

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01589
Petitioners: Martin & Katherine Corcoran
Respondent: Department of Local Government Finance
Parcel #: 001-25-45-0255-0028
Assessment Year: 2002

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 informal hearing as described in Ind. Code § 6-1.1-4-33 was not held. The Petitioners testified they did not receive a Form 11, Notice of Assessment, until after the final date to schedule informal hearings. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$90,900.
2. The Petitioners filed the Form 139L petition on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated August 22, 2005.
4. Special Master, Dalene McMillen, held the hearing on October 4, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 1006 North Warren Avenue, Gary, in Calumet Township.
6. The subject property is a 932 square-foot dwelling on a 25-foot by 120-foot lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$9,300 for the land and \$81,600 for the improvements, for a total assessed value of \$90,900.

9. At hearing, the Petitioners requested a value of \$6,000-\$7,500 for the land and \$50,000 for the improvements for a total value of \$56,000-\$57,500.
10. Martin and Katherine Corcoran, the property owners, and Sharon S. Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners contend that the assessed value of the land and improvements are overstated in comparison with properties located in the surrounding area. *M. Corcoran argument*. According to the Petitioners, comparable lots on the subject property's street have assessed values ranging from \$4,500 to \$7,500. *Id*. Further, the Petitioners allege, a single lot located across the street from the subject was offered for sale in a tax sale for \$3,000, but failed to sell. *Id*; *Petitioner Exhibit 12*. Finally, according to the Petitioners, Megan Cecil, a local realtor, estimated the subject land value to be no more than \$6,000. *Id*.
 - b. The Petitioners also presented information concerning three properties that the Petitioners contend are superior to the subject property. According to the Petitioners, two of the three properties have assessed values that are lower than the assessed value of the subject property. The remaining "comparable" property has an assessed value that is only slightly higher than the assessed value of the subject property. *Petitioner Exhibit 3-10, 14*; *M. Corcoran testimony*. The Petitioners testified that, according to Ms. Cecil, the principle marketing features of properties in the area of the subject property are proximity to the lake, view of the lake, and the presence of a fireplace, a garage, and a deck/patio. *Petitioner Exhibit 13*; *M. Corcoran testimony*. In comparing the Petitioners' assessed value to the assessed values of three other properties, the Petitioners allege that the subject property should be assessed at one half or one third of its current assessed value. *Petitioner Exhibits 3-10, 14*; *M. Corcoran testimony*. In support of this contention, the Petitioners presented a "comparability ratio" and a comparison showing the number of rooms, number of bedrooms, number of bathrooms, living area by floor, and the "marketing features" of proximity to the lake, view of the lake, fireplace, garage and deck or patio.¹ *Petitioner Exhibit 15*; *14*.
 - c. The Petitioners also contend that there are errors in the assessment. According to the Petitioners, the land assessment erroneously reflects the presence of sidewalks, a sewer, an alley, and paved streets. *M. Corcoran testimony*; *Petitioner Exhibit 12*. The Petitioners also argue that the subject structure is a

¹ Petitioners' Exhibit 14 suggests that attic and basement living area is "exempt" from assessment. This is decidedly incorrect as Petitioners' own property record card shows. However, because the Petitioners do not claim that the basement or attic of the subject property has been improperly assessed as not "exempt," we disregard this issue.

536 square foot one-story dwelling with a 396 square foot attic/loft. In support of this contention, the Petitioners submitted exterior photographs of the front and back of the dwelling. *Petitioner Exhibit 4; M. Corcoran testimony*. The Petitioners allege that the attic is incorrectly assessed as a .75 story. *M. Corcoran argument*. In addition, the Petitioners contend that the effective date of the dwelling is incorrect, according to the Petitioners, Jacquelyn Collins, Chief Deputy, Calumet Township Assessor's office, calculated the effective age of the dwelling to be 1963. *Petitioner Exhibit 13; M. Corcoran testimony*. The Petitioners contend that 536 square feet (58% of the total square footage) of the dwelling was constructed in 1937, and 396 square feet (42% of the total square footage) was constructed in 1999. According to the Petitioners, applying the calculation $((1937 \times 58\%) + (1999 \times 42\%) = 1963)$ leads to the conclusion that the effective year of construction should be 1963. Therefore, the Petitioners argue, the physical depreciation should be adjusted so that the effective age of the structure is 36 years in 1999. *Id.*

- d. Further, the Petitioners contend, the dwelling cannot be considered "new" due to its condition. According to the Petitioners, the dwelling's foundation has developed a six-inch crack, leaving the dwelling susceptible to collapse. *Petitioner Exhibit 11; M. Corcoran testimony*. In support of this contention, the Petitioners submitted a photograph to show the foundation of the dwelling contains a major crack. The Petitioners testified that at the time of purchasing the property in 2002, the home was professionally inspected. *Petitioner Exhibit 13; M. Corcoran testimony*. At that time, the crack was undetected by the inspector. *Id.*
- e. In response to questioning, the Petitioners testified that they purchased the subject property for \$117,000 on May 29, 2002. *Petitioner Exhibit 17; M. Corcoran testimony*. However, according to the Petitioners, they were involved in a "bidding war" and paid too much. *M. Corcoran testimony*.

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

- a. The Respondent contends that the subject property is properly assessed. According to the Respondent, the land on the subject property has been assessed for \$385 per front foot, which is consistent with all other parcels in the neighborhood. *Elliott testimony*. The Respondent argues that the difference in land assessments between the subject property and other properties in the neighborhood are due to differences in parcel size. *Id; Respondent Exhibits 6-9*.
- b. Further, the Respondent argues that the assessed value is correct based on the Petitioners' purchase price of subject property. According to the Petitioners, they purchased the property in May 2002 for \$117,000. *Respondent Exhibit 3; Elliott testimony*. Thus, the Respondent contends, the time adjusted sales value is

\$100,292 as of January 1, 1999. *Id.* The Respondent, therefore, concludes that the current assessed value of \$90,900 is fair and accurate. *Elliott argument.* The Respondent also submitted evidence of two “comparable” properties that show time adjusted sale prices of \$88,020 and \$106,466 in support of the assessment. *Respondent Exhibit 4; Elliott testimony.* According to the Respondent, the subject property is assessed at \$97.53 per square foot, while the “comparables” range from \$100.71 to \$120.98 per square foot. *Respondent Exhibit 4; Elliott testimony.* The Respondent alleges that this further shows that the subject is assessed fairly. *Elliott argument.* The Respondent also contends that the Petitioners failed to submit an appraisal to show the fair market value of the subject property as of January 1, 1999. *Id.*

- c. Finally, the Respondent argues that the dwelling is not assessed as one-story with an attic due to higher pitch in the roofline. *Elliott testimony.* The exterior photograph indicates the .75 or $\frac{3}{4}$ story more accurately reflects the second floor. *Id.; Respondent Exhibits 2, 3.* In addition, the Respondent notes that that the dwelling was updated in 1995 after a fire and, thus the Respondent alleges, that a depreciation factor of 3% is correct based on a four-year-old house. *Elliott 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 Lake Co. 1667,
- c. Exhibits:

Petitioner Exhibit 1 – Verification of Participation in Informal Hearing with Cole-Layer-Trumble, and a letter from Martin and Katherine Corcoran to the Board, dated June 28, 2005,

Petitioner Exhibit 2 – Notice of Assessment of Land and Structures – Form 11/ Lake County,

Petitioner Exhibit 3 – Two exterior photographs of the Patricia Kelly property,

Petitioner Exhibit 4 – Two exterior photographs of the subject property,

Petitioner Exhibit 5 – Two exterior photographs of the Susan Davey property,

Petitioner Exhibit 6 – Two exterior photographs of the Rodney Fisher property,

Petitioner Exhibit 7 – Patricia Kelly’s 2002 property record card,

Petitioner Exhibit 8 – Subject property record card,

Petitioner Exhibit 9 – Susan Davey’s 2002 property record card,

Petitioner Exhibit 10 – Rodney Fisher’s 2002 property record card,

Petitioner Exhibit 11 – Two photographs of the foundation of the subject dwelling,
Petitioner Exhibit 12 – Petitioners’ land argument,
Petitioner Exhibit 13 – Petitioners’ new or restored house argument,
Petitioner Exhibit 14 – Comparison analysis for 1006, 1002, 1010, and 1212 North Warren Avenue,
Petitioner Exhibit 15 – Petitioners’ comparability ratio argument,
Petitioner Exhibit 16 – Petitioners’ argument conclusions,
Petitioner Exhibit 17 – Ticor Title Insurance closing statement, reconciliation tax bill, and Notice of Assessment of Land and Structures – Form 11 / Lake County,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Two exterior photographs of the subject property,
Respondent Exhibit 3 – Chart of comparable properties and statistical analysis,
Respondent Exhibit 4 – Property record cards and photographs of the Twila Hayes and Cherie Bianco properties, used as comparables,
Respondent Exhibit 5 – plat maps of the subject area,
Respondent Exhibit 6 – Residential Neighborhood Valuation Form for neighborhood #02513,
Respondent Exhibit 7 – Property record cards for the Joshua Hoyt, Richard Mangiaracina, Jon Beacher, and Patricia Kelly properties, used as comparables,
Respondent Exhibit 8 – Property record cards for the Patricia Kelly and Susan Davey properties, used as comparables,
Respondent Exhibit 9 – Aerial map of the subject area,

Board Exhibit A – Form 139L petition with attachments,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable cases are:
- a. A Petitioner seeking review of a determination of assessing officials 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 Insurance Company 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 provide sufficient evidence to support their contentions. This conclusion was arrived at because:

Comparable Properties

- a. The Petitioners contend that the subject property is overvalued compared to neighboring properties and lots. The Petitioners argue that comparable lots within the neighborhood are assessed ranging from \$4,500 to \$7,500, and that a lot offered in a tax sale for \$3,000 failed to sell. Further, the Petitioners allege that neighboring properties with homes “superior” to the subject property are assessed lower than the subject property. In support of this contention, the Petitioners presented a comparison showing the number of rooms, number of bedrooms, number of bathrooms, living area by floor, and the “marketing features” of proximity to the lake, view of the lake, fireplace, garage and deck or patio. *Petitioner Exhibit 14*.
- 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 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter 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. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* 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.” *Id.*
- c. Here, however, the Petitioners attempt to show that their property is over-valued not by submitting an appraisal, but by comparing the “assessed value” of

neighboring properties rather than the “sales value.” While Indiana Code requires uniform and equal assessments, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.*

- d. To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. See *Blackbird Farms Apts. v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* See also, *Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- e. In the case at bar, the Petitioners have not met their burden. The Petitioners’ evidence simply shows that some neighboring properties are assessed lower and some neighboring properties are assessed higher. While the Petitioners identify some characteristics of the purportedly “comparable” properties, such as living area, proximity to the lake, and whether a property had a fireplace, garage and deck or patio, the Petitioners fail to explain how these factors would impact the value of the properties. The Petitioners merely allege that the neighboring properties are “superior” to the subject property. Similarly, when comparing the value of the subject property land to neighboring lots, the Petitioners provided no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine the lots presented by Petitioners were “comparable” properties. *Blackbird Farms Apartments*, 765 N.E.2d at 715. This falls far short of the burden Petitioners face. In addition, the Petitioners’ allegation that the land should be valued at \$6,000 or that the subject property should be assessed for \$40,000 or \$50,000 was not substantiated with market evidence. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Thus,

Petitioners have only made a “de minimis factual showing” and have failed to “sufficiently link [their] evidence to the uniform and equal argument they raise.” *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). We find that the Petitioners failed to raise a prima facie case that the subject property is over-valued.²

Errors in the Assessment

- f. The Petitioners also contend that errors were made in the assessment. According to the Petitioners, the effective age of the subject structure should be 1963.³ Further, the Petitioners allege, the second story should be assessed as an attic with a loft, the dwelling only has five rooms and one bedroom and the subject land should not be assessed with sewers, sidewalks, and paved streets.
- g. The Petitioners contend the effective year of construction of the structure is 1963, not 1995. In support of this position, the Petitioners testified that the subject dwelling was constructed in 1937 and underwent extensive repairs in 1999. Further, the Petitioners presented a calculation allegedly showing that the effective age of the dwelling is 36 years, and the effective year of construction is 1963.
- h. The Guidelines recognize that not all structures depreciate at the same rate. Thus, two structures built in the same year might have different “effective ages.” GUIDELINES, app. B at 5. According to the Guidelines, “effective age” can be thought of as “the actual age less the years that have been removed from the actual age by such things as maintenance, repair, upgrading, and change.” *Id.* Thus, effective age may be changed in a residential structure “when remodeling takes place and the structure is updated, renovated, or when additional area is added which increases the structure’s functional utility.” *Id.* at 6.
- i. The undisputed testimony indicates that the dwelling was originally constructed in 1937. After a fire rendered the dwelling unlivable, the dwelling was extensively

² Further, the sale of a subject property is often the most compelling evidence of its market value. Here, the evidence shows that the Petitioners purchased the subject property in May of 2002 for \$117,000. The time adjusted sales value is \$100,292 as of January 1, 1999. This suggests that the assessed value of \$90,900 is fair and accurate. While the Petitioners argue that they “overpaid” for the subject property, the Petitioners failed to submit any appraisal or other market evidence to overcome the compelling evidence of the subject property’s purchase price.

³ The Petitioners also allege that the subject dwelling cannot be considered “new” because of a crack in the foundation. While the Petitioners contend this is “evidence” that the effective date of the structure should be 1963, it is actually evidence of the “condition” of the property. However, the Petitioners testified that their property inspection in May of 2002 did not reveal a crack in the foundation. Thus, the Petitioners have failed to establish that the crack in the foundation existed on the March 1, 2002, assessment date and it is, therefore, unnecessary to address the issue of condition here.

remodeled and a 396 square-foot room addition was constructed in 1999.⁴ Thus, because effective age can change on the basis of remodeling or adding on to a home, the Petitioners have failed to meet their burden to establish that the effective year of construction is in error.

- j. The Petitioners further contend that the 396 square-foot upper floor area should be classified as an attic/loft. In support of this contention, the Petitioners submitted exterior photographd of the subject dwelling.
- k. A “loft” is “an area of a residential dwelling which is characterized as a finished platform type area overlooking the first floor.” GUIDELINES, glossary at 12. According to the Guidelines, “A loft usually appears in a structure with cathedral type ceilings and is not to be confused with areas of a dwelling that have partial or full exterior walls that make the dwelling a one and one-half story to a two-story dwelling.” GUIDELINES, ch. 3 at 31. Whereas a “one-story with a finished attic” has the same characteristics as a one-story dwelling and also has the following; a roof slope of about 1/4 or 1/3, and permanent stairway to an attic with interior finish. *Id.* at 11.
- l. Here the Petitioners submitted exterior photographs showing a partial story with exterior walls. The Petitioners presented no evidence that the second story living area does not extend to the exterior walls like a loft. Nor did the Petitioners present evidence sufficient to show that the second story is a finished attic. In fact, the Petitioners testified that the second story contains the dwelling’s bedroom. Thus, the Petitioners failed to sufficiently show an error in the assessment of the subject dwelling as a one and $\frac{3}{4}$ story structure.
- m. Finally, the Petitioners allege that the dwelling has only five rooms⁵ and the land has no sewers, sidewalks and only one paved street.
- n. Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be

⁴ The calculation submitted by the Petitioners assumes that only the second floor living area is new. However, the first floor was extensively rebuilt following a fire which can change the effective age of the first floor also. Further, while such a calculation has been used in previous reassessments to calculate effective age, it is not applicable in a market value system.

⁵ The number of rooms in a dwelling is descriptive of the dwelling, but has no specific value attached under the Guidelines. Thus, while the property record card may reflect seven rooms and three bedrooms where the subject dwelling only has five rooms and a single bedroom, correcting this information would not change the assessed value of the property. Further, while the lower number of rooms or bedrooms may have an impact on the market value in use of the property, the Petitioners have not shown us this value.

lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. The Petitioners have the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." See *Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- o. While the subject property's lack of sidewalks and paved streets may be relevant to the issue of whether a negative influence factor should apply here, the Petitioners have failed to show how this condition would impact the market value of the subject property or to show the actual market value of the property itself. See *Talesnick*, 756 N.E.2d at 1108. Further, there is no evidence that this is unique to the subject property. To the contrary, the Petitioners testified that other properties in the neighborhood did not have sewers, sidewalks or paved streets. Thus the Petitioners have failed to raise a prima facie case that the assessment of the subject property is in error.
- p. Where the Petitioner has not supported his 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 Petitioners have failed to make a prima facie case that the subject property is over-assessed. 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.