INDIANA BOARD OF TAX REVIEW

Final Determination
Findings and Conclusions
Lake County

Petition #: **45-001-02-1-5-00914**
Petitioners: **Amy J. LeJeune & Kevin E. Stonehill**
Respondent: **Department of Local Government Finance**
Parcel #: **001-25-47-0386-0003**
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioners and the Respondent on February 13, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was $93,700 and notified the Petitioners on April 1, 2004.

2. The Petitioners filed a Form 139L on April 29, 2004.

3. The Board issued a notice of hearing to the parties on October 27, 2004.

4. A hearing was held on December 1, 2004, in Crown Point, Indiana before Special Master Peter Salveson.

Facts

5. The subject property is located at 8441 Oak Avenue, Gary, in Calumet Township.

6. The subject property is a single-family home on 0.258 acres of land.

7. The Special Master did not conduct an on-site visit of the property.

8. The DLGF determined the assessed value of the subject property to be $29,000 for the land and $64,700 for the improvements for a total assessed value of $93,700.

9. The Petitioners did not request an assessed value in their Form 139L. At hearing, the Petitioners requested a total assessed value of $4,834.

10. Amy J. LeJeune, one of the owners of the property, and Joseph Lukomski, Jr., representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:

    a. The Petitioners contend that the land value is overstated based on the assessed value of lots in area and comparable land sales. *Petitioner Exhibits 5, 6, and 7.*

    b. The base living area of the dwelling is incorrect. According to Petitioners, it should be 1,627 square feet if the enclosed porch is included. There is no recreation room and the masonry stoop was removed in January 2002. *LeJeune testimony. Petitioner Exhibits 8 and 9.*

    c. The Petitioners further allege that the condition of the property is uninhabitable. The walls are 2' x 4' studs; there is no insulation, no working plumbing fixtures, and no furnace or hot water heater hook-ups. *LeJeune testimony. Petitioner Exhibits 8 and 11.*

    d. The Petitioners also testified that the neighborhood code and the base rate per front foot are incorrect according to the Calumet Township Assessor's office and by comparison with the properties on Wayne and Warren. *LeJeune testimony. Petitioner Exhibits 5, 6, and 11.*

    e. Finally, Petitioners contend that sales of ranches from NIAR and the assessor's website show a range from $53.86 to $93.78 per square foot. The same sales show a range per front foot from $189 to $3,070. This is inconsistent. *Lejeune testimony. Petitioner Exhibit 9.*

    f. The property was purchased from a bank in 2002 for $95,000. *LeJeune testimony.*

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

    a. The property record card shows that the values for interior finish and for the plumbing fixtures have been deducted, although the deduction for plumbing should be $3,500, not $3,200 as shown on the property record card. *Lukomski testimony. Respondent Exhibit 2.*

    b. The Respondent contends that comparable sales for improved properties support the current valuation of the improved parcel. *Lukomski testimony. Respondent Exhibit 4.*

    c. The Respondent stated that the base living area of the subject property should match the drawing on the property record card and the recreation room and masonry stoop should be removed. As far as the grade and condition are concerned, he has not seen the property and is not qualified or authorized to change these. *Lukomski 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. #900.

    c. Exhibits:

        Petitioner Exhibit 1: Notice of Reappraisal
        Petitioner Exhibit 2: Petition for Review Form 130[1]
        Petitioner Exhibit 3: Communication Log
        Petitioner Exhibit 4: Notice of Hearing
        Petitioner Exhibit 5: Comparable Property – Wayne St.
        Petitioner Exhibit 6: Comparable Property – Warren St.
        Petitioner Exhibit 7: Map of Subject and Comparable Properties
        Petitioner Exhibit 8: Photographs of Subject Property
        Petitioner Exhibit 9: Improvement Data and Computations
        Petitioner Exhibit 10: Chart of Sales of Comparable Properties
        Petitioner Exhibit 11: Notes from Calumet Assessor's Meeting

        Respondent Exhibit 1: Form 139L Petition
        Respondent Exhibit 2: Subject property record card
        Respondent Exhibit 3: Subject photograph
        Respondent Exhibit 4: Comparable Sales Sheet
        Respondent Exhibit 5: Comparable property record cards and photographs

        Board Exhibit A: Form 139 L 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, laws, and regulations are:

    a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).

[1] This is actually a Form 139 Petition.

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. Wash. 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 Petitioners failed to raise a prima facie case that the subject property is over-assessed. However, based on the agreement of the parties, the assessed value of the dwelling should be reduced. This conclusion was arrived at because:

a. The Petitioners contend that the subject property is over-valued. Petitioners land is currently assessed for $29,000. Petitioners contend that the value of the land should be $4,834. *LeJeune testimony.* In support of this, Petitioners presented evidence of the sale of two lots. The first property, 1002 Wayne Street, is a 175x120.64 vacant lot that sold for $23,000 in 1999. *Petitioner Exhibit 5.* The second property, located at 1083 Warren Street, is a 93'x120.64' vacant lot that sold for $15,000 in 1999. *Petitioner Exhibit 6.* The assessment of real property includes land, buildings and fixtures situated on the land and appurtenances to the land. THE REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES), Chap. 1, p. 2. Property is assessed according to a base rate established for land by class in each neighborhood. GUIDELINES, Chap. 2, p. 9.[2] The established value of land "represents the January 1, 1999 market value in use of improved land." *Id.* at 7. Thus, although land is valued according to a base rate, it is based on market value principles. For vacant property to be comparable to improved lots to determine land value, however, the vacant property must be developed for improvement. Thus, all utilities must be in place and "comparable" vacant lots must have the same or similar access, sidewalks and street lighting as the subject property. Alternatively, the Petitioner must provide evidence of the costs of such improvements to the vacant lots to make the land comparable. Further, the Indiana Supreme Court has held that whether properties are "comparable" depends on many factors including size, shape, topography, accessibility and use. *Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Here, Petitioners provided no evidence of the shape, topography or use of the purported "comparable" properties. Nor did Petitioners testify that the properties were developed for improvement or what the

[2] Petitioners further testified that township assessor claimed that the property is in the wrong neighborhood. However, they provide no support for this statement. Further, Petitioners do not provide evidence as to the neighborhood they contend is the "correct" neighborhood. It is insufficient for Petitioners to identify an error in the assessment. They must also prove, by a preponderance of the evidence, 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).

cost of adding utilities and other improvements to the vacant lots would have been. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). Thus, Petitioners failed to raise a prima facie case that the land at the subject property is over-valued. 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 Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

b. Petitioners also allege that the two purported comparables and nine additional sales prove that assessments for the entire area were incorrect. *LeJeune testimony; Petitioners Exhibits 5, 6 and 10.* Petitioners contend that 1002 Wayne Street was assessed for only $9,400 but sold for $23,000.[3] Petitioners also contend that 1083 Warren Street sold for $15,000, but was assessed for only $7,500.[4] Similarly, Petitioners identified nine additional sales that uniformly sold in excess of their assessed value. *Id.* The evidence provided in Petitioners' exhibits suggests that individual non-lake front property sold for 181%, 113% and 214% of assessed value and various lake front properties assessed for between 168% and 271% of their assessed values.[5] *Petitioner Exhibit 10.* Far from proving that Petitioners' property is over-assessed, however, Petitioners' evidence suggests the contrary - that the neighborhood is under-assessed. To establish a prima facie case that a property has not been assessed in a uniform and equal manner, a taxpayer must present probative evidence demonstrating that comparable properties are assessed and taxed differently. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). However, when a taxpayer introduces evidence of allegedly comparable properties, the taxpayer must explain how those properties are comparable to the subject property, including factors such as "size, shape, topography, accessibility and use." *Id.* Here, the Petitioners made no attempt to compare the subject property to any of the other properties at issue, other than to state that the nine properties were "all ranch style homes." *LeJeune testimony.* Further it would require far more than evidence of nine sales in a neighborhood to call into question the validity of the reassessment of an entire neighborhood. Thus, Petitioners failed to raise a prima facie case that their property was over-valued and fell far short of proving that the assessment as a whole was in error.

c. The subject property assessed for $93,700 and sold for $95,000 in 2002. *LeJeune testimony; Petitioner Exhibit 1.* The sale of a subject property is often the most

[3] However, the property tax information provided by Petitioners for parcel number 25-45-0253-0027, although purportedly 1002 Wayne Street, is a lot with an effective frontage of 25' and an effective depth of 125'. Thus, the 1002 Wayne Street property encompasses several parcels for which information was not provided by Petitioners.

[4] Again, the information Petitioners provided, although purportedly 1083-1085 Warren Street, is a lot with an effective frontage of 25' and an effective depth of 125'. Thus, the 1083 Warren Street property also appears to encompasses several parcels for which information was not provided by Petitioners.

[5] These figures were determined by comparing the assessed values on various properties reported by Petitioners with the properties' reported sales values as provided by Petitioners.

compelling evidence of its market value. In this case, the Petitioners bought the subject property in 2002 for slightly more than the amount for which it is assessed and almost twenty times the amount for which the Petitioners contend the property should be assessed. Real estate is to be valued as of January 1, 1999 for the 2002 general reassessment. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter "MANUAL"). However, absent evidence to the contrary, the Board will not assume that the subject property appreciated twenty-fold between January 1, 1999, and the date that the Petitioners bought the property. Although not itself probative of the assessed value of the subject property, the $95,000 that Petitioners paid for the property does tend to rebut Petitioners' claimed value of $4,834.

d. The Petitioners also argue that, because the property is being renovated and is presently unlivable, the dwelling should be assessed as having no value. *LeJeune testimony*. Thus, reason the Petitioners, the dwelling is essentially valueless because it is not currently being used. *LeJeune testimony*. The Petitioners are mistaken. 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." MANUAL at 2. In order to satisfy requirements imposed by the courts and legislature, "True Tax Value uses fair market value data of property wealth, but derives values that are not based strictly on market value." *Id.* at 3. Thus, in markets where "sales are not representative of utilities, either because the utility derived is higher than indicated sale prices, or in markets where owners are motivated by non-market factors such the maintenance of a farming lifestyle even in the face of a higher use value for some other purpose, true tax value will not equal value in exchange." *Id*. at 2. However, "[i]n markets where there are regular exchanges, so that ask price and offer price converge, true tax value will equal value in exchange." *Id.* Here, the evidence demonstrates that the Petitioners receive *some* utility from the subject property and that a similar user would also receive utility. The Petitioners testified that the subject property is being completely renovated to serve as Ms. LeJeune son's residence upon completion. The fact that the Petitioners are not currently using the property results from a voluntary decision to renovate the property and does not negate the fact that the Petitioners receive utility from the property. If the Board were to adopt the Petitioners' position, a taxpayer could avoid taxation on his property simply by vacating the property on the assessment date every year. Such a result clearly is not intended by the statutes and administrative regulations governing the assessment of real property.

e. Finally, Petitioners allege that certain errors were made in the assessment of the subject property. The Petitioners dispute the condition of the property because the property is "unlivable." The GUIDELINES recognize that similar structures tend to depreciate at about the same rate over their economic lives. GUIDELINES, app. B at 6. However, the manner in which owners maintain structures can influence their rate of depreciation. *Id*. Consequently, the GUIDELINES require assessing officials to assign a condition rating to each structure they assess. *Id*. at 6-7. The condition rating, in

turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of "Average" depreciates at a slower rate than does a structure with a condition rating of "Fair." *Id*. at 6-13. The GUIDELINES provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. These descriptions are based largely upon a comparison of the subject structure to other structures in its neighborhood. For example, a structure in "Average" condition, "has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood." *Id*. at 7. Conversely, a structure in "Fair" condition, "suffers from minor deferred maintenance and demonstrates less physical maintenance that the majority of structures within the neighborhood." *Id*. Here, the Petitioner identified several problems with the subject improvements that might be viewed as the result of deferred maintenance, such as rotting wood, the house being gutted to its studs and the lack of plumbing fixtures. *LeJeune testimony; Petitioner Exhibit 8.* While this may be the current condition of the dwelling during renovation, the Petitioners did not present any evidence regarding the condition of the structure at the time of the assessment, March 1, 2002. Therefore, the Petitioner did not establish a prima facie case that the subject property was entitled to a lower condition rating under the GUIDELINES.[6] Despite this fact, several changes had already been made to the property record card, including that the entire house was "unfinished interior" resulting in a $34,000 reduction in assessed value and a $3,200 credit for the dwelling having no plumbing fixtures.[7] In addition, the Respondent agreed that additional changes should be made. According to the Respondent, the credit for the dwelling's lack of plumbing fixtures should be corrected and the recreation room and masonry stoop should be removed as neither exists presently.[8]

Conclusion

16. The Petitioner failed to make a prima facie case for a reduction in the assessed value of the property. However, based on the parties' agreement, the Petitioners should be credited $3,500 for the dwelling having no plumbing fixtures rather than $3,200 and the recreation room and the masonry stoop should be removed from the assessment of the subject property.

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[6] Petitioners alleged that Respondent agreed that the property was in poor condition. However, this is an inaccurate characterization of the testimony. While Respondent agreed that the property did not appear to be "average," that testimony was based on evidence of the condition of the property during renovation and has no bearing on the determination of the condition of the subject property as of the assessment date March 1, 2002. Respondent also stated he was not authorized to agree that the condition of the property should be lower. Further, since Petitioner did not raise a prima facie case that the condition of the dwelling was "poor" as of the assessment date, Respondent's duty to support the assessment did not arise. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

[7] The property record card reflects a credit of $3,200 for the lack of plumbing fixtures, however, as Respondent pointed out in the hearing, this should be $3,500 credit (-5 x 700).

[8] The Petitioners also dispute the size of their property "based on the measurements on the property record card." *LeJeune testimony.* Petitioners, however, are demonstrably incorrect. The area based on the PRC drawing is correctly identified as 1742 sq.ft.

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**>.