

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

Petition #: 79-112-03-1-4-00001
Petitioner: Stonecroft Group LLC
Respondent: Perry Township Assessor (Tippecanoe County)
Parcel #: 112-01700-0315
Assessment Year: 2003

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 Tippecanoe County Property Tax Assessment Board of Appeals (the PTABOA) by written document on March 20, 2004.
2. The Petitioner received notice of the decision of the PTABOA on March 22, 2005.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on April 20, 2005. Petitioner elected to have this case heard in small claims.
4. The Board issued notice of hearing to the parties dated April 3, 2006.
5. The Board held an administrative hearing on May 16, 2006, before the duly appointed Administrative Law Judges (the ALJs) Dalene McMillen and Carol Comer.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: John Johantges, Property Tax Group I
 - b. For Respondent: Nancy Moore, Tippecanoe County Assessor
Ginny Whipple, County Representative

Facts

7. The subject property is a 616 square foot one-story frame building on 77.457 acres of land located at 1850 Stonecroft Place, Lafayette, in Perry Township, Tippecanoe County.

8. The ALJs did not conduct an on-site visit of the subject property.
9. The PTABOA determined the assessed value of the subject property to be \$43,600 for the land and \$22,500 for the improvements, for a total assessed value of \$66,100.¹
10. The Petitioner did not specifically request assessed values on the Form 131 petition.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the structure is over-valued based on its construction costs. *Johantges testimony*. In support of this contention, the Petitioner submitted a letter dated March 28, 2004, from Jeff Pence wherein it states, "I remember (Mr. Pence) we spent less than \$5,000 total" and that the total "was under \$10,000 for three years . . . including other repair & maintenance amounts." *Petitioner Exhibit A*. The Petitioner also submitted two itemized statements of expenses, one from 1991 and the other from 1993 showing the amounts of \$1,947 (1991) and \$2,240 (1993) charged for the property. *Johantges testimony; Petitioner Exhibit C*.
 - b. The Petitioner also contends that the subject improvement should be classified as a 616 square foot out-building or utility shed in "fair" condition rather than a residence. *Johantges testimony*. In support of this contention, the Petitioner submitted one exterior and two interior photographs of the subject structure. *See Petitioner Exhibit D*. The Petitioner argues that the structure was constructed of mostly salvage materials from a barn, that it has no well or septic, and no heat, water or electricity. *Johantges testimony; Petitioner A, B & E*. The Petitioner further claims that the structure is used for storage, church retreats and picnics. *Id.; Petitioner Exhibit E*.
 - c. Finally, the Petitioner argues that the structure is not built on a crawl space. *Johantges testimony*. In support of this contention, the Petitioner submitted an exterior photograph to show that the structure is constructed on a pole frame and that the structure has no concrete footers normally found in the construction of a crawl space. *Id.; Petitioner Exhibit D*.
12. Summary of Respondent's contentions in support of the assessment:

¹ The Form 115, on which the PTABOA final determination is issued, indicates the assessed value of the land is \$52,100 and the improvements is \$22,500 for a total assessed value of \$74,600; however the Respondent testified that after the Form 115 was issued the taxpayer filed a Correction of Error-Form 133 to correct an error in the calculation of the land, subsequently the township corrected the error to the land and the value was reduced from \$52,100 to \$43,600. The parties stipulated to that point. The Board concludes the land value was changed by a Correction of Error-Form 133 after the issuance of the Form 115 by the PTABOA, therefore the land value as of March 1, 2003 is \$43,600.

- a. The Respondent contends that the subject property is correctly assessed at \$43,600 for the land and \$22,500 for the improvements, for a total assessed value of \$66,100. *Whipple testimony; Respondent Exhibit 1.*
- b. The Respondent contends that the Petitioner's construction cost should be given little weight. *Whipple testimony.* The Respondent argues that the Petitioner's "construction cost" documentation is for repairs to the subject property and the documents do not detail the items being invoiced or state that they relate to any construction costs. *Id.; Petitioner Exhibit C.* The Respondent also contends that the Petitioner did not include the cost of labor in the construction of the structure. *Whipple testimony.*
- c. The Respondent asserts that the Petitioner's photographs of the subject property show the structure being used for residential type activities. *Whipple testimony; Petitioner Exhibit D.* The Respondent contends that the photographs show a kitchen table and chairs, kitchen cabinets, and a couch. *Id.* The Respondent further asserts that the photographs show a structure of primitive construction but residential construction nonetheless and that its market value-in-use is as a residential property. *Id.* The Respondent testified that deductions had been made for the lack of heat, plumbing, etc. *Whipple testimony; Respondent Exhibit 1.* The Respondent further argues that the structure is being correctly assessed as an inferior quality residential structure and that the County recognized this when the County took away the "homesite" from the property. *Id.*
- d. Finally, the Respondent admits that the Petitioner's testimony with regard to the lack of a crawl space is accurate. *Whipple testimony.* The Respondent agreed that the crawl space area should be removed from the property record card (PRC). *Moore testimony; Whipple 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 and CD labeled STB 5183 and 79-112-03-1-4-00001, respectively,
 - c. Exhibits:
 - Petitioner Exhibit A - Letter from Jeff Pence to John Johantges, dated March 28, 2004,
 - Petitioner Exhibit B - E-mail from Corinne Pence to Property Tax Group I, dated February 18, 2004,

Petitioner Exhibit C - Itemized cost statements from Schedule F for 1991 and 1993,

Petitioner Exhibit D - One exterior and two interior photographs of the subject property,

Petitioner Exhibit E - Petitioner's argument,

Respondent Exhibit 1 - Subject PRC,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet,

Board Exhibit D – Stipulation Agreement,

- 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 Petitioner 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 Petitioner contends that the assessment on the subject property is over-valued. *Johantges testimony*. In support of this contention, the Petitioner argues that the assessment of the improvements exceeds the construction cost of the

structure. *Id.* Further, the Petitioner contends the improvement is improperly classified and was assessed with a crawl space in error.² *Id.*

Construction Costs

- b. The Petitioner alleges that the subject structure was over-valued based on the construction costs of the structure. *Johantges testimony*. The Petitioner argues that the subject structure was built from materials salvaged from a barn and that the total cost of construction was under \$5,000. *Id.*; *Petitioner Exhibits A and C*.
- c. Real property in Indiana is assessed on the basis of its “true tax value”. *See* IC § 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 similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. “Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles.” *Id.*
- d. 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 v. Wayne Township Assessor*, 821 N.E.2d 471 (Ind. Tax Ct. 2005); MANUAL at 4.
- e. Here, the Petitioner seeks to use construction costs to show that the assessed value of the subject structure is incorrect. In support of this contention, the Petitioner submitted a letter and two itemized cost schedules. *See Petitioner Exhibits A and C*. According to the 2002 REAL PROPERTY ASSESSMENT GUIDELINES (the GUIDELINES), “The cost to be estimated by the assessor is made up of all the direct labor and material costs plus the indirect expenses required to construct an improvement. Examples of direct costs include labor, materials, supervision, utilities used during construction, equipment rental. Indirect cost examples are building permits, fees, insurance, taxes, construction interest, overhead, profit, and professional fees such as those charged by architects, engineers, consultants,

² At the hearing, the parties agreed that the subject structure does not have a crawl space and, therefore, the valuation of the crawl space should be removed from the assessment of the subject structure. *Johantges testimony; Moore testimony; Board Exhibit D*. The agreement between the County and the Petitioner is a decision among the parties and the Board will accept the agreement. The Board’s acceptance of the agreement should not be construed as a determination regarding the existence of any crawl space as agreed to by the parties.

and attorneys. The cost tables contain both direct and indirect costs.” GUIDELINES, intro. at 1. It is critical, however, that the actual construction costs represent all costs (direct and indirect) regardless of whether or not they were realized, as in the case of do-it-yourself construction. *Id.* Thus, while a taxpayer may establish a prima facie case based upon construction cost information, that information must include all costs. For example, the cost of purchasing the property and utilities used during construction are part of the costs of constructing the subject property. Further, if the Petitioner acted as their own contractor, a “contractor fee” would need to be added to the construction costs to accurately reflect market value-in-use.

- f. The Board finds that the Petitioner’s letter and itemized cost statements are insufficiently detailed to be probative of the structure’s value. *See Petitioner Exhibits A and C.* The Petitioner’s itemized statements indicate charges made to credit cards or stores and amount charged to that account, but no explanation as to what these charges/purchases represented. *Id.* In addition, the Petitioner’s construction costs did not include information regarding administrative and permit costs for the construction. Further, no evidence is offered as to contractor costs, labor, mark-up or other costs that would reflect the market value of the property. Finally, there is no complete accounting of the Petitioner’s costs. The fact that Mr. Pence was not at the hearing to answer questions regarding his letter, renders the letter little more than a conclusory statement with no probative value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). Finally, assuming *arguendo* that the Petitioner had provided an acceptable cost approach analysis, the Petitioner failed to explain how the purported construction costs from 1991 and 1993 are relevant to the January 1, 1999, valuation date pursuant to *Long*.
- g. 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. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Improvement Classification

- h. The Petitioner further contends that the structure should be valued as an out-building or utility shed rather than as a single story dwelling. *Johantges testimony.* According to the Petitioner, the structure is constructed from rough salvaged material, has no utilities, septic or water and is used for storage, church retreats and picnics. *Id.*; *Petitioner Exhibit E.*

- i. A dwelling unit is defined as, “Any room or group of rooms designed as the living quarters of one family or household, equipped with cooking and toilet facilities, and having an independent entrance from a public hall or from the outside.” GUIDELINES, Glossary at 6. A one-story dwelling has the following characteristics: all rooms are on one floor; all rooms are located below the square of the house at the eave line; and low-pitch roof with a slope of about 1/6. GUIDELINES, ch. 3 at 11. A cottage is defined as, “A one-story or two-story dwelling unit of small size and humble character.” GUIDELINES, Glossary at 4.
- j. The Petitioner failed to direct this Board to any statute or regulation regarding out-buildings or utility sheds. Nor did the Petitioner provide this Board with any definition of an out-building or utility shed. The Petitioner simply submitted interior and exterior photographs and written testimony regarding the property’s lack of amenities. *See Petitioner Exhibit D*. Petitioner’s mere reference to photographs is not probative evidence. *See Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999) (stating that references to photographs or State Board regulations, without further explanation, do not qualify as probative evidence). Similarly, the Petitioner’s conclusory statements that the structure is an out-building are not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- k. Even if the Board were to accept the Petitioner’s argument regarding the classification of the structure being incorrect, we find that the Petitioner has not presented any evidence to show that the assessment is not a reasonable measure of the property’s true tax value. *See Ind. Admin. Code tit. 50, r. 2.3-1-1 (d) (2002 Supp.)* (“failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of ‘True Tax Value [.]’”). The Petitioner’s argument regarding a strict application of the GUIDELINES is not sufficient to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) (“Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor’s assessed value does not accurately reflect the property’s market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”) Thus, a Petitioner must show, through the use of market-based evidence, that the assessed value does not accurately reflect the property’s market value-in-use. Here, the Petitioner did not. Therefore, the Petitioner has failed to raise a prima facie case.
- o. Where Petitioner has not supported the claim with probative evidence, Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to provide sufficient evidence to establish a prima facie case as it pertained to construction costs and the classification of the subject structure. The Board finds in favor of the Respondent on these issues. The parties agreed that the structure was improperly assessed as having a crawl space. The Board accepts this agreement and finds that the value of the crawl space should be removed from the property's assessment.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to remove the value of the crawl space based upon the parties' agreement.

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>>.