

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

Petition #: 19-009-04-1-1-00001
Petitioner: John J. Jackson
Respondent: Jefferson Township Assessor (Dubois County)
Parcel #: 009-01941-00
Assessment Year: 2004

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 Dubois County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated August 16, 2004.
2. The Petitioner received notice of the decision of the PTABOA on December 17, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on January 18, 2005. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of rescheduled hearing to the parties dated November 22, 2005.
5. The Board held an administrative hearing on January 23, 2006, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: John J. Jackson, Petitioner¹,
Kenneth Jackson, Petitioner's witness
 - b. For Respondent: Natalie Jenkins, Dubois County PTABOA,
Marvin M. Folkerts, Jefferson Township Assessor's contractor.

¹ John J. Jackson is the owner of record of the subject property and Kenneth Jackson is his father. Kenneth Jackson was the former owner of the property and constructed the improvement under appeal. Kenneth Jackson was sworn and presented testimony on behalf of his son, who was in attendance at the hearing.

Facts

7. The subject property is a single-family home with a detached garage and various outbuildings on 57.11 acres of agricultural land.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$26,700 for the land and \$172,100 for the improvements, for a total assessed value of \$198,800.
10. The Petitioner requested an assessment of \$26,700 for the land and \$160,000 for the improvements, for a total assessed value of \$186,700.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:²
 - a. The Petitioner contends that the detached garage is over-assessed. In support of this contention, the Petitioner submitted a list of costs of materials and labor totaling \$17,850.07. Further, the Petitioner presented various invoices. *K. Jackson testimony; Petitioner Exhibits 1 through 6.*
 - b. The Petitioner further contends that the township assessor indicated he believed the garage should be assessed at \$5,000 less than the current \$23,400. *K. Jackson testimony; Board Exhibit A.* According to the Petitioner, when the township assessor discussed the assessed value of the garage in a pre-hearing conference with Petitioner, the assessor indicated he found it similar to a garage located on Schnellville Road. *Id.* However, the Petitioner contends the two garages are not comparable in construction and materials, and cites location differences. *Id.* Thus, the Petitioner contends a further reduction is warranted. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the assessed value of the garage is consistent with the pricing of the average garage in Dubois County. According to the Respondent, the pricing is correctly derived from the State of Indiana Pricing Manual. *Respondent Exhibit 9.* In support of this contention, the Respondent submitted a group of seven photographs of the garage, an excerpt from the 2002 REAL PROPERTY ASSESSMENT MANUAL, and a summary of contentions detailing support of the 2004 assessed value. *Respondent Exhibits 1 through 10.*

² Petitioner complained that a group of seven photographs of the garage (including interior views) submitted as evidence by Respondent were taken without his permission. The Board does not support or condone such activities by an assessor or a PTABOA. However, from an evidentiary standpoint, Petitioner did not raise an objection to the inclusion of the evidence or seek to have it removed from evidence.

- b. Further, the Respondent alleges that the garage may be undervalued. According to the Respondent, a visual inspection of the garage by the PTABOA and the township's technical advisor during the county-level appeals process, established that the construction and interior elements, such as heating and a half bathroom, justify an assessed value above the average garage pricing in the county. *Folkerts testimony*. Thus, the Respondent argues, the township assessor's conference note on the Form 130 appeal to the PTABOA referred to by Petitioner carries no weight. *Id.*
- c. Finally, the Respondent contends that receipt documentation provided by Petitioner may include prices that have been discounted as a result of Petitioner's profession. *Folkerts testimony*. In addition, the Respondent alleges that many items are missing from the receipted materials such as the sinks and cabinets. *Id.*

Record

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

- a. The Petition,
- b. The CD recording of the hearing labeled Jackson #19-009-04-1-1-00001.
- c. Exhibits:

Petitioner Exhibit 1 - Handwritten list of expenses on garage, totaling \$4,336.31,
Petitioner Exhibit 2 - Handwritten list of furnace and duct work expenses totaling \$5,513.76 and a listing of labor at \$8,000, totaling \$17,850.07,

Petitioner Exhibit 3 - An invoice from Huntingburg Machine Works to Kenny Jackson for \$1,863.02 dated 2/28/2003,

Petitioner Exhibit 4 - An invoice from Betz Brothers Building Supply to Kenny Jackson for \$1,358.27 dated 5/4/2002,

Petitioner Exhibit 5 - An invoice from Betz Brothers Building Supply to Kenny Jackson for \$154.48 dated 6/1/2002,

Petitioner Exhibit 6 - An invoice from Betz Brothers Building Supply to Kenny Jackson for \$172.56 dated 5/18/2002,

Respondent Exhibit 1 - Frontal view photograph of subject garage,

Respondent Exhibit 2 - Rear view photograph of subject garage,

Respondent Exhibit 3 - Corner view photograph of subject garage,

Respondent Exhibit 4 - Photograph of half bath inside subject garage,

Respondent Exhibit 5 - Photograph of furnace and ducting in subject garage,

Respondent Exhibit 6 - Front view of doors of subject garage,

Respondent Exhibit 7 - Photograph of cedar wall finish and window in subject,

Respondent Exhibit 8 - Description of photographs,

Respondent Exhibit 9 - Summary of contentions,

Respondent Exhibit 10 - Front of property record card (PRC) for parcel 009-01941-00,

Respondent Exhibit 11 - Version A- Real Property Assessment Guidelines, pg. 13,

Respondent Exhibit 12 - Notice of Appearance on behalf of assessor,

Respondent Exhibit 13 - List of Respondent's witnesses,

Respondent Exhibit 14 - Copy of Form 131, Form 115, and Form 130,

Respondent Exhibit 15 - Copy of Notice of Hearing,

Board Exhibit A - Form 139L petition,

Board Exhibit B - Notice of Hearing,

Board Exhibit C - Sign in sheet,

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 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 that the detached garage³ is over-assessed. In support of this contention, the Petitioner submitted a hand-written list of costs of materials and labor totaling \$17,850.07, and various invoices with some items underlined. *K. Jackson testimony; Petitioner Exhibits 1 through 6.*

³ The value of the garage is the only issue presented for review in this appeal.

- b. Real property in Indiana is assessed on the basis of its “true tax value.” See I.C. § 6-1.1-31-6(c). “True tax value” is defined as “[t]he market-value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2) (the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession, the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. MANUAL at 5. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. *Id.* “Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal guidelines.” *Id.*
- c. Thus, the value of a property can be shown by its construction cost. “Construction cost” includes direct labor and material cost plus indirect expenses required to construct an improvements. REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A at 1. According to the Guidelines, direct costs include, but is not limited to, labor, materials, supervision, utilities used during construction and equipment rental and indirect costs includes building permits, fees, insurance, taxes, construction interest, overhead, profit and professional fees. *Id.* However, construction costs must represent all costs (direct and indirect), regardless of whether or not they were realized, as in the case of do-it-yourself construction. *Id.*
- d. Finally, for the 2002 reassessment and subsequent years until the date of the next general reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4 Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property’s value as of January 1, 1999. See *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- e. Here, the Petitioner submitted a hand-written list of the material costs that the Petitioner alleges he incurred to purchase building materials to construct the garage. In further support, the Petitioner provided four invoices for various construction materials. *Id.* In addition, the Petitioner estimated his labor used in the construction of the garage under appeal. *Petitioner Exhibits 1 through 6*. However, the Petitioner offered no support for the values he assigned to many of the items used in the construction of the garage. Moreover, the Petitioner testified that the material costs represented discounted charges that the Petitioner, as a professional builder, was entitled to receive. Further, the Petitioner did not explain or substantiate the value of

\$8,000 for his own labor on the project. Nor does it appear that the receipts submitted or the charges the Petitioner alleges he incurred represent the universe of material costs for the construction of the garage.⁴ Thus, the Petitioner's assertions amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998). Finally, the Petitioner failed to relate the costs used in his calculations to the January 1, 1999, valuation date as required by the Indiana Tax Court in *Long*. *Long* at 471; MANUAL at 4.⁵ The Board finds that the Petitioner failed to establish a prima facie case.

- f. 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 Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to provide sufficient evidence to establish 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

⁴ For example, there is no cost provided for the plumbing materials other than the toilet. Nor is there any hardware or electrical materials in the Petitioner's list of costs or invoices.

⁵ The Petitioner's contention that the township assessor stated the garage could be valued approximately \$5000 lower is not relevant to the case before the Board because, as noted on the Form 130, page 4 (*Board Exhibit A*), the Petitioner did not agree with the township assessor's opinion. Further, to the extent the valuation was made in an effort to settle the matter between the parties, it is inadmissible at hearing. *Indiana Rules of Evidence, Rule 408* ("Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.")

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>>. 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 days of the date of this notice.