

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

Petition: 71-026-02-1-5-00161
Petitioners: Michael and Paula Stonestreet
Respondent: Portage Township Assessor (St. Joseph County)
Parcel: 18-7109-3882
Assessment Year: 2002

The Indiana Board of Tax Review (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 St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 2, 2003.
2. The PTABOA mailed notice of its decision on October 20, 2004.
3. The Petitioners appealed to the Board by filing a Form 131 petition with the county assessor on October 27, 2004. The Petitioners elected to have this case heard under small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 17, 2006.
5. Administrative Law Judge Patti Kindler held an administrative hearing in South Bend on October 17, 2006.
6. Terrance Wozniak appeared as counsel for the Respondent.
7. The following persons were present and sworn as witnesses at the hearing:
For the Petitioners – Paula Stonestreet, taxpayer,
For the Respondent – Rosemary Mandrici, Portage Township Assessor,
Dennis Dillman, PTABOA member.

Facts

8. The subject property is a dwelling located at 1626 East Donald Street in South Bend, Indiana.
9. The Administrative Law Judge did not conduct an on-site inspection of the property.

10. The PTABOA determined the assessed value of the property is:
land \$1,500 improvements \$40,600 total \$42,100.
11. The assessed value requested by the Petitioners is:
land \$1,500 improvements \$23,500 total \$25,000.

Issue

12. Summary of the Petitioners' contentions in support of alleged error in assessment:¹
- a) The State is obligated to assess value based on the condition and price of the property at the time the Petitioners purchased it. *Stonestreet testimony; Pet'rs Ex. A at 3*. The correct assessed value for the subject property should be the purchase price of \$25,000 that the Petitioners paid on August 5, 2003. *Stonestreet testimony; Pet'rs Ex. A at 6*. The Petitioners purchased the dwelling through a realtor's listing on the Multiple Listing Service (MLS) that described the property as "in need of attention." *Stonestreet testimony; Pet'rs Ex. A at 5*. The Residential Broker Price Opinion report, dated July 15, 2003, described the condition of the dwelling as fair to poor and concluded the property had an "as is" market value of \$26,000. *Pet'rs Ex. B at 1-2*.
 - b) The subject property was severely neglected and deteriorated when the Petitioners bought it. Its condition negatively affected its value and should be reflected in the assessment. Photographs show debris left by the former tenants, plumbing leaks, water and electrical damage in the basement and kitchen, a boarded-up house next door, bathroom plumbing problems, the disconnected electric box, damaged windows, and yard debris. *Stonestreet testimony; Pet'rs Ex. B at 3-6*. There were no working utilities or running water, the toilet was full of debris, and the home was infested with mice when the Petitioners bought the property for \$25,000. *Stonestreet testimony*. The Petitioners intended to clean it up, make necessary repairs, and then resell the property. *Id.*
 - c) The sales disclosure form from December 18, 2003, reports a sale price for the subject of \$59,500 after the Petitioners had removed the debris, gutted and entirely repaired the property. *Stonestreet testimony; Resp't Ex. 9*. That sale is not relevant because it does not reflect the deteriorated condition of the home at the time of assessment. *Id.*
 - d) The law states that the value of the property at the time of the assessment determines its assessed value. The assessment should not be based on the assessments of other homes in the neighborhood. *Stonestreet testimony*.

¹ The Form 131 petition also raises claims concerning the constitutionality of property taxes imposed on owners of rental property. *Bd. Ex. A*. The Petitioners did not address these contentions at the administrative hearing and the Board considers them waived.

13. Summary of the Respondent's contentions in support of the assessment:
- a) The Petitioners' purchase of the property in 2003 involved a distressed sale that occurred after a Federal National Mortgage Association (Fannie Mae) foreclosure. *Wozniak argument; Resp't Ex. 8*. After the Petitioners renovated the property, they sold it for \$59,500 on December 18, 2003. *Resp't Ex. 9*. This fact shows the assessment is not excessive. *Wozniak argument*.
 - b) According to MLS information, the subject property sold for \$48,000 on November 2, 2001, nearly two years before the Petitioners purchased it. *Mandrici testimony; Resp't Ex. 7*. The Petitioners' purchase price (\$25,000) obviously reflected the need for repairs. *Dillman testimony*. The current assessment of the property (\$42,100) is less than it sold for in either 2001 or 2003 and shows the assessment is not excessive. *Mandrici testimony*.
 - c) Three sales of similar properties of the same age and style in the subject neighborhood show the assessment is a reasonable value. *Mandrici testimony*. The property at 1610 Donald sold for \$53,000 on January 16, 2004. The property at 1613 Donald sold for \$44,000 on February 15, 2002. The property at 1630 Donald sold for \$39,000 on March 24, 2006. *Id.; Resp't Ex. 7 at 2-4*.

Record

14. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioners Exhibit A – Form 131 Petition with the MLS listing dated July 18, 2003, and the Contract to Purchase,
Petitioners Exhibit B – Residential Broker Price Opinion report with photographs,
Respondent Exhibit 1 – Form 131 Petition,
Respondent Exhibit 2 – Form 130 Petition,
Respondent Exhibit 3 – Letter from the township assessor to the taxpayer,
Respondent Exhibit 4 – Form 115, Notification of Final Assessment,
Respondent Exhibit 5 - PTABOA Record of Hearing,
Respondent Exhibit 6 - Subject property record card,
Respondent Exhibit 7 - MLS information for the subject and comparables,
Respondent Exhibit 8 – Subject sales disclosure form dated August 15, 2003,
Respondent Exhibit 9 – Subject sales disclosure form dated December 18, 2003,
Board Exhibit A - Form 131 Petition with attachments,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Hearing Sign-In Sheet,
 - d) These Findings and Conclusions.

Analysis

15. 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.
16. 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 (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. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A* (incorporated by reference at 50 IAC 2.3-1-2) (GUIDELINES). 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) 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 v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4.

Consequently, a party relying on market data to establish the market value-in-use of a property must provide some explanation as to how the market data demonstrates, or is relevant to, the value as of January 1, 1999. *Id.*

- c) The assessment should be for what physically existed on March 1, 2002. The record establishes the property sold for \$48,000 in November 2001. The Petitioners purchased the parcel for \$25,000 in August 2003. After renovations, the Petitioners sold the property for \$59,500 in December 2003. The Petitioners also presented a 2003 MLS listing for the property showing a listing price of \$27,900, and a Residential Broker Price Opinion dated July 15, 2003, showing an “as is” market value of \$26,000. Neither party linked any of these values to the required valuation date, January 1, 1999, or the assessment date, March 1, 2002. Therefore, this evidence has no probative value in determining the assessed value. *See Long*, 821 N.E.2d at 471.
- d) Nevertheless, the evidence supports a value of \$48,000 on November 2, 2001. This value is greater than the current assessment. The 2001 MLS listing described the subject property as a “very nice home” in “move in condition” with new carpet, new paint, and a bathroom with new flooring, ceiling, and vanity. *Resp’t Ex. 7*. The condition apparently deteriorated significantly before the Petitioners purchased the property. That change could account for the reduced price paid by the Petitioners, but it does not prove the condition of the property on the assessment date. The physical condition of the property on March 1, 2002, is not established by any probative evidence. Furthermore, the evidence fails to establish any relationship to value as of January 1, 1999.
- e) The Petitioners failed to establish a prima facie case. Where the Petitioners have not supported their claim with probative evidence, the Respondent’s duty to support the assessment 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

17. The Board finds in favor of the Respondent. There is no change to the assessment.

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>.