
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Marian & George Parks,	)	Petition No.:	05-006-02-1-4-00053
	)	Parcel:	05-10-303-010-00005
Petitioners,)		
)		
v.)		
	)	County:	Blackford
Licking Township Assessor,	)	Township:	Licking
	)	Assessment Year:	2002
Respondent.)		
)		

Appeal from the Final Determination of the
Blackford County Property Tax Assessment Board of Appeals

February 1, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board") has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:

Should the apartment buildings on the subject property be assessed as residential property or as commercial property?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. On May 6, 2004, the Blackford County Property Tax Assessment Board of Appeals ("PTABOA") issued an assessment determination for the subject property. Pursuant to Ind. Code § 6-1.1-15-1, the Marian and George Parks (the "Petitioners") filed a Form 131 Petition for Review of Assessment, petitioning the Board to conduct an administrative review of the above petition. The Petitioners filed Form 131 on May 20, 2004.

THE HEARING AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on June 22, 2005, in Hartford City, Indiana before Patti J. Kindler, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.
3. The following persons were sworn as witnesses and presented testimony at the hearing:
For the Petitioners – George Parks, owner,
For the Respondent – Jeff Kiess, Appraisal Research,
Donald Goetz, Licking Township Assessor,
Fred Tobey, Blackford County Assessor.
4. The following exhibits were presented for the Petitioners:
Petitioner Exhibit 1 – Summary of Contentions,
Petitioner Exhibit 2 – Data regarding permitted uses for R-3 Residential zoning,
Petitioner Exhibit 3 – Photograph from newspaper showing the apartment under construction,
Petitioner Exhibit 4 – Copy of a 1977 insurance policy endorsement,
Petitioner Exhibit 5 – Copy of a 2003 insurance Renewal Certificate,
Petitioner Exhibit 6 – Photograph of the two subject apartment buildings,
Petitioner Exhibit 7 – Photograph of an apartment building located at 223 West Van Cleve in Hartford City,
Petitioner Exhibit 8 – Property record card for the apartments at 223 W. Van Cleve,
Petitioner Exhibit 9 – 2002 subject property record card prior to neighborhood factor correction,
Petitioner Exhibit 10 – 2002 subject property record card subsequent to the neighborhood factor correction,
Petitioner Exhibit 11 – Form 131 petition,
Petitioner Exhibit 12 – Form 115, Notification of Final Assessment,
Petitioner Exhibit 13 – Data sheet of neighborhood factors for Blackford County,
Petitioner Exhibit 14 – Notice of Hearing,
Petitioner Exhibit 15 – Copy of pages 41 and 43 regarding row-type adjustments from the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3.
5. The following exhibits were presented for the Respondent:
Respondent Exhibit 1 – Summary of comments,
Respondent Exhibit 2 – Two property record cards and photo of subject,
Respondent Exhibit 3 – Copy of pages 9 and 10 from REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. E,
Respondent Exhibit 4 – Copy of pages 24 and 25 from GUIDELINES, ch. 3,
Respondent Exhibit 5 – Form 130 Petition,
Respondent Exhibit 6 – Final Determination of the PTABOA.

6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign in sheet.
7. The subject property consists of two apartment buildings on a lot measuring 100 feet by 175 feet located at 1612 West Water Street in Hartford City.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The assessed value determined by the PTABOA is:

Land \$12,300	Improvements \$200,300	Total \$212,600.
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10. The Petitioners did not request a specific assessed value.

JURISDICTIONAL FRAMEWORK

11. The Indiana Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN

12. Petitioners seeking review of a determination of an assessing official have 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).
13. In making a case, taxpayers 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”).
14. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' 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 Petitioners' evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

FACTS AND CONTENTIONS

15. The Petitioners presented the following evidence and contentions in regard to this issue:
- a) The Petitioners contend that the subject buildings are erroneously valued using the Residential Dwelling schedule with a row-type adjustment applied. *Parks testimony; Petitioner Exhibit 11*. The Petitioners claimed the subject property should have been priced using the General Commercial Residential (“GCR”) schedule. *Parks testimony; Petitioner Exhibit 11*.
 - b) In support of this claim, the Petitioners presented evidence pertaining to permitted zoning uses, building use and parking restrictions, photographs of the subject buildings, insurance information, and a competing apartment building. *Petitioner Exhibit 1, 2, 3, 4, 5, 6, 7, 8*.
 - c) The construction of the subject buildings required a change in local zoning from R-1 to R-3. Local code also required the construction of parking for two cars per apartment unit. Furthermore, state approval of the construction plans and state inspections during and following construction were required. *Parks testimony; Petitioner Exhibit 1, 2*. All of the following requirements were imposed because the apartments are commercial structures subject to commercial restrictions, rather than residential structures. *Parks testimony; Petitioner Exhibit 1, 2*.
 - d) A comparison between the subject buildings (priced as residential row-type) and the building located on West Van Cleve (priced from the GCR schedule) shows wide disparity in assessed values. *Parks testimony; Petitioner Exhibit 7*. The 223 West Van Cleve property is a single building with six apartment units. It has a replacement cost of \$337,440 and a taxable improvement value of \$117,600 after depreciation. *Parks testimony; Petitioner Exhibit 8*. The taxable value for the subject buildings is \$212,600, even though according to Petitioners their buildings are approximately the same age, have one less unit, and are less desirable than the West Van Cleve building. *Parks testimony; Petitioner Exhibit 10*. According to the Petitioners, the tax per unit for the competing apartment is \$560.83 and the tax per unit for their buildings is \$1,163.36. *Parks testimony; Petitioner Exhibit 1*.
 - e) In describing the pricing of residential dwelling units, the Guidelines state that single ownership wood joist buildings containing four or more row-type units are considered as commercial row-type structures and valued from the GCR apartment schedule. Because the term “buildings” is plural, this description includes the subject property. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 43; *Petitioner Exhibit 15; Parks testimony*.

16. The Respondent presented the following evidence and contentions:
- a) The subject property originally was assessed at \$263,600 for the 2002 reassessment. The value was reduced to \$212,600 after an error in the neighborhood factor was discovered and corrected. *Kiess testimony; Respondent Exhibit 1, 2.*
 - b) The subject property includes two buildings. One is a 3-unit row type dwelling. The other is a two-story structure with a 2-unit row type dwelling on the second floor and garages on the first floor. *Kiess testimony; Respondent Exhibit 2.*
 - c) The "Photographs of Graded Commercial and Industrial Structures" identify a structure as "Grade C Row Type Residential Schedule A." GUIDELINES, app. E at 9; *Respondent Exhibit 3, 4.* The subject building, which is a two-story structure, has similar construction to the structure in the photograph. *Respondent Exhibit 3, 4.* The subject building is valued using Residential Dwelling Schedule A. *Kiess testimony; Respondent Exhibit 3.*
 - d) The assessment Guidelines instruct assessing officials to use the GCR schedule for apartment buildings with single ownership and row-type construction containing five units and to use the residential dwelling schedule for apartment buildings if each of the units in the building have individual ownership. *Kiess testimony; Respondent Exhibit 3 at 2.*
 - e) The unit occupancy options indicate that the residential schedule is for units separated by vertical common walls such as two-family doubles or townhouses and row-types that generally are a series of single-family units. *Kiess testimony; Respondent Exhibit 4 at 2; GUIDELINES, ch. 3 at 25.* If there are four or more units and the units have single ownership, the structure is considered commercial and priced from the commercial pricing guidelines as an apartment building. *Id.* The Guidelines were followed in pricing each of the subject buildings because the subject buildings have less than four units each and they should be priced as residential dwelling, not commercial apartments. *Kiess testimony.*
 - f) The Petitioners originally requested a value of \$220,000 on the Form 130 petition to the PTABOA because appraisals ranged from \$200,000 in April of 2000 to \$210,000 in August of 2003. *Kiess testimony; Respondent Exhibit 5.* The current assessment is less than the amount Petitioner originally requested on the Form 130 petition and is in line with those appraisals. *Kiess testimony; Respondent Exhibit 5, 6.*

ANALYSIS

17. Dwelling units separated by vertical common walls, such as two-family doubles or townhouses, are row-type units. Row-types are generally a series of single-family dwelling units. If there are four or more units and the units have single ownership, the structure is considered to be commercial and priced from the commercial pricing

guidelines as an apartment building. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 25 (incorporated by reference at 50 IAC 2.3-1-2). Single ownership wood joist buildings containing four or more row-type units are considered to be commercial row-type structures. GUIDELINES, ch. 3 at 41.

18. The Petitioners argue that the plural term “buildings” applies to their two separate apartment structures, and therefore, their buildings should be priced as commercial row-type structures because there are a combined total of five units in the two structures. The Petitioners are incorrect.
19. The Petitioners rely on a single term written in its plural form in a paragraph found in the Guidelines as the basis for its argument. That reference, however, appears to be a general reference to wood joist buildings. The Petitioners’ argument does not consider other references to that same term in its singular form regarding the same subject matter. The Guidelines make several references to the term “building” in its singular form in other paragraphs addressing the number of units and the appropriate pricing schedule. GUIDELINES, ch. 3 at 25; GUIDELINES, ch. 3 at 41. The overall context makes it clear that the number of units and classification as residential or commercial should be based on the number of units in each building.
20. The Petitioners have no substantial support for their claim that one plural word means that assessing officials must add the total number of units for both of their buildings. In fact, on the same page submitted by the Petitioner regarding row-type dwellings, the Guidelines instruct assessing officials to “determine the replacement cost of the building by totaling the cost of all the units” contained in the building. GUIDELINES, ch. 3 at 43. The Petitioners failed to point to any other probative evidence that supports their argument.
21. The property record card for the purportedly competitive building does not establish that the subject property was assessed incorrectly. It shows six units, a fact that leads to the commercial cost tables, not the residential cost tables. GUIDELINES, ch. 3 at 25. Furthermore, the Petitioners failed to provide a meaningful comparison of specific similarities and differences between their own property and the comparable. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (stating that the taxpayer must explain the characteristics of their own property, how those characteristics compare to those of the comparable, and how any differences affected the relevant market value-in-use of the properties). The Petitioners failed to establish relevance or probative value for any of their evidence regarding how other properties are assessed.
22. After reviewing all the evidence, the Petitioners claim that the use of the GCR pricing schedule was the proper means of assessing the subject apartment buildings remains merely a conclusory statement that is not supported by probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

23. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d at 1222.

SUMMARY OF FINAL DETERMINATION

24. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent. The assessment is not changed as a result of this issue.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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/coder> 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.