

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

Petition: 42-018-08-1-5-00001
Petitioners: Robert L. & Judith L. Melvin
Respondent: Knox County Assessor
Parcel: 018-007-0014-300-008
Assessment Year: 2008

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 Knox County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130.
2. The PTABOA mailed notice of its decision on May 10, 2010.
3. The Petitioners appealed to the Board by filing a Form 131 on June 11, 2010. They elected to have this case heard according to small claims procedures.
4. The Board issued notice of hearing to the parties dated January 25, 2011.
5. Administrative Law Judge Kay Schwade held the Board's administrative hearing on March 1, 2011. She did not inspect the property.
6. Petitioner Judith Melvin and County Assessor Catherine Lane were sworn as witnesses.

Facts

7. The subject property is located at 6555 North Windmill Road in Bicknell.
8. The PTABOA determined the assessed value is \$26,400 for land and \$78,400 for improvements (\$104,800 total).
9. The Petitioners requested the removal of the assessed value attributed to the garage, which did not exist on March 1, 2008. They do not contest the assessed value of the land or the remaining improvements.

Record

10. The official record contains the following:
 - a. Petition for Review of Assessment (Form 131),
 - b. Notice of Hearing,
 - c. Hearing Sign-In Sheet,
 - d. Digital recording of the hearing,
 - e. Petitioner Exhibit 1 – Map showing the subject property,
Petitioner Exhibit 2 – Photograph of the home without garage,
Petitioner Exhibit 3 – Assessment record showing the addition of improvements to the wrong parcel,
Petitioner Exhibit 4 – Homestead credit application,
Petitioner Exhibit 5 – Payable 2009 Real Property Master,
Petitioner Exhibit 6 – State Form 53569,
Petitioner Exhibit 7 – Tax bill,
Petitioner Exhibit 8 – Tax bill,
Petitioner Exhibit 9 – Tax bill,
Petitioner Exhibit 10 – Page 2 of the subject property record card,
Petitioner Exhibit 11 – Page 1 of the subject property record card,
Petitioner Exhibit 12 – A record of the labor costs paid in September and November 2008,
Petitioner Exhibit 13 – A record of labor costs paid in September and October 2008,
Petitioner Exhibit 14 – A receipt from K & K Materials, Inc. for building materials dated September 15, 2008,
Petitioner Exhibit 15 – A receipt from Stoll Brothers Lumber, Inc. for building materials dated September 24, 2008,
Petitioner Exhibit 16 – A receipt from Graber Post Buildings, Inc. for building materials dated September 25, 2008,
Petitioner Exhibit 17 – A receipt from Daviess County Metal Sales, Inc. for building materials dated October 7, 2008,
Petitioner Exhibit 18 – Receipts from Distinctive Homes Incorporated for building materials dated October 20, 2008 and October 27, 2008,
Petitioner Exhibit 19 – Receipts from Distinctive Homes Incorporated and Wagler Homes for building materials dated November 10, 2008 and September 26, 2008,
Respondent Exhibit 1 – Form 115,
Respondent Exhibit 2 – Property record card for the subject property,
Respondent Exhibit 3 – Photograph of the subject property with garage,

- Respondent Exhibit 4 – Market data comparable grid with a map showing location of comparables,
- Respondent Exhibit 5 – Property record card and MLS sheet for 808 North Rod & Gun Club Road (Comp B),
- Respondent Exhibit 6 – Property record card and MLS sheet for 5690 North Coon Hunter Road (Comp C),
- Respondent Exhibit 7 – Property record card and MLS sheet for 7722 East State Road 67 (Comp D),
- Respondent Exhibit 8 – Property record card and MLS sheet for 1 Robert Drive (Comp E),
- Respondent Exhibit 9 – Property record card and MLS sheet for 10154 East State Road 67 (Comp F),

f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

- a. The house is a modular unit brought in as separate pieces and then put together on site. It was only partially complete on March 1, 2008. At that time it did not have electricity, heating, or plumbing. It was not complete and ready to live in until July 2008. *Melvin testimony.*
- b. The modular unit (shown in photograph) did not include a garage. *Melvin testimony; Pet'r Ex. 2.*
- c. The receipts for materials and records for labor costs prove that the garage was not built until after March 1, 2008. The records of labor costs show that labor for the garage construction was paid in September, October, and November of 2008. The receipts show that the garage materials the last material purchase was in November 2008. *Melvin testimony; Pet'r Ex. 12-19.*
- d. The Petitioners initially complained the house was incomplete on the assessment date without realizing the assessment included anything for the garage. That realization came later. The 2008 assessed value should not include an assessment for a garage that did not exist on March 1, 2008. *Melvin testimony.*

12. Summary of the Respondent's case:

- a. When the Petitioners came into the Assessor's office, they said the house was only 50% complete on the assessment date, but they did not question the garage assessment. *Lane testimony; Resp't Ex. 2.*

- b. The PTABOA’s inspection indicated the house was more than 50% complete on March 1, 2008, but the PTABOA still determined to assess the house at only 50% complete. *Lane testimony*.
- c. A sales comparison grid shows the subject property compared to five properties that sold in the area. It shows what homes are selling for in the area. *Lane testimony; Resp’t Ex. 4-8*.
- d. The Petitioners’ receipts and records do not state that the labor and materials were for the garage. *Lane testimony*.

Analysis

- 13. 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).
- 14. 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”).
- 15. Once the Petitioner establishes a prima facie case, the burden of going forward 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). Then the assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
- 16. The Petitioners made a case for an assessment change for the following reasons:
 - a. The Tax Court has often explained that an assessor’s misapplication of the guidelines will not *necessarily* invalidate an assessment; rather, the pivotal question is, notwithstanding the misapplication of the guidelines, does the assessment accurately reflect the property’s market value-in-use? *See, e.g., Westfield Golf Practice Ctr. v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007); *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
 - b. The Petitioners did more than just challenge the methodology of the assessment and prove it was misapplied. They proved the Respondent assessed a garage that did not exist on the assessment date.
 - c. A modular home is defined as a “transportable, factory assembled home that is built to meet local and state building code requirements for industrialized housing.

A panelized or prefabricated home, which consists of site-assembled factory-built components, is an example of a modular home.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The evidence leads us to conclude that the modular home was in the middle of being assembled on March 1, 2008, but the garage was not—it was added approximately six months later. Nothing indicates that the garage was part of the modular home when it was added to the property.

- d. The Petitioners presented records and receipts for labor and building materials dated between September 2008 and November 2008. Ms. Melvin testified that these items were used to build the garage. The Respondent offered absolutely no evidence to dispute that fact, but merely quibbled about the documents not adequately identifying what they were for. The Respondent’s point is not enough to create any reasonable doubt about the accuracy of Ms. Melvin’s specific testimony concerning when the garage was added.
- e. By establishing this assessment includes the value of a non-existent garage the Petitioners showed their current assessment is not a reasonable measure of true tax value.
- f. The Respondent presented sales data for five properties in an attempt to support the current assessment. If the Respondent’s sales comparison actually supported the existing assessed value, the fact that the assessment does not conform to the Guideline’s methodology might be irrelevant; however, that is not the case. Other than noting the location of these five properties in relation to the subject property, the Respondent failed to explain how or why these five properties are comparable to the subject property. Without a detailed explanation comparing the subject property’s characteristics and the characteristics of the alleged comparable properties and an explanation of how any differences affect their market value-in-use, this kind of evidence does not help to prove what the market value-in-use of the subject property really might be. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The most obvious difference between the subject property and the purported comparables, of course, is the fact that the subject property was a partly assembled modular home, which does not appear to be the case with any of the other properties. The Respondent provided absolutely no meaningful analysis or legitimate conclusion about the value of the subject property from the selling prices of the purported comparables.
- g. The Respondent’s evidence does not impeach or rebut the Petitioners’ case.
- h. The Board will not sustain a valuation where a significant part of that value is based on non-existent property. The non-existent garage will not be included as part of this assessment. Accordingly, the true tax value attributable to the non-existent garage must be removed from the assessment.

Conclusion

- 17. The assessment must be reduced to remove the value for the garage. The Respondent must make that calculation.

Final Determination

In accordance with the above findings and conclusions, the assessment is 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>>