

REPRESENTATIVE FOR PETITIONER:

Robert Leirer Justice, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Brian Thomas, Ad Valorem Solutions

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

ROBERT L. JUSTICE,)	Petition No.: 09-010-02-1-4-00270
)	Parcel: 2513156011
Petitioner,)	
)	
v.)	
)	County: Cass
EEL TOWNSHIP ASSESSOR,)	Township: Eel
CASS COUNTY, INDIANA,)	
)	Assessment Year: 2002
Respondent.)	

Appeal from the Final Determination of
Cass Property Tax Assessment Board of Appeals

December 7, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the assessed value of the subject property exceeds its market value as evidenced by an appraisal.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Robert L. Justice (the Petitioner) filed Form 131 Petition for Review of Assessment, petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on July 26, 2004. The determination of the Cass County Property Tax Assessment Board of Appeals (the PTABOA) was issued on June 25, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on June 8, 2005, in Logansport, Indiana before Brian McKinney, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Robert L. Justice, the property owner
Jack Cross, President, Cross Appraisals, Inc.
Charlene F. Wickersham, property manager

For the Respondent:

Brian Thomas, Ad Valorem Solutions
Judy Lewis, Cass County Assessor
Sharon Campbell, First Deputy Assessor, Eel Township

5. The following exhibits were presented for the Petitioner:
Petitioner's Exhibit A – Summary of Witness Testimony, including Brief
Petitioner's Exhibit B – Real Estate Appraisal, as of October 8, 2004

Petitioner's Exhibit C – Property Record Card, and Room Diagram
Petitioner's Exhibit D – Market Value Appraisal, as of June 13, 1997

6. The following exhibits were presented for the Respondent:
 - Respondent's Exhibit A – Cover Sheet
 - Respondent's Exhibit B – Written summary of testimony
 - Respondent's Exhibit C – Two pictures of subject property
 - Respondent's Exhibit D – Statement regarding the Appraisal value date of October 8, 2004
 - Respondent's Exhibit E – List of additional exhibits
 - Respondent's Exhibit F – Written summary of testimony
 - Respondent's Exhibit G – Definitions from 2002 Real Property Assessment Manual, page 12.
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 131 petition
 - Board Exhibit B – Notice of Hearing dated April 22, 2005.
8. The subject property is assessed as a residential property. The property is currently used as a law office by the Petitioner.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2002, the PTABOA determined the assessed value of the property to be \$33,600 for the land and \$194,200 for the improvements for a total assessed value of \$227,800.
11. For 2002, the Petitioner contends the assessed value of the property should be \$135,000¹

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions;

¹ On the Form 131 petition, the Petitioner requests a value of \$10,000 for land and \$70,000 for improvements, for a total assessed value of \$80,000. The brief submitted by the Petitioner (Pet'r Ex. A, p. 2) and the testimony presented at the hearing indicate the Petitioner is seeking a total assessed value of \$135,000.

and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

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. 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”).
15. 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.

ANALYSIS

Whether the assessed value of the property is incorrect.

16. Petitioner contends that the subject property is assessed in excess of its actual market value-in-use. In support of this contention, the Petitioner submitted an appraisal dated October 8, 2004. According to the appraisal the property had a market value of \$135,000 as of the appraisal date. *Pet'r Ex. B*. The appraiser used three approaches to value to arrive at his conclusion. *Id*; *Cross testimony*. Further, the appraiser stated it was his

opinion that the commercial office market in the Logansport area had not changed significantly since 1999. *Cross testimony*. The Appraiser also testified that he is experienced and knowledgeable of the local area and that the appraisal was done in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.*

17. The Respondent contends the property is assessed correctly and argued that the Petitioner did not present sufficient probative evidence to indicate an error in the assessment nor what the correct assessment should be. The Respondent further alleged that the appraisal is unreliable for assessment purposes for a number of reasons. *Thomas argument*. The appraisal has a valuation date of October 2004, instead of January of 1999. *Id.* The appraisal is a limited appraisal and not a complete appraisal. *Id.* The capitalization rate used by the appraiser is extremely low. *Id.* Further, the Respondent contends that the market has changed significantly in Logansport since 1999. *Thomas testimony*. The market is lower currently than it was in 1999. *Campbell testimony*. However, the Respondent stated that with respect to commercial properties, “not as much change, pretty much stayed the same.” *Id.*

18. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate 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). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through the cost and income capitalization approaches).

19. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*

20. Here, the Petitioner presented an appraisal with an effective date of October 8, 2004, to attempt to show the current assessment is incorrect, and to show what the correct assessment should be. The appraisal uses the three approaches to value that are generally recognized in the appraisal industry and concludes that subject property has a market value of \$135,000 as of October 8, 2004. In arriving at this conclusion, the appraiser stated he relied most heavily on the income approach to value because the property was an income producing property. The appraiser testified that based on his experience and knowledge of the local market, the value of commercial office buildings in the Logansport area has not changed since 1999. Based on the appraisal and the appraiser's testimony that the value of commercial properties has not changed significantly since 1999, the Board finds that the Petitioner raised a prima facie case that the property is over-valued and that the correct value of the subject property is \$135,000.

21. 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. Here, the Respondent contended that the assessment was correctly performed according to the MANUAL. Further, according to the Respondent, the Petitioner's appraisal is insufficient to show an error in the assessment, or what the correct assessment actually should be because it is not relevant to the January 1, 1999, valuation date, it is only a "limited" appraisal and used inadequate comparable properties. Finally, the Respondent contends that market value and true tax value can be very different values.

22. The Board finds that the Petitioner sufficiently related the appraisal value to the value of the subject property as of January 1, 1999. The Petitioner's appraiser, a Certified Indiana General Appraiser with years of experience in the Logansport area, testified that the market for commercial property has not changed in the area since 1999. Furthermore, the testimony by the Respondent supports this conclusion. The Eel Township First Deputy Assessor stated that prices of commercial property had "pretty much stayed the same." *Campbell testimony*.
23. The Board similarly is not persuaded by Respondent's contention that the appraisal is not reliable because it is a limited appraisal rather than a complete appraisal. The Petitioner's appraiser stated that appraisal was done in accordance with USPAP guidelines, and that it did not invoke any of the departure rules. Moreover, the Respondent presented no evidence showing how a limited appraisal would be unreliable for determining the value of the property. *See Meridian Towers*, 805 N.E.2d at 479.
24. Finally, the Respondent states that the adjustments used by the appraiser "are not logical." *Thomas testimony*. The Respondent also stated that the capitalization rate was "nonsensically" low. *Id.* These are nothing more than conclusions and conclusory statements do not constitute probative evidence. *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
25. The Board, therefore, finds that Respondent failed to rebut the Petitioner's appraisal indicating that as of October 8, 2004, the property had a market value of \$135,000. The Respondent failed to rebut the Petitioner's evidence that commercial property values in the Logansport area had not changed between 1999 and 2004. The Board finds for the Petitioner and holds that the value of the subject property is no more than \$135,000.²

² Based on the Board's ruling on the market value of the property, the Board need not address the other errors in the assessment alleged by Petitioner, including condition and obsolescence.

SUMMARY OF FINAL DETERMINATION

Whether the assessed value of the property is incorrect.

26. The Petitioner made a prima facie case showing the assessment of the subject property was incorrect. The Petitioner further presented probative evidence indicating the subject property should be assessed for \$135,000. The Respondent did not rebut the Petitioner's evidence. Therefore, the Board finds in favor of the Petitioner and holds that the value of the subject property is \$135,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>.