

REPRESENTATIVES FOR PETITIONERS: Terence E. and Ibenia A. Evans, Pro Se

REPRESENTATIVE FOR RESPONDENT: Victoria L. Voris, Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

TERENCE E. AND IBENIA A.)	Petition No.: 49-904-05-1-5-10000 ¹
EVANS,)	
Petitioners,)	Parcel: 9043188
)	
v.)	Marion County
)	
WAYNE TOWNSHIP ASSESSOR,)	Wayne Township
)	
Respondent.)	2005 Assessment

Appeal from the Final Determination of the
Marion County Property Tax Assessment Board of Appeals

November 28, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of facts and conclusions of law on the following issue: Does the current assessment reflect the correct market value-in-use of the property?

¹ The petition was originally numbered 49-904-04-1-5-1000. At the hearing, the parties agreed the year under appeal is 2005. The petition number has been changed to reflect the correct year of appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Petitioners initiated an appeal of their assessment by written document on August 12, 2005. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on November 18, 2005. The Petitioners filed Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment, seeking an administrative review on December 2, 2005.²

Hearing Facts and Other Matters of Record

2. Ronald Gudgel, the Board's designated Administrative Law Judge, held the hearing in Indianapolis on September 14, 2006.
3. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioners – Terence E. Evans,
Ibenia A. Evans,
 - For the Respondent – Victoria L. Voris.
4. The Petitioners presented the following exhibits:
 - Petitioners Exhibit 1 – Letter of contentions,
 - Petitioners Exhibit 2 – Property record card (PRC) for the 2005 assessment,
 - Petitioners Exhibit 3 – Floor plan (porch),
 - Petitioners Exhibit 4A – Photograph of the furnace area,
 - Petitioners Exhibit 4B – Photograph of a window,
 - Petitioners Exhibit 4C – Photograph of the front porch,
 - Petitioners Exhibit 4D – Photograph of the kitchen,
 - Petitioners Exhibit 4E – Photograph of the shower wall,
 - Petitioners Exhibit 4F – Photograph of paneling damaged by water,
 - Petitioners Exhibit 4G – Photograph of mold and mildew,
 - Petitioners Exhibit 4H – Photograph of a crack in the wall,
 - Petitioners Exhibit 4I – Photograph of ceiling water damage,
 - Petitioners Exhibit 4J – Photograph of a crack in the wall,
 - Petitioners Exhibit 4K – Photograph of water damage.

² The Petitioners elected to have this administrative hearing conducted under the Indiana Board of Tax Review small claims procedures. The Respondent exercised its option to remove this matter from the small claims docket pursuant to 52 IAC 3-1-3(b)(2).

5. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Form 130 and Form 131,
 - Respondent Exhibit 2 – Form 11,
 - Respondent Exhibit 3 – Form 115,
 - Respondent Exhibit 4 – Field assessment information,
 - Respondent Exhibit 5 – Current PRC reflecting the PTABOA changes,
 - Respondent Exhibit 6 – Pages from the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A,
 - Respondent Exhibit 7 – Base lot contribution study,
 - Respondent Exhibit 8 – Sales information and comparisons of properties within the neighborhood to the subject property,
 - Respondent Exhibit 9 – Neighborhood factor calculations.

6. The following additional items are part of the record of proceedings:
 - Board Exhibit A – Form 131,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C - Letter from the Respondent opting out of small claims,
 - Board Exhibit D – Letter from the Board advising the appeal was removed from the small claims docket.

7. The Respondent timely provided a list of witnesses and exhibits, as well as copies of documentary evidence to the Petitioners as required by 52 IAC 2-7-1. The Petitioners failed to provide the lists or copies of documentary evidence to the Respondent. At the administrative hearing, the Respondent waived that issue.

8. The subject property is a home located at 8439 Rodney Drive, Indianapolis, Indiana.

9. The Administrative Law Judge did not conduct an on-site inspection of the property.

10. The PTABOA determined the assessed value is \$15,900 for land and \$128,800 for improvements. The total assessed value is \$144,700.

11. The Petitioners contend the total assessed value should be \$125,000.

12. The Petitioners presented the following evidence:
- A. The exterior of the home is typical for the neighborhood. The residence is thirty-four years old. It has experienced deterioration, including water damage to the walls, cracked concrete on the porch and driveway, and furnace and air conditioning systems that need replacement. The sewage system backs up during heavy rains. *T. Evans testimony; Pet'rs Ex. 1; Pet'rs Exs. 4A – 4K.*
 - B. Although the Petitioners initially agreed to the current assessment after the local officials made some corrections, the Petitioners did not fully understand the revised assessment. *T. Evans testimony; Resp't Ex. 1 at 4.*
 - C. Based on the need for extensive repairs, the property should be assessed for no more than \$125,000. *T. Evans testimony.*
13. The Respondent presented the following evidence:
- A. During the informal preliminary conference, the Petitioners stated the home is insured for \$140,000, an amount greater than the current assessed value of the home. The home is thirty-four years old. Some deterioration is normal. The Respondent inspected the property at the time the Petitioners requested an informal preliminary conference. The deficiencies identified by the Petitioners were observed and accounted for by reducing the grade from B to C+2. *Voris testimony.* The Petitioners agreed in writing with these changes and the proposed new assessed value. *Id.; Resp't Ex. 1 at 4.*
 - B. Sewage problems during heavy rains affect other homes in the neighborhood. This problem is typical for the neighborhood. *Voris testimony.* A consultant determined the land value and an influence factor was applied to the Petitioners' land assessment to account for excess front footage. No additional adjustment is necessary. *Voris testimony; Resp't Ex. 7.*

C. For the 2002 reassessment, values are based on January 1, 1999, sales. Sales in the Petitioners' neighborhood ranged from \$99,500 to \$147,000. *Resp't Ex. 9*. The Petitioners' current assessment is within that range. *Voris testimony*. The Respondent prepared a comparison of the Petitioners' property to seven sales of comparable properties with the same grade, same year of construction, and the same number of baths. The Petitioners have a large amount of square footage. The difference in price in these sales results from the difference in square footage. The property that sold for \$147,000 is most comparable to the Petitioners' property. *Voris testimony; Resp't Ex. 8*.

Jurisdiction

14. The Indiana Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property. Ind. Code § 6-1.5-4-1(a). These appeals are conducted under Ind. Code § 6-1.1-15.

Administrative Review and Burden

15. 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).
16. 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”).

17. 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

18. 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 is permitted to 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.
19. In challenging their assessment, the Petitioners provided a list of alleged deficiencies present in their home, including leaking walls and ceiling, deteriorated furnace and air conditioning systems, and sewage problems during heavy rains. The Petitioners failed to prove how any of these deficiencies impact market value-in-use or what the value should be. Their unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

20. The goal under Indiana's new assessment scheme is to ascertain market value-in-use. The purported errors focus solely on the methodology used to determine the assessment. Even if the Respondent's assessment did not fully comply with the Guidelines, the Petitioners failed to show that the total assessment is not a reasonable measure of true tax value. Their arguments based on strict application of the Guidelines are not enough to rebut the presumption 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.2d 764, 678 (Ind. Tax Ct. 2006) "[W]hen a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct." *Id.*
21. The Petitioners were required to prove that the assessed value does not accurately reflect market value-in-use, but they failed to do so. They failed to establish a prima facie case.
22. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Summary of Final Determination

23. The Petitioners failed to make a prima facie case of error. The Board finds for the Respondent. There will be no change in the assessment.

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>.