

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

Petition #: 42-023-04-1-5-00002
Petitioner: Shirley J. Kiel
Respondent: Vincennes Township Assessor (Knox County)
Parcel #: 023-012-SO58-000-019
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 Knox County Property Tax Assessment Board of Appeals (the PTABOA) by written document on April 14, 2005.
2. The Petitioner received notice of the decision of the PTABOA via a Form 115 Notification of Final Assessment Determination dated April 27, 2005.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on May 4, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 30, 2006.
5. The Board held an administrative hearing on June 20, 2006, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: Shirley J. Kiel, Petitioner,
 - b. For Respondent: Rose Goodwin, Vincennes Township Assessor.

Facts

7. The subject property is a single-family, residential dwelling located at 3658 N. Junkins Road, Vincennes.
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 \$5,400 for the land and \$44,500 for the improvements, for a total assessed value of \$49,900.
10. The Petitioner requested an assessment of \$5,400 for the land and \$36,600 for the improvements, for a total of \$42,000.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the 2004 assessed value is over-stated in relation to the \$42,000 purchase price of the property in March of 2005. *Kiel testimony*. In support of this contention, the Petitioner submitted a copy of the Sales Disclosure Form showing a total sales price of \$42,000, and a real estate sale listing with an asking price of \$57,500 for the property. *Petitioner Exhibits 2 through 4*.
 - b. The Petitioner further argues that the sales price of nearby properties demonstrate that the assessed value of the subject property is over-stated. *Kiel testimony*. In support of this argument, the Petitioner submitted copies of pages from the Knox County Board of Realtors showing sales of several properties that the Petitioner contends are comparable to the subject property. *Petitioner Exhibits 6 & 7*.
 - c. The Petitioner also contends that the subject property suffers a loss in value due to health codes regarding septic systems. *Kiel testimony*. According to the Petitioner, the property has an inadequate septic system that may only be corrected by purchasing an additional lot and having a new septic system built there. *Id*. In support of this contention, the Petitioner submitted into evidence a copy of an invoice from AAA Godfrey Septic Tank Service and a letter dated March 9, 2006, from the Knox County Health Department to Petitioner concerning a nearby property she owns suffering from the same condition. *Petitioner Exhibits 9 & 11*.
 - d. Finally, the Petitioner contends that the subject property is out-dated, under-improved and lacks amenities such as a washer and dryer. *Kiel testimony*. In support of this contention Petitioner submitted copies of bills for improvements to the property. *Petitioner Exhibits 8 & 10*.

12. Summary of Respondent's contentions in support of the assessment:

The Respondent contends that the assessed value is correct under Indiana and Knox County assessing standards. *Goodwin testimony*. The Respondent admits, however, that she was unaware of the septic system requirements when the assessment was made on the subject property. *Id*.

Record

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled 42-023-05-1-5-00002-06-20-2006 Kiel,
- c. Exhibits:

- Petitioner Exhibit 1 - Property record card for 2002 printed April 15, 2004,
- Petitioner Exhibit 2 – Sales disclosure for subject property dated March 2005,
- Petitioner Exhibit 3 – Listing contract for subject property,
- Petitioner Exhibit 4 – Sales promotional flyer for subject property,
- Petitioner Exhibit 5 - Invoice for new carpet dated March 3, 2005,
- Petitioner Exhibit 6 – Copies of a page from Knox County Board of Realtors book,
- Petitioner Exhibit 7 – Copies of two pages from Knox County Board of Realtors book,
- Petitioner Exhibit 8 – Proposal for new furnace dated March 13, 2005,
- Petitioner Exhibit 9 – Copy of proposal/invoice for septic service work dated September 20, 2005,
- Petitioner Exhibit 10 – Copy of invoice for equipment and labor on well dated January 19, 2006,
- Petitioner Exhibit 11 – Letter from Knox County Health Department concerning the septic system at 3636 Junkins Road dated March 9, 2006,

Respondent Exhibit – None submitted

- 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.
15. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in the assessed value of the subject property. The Board reached this decision for the following reasons:
- a. The Petitioner contends that assessed value of the property is over-stated when compared to the 2005 purchase price of \$42,000. *Kiel testimony*. In support of this, the Petitioner presented the sales disclosure for the property.¹ *Petitioner Exhibit 2*.
 - 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). A taxpayer is permitted to offer evidence relevant to market value-in-use. MANUAL at 5. “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. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on a sale to establish the market value-in-use of a property must provide some explanation as to how the sales price demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
 - d. The Petitioner relied upon her purchase of the property in March 2005 for \$42,000 to show the market-value-in-use of the subject property. *Kiel testimony, Petitioner Exhibit 2*. The Petitioner, however, failed to explain the relevance of the 2005 sale to the January 1, 1999, valuation date. The Respondent, however, testified that the property was worth less in 1999 than in 2005. *Goodwin testimony*. Thus, the Petitioner has established a prima facie case that the 1999 value of the property would be no higher than its 2005 purchase price.

¹ To the extent that the Petitioner can be seen as raising an issue relating to the condition of the property, the Petitioner’s argument that the property is out-dated and requires expenditure to improve it to an acceptable level is insufficient to raise a prima facie case. Further, the Petitioner failed to show that any regulatory restrictions on the use of the property related to the septic system existed as of March 1, 2004.

- e. Where the Petitioner has established a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life Ins. Co.*, 803 N.E.2d 276. Here, Respondent contends that it assessed the property properly under Indiana and Knox County assessment rules. In order to carry its burden, the Respondent must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.d2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case). Thus, the Respondent failed to rebut Petitioner's evidence.

Conclusion

16. The Petitioner provided sufficient evidence to establish a prima facie case that the 2004 value of the subject property is no greater than its \$42,000 purchase price. The Respondent failed to rebut the Petitioner's evidence. The Board finds for the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>.