

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

Petition #: 51-004-03-1-4-00001
Petitioners: Douglas R. & Christina A. Lane
Respondent: Halbert Township Assessor (Martin County)
Parcel #: 0042430304
Assessment Year: 2003

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 Martin County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 13, 2004.
2. The PTABOA mailed notice of its decision on April 27, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the county assessor on May 25, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 24, 2006.
5. The Board held an administrative hearing with regard to the above referenced petition on February 28, 2006, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Christina Lane, property owner; Carolyn McGuire, Martin County Assessor; Kirk Reller, Martin County Real Property Advisor; and Gerald Montgomery, Halbert Township Assessor, appeared at the hearing and were sworn as witnesses.

Facts

7. The subject property is classified as a commercial garage. The property is located on U.S. 50 East in Shoals, Indiana, Halbert Township, Martin County.
8. The Administrative Law Judge did not conduct an inspection of the subject property.

9. The PTABOA determined that the assessed value of the subject parcel is \$9,500 for the land and \$66,300 for the improvements for a total assessed value of \$75,800.
10. The Petitioners did not request a specific value on their Form 131 petition.

Issue

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

- a) The Petitioners operated a commercial garage on the subject property until January 2003. *Lane testimony*. At that time, the Petitioners moved their business and notified the assessor that they had vacated the subject building. *Id.* The assessor told the Petitioners that a notation concerning the vacancy would be made on the subject property record card. *Id.*
- b) The Petitioners' tax bill for the 2003 assessment did not reflect an adjustment for the subject building being vacant in 2003. *Id.* The assessor had the Petitioners fill out a Form 133, Petition for Correction of Error, but the PTABOA did not change the assessment. *Id.*
- c) The property record card for the subject property dated March 29, 2004 contains a footnote indicating that the property was vacated as of January 29, 2003. *Id.*
- d) In the spring of 2004, a church was using one-fourth of the building, but as of 2003 (the assessment year in question) the building was vacant. *Id.* The property is located in an economically depressed area. *Id.*
- e) The building should be listed as residential, as it was when the Petitioners bought it. *Lane argument*. The building was no longer used for commercial purposes after January 29, 2003. *Lane testimony*. Thus, the Petitioners contend that the base rate used to assess the building should be \$37.35 per square foot, not \$62.22 per square foot. *Lane argument*. Ms. Lane testified that she did not recall where she obtained those numbers, but she believes that it was the "tax manual." *Lane testimony*.
- f) The subject building is in the process of being sold to a trucking company for \$78,000, with a previous one-year lease going toward the purchase price. *Lane testimony*. The Petitioners are selling the property for a loss, as they once put a \$50,000 addition on the back of the building. *Id.* The subject property was appraised for a bank at \$125,000. *Lane testimony*.

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

- a) The original use of the subject building was as a tractor garage, and the property has always been used for commercial purposes. *Montgomery testimony*.

- b) A building does not necessarily experience a loss in value just because it is vacant. *Reller argument.*
- c) The Petitioners state on their Form 131 petition that their asking price for the subject property would be \$85,000. *Reller testimony; Board Ex. A at 2.* Moreover, at the PTABOA hearing, the Petitioners submitted an appraisal dated January 18, 2002, valuing the property at \$125,000. *Reller testimony.* Trending this value back to January 1, 1999, using a 3% rate results in a value of \$114,000. *Id.*
- d) Based on the evidence, the assessment should be raised if there is any change at all. *Reller argument.*

Record

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

- a) The Petition.
- b) The recording of the hearing on compact disk, labeled IBTR 6180.
- c) Exhibits:

Petitioner Exhibit 1: Copy of the Form 133,
 Petitioner Exhibit 2: Copy of the Property Record Card dated 3/29/04,
 Petitioner Exhibit 3: Copy of the Property Record Card dated 4/26/05.

Respondent Exhibit 1: Copy of the property record card with the trending of the appraisal calculations.

Board Exhibit A: Copy of Form 131 petition and attachments,
 Board Exhibit B: Copy of notice of hearing,
 Board Exhibit C: Notice of County Assessor Representation,
 Board Exhibit D: 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 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).

- 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 276 (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 contend that current assessment is in error because the subject building was vacant as of March 1, 2003.
- 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 2 (incorporated by reference at 50 IAC 2.3-1-2).
- 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 Ct. 2006). A taxpayer, however, may rebut that presumption with evidence relevant to the market value-in-use of the subject property, including information regarding the sale price of that property or an appraisal prepared in accordance with the Manual’s definition of true tax value. MANUAL at 5; *Kooshtard Property VI*, 836 N.E.2d at 505-06 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice [USPAP].”). MANUAL at 5.
- d) Ms. Lane simply asserted that the fact that the subject building was vacant negatively affected its market value, without presenting any evidence to quantify that effect. At most, Ms. Lane testified that the subject property should be assessed \$37.35 per square foot, but she could not remember her source for that number. This type of conclusory testimony is insufficient to establish a prima

facie case of error. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998) (holding that conclusory statements, unsupported by factual evidence, are insufficient to establish error).

- e) Moreover, Ms. Lane testified to facts that tend to undercut the Petitioners' claims. For example, Ms. Lane testified that the subject property appraised for \$125,000 on January 8, 2002. As explained above, an appraisal of the subject property conducted in accordance with USPAP is relevant to establishing the property's market value-in-use. Because neither party submitted a copy of the appraisal report, the Board does not assign it sufficient probative weight to raise the assessment as requested by the Respondent. Nonetheless, Ms. Lane's testimony regarding the appraisal weighs against the Petitioners' claims.
- f) Based on the foregoing, the Petitioners did not establish a prima facie case that the assessment is in error. The assessment is not changed.

Conclusion

16. The Petitioner did not make a prima facie case of error. The Board finds for the Respondent. The assessment remains at \$75,800.

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: **May 26, 2006**

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>.