

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

Petition: 41-004-06-1-5-00001
Petitioners: Thomas Crow & Kimberly Phelps
Respondent: Johnson County Assessor
Parcel: 41-12-33-014-044.000-002
or 9100-33-21-060/00
Assessment Year: 2006

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 Johnson County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130.
2. The PTABOA mailed its decision on December 18, 2007.
3. The Petitioners appealed to the Board by filing a Form 131 on February 1, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 3, 2009.
5. Administrative Law Judge Kay Schwade held the Board’s administrative hearing on April 30, 2009. She did not conduct an inspection of the property.
6. The following persons were present and sworn as witnesses at the hearing:
For the Petitioners—Milo Smith and Kimberly Phelps,
For the Respondent—Michael Watkins.

Facts

7. The subject property is located at 502 Center Cross Street in Edinburgh.
8. The PTABOA determined the assessed value is \$14,200 for land and \$75,900 for improvements (total \$90,100).
9. The Petitioners requested 95% obsolescence, which would yield a total assessed value of \$4,500.

Contentions

10. Summary of the Petitioners' case:
 - a. True tax value is defined as 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. The subject property is vacant and produces no income. Another user might have kept the subject property open, but the Petitioners choose to close it because they were not making a profit from it. *Smith testimony*.
 - b. Before closing, the subject property's monthly rent rate had been \$600 per side, or \$1,200 total. *Phelps testimony*.
 - c. The Petitioner's Form 1040 Schedule E, Col. C, (Schedule E) shows that the subject property had \$4,100 in rental income for 2004. The Petitioner's Schedule E for the years 2005, 2006, and 2007 show that the subject property had no rental income. *Smith testimony*.
 - d. The subject property should receive 95% obsolescence depreciation, as awarded in *Canal Square Limited Partnership v. State Bd. of Tax Comm'rs*, because it is not producing any rental income for the property owners. The subject property's assessed value should be \$4,500. *Smith testimony*.
 - e. The cars shown in the parking lot of the subject property in Respondent's Exhibit B belong to a neighboring property. *Phelps testimony*.
11. Summary of the Respondent's case:
 - a. The assessor was unaware of the subject property's rental income. The lack of income may or may not affect the assessed value. *Watkins testimony*.
 - b. The aerial photographs show cars parked in the subject property's parking lot. *Watkins testimony; Resp't Ex. A, B*.

Record

12. The official record contains the following:
 - a. The Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1A – Summary of Contentions (offered, not admitted),
Petitioner Exhibit 1 – Introduction from the 2002 Real Property Assessment Manual (offered, not admitted),
Petitioner Exhibit 2 – Copy of Schedule E from Kimberly Phelps's 2004 Form 1040 (offered, not admitted),

Petitioner Exhibit 3 – Copy of Schedule E from Kimberly Phelps’s 2005 Form 1040 (offered, not admitted),
Petitioner Exhibit 4 – Copy of Schedule E from Kimberly Phelps’s 2006 Form 1040 (offered, not admitted),
Petitioner Exhibit 5 – Copy of Schedule E from Kimberly Phelps’s 2007 Form 1040 (offered, not admitted),
Petitioner Exhibits 6 through 11 – Not offered,
Petitioner Exhibit 12 – *Canal Square Ltd. Partnership v. State Bd. of Tax Comm’rs*, April 24, 1998, (offered, not admitted),
Respondent Exhibit A – Aerial photograph of the subject property,
Respondent Exhibit B – Aerial photograph of the subject property,
Board Exhibit A – Form 131 Petition for Review of Assessment with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,

d. These Findings and Conclusions.

Objection

13. The Respondent objected to the Petitioners’ exhibits and asked that they be excluded from the record because the Petitioners failed to provide copies prior to the hearing. Mr. Watkins requested copies of the evidence via email on April 17, 2009. Mr. Smith admitted that he did not provide copies prior to the hearing—on Saturday, April 25, 2009, at 4:29 p.m. Mr. Smith sent an email that included the following list of exhibits, but no copies:

- The “2002 Real Property Assessment Manual” and “Real Property Assessment Guidelines for 2002–Version A”
- “Petitioner’s Exhibit 1” (The subject Property Record Card)
- Kim’s tax papers

14. The Board’s small claims procedural rules specifically address providing copies of exhibits:

(d) If requested by any party, the parties shall provide to all other parties copies of any documentary evidence ... intended to be presented at the hearing at least five (5) business days before the small claims hearing.

(f) Failure to comply with subsection (d) may serve as grounds to exclude evidence or testimony that has not been timely provided.

52 IAC 3-1-5. Five business days before the hearing would have been Thursday, April 23. Therefore, Mr. Smith’s response on April 25 was late and it was inadequate because copies of the exhibits were not provided. This point is particularly significant in regard to the “tax papers” (Schedule E from 2004-2007 income tax returns) that were offered as Exhibits 2, 3, 4, and 5. Mr. Watkins argued that he had no opportunity to examine the

documents prior to them being offered at the hearing. In response, Mr. Smith noted his involvement with the legislature during that time and argued that the Petitioners should not suffer for his mistake. He also pointed out that the rule provides only that evidence “may” be excluded.

15. While exclusion is permissive under the rule, this case presents circumstances where that sanction is appropriate. The Petitioners’ exhibits are therefore excluded from the record. (Exclusion of Exhibit 1, page 2 from the Assessment Manual, and Exhibit 12, the Tax Court’s *Canal Square* decision, is of no consequence because even though such authorities should be brought to the Board’s attention, they do not need to be proved. Similarly, exclusion of Exhibits 2, 3, 4, and 5 is of no real consequence to the outcome of this case because the fact that the Petitioners were getting no rent from the subject property was not disputed.)

Analysis

16. 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”).
17. The Petitioners failed to prove that the current assessment is wrong or what a more accurate assessment might be. This conclusion was arrived at for the following reasons:
 - a. Real property is assessed on the basis of 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); REAL PROPERTY ASSESSMENT 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. MANUAL at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to 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. But the Petitioners did not present any such evidence.

- b. A taxpayer must show that the assessment is not a reasonable measure of market value-in-use in order to prevail. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) (stating that failure to comply with the Guidelines does not in itself show the assessment is not a reasonable measure of value); *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007)(explaining that beginning in 2002, Indiana overhauled its property tax system—the new benchmark is market value-in-use. “As a result, the new system shifts the focus from examining how the regulations were applied ... to examining whether a property’s assessed value actually reflects the external benchmark of market value-in-use.”); *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006) (explaining that a taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana’s new assessment system).
- c. The Petitioners failed to present probative evidence about what the market value-in-use of their property really is. In fact, they provided almost no facts about the property.¹ They merely claimed that the subject property should get 95% obsolescence depreciation because it was not generating any profit and they decided to close it. The Petitioners did not even attempt to explain why the property failed to make a profit—there might be many reasons. The Petitioners did not present any evidence about what might be a cause of obsolescence and they did not establish how they quantified an amount at 95% obsolescence. Although the Petitioners cited the decision in *Canal Square v. State Bd. of Tax Comm’rs*, 694 N.E.2d 801, (Ind. Tax Ct. 1998) as support for their claim, they failed to offer any cogent reasons or explanation for that position. And the case that Canal Square presented has no resemblance to this one. Consequently, *Canal Square* provides no substantial support for the Petitioners’ claim. Without any explanation showing how any purported loss in value equated to a 95% reduction in assessment, conclusory statements about obsolescence are not probative evidence. The Petitioners did not make a prima facie case.
- d. The Petitioners failed to present a prima facie case that their property was assessed incorrectly. Where the Petitioners have not supported their 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).

¹ The address is 502 Center Cross Street in Edinburgh. The Petitioners had rented it for \$600 per side before they decided to close. Respondent also offered two aerial photographs that show the property. *Nothing* else about it was established.

Conclusion

18. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED:

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>