

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

Petition: 46-022-02-1-5-00076
Petitioners: Anthony & Marcia Metzcus
Respondent: Michigan Township Assessor (LaPorte County)
Parcel: 42 01 21 328 018
Assessment Year: 2002

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 LaPorte County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 15, 2003.
2. The PTABOA mailed notice of its decision on March 31, 2004.
3. The Petitioners appealed to the Board by filing a Form 131 with the county assessor on April 22, 2004. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 4, 2008.
5. The Board's Administrative Law Judge, Ellen Yuhan, held the administrative hearing on May 1, 2008.
6. Attorney Marilyn Meighen represented the Respondent. The persons present and sworn as witnesses at the hearing were:
 - For Petitioner - Anthony Metzcus, property owner,
 - For Respondent - Terry Beckinger, Michigan Township Assessor, and
Joshua D. Pettit, Nexus Group.

Facts

7. The subject property is a residence located at 108 Illinois Avenue, Michigan City.
8. The ALJ did not conduct an on-site inspection.

9. The PTABOA determined the assessed value of the subject property is \$41,300 for land and \$123,100 for improvements (total \$164,400).
10. The Petitioners requested \$33,000 for land and \$93,600 for improvements (total \$126,600).

Issues

11. Summary of Petitioners' contentions:
 - a) The assessment is excessive because the parcel is a corner lot that requires additional setbacks for any building. *Metzcus testimony. Petitioner Exhibit VI.* The 1990 County Board of Review recognized the parcel is a non-conforming lot that does not comply with the Michigan City building codes. *Id. Petitioner Exhibit III.*
 - b) The sale of a similar, neighboring property, 105 Illinois Avenue, occurred 5 to 7 years ago and shows the value of the subject property. *Metzcus testimony.* That sale price was between \$100,000 and \$115,000. *Id.*
 - c) The attached garage was not built in 1915. *Metzcus testimony.* The Petitioners built the garage in the 1970's. *Id. Petitioner Exhibit V.*
12. Summary of Respondent's contentions:
 - a) The county employed an outside appraiser to analyze comparables for properties under appeal for the 2002 assessment year. *Pettit testimony; Respondent Exhibit 3.* The appraiser, who is familiar with the subject area, recognized the property is a non-conforming lot, but it retains value because the improvements are grand-fathered. The value of Petitioner's land is lower than the sales prices of comparable vacant lots. *Id.* Based on sales of comparable improved properties, the appraiser's opinion of value for the subject property was \$188,160, or \$24,300 more than the assessed value. *Id.*
 - b) The current property record card (PRC) correctly shows the attached garage. *Pettit testimony; Respondent Exhibit 2.* Attached garages should not have a year of construction, an effective year, or a condition — they follow the same age and condition as the home. *Id.* The effective year can be adjusted if the garage brings more value to the home. *Pettit testimony.*
 - c) The Petitioners did not prove market value-in-use. *Meighen argument.* Three Indiana Tax Court cases hold that one can not look at methodology under the current assessment system. One must look at the bottom line value. *Id. Respondent Exhibit 11.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition,
 - b) A digital recording of the hearing,
 - c) Petitioner Exhibit I – Location of Petitioners’ Property,
Petitioner Exhibit II – Form 131, page 2, Grounds for Appeal,
Petitioner Exhibit III – Michigan City Zoning Code, 2 pages,
Petitioner Exhibit IV – PRC for subject property,
Petitioner Exhibit V – Photographs of improvements,
Petitioner Exhibit VI – 1990 County Board of Review results¹,
Petitioner Exhibit VII – Form 130, page 4,
Petitioner Exhibit VIII – Form 115, pages 1, 2, 3, Final Assessment Determination,
Respondent Exhibit 1 – Aerial photograph,
Respondent Exhibit 2 – PRC and photograph for subject property,
Respondent Exhibit 3 – Property Tax Appeal Response Form,
Respondent Exhibit 4 – PRC and photograph for 509 Colfax Avenue,
Respondent Exhibit 5 – PRC and photograph for 808 Lakeshore Drive,
Respondent Exhibit 6 – PRC and photograph for 107 Nevada Avenue,
Respondent Exhibit 7 – PRC and photograph for 904 Lakeshore Drive,
Respondent Exhibit 8 – PRC and photograph for 201 S. Lake Avenue,
Respondent Exhibit 9 – PRC and photograph for 111 California Avenue,
Respondent Exhibit 10 – PRC and photograph for 115 N. Lake Avenue,
Respondent Exhibit 11 – Summary of case law,
Board Exhibit A – Form 131 petition and subsequent mailings,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
 - d) These Findings and Conclusions.

Analysis

14. 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).

¹ Ms. Meighen questioned the relevance of a 1990 Board of Review determination, but did not object to it.

- 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”).
 - c) 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.
15. The Petitioners failed to make a case for any change to the existing assessment. The Board reached this decision for the following reasons:
- a) Real property is assessed based on 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); 2002 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. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A* (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may 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.
 - b) Even if the assessment did not fully comply with the Guidelines, the Petitioners must show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the Guidelines are not sufficient to rebut the assumption that the assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N. E. 2d764, 768 (Ind. Tax Ct.). The evidence and arguments about zoning, setback requirements and year of construction focused on methodology used to determine the assessment. They do not prove that the current assessment fails to reflect market value-in-use and they do not prove what a more correct market value-in-use might be.

- c) As noted above, a sales comparison approach is one of the recognized methods to determine market value-in-use. The Petitioners contend the land value should be \$33,000 and the improvements \$93,600 based on an undocumented sale of an improved neighboring property 5 to 7 years ago for a purchase price between \$100,000 and \$115,000. The Petitioners offered no substantial support for this conclusory statement about what the value should be.² Such conclusory statements are insufficient to establish a prima facie case of error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1122 (Ind. Tax 1998). *See College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 907-8 (Ind. Tax Ct. 2006)
- d) The Petitioners failed to make a prima facie case for a reduction in assessed value. Therefore, the Respondent's burden to support its determination with substantial evidence was 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

16. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

² Any legitimate comparison would require more specific evidence about the date of the sale and the amount of the sale. In addition, the Petitioners would have to specifically compare the characteristics of their property to that neighboring property and explain how any differences affect the relevant market value-in-use of the properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Furthermore, the Petitioners would have to establish how the neighbor's sale price relates to value as of January 1, 1999. *Id.*

- 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>