

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

Petition #: 82-027-02-1-5-00162
Petitioners: Roger & Suzanne Emge
Respondent: Knight Township Assessor (Vanderburgh County)
Parcel #: 0931013071018
Assessment Year: 2002

The Indiana Board of Tax Review (the “Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Vanderburgh County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated May 21, 2003.
2. The Petitioners received notice of the decision of the PTABOA on June 23, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on July 8, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 10, 2004.
5. The Board held an administrative hearing on January 25, 2005, before the duly appointed Administrative Law Judge, Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Roger Emge, Taxpayer
 - b) For Respondent: Tammy Elkins, Vanderburgh County Assessor
Candy Wells, Vanderburgh County Hearing Officer
Tiffany Carrier, Vanderburgh County Deputy Assessor
Philip Bernard, Vanderburgh County Deputy Assessor
Joe Gries, Knight Township Real Estate Deputy Assessor

Facts

7. The property is classified as single family residential property, located at 546 S. Kelsey Avenue, Knight Township, Evansville, Indiana as is shown on the property record card for parcel #0931013071018.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Vanderburgh County PTABOA:
Land \$8,000 Improvements \$99,600
10. Assessed Value requested by Petitioners:
Land \$8,000 Improvements \$92,250

Issues

11. Summary of Petitioners’ contentions in support of alleged errors in assessment:
 - a) The Respondent did not calculate the finished attic area correctly under the Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”). The Assessment Guidelines show a drawing of a one story dwelling with a finished attic, which is a realistic rendition of the subject property. *Emge testimony; Petitioner Ex. 3.*
 - b) The Assessment Guidelines delineate the steps that must be used to calculate an assessment if a dwelling has an attic with finished area. *Emge testimony; Petitioner Ex. 4.* The error in the Respondent’s calculation is that the Respondent used the same square footage for both the finished and unfinished portions of the attic. *Emge testimony.*
 - c) The Petitioners presented a worksheet comparing the method used by the Respondent for assessing the subject attic with what the Petitioners believe to be the correct method. *Emge testimony; Petitioner Ex. 8.*
 - d) Correcting the square footage of the finished attic area will also require a correction to the value assigned to the subject dwelling for central air conditioning. *Petitioner Ex. 7.*
 - e) The assessed value of the subject garage exceeds its actual cost of construction. The Petitioners submitted a Contract for Sale with respect to the garage, which lists a total proposed cost of \$8,236. The total cost of \$8,236 includes demolition, clean up, and removal of the old garage, so the actual cost of the new garage is somewhat lower. *Emge testimony; Petitioner Ex. 9.*

- f) The Contract for Sale specifically states that it does not include electrical work, plumbing, or painting. There was no plumbing or painting required, so the only addition to the \$8,236 was for electrical work and gutters. The Petitioners do not have an exact amount for the electrical work, but Roger Emge testified that an additional 10% would be a reasonable estimation of the cost ($\$8,236 + \$824 = \$9,060$). Emge also added \$100 to his estimate for gutters ($\$9,060 + \$100 = \$9,160$).
- g) The property record card reflects a value for the subject garage of \$10,780 before application of a market adjustment. When the market adjustment is added, the assessment is \$13,600. The Petitioners would accept \$10,780, but when the market adjustment of twenty-six percent (26%) is added, the garage assessment as a whole becomes unreasonable. The garage was built in its present location for \$8,236. There was no adjustment by the contractor because of its location. *Emge testimony.*
- h) The Petitioners contend that the subject neighborhood boundaries are poorly determined. The Petitioners also contend that the Respondent's drawing of the neighborhood's boundaries ignores a number of characteristics required to be considered by the Assessment Guidelines. The Petitioners, however, make no specific request to remedy what they believe to be the errors in determining the neighborhood boundaries. *Emge testimony.*
- i) The Petitioners presented a map of neighborhood 90602. The Petitioners also presented worksheets with a calculation of the multiplier. The calculation shows the multiplier of 1.2572 and the corrected multiplier to be 1.2243, with an error of .0329. *Petitioner Exs. 10, 11.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent presented evidence concerning the sale prices and assessments for comparable properties from the same neighborhood as the subject property. Those sale prices and assessments show that the Petitioners' property was not treated any differently than other properties in the same neighborhood. *Gries testimony; Respondent Exs. 1A - 9A.*
- b) The sale prices of the comparable properties range from \$95,000 to \$149,000. The assessed values of those properties range from \$103,600 to \$123,900. *Gries testimony; Respondent Ex. 10.*
- c) The Respondent prepared a worksheet listing specific characteristics of the subject property and the comparable properties. *Gries testimony; Respondent Ex. 11.*
- d) The Respondent priced the subject attic in the same way that it priced attics throughout the township. The Respondent used the base ground floor area of

dwellings to determine both the finished and unfinished portions of attics. *Gries testimony.*

- e) The sale prices and assessments of comparable properties show that the subject property is within the correct value range. The attic and garage are secondary issues; the bottom line value is correct. *Gries testimony.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #5889.
- c) Exhibits:

- Petitioner Exhibit 0: Brief of the issues at matter for the subject hearing.
- Petitioner Exhibit 1: Copy of Indiana Code § 6-1.1-4-26.
- Petitioner Exhibit 2: Copy of 50 Indiana Administrative Code 2.3-1-1.
- Petitioner Exhibit 3: Copy of Assessment Guidelines, Page 11.
- Petitioner Exhibit 4: Copy of Assessment Guidelines, chapter 3, page 36.
- Petitioner Exhibit 5: Attic Schematic of 546 S. Kelsey Avenue, Evansville, IN.
- Petitioner Exhibit 6: Copy of Assessment Guidelines, Appendix C, page 2.
- Petitioner Exhibit 7: Copy of Assessment Guidelines, Appendix C, page 6.
- Petitioner Exhibit 8: Comparison of Knight Township and Assessment Guidelines Calculations w/differences.
- Petitioner Exhibit 9: Hobgood Contractors, Inc. – Contract of Sale.
- Petitioner Exhibit 10: Neighborhood 90602 obtained over the internet.
- Petitioner Exhibit 11: Calculation of Neighborhood multiplier based upon Petitioner Exhibit 10.

- Respondent Exhibit 1: Property record card of the subject property.
- Respondent Exhibit 1a: Photograph of subject property.
- Respondent Exhibit 2: Parcel list of all property in neighborhood 90602.
- Respondent Exhibit 3: Property record card of 2536 Lincoln Avenue.
- Respondent Exhibit 3a: Photograph of 2536 Lincoln Avenue.
- Respondent Exhibit 4: Property record card of 516 Runnymead Avenue.
- Respondent Exhibit 4a: Photograph of 516 Runnymead Avenue.
- Respondent Exhibit 5: Property record card of 519 S. Lincoln Park Drive.
- Respondent Exhibit 5a: Photograph of 519 S. Lincoln Park Drive.
- Respondent Exhibit 6: Property record card of 443 S. Lincoln Park Drive.
- Respondent Exhibit 6a: Photograph of 443 S. Lincoln Park Drive.

Respondent Exhibit 7: Property record card of 419 S. Boeke Road.
Respondent Exhibit 7a: Photograph of 419 S. Boeke Road.
Respondent Exhibit 8: Property record card of 441 S. Boeke Road.
Respondent Exhibit 8a: Photograph of 441 S. Boeke Road.
Respondent Exhibit 9: Property record card of 440 S. Boeke Road.
Respondent Exhibit 9a: Photograph of 440 S. Boeke Road.
Respondent Exhibit 10: Summary of comparable properties.
Respondent Exhibit 11: List of specific details for the subject and comparable properties.

Board Exhibit A: Form 131 petition.

Board Exhibit B: Notice of Hearing.

d) These Findings and Conclusions.

Objection

14. The Petitioners objected to the admission of Respondent's Exhibits 2-11. The Petitioners contend that the exhibits are inadmissible because the Respondent did not offer them at the PTABOA hearing. *Emge testimony.*
15. The procedures for small claims hearings are found at 52 IAC 3. The provisions of 52 IAC 2 also apply to small claims unless inconsistent with the procedures set forth in 52 IAC 3.
16. The Petitioners are correct in their assertion that the Board will consider only the issues presented to the PTABOA. Pursuant to 52 IAC 3-1-2(b), by accepting small claims the parties agree that the issues contained in the appeal are substantially the same as those presented to the PTABOA.
17. In addition, 52 IAC 2-7-1(a) states:
Except as provided in subsection (b), a party participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.
18. Read together, the above provisions indicate that parties may introduce new evidence at a small claims hearing before the Board, provided that such evidence relates to the issues presented to the PTABOA. The Petitioners' objection is overruled. Respondent's Exhibits 2-11 are admitted into evidence.

Analysis

19. 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”).
- 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.

Attic

20. The Petitioners provided sufficient evidence to support their contention that the assessment of the subject attic is incorrect. This conclusion was arrived at because:
- a) The Assessment Guidelines provide detailed instructions regarding the valuation of attics. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 38 (incorporated by reference at 50 IAC 2.3-1-2). Pursuant to those instructions, assessors are directed to first assign an unfinished value to the entire attic area. *Id*. If a portion of the attic is finished, the assessor must then determine the area of finish and obtain a value for that finished area by reference to the cost tables contained in schedule A of appendix C. *Id*. The two values are then added together. *Id*.
 - b) The Petitioners provided a sketch and measurements of the finished area of the subject attic. The Petitioners’ measurements show the finished portion of the attic to be 656 square feet (no deduction is made for stairs). The property record card, however, shows that the Petitioners are being assessed for 1184 square feet of finished attic area. *Petitioner Exs. 5-8; Respondent Ex. 1*.
 - c) Based on the foregoing, the Petitioners established a prima facie case of error in the assessment of the subject attic. The burden therefore shifted to the Respondent to rebut or impeach the Petitioners’ evidence. *See Meridian Towers*, 805 N.E.2d at 479.
 - d) The Respondent did not attempt to rebut the Petitioners’ evidence regarding the measurement of the finished portion of the subject attic. The Respondent instead contended that it did not have the ability to enter every dwelling and instead used

the base ground floor area over which attic sits to establish the base unfinished value and the finished value for the attic. *Gries testimony*. The Respondent pointed to the following language in the Assessment Guidelines regarding calculation of the base price of attics: “The square foot area used in the calculation for an attic is the base ground floor area and not the actual attic floor. The attic cost schedules included in Schedule A consider the loss of floor area and wall height in typical attic construction.” GUIDELINES at 38.

- e) The Respondent’s reliance on the above quoted language is misplaced. That language is not intended to require the assessment of finishing cost where no such finishing exists. It simply indicates that the schedules capturing the cost of the construction of a basic unfinished attic already account for the fact that typical attics will have a smaller floor area and less wall height than the living area over which they are situated.
- f) The Respondent also contends that the accuracy of the valuation of the attic is secondary to the question of whether the overall assessment is correct. *Gries argument*. If the Respondent believes the assessed value can be supported by evidence other than misapplied cost data from the Assessment Guidelines, it is the Respondent’s burden to present such independent market evidence.
- g) The Respondent attempted to meet its burden by presenting a listing of sale prices of properties it believes to be comparable to the subject property. *Respondent Exs. 10-11*. The sale prices range from \$95,000 to \$149,900. *Id.* The Respondent contends that the assessment is correct because it falls within the range of the sale prices and assessed values of those purportedly comparable properties. *Gries argument*.
- i) In making this argument, the Respondent essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- h) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- k) While the Respondent provided a detailed comparison regarding many salient characteristics of the subject property and the purportedly comparable properties, it did not make any attempt to explain how differences in those characteristics affected the relative market values-in-use of the properties. For example, the subject property is of frame construction, while all of the purportedly comparable properties are constructed of brick or stone. *Respondent Ex. 10*. The Respondent's purported comparison of the subject property to other properties within the neighborhood therefore fails to meet the requirements set forth in *Long*. As a result, the Respondent's evidence regarding the sale prices and assessments of other properties within the subject neighborhood lacks probative value.
- i) Based on the foregoing, the preponderance of the evidence demonstrates that the Respondent erred in valuing the attic of the subject dwelling. The subject dwelling should be assessed as having only 656 square feet of finished area. A corresponding change should also be made regarding the value assigned to the subject property for air conditioning. The Respondent should not consider the unfinished portion of the attic in calculating the area assessed as having central air conditioning.

Garage

21. The Petitioners did not provide sufficient evidence to demonstrate an error with regard to the valuation of the subject garage. This conclusion was arrived at because:
- a) The Petitioners presented the Contract of Sale for the garage. The contract is dated August 29, 1997. *Petitioner Ex. 9*.
 - b) For the 2002 general reassessment, property must be assessed to reflect its value as of January 1, 1999. *MANUAL* at 4; *Long*, 821 N.E.2d at 471. Consequently, in order to present evidence probative of a property's true tax value, a party relying on market evidence, including actual cost data, should explain how the value estimated by such market evidence relates the property's value as of January 1, 1999. *See Long* 821 N.E.2d at 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). The Petitioners did not explain the relationship between the 1997 contract price and the garage's value as of January 1, 1999. Moreover, the contract is incomplete in that it does not include the cost for electrical work or gutters.
 - c) The Petitioners therefore failed to make a prima facie case of error with regard to the valuation of the subject garage.

Market Adjustment/Neighborhood

22. The Petitioners discussed the market adjustment applied to the subject property and the boundaries of the subject neighborhood. Roger Emge, however, stated that the Petitioners were not requesting any specific remedy with regard to the neighborhood factor (market adjustment) assigned to the subject improvements.

Conclusions

Attic

23. The Petitioners made a prima facie case with regard to the assessment of the attic. The Respondent failed to rebut the Petitioners' prima facie case. The Board finds in favor of the Petitioners and orders that the assessment should be corrected to value only a 656 square foot portion of the attic as finished area with a corresponding correction to be made to the value assigned to the subject dwelling for air conditioning.

Garage

24. The Petitioners failed to make a prima facie case with regard to the valuation of the garage. The Board finds in favor of the Respondent on the issue of the garage.

Market Adjustment/Neighborhood

25. The Petitioners made no specific request for remedy regarding this issue. 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 of the attic should be changed.

ISSUED: _____

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.