

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

Petition: 41-004-06-1-5-00002
Petitioners: Thomas Crow & Kimberly Phelps
Respondent: Johnson County Assessor
Parcel: 41-12-33-014-045.000-002
or 9100-33-21-061/00
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,¹
For the Respondent—Michael Watkins.

Facts

7. The subject property is located at 500½ Center Cross Street in Edinburgh.
8. The PTABOA determined the assessed value is \$5,700 for land and \$80,500 for improvements (total \$86,200).
9. The Petitioners requested 95% obsolescence, which would yield a total assessed value of \$4,310.

¹ Kimberly Phelps did not testify during this hearing.

Contentions

10. A 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 except for approximately 250 square feet used by one of the owners, Thomas Crow, as a personal residence. The subject property produces no income. *Smith testimony.*
 - b. The Petitioners' Business Tangible Personal Property Returns for the years 2004 through 2009 have a note attached that their video rental business closed in May 2004. After the business closed, the Petitioners continued to file personal property returns because they still had inventory that they were unable to sell. *Smith testimony.*
 - c. The Petitioners' Form 1040, Schedule E, Col. A, shows that the subject property had no rental income for 2004. For 2005, 2006, and 2007 they show the same thing. *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 producing no rental income. The subject property's assessed value should be \$4,310. *Smith testimony.*

11. A summary of the Respondent's case:
 - a. A similar user might be renting the property out. *Watkins testimony.*
 - b. The aerial photographs of the subject property show a car parked in the parking lot. They might still be in business. *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 Exhibit 6 – 2004 Personal Property Return (offered, not admitted),
Petitioner Exhibit 7 – 2005 Personal Property Return (offered, not admitted),
Petitioner Exhibit 8 – 2006 Personal Property Return (offered, not admitted),
Petitioner Exhibit 9 – 2007 Personal Property Return (offered, not admitted),
Petitioner Exhibit 10 – 2008 Personal Property Return (offered, not admitted),
Petitioner Exhibit 11 – 2009 Personal Property Return (offered, not admitted),
Petitioner Exhibit 12 – *Canal Square Ltd. Partnership v. State Bd. of Tax Comm’rs*, April 24, 1998 (offered, not admitted),
Respondent Exhibit A – Not offered,
Respondent Exhibit B – Aerial photograph of the subject property,
Respondent Exhibit C – 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.
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.

15. The Petitioners failed to comply with the requirement. Mr. Smith merely pointed out that the rule provides evidence “may” be excluded, but exclusion is not required.

16. While exclusion is permissible 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, 5, 6, 7, 8, 9, 10, and 11 is of no real consequence to the outcome of this case because the fact that the Petitioners were getting no income from the subject property was not disputed.)

Analysis

17. 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”).
18. 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. They provided only a few facts about the property.² They merely claimed that the subject property should get 95% obsolescence depreciation because the video business closed and they are getting no income from this property. The Petitioners did not even attempt to explain why the business closed—there might be many reasons. Furthermore, they did not explain why the property is only being used as Mr. Crow’s residence. 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 the 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.
- c. 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).

Conclusion

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

² The address is 500½ Center Cross Street in Edinburg. The Petitioners had a video rental business there until May 2004. The business has been closed since then. Currently Petitioner Crow is using about 250 square feet of the subject property as his residence. The rest of the property is vacant. Respondent also offered two aerial photographs that show the property. *Nothing* else about it was established.

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>