details.
Respondent Exhibit 10: IAAO-Property Assessment Valuation Second -Edition-
Chapter 10-The Income Approach Income and Expense
Analysis Pages 204, 205, 211, 214, 215, 226, and 253 with
highlighted excerpts.

Board Exhibit A: The Form 131 Petition with attachments.
Board Exhibit B: Notice of Hearing.
Board Exhibit C: Notice of County Assessor Appearance as an Additional Party.
Board Exhibit D: Hearing Sign-In Sheet.
Board Exhibit E: Memorandum from Vanderburgh County Assessor.
Board Exhibit F: Petitioner correspondence re: 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners first contend that the Respondent's original recommendation for a reduction in assessment to \$27,700 was correct.
- b) The Petitioners, however, did not present any explanation as to why the Respondent's original calculation under the income approach to value was correct. The Respondent subsequently repudiated its recommendation on grounds that it had not correctly applied the income approach to value. The Petitioner has not shown that the Respondent's initial recommendation amounted to a binding quasi-judicial admission or that the Respondent should otherwise be estopped from contending that such recommendation was based upon an incorrect application of the income approach to value.
- c) Consequently, the Petitioners bore the burden of demonstrating that the Respondent's calculation under the income approach was probative of the market value-in-use of the subject property. The Petitioners did not do so. In fact, the Petitioners provided no evidence or explanation to support the Respondent's calculations under the income approach. The Respondent, by contrast, testified to specific instances in which its calculation did not meet the standards set forth by the IAAO for the application of the income approach to value. The Board therefore gives no weight to the Respondent's initial recommendation.
- d) The Petitioners also submitted a handwritten list of addresses for properties which they contend more closely relate to the subject property's value than do the purportedly comparable properties identified by the Respondent. *Purdue testimony; Petitioner Exhibit 7*. The Petitioners provided no information about those properties other than their street addresses. The Petitioners simply concluded that this handwritten listing of properties supported their contentions. Unsubstantiated conclusory statements, however, do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).
- e) Finally, the Petitioners contend that the current assessment is excessive in light of the condition of the subject dwelling on March 1, 2002. In support of that contention, Gene Purdue testified that the tenants at that time were involved with illegal drugs and "trashed" the property. *Purdue testimony*. Purdue testified that, after the Petitioners had evicted the tenants, they discovered dog feces and urine

on the floors of the subject dwelling, holes in the ceiling, garbage in the sinks and burnt clothes in the yard. *Id.* The Petitioners submitted numerous photographs purportedly depicting the conditions described by Purdue. *Petitioner Exhibit 7.*

- f) The Petitioners, however, did not present any evidence to quantify the effect that the conditions to which Gene Purdue testified had on the market value-in-use of the subject property. The Petitioners similarly failed to explain how the facts described by Mr. Purdue related to the condition rating assigned to the subject dwelling pursuant to the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”). Even if Mr. Purdue had done so, the Guidelines address conditions affecting the structure itself, not general cleanliness issues, such as the presence of clothing in the yard or dog feces on the floor. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
- g) Based on the foregoing, the Petitioners failed to establish a prima facie case of error in assessment.

Conclusion

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: _____

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>.