

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

Petition: 20-026-02-1-5-00010
Petitioner: Paul A. and Patricia M. Scholten
Respondent: Osolo Township Assessor (Elkhart County)
Parcel: 20-02-35-430-014.000-026
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 25, 2003.
2. The PTABOA mailed notice of its decision to the Petitioners on June 7, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 on July 2, 2004, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 28, 2006.
5. Administrative Law Judge Patti Kindler held an administrative hearing in Goshen on November 16, 2006.
6. Paul A. Scholten and Douglas Thornton were present and sworn as witnesses at the hearing.

Facts

7. The subject property is a residential dwelling with a two-car garage on a lot measuring 78 feet by 121 feet located at 54691 Rock Court in Elkhart.
8. The Administrative Law Judge (the ALJ) did not conduct an inspection of the property.
9. The assessed value determined by the PTABOA is:
land \$15,400 improvements \$99,400 total \$114,800.
10. The assessed value requested by the Petitioners is:
land \$15,400 improvements \$92,800 total \$108,200.

Contentions

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) An additional bath and a basement recreation room were added to the subject assessment for 2002 even though the assessors did not perform an interior inspection. The assessor got the information regarding the additional bathroom and basement finish illegally and arbitrarily from an appraiser who was contracted to perform an appraisal on the property. The confidential information obtained by the assessor from the appraiser was third-party hearsay that the assessor should not use to change the assessment. *Scholten testimony; Pet'r Ex. 2, 5.*
 - b) The basement is unfinished. It has concrete block walls. The house only has one and one half baths. The township officials arbitrarily add items to an assessment so that they can get into the property to view it. *Scholten testimony.*
 - c) The item on the property record card identified as a utility shed was actually a playhouse in 2001. The playhouse no longer exists. It should not be assessed. *Scholten testimony; Pet'r Ex. 12.*
 - d) The front wood deck should be priced as a wood patio instead of a wood deck because it is at grade. Further, the wood deck at the rear of the property is contiguous and constitutes one deck, but it is priced incorrectly as two decks on the property record card. *Scholten testimony; Pet'r Ex. 12.*
 - e) The location cost multiplier (LCM) of 1.08 is incorrect. It should be 1.00. *Scholten testimony.*
 - f) The subject neighborhood is rated as "good" on the subject property record card. Several subdivisions including Forest Lake, Colonial Ridge, Hunters Point, Hunters Run and Pheasant Ridge are located in neighborhoods superior to the subject, but they are rated as "average" on the property record cards. The assessment is arbitrary because neighborhoods with homes that range from \$300,000 to \$500,000 have higher grade factors than the subject property, but they are in an "average" neighborhood, while the homes in the subject neighborhood are valued at only \$150,000 in a "good" neighborhood. *Scholten testimony; Pet'r Ex. 10.*
12. Summary of Respondent's contentions:
 - a) After the PTABOA hearing, the utility shed was removed and the area of the rear deck reduced by 53 square feet for the 2002 assessment. That action resolved those two issues. The assessor made several attempts to contact the Petitioner to schedule an interior inspection. Because the Petitioner would not agree to an interior inspection, the assessor could not verify the number of baths and basement finish. *Thornton testimony; Resp't Ex. 2.*

- b) The additional number of baths listed on the property record card and the basement recreation room were changes that resulted from an appraiser's call to the assessor's office to verify information for a refinance appraisal of the subject property. *Thornton testimony; Resp't Ex. 7.*
- c) A change in the neighborhood rating would have no affect on the value of the subject property for the 2002 reassessment because it is no longer used in determining depreciation. *Thornton testimony.*

Record

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

- a) The Petition,
- b) The digital recording of the hearing,
- c) Petitioner Exhibit 1 – Notice of Hearing,
 Petitioner Exhibit 2 – Notice of Defect in Completion of Appeal Form,
 Petitioner Exhibit 3 – Form 131,
 Petitioner Exhibit 4 – Form 115,
 Petitioner Exhibit 5 – Form 130,
 Petitioner Exhibit 6 – PTABOA's request for additional evidence,
 Petitioner Exhibit 7 – Form 114,
 Petitioner Exhibit 8 – Tax Duplicates for 2003 payable 2004,
 Petitioner Exhibit 9 – Form 11,
 Petitioner Exhibit 10 – 2002 property record card,
 Petitioner Exhibit 11 – Page 1 of 3 from what appears to be an appraisal of the subject property,¹
 Petitioner Exhibit 12 – Four pages of photographs of the subject property²,
 Respondent Exhibit 1 – Form 131,
 Respondent Exhibit 2 – Form 115, pages 1-3,
 Respondent Exhibit 3 – Form 114,
 Respondent Exhibit 4 – Request for additional evidence,
 Respondent Exhibit 5 – Six pages of photographs of the subject property (three of those pages are duplication),
 Respondent Exhibit 6 – Form 115, page 1,
 Respondent Exhibit 7 – Subject property record card,
 Board Exhibit A – Notice of Defect and Form 131 with attachments,
 Board Exhibit B – Notice of hearing,
 Board Exhibit C – Hearing sign-in sheet,
- d) These Findings and Conclusions.

¹ The Petitioners erroneously refer to this document as "PRC neighbor rating 'comparables.'"

² The Petitioners presented 12 exhibits, but they only made reference to Pet. Ex. 3, 4, 11, and 12 during the hearing. The remaining exhibits, while offered and admitted into evidence, were not discussed by the Petitioners.

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) Real property is assessed based on its “true tax value,” which does not mean fair market value. It means “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, from 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). There are three generally accepted techniques to calculate market value-in-use: 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. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-in-use to rebut that presumption. 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 principles. MANUAL at 5.

- b) Strict application of the Guidelines is not enough to rebut the presumption that the assessment is a reasonable measure of the property's true tax value. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). A petitioner must show that the assessed value does not accurately reflect market value-in-use. *Id.*
- c) The Petitioners' argue that the assessment contains several errors relating to a utility shed that does not exist, the decks, the number of bathrooms, and the location multiplier for the valuation approach contained in the Guidelines. They also argue that their neighborhood is only average, not good. Such claims miss the point of the new assessment system because they focus solely on methodology, rather than establishing that the current assessment fails to accurately reflect market value-in-use. A case based solely on the methodology used to calculate the assessment does not prove that the assessment must be changed. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 95 (Ind. Tax Ct. 2006); *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899 (Ind. Tax Ct. 2006).
- d) Probative 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 principles, however, "the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The Petitioners offered no such evidence. Consequently, they failed to make a prima facie case.
- e) The Petitioners introduced one page from what appears to be an appraisal. *Pet'r Ex. 11*. This page contains data about the subject property and three other properties that it identifies as comparable sales.³ This page indicates it is 1 of 3. Clearly this is not the entire document. There is no indication that it conforms to USPAP standards and it is not signed by the appraiser. In fact, it does not even identify the purported appraiser by name. Under these circumstances, the document lacks credibility and has no probative value in establishing what the market value-in-use really is. Nevertheless, if those three purportedly comparable sales were considered as probative evidence, they would almost certainly support a value that is higher than the current assessment of \$114,800. The adjusted price for comparable sale 1 (August 1995) is \$137,870. The adjusted price for

³ According to this document, the subject property has 2.5 baths, a basement recreation room and 3 decks. (It also states that the estimated market value was \$141,000 as of October 11, 2001.) Although the evidence remains somewhat unclear on this point, it appears that this document ties in with the testimony that the additional bathroom and basement recreation room were added to the property record card based on statements from an appraiser. The Plaintiffs failed to support their claim that it was illegal and arbitrary for the assessor to take that action. Thus, even if that is how the extra bathroom and recreation room were added, that fact is not relevant to what the assessment should be. Furthermore, it is worth noting that this exhibit directly contradicts the testimony the Petitioners offered about the number of bathrooms, the recreation room and the decks.

comparable sale 2 (December 1988) is \$144,500. The adjusted price for comparable sale 3 (June 1992) is \$141,000.⁴ The Petitioners failed to offer any substantial authority or explanation for how those sales support their request for an assessed value of \$108,200.

- f) When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See 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 Petitioners failed to make a prima facie case. The Respondent's burden of rebutting the Petitioners' case was not triggered. 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 To be properly considered as probative evidence, these values would need to be related to the proper valuation date, which is January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioners failed to do so. Therefore, the Board will not base its determination on that evidence.

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>.