

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

Petition #: 39-011-04-1-5-00033
Petitioners: J.C. Raney & Laurel V. Sparks
Respondent: Madison Township Assessor
Parcel #: 0110576500
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 Petitioners initiated an assessment appeal with the Jefferson County Property Tax Assessment Board of Appeals (the "PTABOA") by written document dated November 29, 2004.
2. Notice of the PTABOA's decision was mailed to the Petitioners on February 14, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the county assessor on March 11, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 11, 2005.
5. The Board held an administrative hearing on November 2, 2005, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Laurel V. Sparks, Owner
 - b) For Respondent: Don Thompson, Madison Township Assessor
Margaret Hoffman, Jefferson County Assessor

Facts

7. The subject property is classified as Unit #3 of a residential condominium property located at 512 East Main Street, Madison, as is shown on the property record card for parcel #0110576500.

8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. Assessed value of subject property as determined by the Jefferson County PTABOA:
Land \$900 Improvements \$109,100 Total \$110,000.
10. Assessed value requested by Petitioners on the Form 131 petition:
Land \$900 Improvements \$59,100 Total \$60,000.

Issue

11. Summary of Petitioners’ contentions in support of alleged error in assessment:
 - a) The subject is a condominium located in a seven-unit condominium building. In 1999, the building was an apartment building with a total assessed value of \$67,300. *Sparks testimony; Pet’r Ex. 1.* As of the March 1, 2002, reassessment, the building was a five unit apartment building with an assessed value of \$245,400. *Sparks testimony; Pet’r Ex. 1.*
 - b) On February 28, 2003, Hubbard Properties, LLC, purchased the building and converted the five apartments into seven condominiums.
 - c) By the 2004 tax year, the building had a total assessed value of \$620,000 with no change to the measured area of the subject building or land. The only change was the conversion from apartments to condominiums. *Sparks testimony; Pet’r Ex. 1.*
 - d) The Respondent assessed all of the units that sold at \$110,000 regardless of the sale price and size of each unit. Two of the units sold for \$125,000. The subject unit and another unit sold for \$115,000. The subject unit is smaller than the other units that sold, yet all of those units are assessed for the same amount. The Respondent assessed all of the unsold units owned by Hubbard Properties for \$60,000 regardless of size. The assessment of the units within the building is arbitrary and unequal. *Sparks testimony; Pet’r Ex. 1.*
 - e) The Petitioners submitted a history of the sales and listing prices for the subject unit and three other units in the building. The exhibit shows sales and listing prices from May 2003 through November 2005. The Petitioners contend that this exhibit shows the lack of marketability of the units. *Sparks testimony; Pet’r Exs. 4A - 4B.*
 - f) The Petitioners bought the subject unit in November 2003 for \$115,000. The Petitioners put the subject unit on the market in March 2004 with a listing price of \$118,000. The Petitioners lowered their asking price over time. Their current asking price is \$89,900. *Sparks testimony; Pet’r Exs. 4A - 4B.*
 - g) Unit #4 is located across the hall from the subject unit and is identical to the subject unit. Unit # 4 sold at an auction for \$72,600 in June 2005. *Sparks testimony; Pet’r*

- Ex. 4A. Unit #5 sold for \$60,000 in 2005. Unit #5 originally was listed for \$79,900 in May 2003. Sparks testimony; Pet'r Ex. 4B. Unit 6 was listed at \$110,000 in May 2003. Unit #6 failed to meet the minimum bid at auction in June 2005 and is currently listed for \$84,500. Id. Unit #7 is assessed at \$110,000. Ms. Sparks was told Unit #7's assessment dropped to \$88,900 in October 2005 after the common area portion of its assessment was changed. The assessments for the rest of the units stayed the same. Sparks testimony; Pet'r Ex. 3D.*
- h) The units are not selling and values have decreased due to the building's construction and to the developer abandoning the project and letting the insurance on the project lapse. *Sparks testimony.*
- i) The size of the subject unit is also a problem. The original listing indicates that the subject unit contains 809 square feet. The Petitioners believe this may be a typographical error. The Petitioners carefully measured the subject unit at 890 square feet. The Petitioners' realtor lists the subject unit as containing approximately 1,065 square feet. The appraisal prepared for the Petitioners' lending institution lists the subject unit as containing 930 square feet. The sketch from the appraisal shows that the width of the subject unit is overstated on the property record card. *Sparks testimony; Pet'r Exs. 2A - 2E.*
- j) The subject unit is assessed for 18% of the value of the common area of the building. Unit #7 is assessed for 13% of the value of the common area, and Unit #6 is assessed for 11% of the value of the common area. According to covenants filed with the recorder's office, the owner of each unit has an undivided interest in the common areas of the building as a tenant in common with the owners of the other units. The ownership interest in the common areas is expressed as a percentage, with the owner of each unit, except Unit #5, having a 15% interest. *Sparks testimony; Pet'r Exs. 3A - 3E.*
- k) The Petitioners presented information regarding the comparable properties in the neighborhood:
1. Comparable #1 is a single family dwelling located across the street from the subject unit. It has a brick exterior, the same grade as the subject unit, more square feet than the subject unit, and is assessed for only \$98,800.
 2. Comparable #2 is a single-family dwelling located at 409 E. Main Street. It is larger than the subject unit, is graded the same as the subject unit, has a brick exterior, and is assessed at \$114,800.
 3. Comparable #3 is a residential/office complex. It has a brick exterior, the same grade as the subject dwelling, is larger than the subject dwelling, and is assessed at \$106,900.
 4. Comparable #4 is a five unit apartment house with a total assessment of \$115,200. This is similar to the subject building's assessment before it was converted into condominiums.
 5. Comparable #5 is a single family dwelling. It has a brick exterior, the same grade as the subject unit and is larger than the subject unit. Comparable #5 also has an

in-ground pool and a garage. It is assessed at \$144,700. The assessed value is higher than the subject unit, but it has significantly more amenities than the subject unit. *Pet'r Exs. 5A - 5C; Sparks testimony.*

12. Summary of Respondent's contentions in support of the assessment:
- a) The comparable properties relied upon by the Petitioners are single family dwellings rather than condominiums. *Thompson testimony.*
 - b) The Respondent valued units in the subject building using recent sales disclosures. The Respondent presented that information at the PTABOA hearing and gave copies to the Petitioners. *Thompson testimony.*
 - c) The measurements used to assess the units in the subject building are from the blue prints of a local engineer and are valid. *Thompson testimony.*
 - d) The condominium unit that sold for \$60,000 is much smaller than the subject unit. *Thompson testimony.*
 - e) The assessment for the subject unit is lower than its purchase price. *Thompson 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 6177,
 - c) Exhibits:
 - Petitioner Exhibit 1: History of subject property value from 1/1/99 to present,
 - Petitioner Exhibit 2A-2E: Definition of condominium, showing correct measurement,
 - Petitioner Exhibit 3A-3E: Definition of common areas,
 - Petitioner Exhibit 4A-4B: Comparable properties within the condominium building, showing sharp decline in listing and sales prices and complete lack of marketability,
 - Petitioner Exhibit 5A-5C: Data on other comparable properties in the neighborhood,
 - Petitioner Exhibit 6: Summary,
- The Respondent did not present any exhibits,
- Board Exhibit A: Form 131 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.

Measured Area

15. The Petitioners did not provide sufficient evidence to support their contention that the assessment is based upon incorrect measurements. The Board reaches that conclusion for the following reasons:
- a) The Petitioners contend that the measured area of the subject unit reflected on its property record card (“PRC”) is incorrect. The Petitioners provided measurements from various sources in support of their position.
 - b) The PRC indicates that the subject unit contains 1068 square feet. The Petitioners measured the interior of the subject unit and computed its area to be 890 square feet. *Sparks testimony*.
 - c) The original listing for the subject unit indicates that the unit contains 809 square feet. *Sparks testimony; Pet’r Ex. 2B*. The current listing for the subject unit indicates that the unit contains 1065 square feet. *Sparks testimony*. The appraisal from the Petitioners’ lending institution lists the subject unit as containing 903 square feet. *Id.; Pet’r Ex. 2C*. The Petitioners did not explain how any of these various measurements were computed. Thus, the Petitioners did not submit probative

evidence to establish that the Respondent's measurements are incorrect. Even if the Respondent's measurements are incorrect, the Petitioners did not establish which of the various other measurements are correct.

d) Based on the foregoing, the Petitioners failed to establish a prima facie case of error.

Common Areas

16. The Petitioners did not provide sufficient evidence to support their contention that the Respondent assessed the subject unit for an inappropriate percentage of the value of the building's common areas. The Board reaches that conclusion for the following reasons:

- a) The Petitioners contend the subject unit is assessed for 18% of the value of the common areas of the property whereas the Petitioners only have a 15% ownership interest in the common areas.
- b) The Petitioners presented a portion of the recorded "covenants" for the subject condominiums, which shows that the subject unit (Unit #3) has a 15% interest in the property's "Common Areas." *Pet'r Ex. 3B*. Those covenants describe the "Common Areas" as follows:

The Common Areas shall consist of all portions of the Property except the Condominium Units. Without limiting the generality of the foregoing, the Common Areas shall include the following:

- (a) the land on which the building is erected;
- (b) all foundations, columns, girders, beams, supports and all exterior walls, roof, and surfaces of the Building;
- (c) halls, stairs, stairways, entrances, and exists from the Building;
- (d) parking areas;
- (e) structural parts of the Building;
- (f) the storage units located to the rear of the Building;
- (g) pipes, wires, conduits, ducts, flues, or public utility lines running through a Condominium Unit and forming part of a system serving more than one Condominium Unit, whether or not such items shall be located in the floors, ceilings, or perimeters or interior walls of the Condominium Unit;
- (h) all other parts of the Property and all apparatus or installations existing in the Building or on the Property for the common use or necessary to the existence, maintenance, or safety of the Condominium Units, except those expressly described as Limited Common areas or as part of a Condominium Unit.

- Pet'r Ex. 3B.* The covenants define “Limited Common Areas” as “part of the Common Areas serving exclusively a single Condominium Unit, including specifically each Condominium Unit’s designated parking space and storage area and any other areas designated on the Floor Plans as Limited Common Areas.” *Id.*
- c) Based upon the property record cards submitted by the Petitioners, it appears that the Respondent assessed each unit \$940 for land, which is part of the common areas owned by the Petitioners and the owners of the other units as tenants in common. *Pet'r Exs. 3C – 3E.* The memorandum section of the subject PRC further states “[c]ommon area is based on 18% of total area & sales price less land.” *Pet'r Ex. 3C.* The Respondent assessed the subject unit \$19,600 for the value of common areas. *Id.* The memorandum section on the property record card for Unit #6, which was assessed for a total of \$60,000, reads: “When property is sold, the sales price will be reflected as assessment. Common area is based on 11% of total area & sales price less land.” *Pet'r Ex. 3E.* The Respondent assessed Unit #6 \$6,500 for the value of the common areas. *Id.*
- d) The record is devoid of any explanation regarding how the Respondent chose the percentages by which it allocated a common area value to each unit. It appears, however, that once the Respondent determined a percentage, it applied that percentage to one of two figures: \$110,000 for the units that sold and \$60,000 for units that were still owned by the developer. Thus, 18% (rounded) of \$110,000 equals \$19,600 – the common area assessment for the subject property.
- e) The Respondent’s assessment to each unit of a value for common areas is utterly arbitrary. The percentages applied are unrelated to each unit’s ownership interest in the common areas, and the amounts to which the Respondent applied those percentages – the unit “sale prices” of \$110,000 and \$60,000 – are unrelated to the actual value of the common areas. Instead, it appears that the Respondent simply arbitrarily assigned percentages in order to make the total value, including the land, common areas and unit values equal either \$110,000 or \$60,000 for each unit.
- f) The Respondent’s assessment of a value for common areas clearly is in error. The Petitioners, however, did not provide any information from which the Board can determine what the appropriate assessment should be. While the Board agrees that the Petitioners should be assessed for 15% of the value of the common areas, neither party presented any information regarding the actual value of the numerous components that the covenants list as comprising the common areas.
- g) Based on the foregoing, the Petitioners failed to establish a prima facie case for any reduction in the portion of the subject unit’s assessment that is attributed to common areas.

Comparable Properties

17. The Petitioners did not provide sufficient evidence to support their contention that the subject unit is assessed excessively in comparison to the assessments of other properties. The Board reaches that conclusion for the following reasons:
- a) The Petitioners attempted to show the current assessment of the subject unit is incorrect by comparing the assessment to the assessments of neighboring properties.
 - b) In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value-in-use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The primary difference between the Petitioners’ methodology and the sales comparison approach is that the Petitioners seek to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nevertheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioners in this case.
 - c) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, 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 two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
 - d) The Petitioners presented assessment information and photographs regarding five neighboring properties they believe to be comparable to the subject unit. *Pet’r Ex. 5A – 5C*. The Petitioners, however, provided very few details regarding the characteristics of those properties. Moreover, the Petitioners did not explain how any differences between those properties and the subject unit, such as the fact that the subject unit is a condominium unit and the comparable properties all contain single-family dwellings or apartments, affect the relative market values-in-use of the respective properties. The Petitioners’ evidence concerning the assessments of the neighboring properties therefore lacks probative value.
 - e) The Petitioners also compared the assessment of the subject unit to the assessments of other units in the same building. The Petitioners submitted property record cards for the subject unit (#3) and two other units (# 6 and #7). Once again, the Petitioners did

not engage in a significant comparison of the features of the purportedly comparable units and those of the subject unit as required by the court in *Long*. While the property record cards submitted by the Petitioners contain some information concerning the purportedly comparable units, a taxpayer must do more than simply present raw data. Instead, the taxpayer must explain the relevance of that information to his contentions. See *Indianapolis Racquet Club*, 802 N.E.2d at 1022 (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).

- f) Based on the foregoing, the Petitioners failed to establish a prima facie case of error.

Sales and Listing Prices

18. The Petitioners did not provide sufficient evidence to support their contention that the subject unit is assessed in excess of its market value in light of the sales and listing prices of the subject unit and other units within the same building. The Board reaches that conclusion for the following reasons:
- a) The Petitioners presented a sales and listing history for the subject unit (#3) and three other units (#4, #5, and #6) in the same building. Those sales and listing prices refer to dates ranging from May 21, 2003, to November 2, 2005. *Pet’r Exs. 4A – 4B*.
 - b) The Petitioners purchased the subject unit in November 2003 for \$115,000. In March 2004, the Petitioners listed the subject unit for sale at \$118,000. The current listing price of the subject unit is \$89,900. *Id.*
 - c) Thus, the Petitioners bought the subject property within four (4) months of the assessment date of March 1, 2004, for an amount in excess of its current assessment. While it is possible that the \$115,000 purchase price, if trended to the January 1, 1999, valuation date, might have been somewhat lower than the current assessment of \$110,000, the Petitioners did not provide any evidence to show what that lower amount would be.
 - d) The fact that the Petitioners subsequently were unable to sell the subject unit for an amount equal to the assessment does not demonstrate that the assessment is incorrect. Ms. Sparks attributed the Petitioners’ inability to sell the subject unit, in part, to the fact that the developer abandoned the project and let the insurance on the building lapse. *Sparks testimony*. Ms. Sparks, however, did not testify as to when those events occurred. This is significant, because a property is assessed as it exists on the relevant assessment date. Any loss in value caused by changes to a property occurring after the assessment date is irrelevant to determining the property’s true tax value.
 - e) The listing and sale prices for the other units suffer from the same flaw. While two of those units sold for amounts significantly less than the subject unit’s assessment, all of the units were listed for sale for between \$95,000 and \$125,000 as of March 1, 2004. In each case, the owner did not lower its listing price until several months

later, presumably after the developer abandoned the project and let the insurance on the building lapse. Moreover, other than Ms. Sparks' statement that Unit #4 is the "twin" of the subject unit, the Petitioners did not engage in any significant comparison of the features of the subject unit and those of the other units for which they presented sales and listing information. As explained above, this is insufficient to establish comparability. Thus, the Petitioners' evidence concerning sale and listing prices for the other condominium units lacks probative value.

- f) Based on the foregoing, the Petitioners failed to establish a prima facie case of error based on the sales and listing prices for the subject unit and other units in the same building.

Conclusion

- 19. The Petitioners failed to make a prima facie case for a change in assessment. 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

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>>.