

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

Petition #: 43-025-05-1-5-00015
Petitioners: William & Carolyn Carter (Carolyn A. Carter Revocable Trust)
Respondent: Turkey Creek Township Assessor (Kosciusko County)
Parcel #: 07-703005-60
Assessment Year: 2005

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 Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 20, 2004.
2. The Petitioners received notice of the decision of the PTABOA on July 22, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on August 29, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued notice of hearing to the parties dated January 31, 2006.
5. The Board held an administrative hearing on April 26, 2006, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Kevin M. Fasick, SAVVY Property Tax Services¹
 - b. For Respondent: Laurie Renier, Kosciusko County Assessor
Charles A. Ker, PTABOA Member
Susan Myrick, PTABOA Member
Gerald Bitner, PTABOA Member

¹ Mr. Kevin Fasick participated in the hearing via telephonic conference. The Respondent did not object to conducting the hearing in this manner.

Richard R. Shipley, PTABOA Member
Patricia Gammieri, Turkey Creek Township Assessor

c. Others In Attendance: Jan Chiddister, Observer²

Facts

7. The subject property is a 4,710 square foot two-story residence on a 110 foot by 115 foot lot located at 5837 East Island Avenue, Syracuse, in Turkey Creek Township, Kosciusko County.
8. The ALJ did not conduct an on-site visit of the subject property.
9. The PTABOA determined the assessed value of the subject property to be \$407,600 for the land and \$790,000 for the improvements, for a total assessed value of \$1,197,600.
10. At the hearing, the Petitioners requested an assessment of \$407,600 for the land and \$425,639 for the improvements, for a total assessed value of \$833,239.

Issue

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend that the improvements on the subject property are over-valued based on the construction cost of the house. *Fasick testimony*. In support of this contention, the Petitioners submitted a letter, dated December 12, 2003, from Brad Jackson, of T.L. Jackson Construction, Inc., stating that "[w]e received \$425,639.00 for the construction of your home located at 5837 E. Island Ave. Syracuse, IN. 46567." *Petitioner Exhibit 2*. The Petitioners also submitted two construction invoices from T.L. Jackson Construction, Inc., to show a broad breakdown of components charged in the construction of the house including a "contract amount" of \$369,866 and various "allowance" fees such as demolition allowance, piling allowance, lighting fixture allowance, bath hardware allowance and others. *Fasick testimony; Petitioner Exhibits 2 & 3*. The invoices differed only by the amount charged for the "master shower." *Id.*
 - b. The Petitioners admit that at the PTABOA hearing, a limited appraisal report was submitted that established the value of the subject property to be \$1,300,000 as of August 29, 2002. *Respondent Exhibit 1-F*. Further, the Petitioners determined the value of the property to be \$1,183,000 as of 1999 using a 3% annual inflationary rate. *Id.* The Petitioners, however, contend that the appraisal should be disqualified as evidence of value at this hearing, because it exceeds the January

² Ms. Jan Chiddister was present during the administrative proceedings, but was not sworn in to present testimony.

1, 1999, valuation date for establishing assessments by more than two years. *Fasick testimony.*

- c. The Petitioners further argue that the value of a property is not restricted to the property's fair market value as has been cited by the Indiana Tax Court in the case of *State Board of Tax Commissioners v. Town of St. John*, 702 N.E.2d 1034, 1038 (Ind. 1998). *Fasick testimony; Petitioner Exhibit 6.* Therefore, the Petitioners request that the subject property be assessed with the land at \$407,600 and improvements at \$425,639, for a total assessed value of \$833,239. *Fasick testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends the subject property is properly assessed with land at \$407,600 and improvements at \$790,000, for an overall assessed value of \$1,197,600. *Gammieri testimony; Respondent Exhibit 1-A.*
 - b. In support of this contention, the Respondent submitted a limited appraisal report for the subject property prepared by Nicholas E. Dean, Ken Crace Real Estate Appraisal, Inc., a certified appraiser on behalf of the Petitioners. *See Respondent Exhibit 1-G.* The Respondent testified that this appraisal was submitted by the Petitioners at the PTABOA hearing. *Gammieri testimony.* The Respondent further testified that the appraisal estimated the market value for the subject property to be \$1,300,000 as of August 29, 2002. *Id.* In addition to the appraisal being submitted at the PTABOA hearing, the Petitioners submitted a letter dated June 7, 2005, from the Petitioners' representative (Mr. Fasick) to the Petitioner, stating that, "The appraiser listed the 2002 value as \$1,300,000. Given the statewide accepted 3% annual inflationary trend, the 1999 value would be \$1,183,000." *Gammieri testimony; Petitioner Exhibit 1-F.* The Respondent argues that the current assessed value is within ten percent of the appraised value and the Petitioners' trended value, therefore the PTABOA contends that the assessed value of \$1,197,600 is fair and accurate.³ *Gammieri testimony.*
 - c. Finally, the Respondent submitted a map and property record cards (PRCs) for the four comparables contained within the Petitioners' limited appraisal report that sold in the subject property's neighborhood in 2001 and 2002. *Petitioner Exhibits 1-I – 1-L.* The Respondent testified that the sales prices ranged from \$890,000 to \$1,495,000. *Gammieri testimony; Petitioner Exhibits 1-I – 1-L.*

³ The Board notes that there are no regulations, rules, or statutes that support the Respondent's contention regarding a ten percent factor for assessments. The Respondent is apparently relying upon the instruction that "the overall level of assessment, as determined by the median assessment ratio, should be within ten percent (10%) of the legal level." MANUAL at 21. This statement clearly refers to standards for evaluating the accuracy of the median assessment ratio in the equalization process. It does not grant a ten percent range for individual assessments.

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 STB #5180,
- c. Exhibits:

Petitioner Exhibit 1: Fax Transmittal Form from Kevin Fasick to Indiana Board of Tax Review, dated April 26, 2006,

Petitioner Exhibit 2: Letter from Brad Jackson, T.L. Jackson Construction, Inc. to William & Carolyn Carter, dated December 12, 2003,

Petitioner Exhibit 3: Construction invoice from T.L. Jackson Construction to William & Carolyn Carter, dated July 27, 2000,

Petitioner Exhibit 4: Construction invoice from T.L. Jackson Construction to William & Carolyn Carter, dated August 18, 2000,

Petitioner Exhibit 5: One page of the Board's Findings & Conclusions for David T. Reece,

Petitioner Exhibit 6: One page from a local appeal hearing for Ricky & Cindy Leffler, Brownsburg, Indiana,

Respondent Exhibit 1-A: Subject property's PRC,

Respondent Exhibit 1-B: Four exterior photographs of the subject property,

Respondent Exhibit 1-C: Letter from Brad Jackson, T.L. Jackson Construction, Inc. to William & Carolyn Carter, dated December 12, 2003,

Respondent Exhibit 1-D: Power of Attorney from William Carter to Kevin Fasick, dated January 12, 2005,

Respondent Exhibit 1-E: Letter from Kevin Fasick to Turkey Creek Township Assessor,

Respondent Exhibit 1-F: Letter from Kevin Fasick to Patty Gammieri, Turkey Creek Township Assessor,

Respondent Exhibit 1-G: Limited Appraisal Report prepared by Nicholas E. Dean of Ken Crace Real Estate Appraisal, Inc., dated August 29, 2002,

Respondent Exhibit 1-H: Notification of Final Assessment Determination – Form 115,

- Respondent Exhibit 1-I: PRC for parcel 007-085-029, four exterior photographs, plat map and aerial map for John Scott,
- Respondent Exhibit 1-J: PRC for parcel 007-040-014 and 007-040-013.A, four exterior photographs, two plat maps and two aerial maps for Joyce Williams,
- Respondent Exhibit 1-K: PRC for parcel 007-040-021, four exterior photographs, plat map and aerial map for Gretchen Dahm,
- Respondent Exhibit 1-L: PRC for parcel 007-061-037, three exterior photographs, plat map and aerial map for Luke Knecht,
- Board Exhibit A: Form 131 petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 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 Petitioners allege that the subject dwelling is over-valued based on the construction cost of the home. *Fasick testimony*. The Petitioner contends that according to a letter dated December 12, 2003, and two invoices, dated July 27, 2000, and August 18, 2000, from T.L. Jackson Construction, Inc., the cost of construction for the subject structure was \$425,639. *Id.*; *Petitioner Exhibits 2 – 4*. Thus, the Petitioners contend, the improvements on the subject property should be assessed for no more than \$425,639.
- b. Real property in Indiana is assessed on the basis of its “true tax value.” See Ind. Code § 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, including 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. The Petitioner may show the value of a property by evidence of its construction cost. “Construction cost,” however, 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 are not limited to, labor, materials, supervision, utilities used during construction and equipment rental. *Id.* Indirect costs include building permits, fees, insurance, taxes, construction interest, overhead, profit and professional fees. *Id.* Further, 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 must reflect the 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 as to 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 Petitioners submitted a letter stating that “[w]e received \$425,639.00 for the construction of your home located at 5837 E. Island Ave. Syracuse, IN 46567.” *Petitioner Exhibit 2*. The Petitioners also submitted two construction invoices from T.L. Jackson Construction, Inc., showing the components charged in the construction of the house. *Fasick testimony; Petitioner Exhibits 2 & 3*. These “invoices,” however, only included broad categories of costs including a “contract amount” of \$369,866 and various “allowance” fees such as demolition allowance, piling allowance, lighting fixture allowance, bath hardware allowance and others. The invoices differed only by the amount charged for the “master shower.” *Id.* Thus, the Petitioners’ letter and invoices are insufficiently detailed to determine if all costs were included. There is no information regarding the administrative and permit costs for the construction of the subject dwelling. Further, no evidence is offered as to contractor costs, profit or other costs that would reflect the market value of the property. The Petitioners also lacked a “final” or reconciled invoice of the Petitioners’ costs. Finally, Mr. Brad Jackson of T.L. Jackson Construction, Inc., was absent from the hearing preventing the Respondent from raising questions regarding the invoices or the costs. This renders Mr. Jackson’s letter little more than a conclusory statement with no probative value and the invoices, insufficiently detailed to be probative. *See Whitley*, 704 N.E.2d 1113 (Ind. Tax 1998) (statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination).
- 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). We note, however, that had the Petitioners’ construction cost information been sufficiently detailed to raise a prima facie case, that evidence would have been rebutted by the Petitioners’ own appraisal that estimated the market value of the subject property to be \$1,300,000. *See Respondent Exhibit 1-F*.

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: July 6, 2006

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>>.