

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

Petition #: 84-011-02-1-5-00002
Petitioners: Keith A. & Jennifer J. Bailey
Respondent: Nevins Township Assessor (Vigo County)
Parcel #: 1070327101004
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 Vigo County Property Tax Assessment Board of Appeals (the "PTABOA") by written document dated September 24, 2003.
2. The Petitioners received notice of the decision of the PTABOA on April 30, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on May 27, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated July 16, 2004.
5. The Board held an administrative hearing on September 22, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Keith A. Bailey, Taxpayer,
Jennifer J. Bailey, Taxpayer,
 - b) For Respondent: Carl H. Gregory, Nevins Township Assessor,
Ann Akers, Vigo County PTABOA member,
Gloria Donham, Vigo County PTABOA member,
Robert Walls, Vigo County PTABOA member.

Facts

7. The property is classified as agricultural, as is shown on the property record card for parcel # 1070327101004. It includes a 1-acre homesite and 5.88 acres of woodland.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Vigo County PTABOA:
Land \$12,100 Improvements \$123,300 Total \$135,400
10. Assessed Value requested by Petitioners:
Land \$12,100 Improvements \$87,900 Total \$100,000

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) Petitioners purchased the subject property for \$90,000 on October 24, 2000. *K. Bailey testimony; Pet'r Exs. 5, 6, 7.*
 - b) A licensed appraiser appraised the subject property as of October 10, 2000, with a final estimate of value of \$100,000. *Pet'r Ex. 1.*
 - c) Petitioners refinanced the subject property on March 24, 2003. The lending institution used \$100,000 as the estimated market value. *J. Bailey testimony; Pet'r Ex. 8.*
 - d) The subject property was originally listed for \$118,000 by the previous owner. It was on the market for over a year before the price was dropped. *K. Bailey testimony.*
 - e) Petitioners contend the subject property was not well maintained as the appraiser stated and is actually in less than average condition because of repairs needed. The PTABOA requested photographs for their hearing to better understand the condition issue. *K. Bailey testimony. Pet'r Ex. 9.*
 - f) Petitioners are requesting \$100,000 for the land and improvements based on the appraisal. *K. Bailey testimony.* Nevertheless, the Petitioners disagree with the appraisal and believe the property is only worth \$90,000. *K. Bailey testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) Respondent contends the subject property was correctly assessed using the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINE).

- b) Respondent disagrees with the comparable sales used in the appraisal and inserted assessed values for his presentation. *Gregory Testimony.*
- c) Respondent contends the repairs as shown by Petitioners' photographs are minor repairs needed as the result of normal wear and tear. *Gregory Testimony.*
- d) Respondent used the comments from the appraisal to rebut the Petitioners' argument the house was not well maintained and needed repairs. Respondent noted the appraisal stated there was a new septic finger system and new roof. The appraisal states the exterior and interior of the subject property are well maintained. *Gregory Testimony.*

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 6046.
- c) Exhibits:
 - Petitioners Exhibit 1: Appraisal of property prepared by Larry Bohnert,
 - Petitioners Exhibit 2: Statement from Vigo County's website concerning presentation of evidence,
 - Petitioners Exhibit 3: Form 131,
 - Petitioners Exhibit 4: Form 115 Final Assessment Determination by PTABOA,
 - Petitioners Exhibit 5: Buyer's Settlement Statement,
 - Petitioners Exhibit 6: Sales Disclosure Form,
 - Petitioners Exhibit 7: Purchase Agreement w/Inspection sheets/solutions,
 - Petitioners Exhibit 8: Refinance papers dated March 24, 2003,
 - Petitioners Exhibit 9: Pictures of condition of house,
 - Petitioners Exhibit 10: Subject property record card,
 - Petitioners Exhibit 11: Property record card for comparable property,
 - Respondent Exhibit 1: Appraisal of Real Property for Fifth Third Bank with pictures of comparable properties,
 - Respondent Exhibit 2: Photographs of home per Evidence Request Form and Remand Notice,
 - Respondent Exhibit 3: Original 130 Form and New 130 Form,
 - Respondent Exhibit 4: Evidence Request Form, Grade from Guidelines,
 - Respondent Exhibit 5: Form 115 with PTABOA Findings,
 - Respondent Exhibit 6: Cover letter and proof of mailing exhibits,
 - Board Exhibit A: Form 131 petition with attachments,
 - Board Exhibit B: Notice of Hearing on Petition,
- 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 provide sufficient evidence to support their contentions. This conclusion was arrived at because:

Appraisal Evidence

- a) The Petitioners presented a Uniform Residential Appraisal Report signed by a licensed appraiser. *Pet'r Ex. 1*. The cover letter for the appraisal states the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice. *Id.* The purpose of the appraisal is to estimate the market value of the property in unencumbered fee simple title of ownership. The final estimate of value is \$100,000. The date of appraised value is October 10, 2000. *Id.*
- b) For the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal, however, indicates a value as of October 10, 2000. Consequently, the Petitioner was required to provide some explanation as to how these values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. Because the Petitioner provided no such explanation, the appraisal does not carry any probative value. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. (Ind. Tax Ct. January 28, 2005).

- c) Further, the Petitioners purchased the subject property for \$90,000 on October 24, 2000. *Pet'r Exs. 5, 6, 7.* Again, the Petitioner should have presented some evidence or explanation indicating how the sale price of the property on October 24, 2000, is relevant to the assessed value of the property as of January 1, 1999. The Petitioner provided no such explanation. Therefore, the purchase price has no probative value. *Long, slip op. at 8-9.*

Condition of the Property

- d) The Petitioners presented numerous photographs concerning the condition of the property. *See Pet'r Ex. 9.* The Petitioners and Respondent went through the pictures indicating items that were below average condition. *K. Bailey testimony; Gregory testimony.* The photographs and testimony indicated that the concrete patio and walkway needed repair, at least one porch post needed to be replaced, there was damage to the bathroom floor and wall tile, carpeting needed to be replaced, numerous windows needed replacing, crawl space needs repaired; insulation and floor joists need repair; and the roof is in need of repair work or possible replacing. *Pet'r Ex. 9; K. Bailey testimony; Gregory testimony.*
- e) The Respondent classified many of the needed repairs as 'normal wear and tear' and 'not major repairs.' *Gregory testimony.*
- f) In assigning condition in using the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, the Assessor should use the condition rating definitions located in Chapter 3, table 3-12 as a guide. The following definitions are relevant to this appeal:

Average: Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property.

Fair: Marked deterioration is evidence in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates 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.

- g) From the photographs and testimony deferred maintenance is obvious. Carpeting needs repair, bathroom floor needs repair, porch post needs repair, and patio concrete needs repair. The roof needs to be either repaired or replaced. There may be problems with the floor joists in the home.
- h) The evidence presented by both parties indicates the home should be in fair condition. The Respondents relied on the appraisal that states, "Exterior is brick

and 3 in 1 comp. Well maintained. Interior is painted walls, carpet and vinyl flooring, new carpet and vinyl less than six months. Well maintained.”¹ *Resp’t Ex. 1, p2*. The appraisal also states, “Appraiser is not qualified to determine less than obvious conditions.”

- i) The Respondent did not present sufficient evidence to rebut the photographs and testimony of the Petitioner. There should be a change in the condition of the subject property from average condition to fair condition.

Grade of the Property

- j) The Petitioners also argued the grade of the subject property was incorrect. The property is currently assigned a grade of ‘C’. The only evidence of grade presented was photographs of various homes in the GUIDELINE and testimony that the Respondent stated they may be able to reduce the grade to a ‘C-1’. *Resp’t Ex. 4; J. Bailey testimony*.
- k) The Petitioners did not present any probative evidence indicating an error in the current grade. In fact, the Petitioners presented a property record card of a property they contend is nearly identical to their home. *Pet’r Ex. 11*. The grade of that home is identical to the current grade of the subject property. *Id.*
- l) The Petitioners did not establish a prima facie case with regard to the grade of the property. The burden never shifted to the respondent to rebut the Petitioners’ evidence. There should be no change in the grade of the subject property.

Conclusion

- 16. The Petitioners argued the value of the home should be \$100,000 based on the appraisal. For the reasons above, the Petitioners did not provide probative evidence indicating the value of the property should be \$100,000.
- 17. The Petitioner argued the condition of the property was incorrect. The Petitioner did provide sufficient evidence to establish a prima facie case. The Respondent did not rebut the Petitioner’s evidence. The Board finds for the Petitioner, the condition of the property should be changed to fair.
- 18. The Petitioner argued the grade of the property was incorrect. The Petitioner did not provide sufficient evidence to establish a prima facie case.

¹ The appraisal indicates carpet and vinyl is less than six months old. It could have been argued that the condition of the carpet and vinyl as of January 1, 1999, was much worse than its current condition.

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.