

REPRESENTATIVE FOR PETITIONERS:

Milo Smith

REPRESENTATIVES FOR RESPONDENT:

Tara Acton

Michael Thompson

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mark and Jon Eckerling,	)	Petition No.:	49-900-02-1-5-02171
	)	Parcel:	9005274
Petitioners,)		
)		
v.	)	County:	Marion
)		
Wayne Township Deputy Assessor,	)	Township:	Wayne
)		
	)	Assessment Year:	2002
Respondent.)		

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

January 20, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (the “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

ISSUE

Whether the correct cost schedule was used to assess the subject structure.

PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Milo Smith, filed a Form 131 Petition for Review of Assessment on behalf of the Petitioners, petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on January 15, 2004, with the Marion County Assessor. The determination of the Marion County Property Tax Assessment Board of Appeals (PTABOA) was mailed to the Petitioners on December 19, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on June 24, 2004, in Indianapolis, Indiana before Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.
3. The following persons were sworn and presented testimony at the hearing:
For the Petitioners:
Milo Smith, Tax Representative

For the Respondent:
Tara Acton, Wayne Township Deputy Assessor
Michael Thompson, Wayne Township Deputy Assessor
4. The following exhibits were presented for the Petitioners:
Petitioners' Exhibit 1 – Packet of documents containing the following:
 - a. Two (2) page statement of opinion dated June 24, 2004

- b. Copy of 2002 Real Property Assessment Manual, pages 2, 3, and 18
- c. Copy of Version A - Real Property Assessment Guideline, pages 1 and 2
- d. Written statement by Jon Eckerling

Petitioners' Exhibit 2 - Copy of Petitioners' Exhibit 1, received by Board June 25, 2004

Petitioners' Exhibit 3 – Petitioners' suggested pricing using the General Commercial Residential (GCR) Schedule

5. The following exhibits were presented for the Respondent:

Respondent's Exhibit 1- Copy of subject's property record card (PRC)

Respondent's Exhibit 2 - Copy of Version A - Real Property Assessment Guideline, page 2 and copy of 2002 Real Property Assessment Manual, page 3

Respondent's Exhibit 3 – Copy of Township Assessor's worksheets used to list neighborhood sales and ratio study

6. The following additional items are officially recognized as part of the record of proceedings and labeled Board's Exhibits:

Board's Exhibit A – Form 131 Petition

Board's Exhibit B – Notice of Hearing on Petition dated May 21, 2004

7. The subject property is a residential dwelling located at 3830 West Morris Street, Indianapolis, Wayne Township, Marion County.

8. The Administrative Law Judge did not conduct an on-site inspection of the subject property.

9. For March 1, 2002, the PTABOA determined the assessed values of the subject property to be:

Land: \$3,400 Improvement: \$72,400

10. Per the Form 131 petition, for March 1, 2002, the Petitioners contend the assessed values of the subject property should be:

Land: \$3,400 Improvement: \$40,000

JURISDICTIONAL FRAMEWORK

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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 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).
13. 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”).
14. 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.

ANALYSIS

Issue: Whether the correct cost schedule was used to assess the subject structure.

15. The Petitioners contend the improvement is being used as an office and the reproduction cost should be determined using the GCR Pricing Schedule A.3 contained in the Version A – Real Property Assessment Guideline. *Smith testimony.*
16. The Petitioners further assert that the assessed value for the subject structure should be \$15,300. *Petitioners' Exhibit 3.*
17. The Petitioners acknowledged that no changes were made to the structure when it was converted to office use, but assert the actual use should determine the schedule used to assess the building.
18. The Respondent contends the improvement is a residential dwelling and the Residential Pricing Schedule A from the Version A - Real Property Assessment Guideline should be used to assess the property. *Thompson testimony.*
19. The Respondent asserts that there were no interior or exterior changes made to the structure, no structural changes were made, and that the subject structure should remain assessed as a residential dwelling. *Thompson testimony.*
20. The Respondent further asserts that market data indicates the subject property is assessed at its market value-in-use, therefore making the Petitioners' selection of schedule argument irrelevant. *Thompson testimony.*
21. The Petitioners presented the following evidence and testimony in regard to this issue:
 - a. Replacement Cost is defined as “the cost of constructing a building having the same utility as the improvement being valued but using modern materials, design, and workmanship. Replacement cost eliminates the cost of obsolete materials, design,

- and building techniques. In so doing, most forms of functional obsolescence have been ‘cured’ and do not have to be accounted for in the depreciation estimate.” *Smith testimony & Petitioners’ Exhibit 1, page 7.*
- b. The 2002 Real Property Assessment Manual, page 2, states in part, “Ind. Code § 6-1.1-31-6(c) goes on to state that: True tax value is the value determined under the rules of the State Board of Tax Commissioners.” *Smith testimony & Petitioners’ Exhibit 1, page 3.*
 - c. Further, “The goal of the assessor is to estimate the true tax value for the land and the improvements. The calculation of cost is merely the starting point for estimating the true tax value of the improvements or structures. It sets the upper limit of value for the improvements.” *Smith testimony & Petitioners’ Exhibit 1, page 6.*
 - d. The Petitioner further testified that the Marion County PTABOA did not rebut the fact that the subject structure was used for an office. *Smith testimony*
22. The Respondent presented the following evidence and testimony in regard to this issue:
- a. The Respondent testified that there were no exterior or interior changes or modifications made to the structure when the Petitioner converted the use of the structure from a residence to an office. *Thompson testimony.*
 - b. The Respondent further testified the structure is assessed at its market value-in-use. This makes the argument concerning pricing schedules irrelevant. The Respondent presented a copy of the Township Assessor’s worksheets used to determine the subject’s neighborhood factor. The local officials contended this market data supports accuracy of the current assessment. *Thompson testimony & Respondent’s Exhibit 3.*
23. In rebuttal, the Petitioners testified that, “I cannot find any justification for raising the assessment to market value. There is nothing in the Manual that says you can do that. You can use all three approaches to determine value, but when you determine reproduction cost, using Schedule A in this case, that sets the upper limits and you cannot make adjustments higher. I cannot find where values are multiplied by neighborhood factors anywhere.” *Smith testimony.*

24. The Petitioner argued that the subject improvement is currently being used as an office and not as a residence; therefore, the subject improvement should be assessed using the GCR Pricing Schedule and not the Residential Pricing Schedule.
25. The Tax Court has repeatedly rejected this argument, concluding that the taxpayer's use of the buildings was not determinative of which cost schedule to apply. Quoting *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995), the Court stated: "The actual use of the property is not a determinative factor in selecting the appropriate model, but merely a starting point. As a result, the model that most closely resembles the subject improvement with respect to physical features is to be used, regardless of the model's name." *Zakutansky v. State Board of Tax Commissioners*, 696 N.E.2d 494, 497 (Ind. Tax 1998).
26. Specifications for interior finish and mechanical features components are contained in the GCR General Office model (*Guideline, Appendix D, page 36*). To demonstrate error in model selection, the Petitioners must demonstrate how the features of their improvement compare to the features of the requested model. *LDI Mfg. Co. v. State Bd. of Tax Comm'rs*, 759 N.E.2d 685 (Ind. Tax Ct. 2001); *Indianapolis Racquet Club v. State Board of Tax Comm'rs*, 722 N.E.2d 926 (Ind. Tax 2000).
27. The Petitioners made no comparison between the interior finish and mechanical features in the building under appeal and the interior finish and mechanical features identified in the GCR General Office model. Indeed, the bulk of the Petitioners' evidence consists merely of copies of selected pages of the Version A – real Property Assessment Guideline.
28. Further, the Petitioners initially indicated the assessed value of the structure should be \$40,000 (*Board's Exhibit A, Form 131 petition*). At the administrative hearing, however, the Petitioners asserted the correct value of the structure is \$15,300 (*Petitioners' Exhibit 3*). No explanation was offered for such a wide variance in proposed value, reducing the

credibility of the Petitioners' argument. No market evidence was presented to support either proposed value.

29. Both the Petitioners and the Respondent agreed that the subject improvement was constructed as a single family residence, and that the Petitioners did not make any interior, exterior, or structural changes to the subject improvement when the structure was converted to office use. Based on this testimony, the Board determines the Petitioners have failed to establish the building should be assessed from the GCR Schedule.

Other

30. Although the contentions were not dispositive in this appeal, the Petitioners' representative asserted there was no basis for raising the assessment to market value or the application of neighborhood factors. *Smith testimony*.
31. The 2002 Real Property Assessment Manual defines True Tax Value as the "market value-in-use of a property for its current use." Market data is therefore a relevant consideration in the determination of True Tax Value.
32. Instructions for the application of a neighborhood factor are contained in the 2002 Version A – Real Property Assessment Guideline:
 - a. Chapter 3 – Residential Dwelling Units, Completing the Summary of Residential Improvements Section, page 62, Step 8:

“Calculate the neighborhood factor and enter the result in the ‘Nhbd Factor’ cell. Information on neighborhood factors can be found in Appendix B.”
 - b. Appendix B – Residential and Agricultural Depreciation, page 8 – Determining the Neighborhood Factor:

“The assessing official must determine a neighborhood factor for the neighborhood in which the subject property is located...The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services and utilities. It also takes into account the economic characteristics such as demand for property and mortgage

interest rates; governmental characteristics such as police protection, fire protection, and zoning; social characteristics such as crime rates, owner-occupant ratios, and family size.

Neighborhood factors are assigned to each neighborhood based upon an analysis of residential properties that have sold within the neighborhood.”

SUMMARY OF FINAL DETERMINATION

Whether the correct cost schedule was used to assess the subject structure.

33. The Petitioners failed to present probative evidence to make a prima facie case that the subject assessment is in error. The Board finds in favor of Respondent.

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

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.