

REPRESENTATIVE FOR PETITIONER:

Wayne Robey, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Jan Payne, Fairfield Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Wayne Robey,)	Petition Nos.: 79-004-04-1-5-00001
)	79-004-05-1-5-00001
Petitioner,)	Parcel: 156075001412
)	
v.)	
)	
Fairfield Township Assessor,)	Tippecanoe County
)	Fairfield Township
Respondent.)	2004 and 2005 Assessments

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

July 6, 2007

FINAL DETERMINATION

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

ISSUES

- I. Did the Petitioner initiate a timely 2004 appeal?
- II. Does the current assessment reflect market value-in use for the property?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Petitioner sent a letter dated May 1, 2005, to the Fairfield Township Assessor requesting a preliminary conference for 2004 and 2005. *Pet'r Ex. 16.*
2. The Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) did not hold a hearing on the 2004 assessment, concluding that appeal was not timely filed. *Pet'r Ex. 15.* The PTABOA held a hearing on the 2005 assessment and issued a determination on June 28, 2005. The Petitioner filed Form 131 Petitions for Review of Assessment on July 28, 2005, seeking a review of both decisions.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Paul Stultz, the designated Administrative Law Judge, held a hearing on both petitions in Lafayette on April 10, 2007.
4. Wayne Robey and Jan Payne, Fairfield Township Assessor, were sworn as witnesses.
5. The following exhibits were presented for the Petitioner:
 - Petitioner's Exhibit 1(a) - Front of the subject property record card (PRC),
 - Petitioner's Exhibit 1(b) - Back of the subject PRC,
 - Petitioner's Exhibit 2(a) - Residential Neighborhood Valuation Form (marked 1 of 7),
 - Petitioner's Exhibit 2(b) - Residential Neighborhood Valuation Form (marked 2 of 7),
 - Petitioner's Exhibit 2(c) - Residential Neighborhood Valuation Form (marked 3 of 7),
 - Petitioner's Exhibit 2(d) - Residential Neighborhood Valuation Form (marked 4 of 7),

Petitioner's Exhibit 2(e) - Residential Neighborhood Valuation Form (marked 5 of 7),

Petitioner's Exhibit 2(f) - Residential Neighborhood Valuation Form (marked 6 of 7),

Petitioner's Exhibit 3 - Land comparison worksheet,

Petitioner's Exhibit 4 - Map of the subject neighborhood,

Petitioner's Exhibit 5 - Three photographs of the subject property,

Petitioner's Exhibit 6 - Two photographs of property at 612 New York,

Petitioner's Exhibit 7 - Two photographs (top photograph is of property at 612 New York, bottom photograph is of the subject property),

Petitioner's Exhibit 8 - Two photographs of roof of the subject property,

Petitioner's Exhibit 9 - Two photographs of the subject property,

Petitioner's Exhibit 10 - Annually Adjusting Assessed Values Fact Sheet from the Indiana Department of Local Government Finance,

Petitioner's Exhibit 11(a) - List of auction sales of Tippecanoe County property,

Petitioner's Exhibit 11(b) - List of auction sales of Tippecanoe County property,

Petitioner's Exhibit 11(c) - List of auction sales of Tippecanoe County property,

Petitioner's Exhibit 11(d) - List of auction sales of Tippecanoe County property,

Petitioner's Exhibit 11(e) - List of auction sales of Tippecanoe County property,

Petitioner's Exhibit 12 - Tippecanoe County 2004 Cash Report,

Petitioner's Exhibit 13 - Letter from Viola Holt to the Petitioner dated November 6, 1978,

Petitioner's Exhibit 14 - Notice of Assessment of Land and Structures (Form 11) for the assessment date March 1, 2006,

Petitioner's Exhibit 15 - Letter from Nancy Moore, Tippecanoe County Assessor, dated September 2, 2005, to the Petitioner,

Petitioner's Exhibit 16 - Letter dated May 1, 2005, from the Petitioner to the Fairfield Township Assessor requesting a preliminary conference, and letter dated September 1, 2005, from the Petitioner to the Tippecanoe County Assessor requesting a hearing,

Petitioner's Exhibit 17 - Summary of intended testimony of Wayne Robey.

6. The Petitioner objected because the Respondent failed to provide copies of exhibits as required by 52 IAC 2-7-1. As a result, the Respondent offered no exhibits.
7. The following additional items are officially recognized as part of the record:
 - Board Exhibit A - The 131 Petitions,
 - Board Exhibit B - Notices of Hearing,
 - Board Exhibit C - Hearing Sign In Sheet.
8. The subject property is a single-family residential dwelling.
9. The Administrative Law Judge did not conduct an on-site inspection of the subject property.
10. The PTABOA determined the total assessed value is \$42,800 (land \$13,000 and improvements \$29,500).¹
11. The Petitioner contends the total assessed value should be \$13,200 (land \$2,500 and improvements \$10,700).

JURISDICTION

12. This matter is governed by the provisions of IND. CODE § 6-1.1-1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process. The Board issues this final determination pursuant to IND. CODE § 6-1.1-15-3.

¹ The parties agree these values are correct despite the mathematical error. The property record card and the Form 131 petition list the current assessed value of the improvements as \$29,800. *Pet'r Ex. 1(a); Board Ex. A.*

CONTENTIONS

13. The Petitioner contends that Public Law 1-2004 § 78(c) allows him to file the 2004 appeal 45 days after he received the 2004 tax statement. Petitioner received the tax statement on or about April 21, 2005. *Robey testimony; Pet'r Ex. 16.* He sent a letter to the Fairfield Township Assessor on May 1, 2005, initiating the appeal. *Id.*
14. The Respondent contends the 2004 tax statement did not start an extra 45-day period to appeal, and therefore, the appeal is not timely for 2004. Because the Petitioner filed after May 10, 2004, his action was only considered to be an appeal for the 2005 assessment. *Payne testimony.*
15. Petitioner contends his property is over-assessed. Petitioner contends the Respondent did not properly follow applicable Assessment Guidelines. *Robey testimony; Pet'r Ex. 3.*
16. Petitioner contends the current condition rating of average is not correct. *Robey testimony.* The condition rating of the improvements should be fair. *Robey testimony; Pet'r Exs. 8, 9, and 17.*
17. The property sold for \$11,000 on November 6, 1978. *Robey testimony; Pet'r Ex. 13.* The property sold for \$12,000 at a tax sale on October 6, 2004. *Pet'r Ex. 11(d), sale ID 7924519.* Petitioner argues that applying linear interpolation based on the sale dates, the value is \$12,700 when trended to January 1, 1999. *Robey testimony; Pet'r Ex 17.*

ANALYSIS

Did the Petitioner initiate a timely 2004 appeal?

18. INDIANA CODE § 6-1.1-15-1 applies to the initiation of assessment appeals. At the time governing these appeals, that statute provided, in relevant part:
- (b) In order to appeal a current assessment and have a change in the assessment effective for the most recent assessment date, the taxpayer must request in writing a preliminary conference with the county or township official referred to in subsection (a):
 - (1) not later than forty-five (45) days after notice of a change in the assessment is given to the taxpayer; or
 - (2) May 10 of that year;whichever is later. ***
 - (c) A change in an assessment made as a result of an appeal filed:
 - (1) in the same year that notice of a change in the assessment is given to the taxpayer; and
 - (2) after the time prescribed in subsection (b);becomes effective for the next assessment date.
 - (d) A taxpayer may appeal a current real property assessment in a year even if the taxpayer has not received a notice of assessment in the year. If an appeal is filed on or before May 10 of a year in which the taxpayer has not received notice of assessment, a change in the assessment resulting from the appeal is effective for the most recent assessment date. If the appeal is filed after May 10, the change becomes effective for the next assessment date.
19. The Respondent argues that there was no change to the 2004 assessment and May 10, 2004, passed before the Petitioner initiated his appeal. That argument focuses only on the statutory provisions quoted above. If only those provisions controlled, the Respondent's position would be correct. Nevertheless, the Respondent's analysis is incomplete.
20. Petitioner relies on the authority of a specific non-code section enacted by the legislature that provides additional opportunity to challenge certain assessments, *notwithstanding* the time requirements in IND. CODE § 6-1.1-15-1. Public Law 1-2004, Sec. 78 became effective May 10, 2002. Section 78 provides:

(c) Notwithstanding IC 6-1.1-15-1(b)(2), IC 6-1.1-15-1(c), and IC 6-1.1-15-1(d), in order to appeal an assessment of real property and have a change in the assessment effective for the assessment date in 2002, 2003, or 2004, the taxpayer must, in the manner provided by IC 6-1.1-15-1, as amended by this act, file a written request for a preliminary conference with the township assessor not later than forty-five (45) days after:

- (1) a notice of a change of assessment for the assessment date is given to the taxpayer; or
 - (2) the taxpayer receives a tax statement for the property taxes that are based on the assessment for the assessment date;
- whichever occurs first.

21. The Respondent simply did not address this additional authority. Section 78 allows an appeal for the 2004 assessment within forty-five days of receiving the 2004 tax statement. The Petitioner received his 2004 tax statement on April 21, 2005. The Petitioner initiated an appeal on May 1, 2005. The Respondent did not dispute either of these facts. Clearly, the Petitioner initiated an appeal for 2004 within the allowable period after receiving his tax statement for that year. The Petitioner has a timely 2004 appeal.

Does the current assessment reflect market value-in use for the property?

22. 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).
23. 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”).

24. 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); MANUAL at 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. The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may 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. Additionally, 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
25. The Petitioner relied on the 1978 price and the 2004 price of his property, which he interpolated to January 1, 1999. His calculation results in a value of approximately \$12,700 as of January 1, 1999. Generally, the sale price on the open market is good evidence of value. That statement, however, is not always true. One problem with Petitioner's interpolation is the length of time (over twenty years) between the 1978 purchase and the valuation date. Generally, an appraisal does not use sales that are so remote in time. A detailed justification and analysis is required when an appraisal does use a remote sale. The Petitioner provided no such justification or analysis. The Petitioner failed to establish that spanning approximately 21 years is in accordance with generally accepted appraisal principles. The Petitioner failed to provide substantial evidence that the price in 1978 has probative value.

26. The parcel also sold at a tax sale auction in October 2004. A sale does not indicate the market value of the property unless that sale occurs in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. The Petitioner failed to establish that the tax sale satisfies the conditions of a competitive and open market. Furthermore, there is no evidence that the seller (the county treasurer) was typically motivated. Ind. Code § 6-1.1-24-5. That tax sale price is not probative evidence.
27. The Petitioner also contends the assessor did not follow the Guidelines in determining the home's condition rating or the land valuation. This argument focused solely on the methodology used to determine the assessment. The Petitioner must show that the total assessment was not a reasonable measure of true tax value even if the Respondent's assessment did not fully comply with the Guidelines. See Ind. Admin. Code tit. 50, r. 2.3-1-1(d). One cannot make a prima facie case based only on disputes about the application of the Guidelines. See *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006). Arguments regarding strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. See *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
28. The Petitioner was required to show through market-based evidence that the assessed value does not accurately reflect the market value-in-use, but he did not do so. The Petitioner did not present a prima facie case for any assessment change.
29. When a taxpayer fails to provide probative evidence to support any change of an assessment, the Respondent's duty to support the current 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, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

SUMMARY OF FINAL DETERMINATION

30. The 2004 appeal was timely. The Board has jurisdiction to make a final determination concerning the 2004 assessment.
31. The Petitioner failed to present a prima facie case that the current 2004 and 2005 assessments are in error. The Board finds for the Respondent.

This Final Determination is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>