

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

Petition #: 91-021-02-1-4-00063; 91-021-02-1-4-00064
Petitioners: Philip L. & Susan Vogel
Respondent: Union Township Assessor (White County)
Parcel #: 021-26090-00; 021-26100-00
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 White County Property Tax Assessment Board of Appeals (“PTABOA”) by written document.
2. The PTABOA mailed notice of its decision on December 14, 2004.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the county assessor on January 10, 2005. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 12, 2006.
5. The Board held a consolidated administrative hearing with regard to the above referenced petitions on March 1, 2006, before the duly appointed Administrative Law Judge, Joan Rennick.
6. Philip Vogel, property owner, and Scott Potts, consultant for Union Township, appeared at the hearing and were sworn as witnesses.

Facts

7. Parcel 021-26090-00, located at 522 Juanita Street, contains an improvement classified as a commercial structure. Parcel 021-26100-00, located at 518 Juanita Street, is classified as residential and contains a one-family dwelling. Both parcels are located in Monticello, Union Township, White County, Indiana. The Board shall refer to the above referenced parcels collectively as the “subject property,” unless otherwise indicated.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. The PTABOA determined the following assessed values for the subject parcels:

Parcel 021-26090-00

Land: \$13,700 Improvements: \$11,000 Total: \$24,700

Parcel 021-26100-00

Land: \$15,600 Improvements: \$34,200 Total: \$49,800

10. The Petitioners request the following values for the subject parcels:

Parcel 021-26090-00

Land: \$10,000 Improvements: \$8,000 Total: \$18,000

Parcel 021-26100-00

Land: \$14,000 Improvements: \$28,000 Total: \$42,000

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:

- a) The subject property contains a dwelling and a building that is assessed as a commercial structure. *Vogel testimony*. The latter building previously was used to operate a business, but pursuant to the "Area Plan," the area in which the subject property is located has reverted to strictly residential use. *Id.* The Petitioners use the building for storage. *Id.*
- b) The Petitioners bought the subject property for \$55,000 on October 26, 2000. *Vogel testimony*. The property was advertised for sale for "a couple of weeks." *Id.* The Petitioners are requesting a tax valuation of \$60,000 instead of \$55,000 because they "got a good buy." *Id.* However, it wasn't a good enough buy to be 30% under market value, as the current assessment reflects. *Vogel argument*.
- c) Since purchasing the subject property, the Petitioners have made numerous repairs and improvements to both the dwelling and the "commercial" building. *Vogel testimony; Pet'r Exs. 1, 5*. The costs of improvements to the dwelling alone have totaled \$15,950. *Vogel testimony; Pet'r Ex. 1*.
- d) The purportedly comparable properties identified by the Respondent are in much better condition than is the subject property. *Vogel argument*. The first comparable (Parcel 021-19740-00), which sold for \$32,500, on December 17, 1998, is the most comparable to the subject property. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:
- a) The subject dwelling is classified as being in "fair" condition, which recognizes that its condition is not typical for properties in the subject neighborhood. *Potts testimony.*
 - b) The Petitioners testified that they got a good buy, so the assessment should be higher than the Petitioners' purchase price. *Potts argument.*
 - c) The Respondent has enough information concerning sales from the subject property's neighborhood to be confident that the subject property's assessment is correct. *Potts testimony; Resp't Ex. 3.*
 - d) The Respondent used the cost schedules for commercial improvements to assess the subject building located 522 Juanita Street because the building most closely resembles a commercial structure. *Potts 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 IBTR - 6223.
 - c) Exhibits:
 - Petitioners Exhibit 1: Handwritten list of repairs made to the house, comparable sales used by Respondent, and evidence of condition of basement and cabinets,
 - Petitioners Exhibit 2: Photograph of subject basement,
 - Petitioners Exhibit 3: Photograph of subject basement,
 - Petitioners Exhibit 4: Photograph of subject basement,
 - Petitioners Exhibit 5: Handwritten list of repairs made to the building, evidence of condition, and evidence of building use,
 - Petitioners Exhibit 6: Listing and sales information for a building in Monticello.

 - Respondent Exhibit 1: Form 131 Petitions,
 - Respondent Exhibit 2: Property Record Cards of parcels under appeal,
 - Respondent Exhibit 3: Neighborhood Sales Ratio Study,
 - Respondent Exhibit 4: Sales Disclosure of parcel under appeal,
 - Respondent Exhibit 5: Transcript of PTABOA hearing.

 - Board Exhibit A: The Form 131 Petition with attachments,
 - Board Exhibit B: Notice of Hearing,

Board Exhibit C: Notice of Appearance of Consultant on Behalf of
Assessor.

- 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).
 - 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. 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”).
 - 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 did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners first contend that the subject property is overvalued in light of the amount for which they purchased the property in October of 2000.
 - b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property 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). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess real property.

- c) A property's market value-in-use, as ascertained through application of the Guidelines' cost approach, 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). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. A taxpayer may rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- d) The sale of a subject property is often the most compelling evidence of its market value as of the date of the sale. In order for the sale price to be probative of the property's true tax value for a given assessment date, however, the property must have been in substantially the same condition on the assessment date as it was on the sale date. Here, Mr. Vogel testified that the Petitioners made substantial improvements and repairs to the subject structures after they purchased the subject property on October 26, 2000. *Vogel testimony; see also Pet'r Exs. 1, 5.* Mr. Vogel, however, did not testify as to the dates that the Petitioners made those improvements and repairs. Under these circumstances, the Board cannot simply assume that the subject property was in substantially the same condition on March 1, 2002, as it was on the date the Petitioners bought the property. Consequently, the October 26, 2000, sale price is insufficient to establish a prima facie case of error.
- e) The Petitioners also point to the sales of two properties - one located at 570 S. Illinois Street, Monticello, Indiana ("Illinois Street Property") and another located at 502 Maple Street ("Maple Street Property"). *Vogel testimony; Pet'r Ex. 6.* The Illinois Street Property sold for \$35,000 on August 19, 2005, and the Maple Street Property sold for \$32,500 on December 17, 1998. *Id.* The Maple Street Property was subsequently renovated and re-sold for \$68,250 on August 11, 1999. *Vogel testimony.*
- f) By pointing to the sale prices of purportedly comparable properties, the Petitioners essentially rely upon the sales comparison approach to establish the market value of the subject property. The sales comparison approach is based on the assumption that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute improved property already existing in the market place. MANUAL at 13. The appraiser locates sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value. *Id.* The adjustments represent a quantification of characteristics that cause prices to vary. *Id.* The appraiser "considers and compares all possible differences between the comparable properties and the subject property that could affect value," using objectively verifiable evidence to determine which items have an influence on value in the market place. *Id.* The appraiser quantifies the contributory values of the items affecting value in the

market place and uses those contributory values to adjust the sale prices of comparable properties. *Id.* at 13-14.

- g) Thus, in order to effectively use the sales comparison approach as evidence, however, 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. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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.*

- h) Here, the Petitioners did not provide a meaningful comparison of the characteristics of the Maple Leaf and Illinois Street properties and those of the subject property. At most, the record contains the property record cards for the subject parcels and some limited information concerning the Illinois Street Property contained on a listing sheet for that property. *See Pet’r Ex. 6; Resp’t Ex. 2.* It is not the Board’s responsibility to review all of the documents submitted by the Petitioner to determine comparability – that duty rests with the Petitioner. *Long*, 821 N.E.2d at 471. Moreover, even a cursory examination of the documents submitted by the Petitioners reveals numerous differences between the subject property and the Illinois Street Property. For example, the “commercial” building on the subject property is more than twice the size of the building on the Illinois Street Property, and the two properties are located in different townships. *Id.* The Petitioners did not explain how those differences affect the relative market values of the properties as required by the Manual and *Long, supra.*

- i) The Petitioners also argue that the assessment is excessive in light of the condition of the subject structures. The Petitioners, however, did not present any evidence to quantify the effect of the allegedly inferior condition of those structures on the market value of the subject property. Moreover, the bulk of the deterioration to which Mr. Vogel testified, and the only deterioration for which he presented photographs, concerns the subject dwelling. The dwelling is assessed as being in “fair” condition. *See Resp’t Ex. 2.* Pursuant to the Real Property Assessment Guidelines for 2002 – Version A, a dwelling in “fair” condition exhibits the following characteristics:

Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. The condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled or improved. There is deferred maintenance that is obvious.

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, the assessment already accounts for the deteriorated condition of the subject property.

- j) Based on the foregoing, the Petitioners failed to establish a prima facie case of error in the assessment.
- k) Where the taxpayer fails to provide the Board with probative evidence supporting its position, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

Conclusions

- l) The Petitioners failed to make a prima facie case. The Board finds in favor of 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

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>.