

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

Petition No.: 43-025-06-1-5-00152
Petitioner: David A. Meier
Respondent: Kosciusko County Assessor
Parcel No.: 07-713018-90
Assessment Year: 2006

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 Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 18, 2007.
2. The Petitioner received notice of the decision of the PTABOA on October 4, 2007.
3. The Petitioner filed a Form 131 petition with the Board on November 13, 2007. The Petitioner elected to have this case heard according to the small claim procedures.
4. The Board issued notice of hearing to the parties dated January 15, 2008.
5. The Board held an administrative hearing on February 20, 2008, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: David A. Meier, owner of the property
 - b. For Respondent: Brock V. Ostrom, PTABOA Member
Richard R. Shipley, PTABOA Member
Susan Myrick, PTABOA Member
Gerald Bitner, PTABOA Member
Laurie Renier, Kosciusko County Assessor

Jan Chiddester, Kosciusko Deputy Assessor¹
Patricia Gammieri, Turkey Creek Township Assessor
Christy A. Doty, Turkey Creek Deputy Assessor

Facts

7. The property under appeal consists of a 2272 square foot dwelling located on .13 acre, Syracuse, Turkey Creek Township, in Kosciusko County, Indiana.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The PTABOA determined the assessed value of the subject property to be \$642,800 for the land and \$67,800 for the improvements, for a total assessed value of \$710,600.
10. On the Form 131 petition, the Petitioner requested an assessment of \$393,000 for the land and \$35,000 for the improvements, for a total assessed value of \$428,000.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends the subject property is valued in excess of two comparable properties. *Meier testimony*. According to the Petitioner the two comparable properties are like the subject property in that they were built prior to World War II, are located on public roads in public areas and were built prior to local building codes and zoning laws. *Id.* In support of this contention, the Petitioner submitted a multiple listing sheet (MLS) for 8099 East Rosella Street which sold for \$450,000 on November 10, 2004, and an MLS sheet for 8095 East Rosella Street which sold for \$495,000 on November 9, 2004. *Petitioner Exhibits 1 and 2*. Mr. Meier testified in his opinion the market value in use of the subject would be no more than the average of the two comparables, or \$472,500. *Id.*
 - b. The Petitioner further contends that the property would not sell for what it is currently assessed. *Meier testimony*. According to the Petitioner, the property has been owned by his family since 1947. *Id.* Mr. Meier testified that the cottage does not have year round plumbing or heating and the lines from the well are approximately two inches below ground level. *Id.*
 - c. Finally, the Petitioner testified that properties on Lake Wawasee command a higher market price when pre-World War II cottages are torn down and the property is marketed as builder-ready bare ground. *Meier testimony*.
12. Summary of Respondent's contentions in support of the assessment:

¹ Ms. Jan Chiddester was present during the administrative proceeding, but was not sworn in to present testimony.

- a. The Respondent contends the property is correctly assessed for \$710,600 based on sales of properties in the neighborhood. *Gammieri testimony*. According to the Respondent, area properties sold for prices ranging from \$670,000 to \$1,348,475 between July 20, 2004, to October 10, 2005. *Id.* In support of this contention, the Respondent submitted fifteen sales disclosures and property record cards for properties sold in the subject property's neighborhood. *Respondent Exhibit 3A; Id.* In addition, the Respondent submitted the sales disclosure for a property located two doors east of the subject property that sold August 10, 2001, for \$1,075,000. *Respondent Exhibit 4A; Id.* According to the Respondent, the assessed value for that neighboring property for 2006 is \$838,100. *Id.* Thus, the Respondent argues, the township is under-assessing property in the subject area. *Id.*
- b. The Respondent also argues that property located on Lake Wawasee is unique in that the greatest portion of the value comes from the land and not the improvements. *Gammieri testimony*. In support of this contention, the Respondent submitted land sales for thirteen properties in the area that sold from April 21, 2004, to November 27, 2005, for \$8,684 per front foot to \$19,000 per front foot. *Respondent Exhibit 3B*. Ms. Gammieri testified that the sales included properties with crumbling sea walls, rocky and mucky beaches, summer cottages and year round homes. *Id.* The Respondent argues that the subject property's land assessed value is close to the sales comparables at \$14,444 per front foot. *Respondent Exhibit 2B; Id.* The subject property was then adjusted to \$12,855 per front foot to account for the depth of the lot. *Id.*

Record

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – MLS listing for 8099 East Rosella Street, Syracuse, dated November 10, 2004,

Petitioner Exhibit 2 – MLS listing for 8095 East Rosella Street, Syracuse, dated November 9, 2004,

Petitioner Exhibit 3 – Photograph of an entrance sign to the Sunrise Beach Addition,

- Respondent Exhibit 1A – Petition to the Property Tax Assessment Board of Appeals for Review of Assessment, Form 130 and Petition to the Indiana Board of Tax Review for Review of Assessment, Form 131,
- Respondent Exhibit 1B – Notification of Final Assessment Determination, Form 115,
- Respondent Exhibit 2A – Four exterior photographs of the subject property and an aerial photograph of the area,
- Respondent Exhibit 2B – Two property record cards for David Meier,
- Respondent Exhibit 3A – Pages 1 and 3 of the Parcel Characteristics Report for the subject area, trending worksheet for Lake Wawasee, property record cards and sales disclosures for neighboring properties,
- Respondent Exhibit 3B – Lake Wawasee Land Sales from 2000 through 2007,
- Respondent Exhibit 4A – Four exterior photographs, aerial map, sales disclosure, MLS listing sheet and property record card for the property located at 8263 East Sunrise Drive, Syracuse,

- Board Exhibit A – Form 131 petition with attachments,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing sign-in sheet,
- Board Exhibit D – Notice of Township Assessor Representation.

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 Township 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 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. At the hearing, the Petitioner objected to the Respondent's submission of evidence regarding purportedly comparable properties. *Respondent Exhibits 3A and 4A*. According to Mr. Meier, the properties did not qualify as comparables and should not be admitted for the record. The Petitioner's objection goes to the weight rather than the admissibility of the Respondent's evidence. Therefore the objection is overruled, and the evidence and testimony is admitted.
16. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a. The Petitioner contends the subject property is over-assessed based on two comparable sales. *Meier testimony*. In support of this contention, the Petitioner submitted two MLS sales from November 2004 for properties that sold for \$450,000 and \$495,000 respectively. *Petitioner Exhibits 1 and 2; Id.*
 - b. Real property is assessed based on its "true tax value," which is "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, for the property." Ind. Code § 6-1.1-31-6(c); 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 method as evidence consistent with the Manual's definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property's market value-in-use, to establish the actual true tax value of a property. *See MANUAL* at 5.
 - c. Regardless of the approach used to prove the market value-in-use of a property, a 2006 assessment is required to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation of how the evidence demonstrates or is relevant to, the value of the property as of that required valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - d. Here, the Petitioner relies on a "sales comparison" method of establishing the market value of the property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 properties. *Long*, 821

N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioner merely offered MLS sheets for each of the “comparable” properties and offered an opinion that, because the comparables were built prior to World War II, with no building codes or zoning laws and located on public road in public areas, the properties are similar to the subject property. This falls far short of the showing required to prove comparability.

- e. The Petitioner also contends that the subject property would not sell for its assessed value. *Meier testimony*. The Petitioner however provides no evidentiary support for such an argument. Conclusory statements that are unsupported by evidence are not probative of a property’s true tax value. *Whitley Products v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).² Thus, we find that the Petitioner failed to raise a prima facie case.
- f. Where the Petitioner has not supported his claims with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 17. The Petitioner failed to establish a prima facie case. The Board finds in favor of the Respondent.

² To the extent that the Petitioner can be seen to argue that the assessed condition of his property is in error, the Petitioner’s argument fails. *Meier testimony*. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See* GUIDELINES, App. B, at 5. A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* Here, the Petitioner testified the cottage suffers from several inadequacies, such as no year round plumbing and heating. *Meier testimony*. The Petitioner, however, presented no evidence of the property’s current condition rating. Nor did the Petitioner provide evidence comparing the condition of their property to the condition ratings identified in the Guidelines. GUIDELINES, chapter 3, page 60. Finally, the Petitioner failed to show the condition of the subject property differs from other dwellings in the subject property’s neighborhood. The Board, therefore, finds the Petitioner has failed to raise a prima facie case that there are “errors” in the subject property’s current assessment.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.