

REPRESENTATIVE FOR PETITIONERS:
John Martin Smith, Thompson Smith, P.C.

REPRESENTATIVE FOR RESPONDENT:
F. John Rogers, Thompson & Rogers

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lewis and Loretta Lengacher,	)	Petition No.:	02-062-06-1-5-02269
)		
Petitioners,	)	Parcel No.:	02-04-20-400-002.000-062
)		
v.	)	County:	Allen
)		
Allen County Assessor,	)	Township:	Springfield
)		
Respondent.	)	Assessment Year:	2006

Appeal from the Final Determination of the
Allen County Property Tax Assessment Board of Appeals

April 22, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The parties to this assessment appeal have differing opinions about how the lack of modern amenities affects the market value-in-use of an Amish-style home. But the

taxpayers bore the burden of proof. And neither their reliance on an obsolescence calculation from another property's appraisal nor their claim that the subject property should be valued based on its actual construction costs sufficed to meet that burden. The first was factually unpersuasive, and the second did not comply with relevant administrative regulations or generally accepted appraisal principles.

PROCEDURAL HISTORY

2. On April 9, 2007, Lewis and Loretta Lengacher filed notice with the Allen County Assessor contesting the subject property's 2006 assessment. On March 10, 2008, the Allen County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Lewis and Loretta relief. As a result, on April 28, 2008, Lewis and Loretta filed a Form 131 petition with Board. The Board has jurisdiction over the Lewis and Loretta's appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On November 24, 2009, the Board's Administrative Law Judge ("ALJ"), Joseph Stanford, held a hearing on Lewis and Loretta's appeal.¹ Neither the Board nor the ALJ inspected the subject property.
4. The following people testified under oath:

For Lewis and Loretta:

Jesse L. Lengacher
Eli Lengacher
Thomas Mack, certified residential appraiser²

For the Assessor:

Eric Smith, Deputy Allen County Assessor

¹At the hearing, the parties addressed four appeals dealing with four separate properties, including the subject property. The other properties were owned by Jesse and Amanda Lengacher, Eli and Anna Lengacher, and John and Lizzie Lengacher, respectively. The Board issues separate findings and conclusions for each appeal.

² Lewis Lengacher and Melvin Schmucker took an oath but did not testify.

5. Lewis and Loretta submitted the following exhibits:
 - Petitioners Exhibit 1: Certified appraisal of Jesse and Amanda Lengacher's property by Thomas F. Mack
 - Petitioners Exhibit 2: Picture and original sketch of the property owned by Jesse and Amanda Lengacher
 - Petitioners Exhibit 3: Informational packet for the property owned by Jesse and Amanda Lengacher
 - Petitioners Exhibit 4: Informational packet for the property owned by John and Lizzie Lengacher
 - Petitioners Exhibit 5: Informational packet for the property owned by Eli and Anna Lengacher
 - Petitioners Exhibit 6: Informational packet for the property owned by Lewis and Loretta Lengacher
 - Petitioners Exhibit 7: Response to the Assessor's revised assessment computations for properties owned by John and Lizzie Lengacher, Eli and Anna Lengacher, and Lewis and Loretta Lengacher

6. The Assessor submitted the following exhibits:
 - Respondent Exhibit 1: Photographs, property record card, and value calculation for Jesse and Amanda Lengacher's property, and a map of the area
 - Respondent Exhibit 2: Revised value calculation for properties owned by John and Lizzie Lengacher, Eli and Anna Lengacher, and Lewis and Loretta Lengacher³

7. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A – The Form 131 petition
 - Board Exhibit B – Notice of hearing
 - Board Exhibit C – Hearing sign-in sheet

8. The subject property is an Amish-style home, located at 16605 Grabill Road in Grabill, Indiana.

9. The PTABOA determined the following values for the subject property:
Land: \$22,500 Improvements: \$248,500 Total: \$271,000

³ The parties agreed to allow the Assessor to offer revised calculations for those three properties after the hearing. The Lengachers' response to this evidence is labeled Petitioners' Exhibit 7.

10. Lewis and Loretta made alternate requests. On their Form 131 petition, they asked for values of \$22,500 for land and \$124,200 for improvements, for a total assessment of \$146,700. At the hearing, they requested that a 40% obsolescence factor be applied to the subject house's depreciated replacement cost. *See Mack testimony (regarding the obsolescence factor) and Pet'rs Ex. 6 (discussing the cost of building the subject house).*

ADMINISTRATIVE REVIEW AND THE PARTIES' BURDENS

11. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its 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").
13. If the taxpayer establishes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Parties' Contentions

A. Lewis and Loretta's contentions

14. Lewis and Loretta are Amish. As a part of their faith and their desire to be a self-sufficient people, the Amish live without amenities found in "English-style" homes, such

as electricity, heating and cooling ventilation, modern plumbing, and modern sewage and sanitation systems. *E. Lengacher; Mack testimony*. Because of the lack of amenities, and because Amish families build their homes to live in rather than to sell, there is little demand for Amish-style homes. So those homes are heavily discounted on the market. *Id.*

15. Amish families also frequently design and build their own homes with the help of friends. Lewis and Loretta spent a total of \$100,200 for materials and supplies to build their house. *Pet'rs Ex. 6*. Yet the house was assessed almost 2 ½ times what it cost to build. *Id.* Assessing Amish homes for so much more than what it costs to build them infringes on Amish people's personal freedoms. *Id.*; *J. Lengacher argument*. The Department of Local Government Finance ("DLGF") therefore should develop a tool for assessing Amish-style homes that does not include things such as labor and profit. *Mack testimony*. That tool similarly should call for assessors to build costs from the ground up rather than to price Amish-style homes as if they were built with modern amenities and then deduct the costs for those amenities. The market reflects a steeper discount than that. *Id.*
16. To illustrate the severity of that discount, Lewis and Loretta offered an appraisal report for a property owned by Jesse and Amanda Lengacher. The report was prepared by Thomas F. Mack, a certified residential appraiser, and it was reviewed by John Good, a certified general appraiser and MAI. *Pet'rs Ex. 1; Mack testimony*.
17. Mr. Mack used two generally accepted valuation methods—the sales-comparison and cost approaches. *Mack testimony; Pet'rs Ex. 1*. In his sales-comparison analysis, Mr. Mack looked for Amish-style homes that sold in Allen County from 2004 to 2008 and found a total of three sales. *Id.* He compared those three properties to Jesse and Amanda's property along several lines, including parcel size, location, construction quality, age, condition, and various physical features, and he adjusted each property's sale price accordingly. *Id.* Based on those adjusted sale prices, Mr. Mack estimated the market value of Jesse and Amanda's property at \$135,000. *Id.*

18. Mr. Mack also looked at three “English-style” homes that were comparable to Jesse and Amanda’s property except for the presence of modern amenities. Those homes sold between January 31, 2007, and October 10, 2007, for prices ranging from \$197,900 to \$253,000. *Mack testimony; Pet’rs Ex. 1*. Mr. Mack adjusted those sale prices to account for ways in which the three properties differed from Jesse and Amanda’s property other than the presence of amenities. *Id.* The adjusted sale prices ranged from \$218,620 to \$229,700. *Id.*
19. In Mr. Mack’s view, those adjusted sale prices showed that Jesse and Amanda’s property would have been worth \$220,000 if it had been built in the English style with modern amenities. *Mack testimony; Pet’rs Ex. 1*. He therefore attributed the 40% difference between the value of Jesse and Amanda’s home as an Amish-style home and as an English-style home to obsolescence, and he concluded that “the most appropriate method to assess an Amish home would be to apply an obsolescence factor of 40% to the depreciated cost of the home in conducting the assessment analysis.” *Pet’rs Ex. 1*. But he emphasized that, in performing such an analysis, the replacement cost new should not be adjusted for the lack of electricity, heating or plumbing. *Id.* At the hearing, Mr. Mack departed from his appraisal and said that a property containing an Amish-style home should be assessed by applying 40% obsolescence to the property’s total assessment. *Mack testimony*.
20. While Mr. Mack also analyzed the property’s value under the cost approach, he found the sales-comparison approach more reliable and settled on \$135,000 as his overall value estimate. *Id.*

B. The Assessor’s Contentions

21. On behalf of the Assessor, Mr. Smith offered his own revised computation of the subject property’s market value-in-use. *Resp’t Ex. 2*. In that revised assessment, Mr. Smith valued the subject house at \$209,400 and its one-acre homesite at \$20,000 for a total of \$229,400. When he added back in values for excess land and outbuildings, he arrived at

a total value of \$263,100. *Id.* That was \$7,900 less than the assessment reflected on the property's record card for March 1, 2006. *Id.; Pet'rs Ex. 6.*

22. Mr. Smith then found a June 2009 sale of a property that he viewed as comparable to the subject property except for the presence of amenities. *See Resp't Ex. 2.* He used what he described as the "HPI calculator" from the internet to adjust the sale price to a January 1, 2005, value. *Id.*; *see also E. Smith testimony (describing a similar comparison that he used in analyzing Jesse and Amanda's property).* Mr. Smith then isolated the value of the comparable house and one-acre homesite by deducting the assessments for excess land and outbuildings. He also adjusted for differences between the comparable house and the subject house by deducting amounts for the comparable house's enclosed porch, wood deck, and amenities. *Id.* The adjusted sale price for the comparable house and one-acre homesite was \$227,000. *Id.*
23. The method and values used to assess the subject property were consistent with guidelines provided by the DLGF. *E. Smith testimony and argument.* While obsolescence adjustments are available, there must be a basis for applying them. Without any sales, the Assessor had no basis for an obsolescence adjustment. *Id.*

Discussion

24. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use the mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

25. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 Ind. Tax Ct. 2005) reh'g den. sub nom. *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
26. Lewis and Loretta pointed to two things to quantify what they believed was the subject property's market value-in-use—Mr. Mack's obsolescence calculation, and their actual cost to build the subject house. The Board turns first to Mr. Mack's obsolescence analysis.
27. Initially, the Board notes that Mr. Mack appraised Jesse and Amanda's property and did not offer any specific opinion about the subject property's value. Indeed, Mr. Mack said almost nothing about the subject property. Those facts alone give the Board significant pause about relying on Mr. Mack's appraisal to determine the subject property's market value-in-use.
28. Also, while Mr. Mack alternately suggested that an Amish-style property should be assessed either by applying 40% obsolescence to the house's depreciated replacement cost or applying that same obsolescence to the property's total assessment, he did not follow that procedure in estimating the market value of Jesse and Amanda's property. Instead, Mr. Mack used the sales-comparison approach. In fact, Mr. Mack calculated obsolescence solely through using sales-comparison data for Amish-style houses and English-style houses. Thus, if John and Lizzie had undertaken a sales-comparison analysis using otherwise comparable English-style homes, Mr. Mack's obsolescence calculation might have provided useful market data for adjusting the comparable

properties' sale prices. But it does not necessarily follow that 40% should be deducted from an Amish-style home's assessment as determined using a mass-appraisal version of the cost approach.

29. Plus, Mr. Mack explained that the depreciated replacement cost from which the 40% obsolescence adjustment should be deducted must be calculated as if the Amish-style house had modern amenities. The record card for the subject property, however, shows that the house's assessment already includes deductions from its replacement cost new to account for the lack of amenities. *See Pet'rs Ex. 6.*

30. Lewis and Loretta's reliance on the actual cost for building the subject house fares no better. True, the Manual and Tax Court both recognize actual construction costs as probative evidence of a property's market value-in-use. But that is premised on the cost approach to value, which assumes that "potential buyers will pay no more for the subject property, hence they set the subject property's value, than it would cost them to purchase an equally desirable substitute parcel of vacant land and construct an equally desirable substitute improvement." MANUAL at 13. And it takes more than just materials to build a substitute improvement. One therefore must include all direct and indirect costs required to build the improvement. GUIDELINES, intro. at 1. Labor is an example of a direct cost. Thus, when comparing the Guidelines' cost tables to actual construction costs "is critical 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.* (emphasis added).

31. Lewis and Loretta admit that their proffered costs do not include labor. But they argue that labor should not be included in valuing an Amish-style home because the Amish do not hire contractors to build their homes. While that may be true, neither the Manual nor

the Guidelines makes an exception for Amish people who choose to build their own homes.⁴

32. Finally, Lewis and Loretta argue that a special tool should be provided for assessing Amish-style homes. That argument is better addressed to the General Assembly or the DLGF. The Board, however, notes that owners of an Amish-style home have recourse if they think that a Guidelines-based assessment does not accurately reflect the home's values—they can offer probative market value-in-use evidence to prove their claim. That is exactly what Jesse and Amanda Lengacher did when they offered Mr. Mack's appraisal. Had Lewis and Loretta offered similar evidence specifically addressing the subject property's value, they too might have succeeded.
33. Nonetheless, the Assessor did not even try to defend the assessment of record, relying instead on Mr. Smith's revised estimate of the subject property's value. Thus, the Assessor effectively conceded that subject property was worth no more than \$263,100. The property's assessment should be reduced accordingly.

SUMMARY OF FINAL DETERMINATION

34. Lewis and Loretta Lengacher failed to make a prima facie case for reducing the subject property's assessment. Based on the Assessor's concession, however, the Board orders that the property's assessment must be reduced to \$263,100.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

⁴ Although Amish people's desire to build their own homes may relate to their religious beliefs, Lewis and Loretta did not argue that the First Amendment requires the Manual and Guidelines to apply differently to homes built by Amish people than they do to other homes.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>>