

REPRESENTATIVE FOR PETITIONERS:

Wilbur R. Bingaman, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Brian Thomas, Ad Valorem Solutions

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Wilbur R. and Melinda Bingaman,)	Petition No:	09-010-09-1-5-00061
)		
Petitioners,)	Parcel No:	09-17-56-442-018.000-010
)		
v.)		
)	County:	Cass
Cass County Assessor,)		
)	Assessment Year:	2009
Respondent.)		

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

September 13, 2011

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 is whether the assessed value of the Petitioners' property is overstated for the 2009 assessment year.

PROCEDURAL HISTORY

2. The Petitioners, Wilbur R. and Melinda Bingaman, initiated their assessment appeal by filing a request with the Cass County Assessor on May 12, 2010. The Cass County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on December 17, 2010. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed a Form 131 Petition for Review of Assessment on December 28, 2010, petitioning the Board to conduct an administrative review of their petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on July 12, 2011, in Logansport, Indiana.
4. The following persons were sworn and presented testimony at the hearing:¹

For the Petitioners:

Wilbur R. Bingaman, property owner
Melinda Bingaman, property owner

For the Respondent:

Cathy Isaacs, Cass County Assessor
Brian Thomas, Ad Valorem Solutions

¹ Mrs. Bingaman and Ms. Isaacs were sworn in as witnesses but did not present any testimony.

5. The Petitioners presented the following exhibits:

Petitioner Exhibit 1 – Broker’s opinion of value prepared by Cindy Heinzman, of Galloway, Murray & Scheetz Real Estate, dated October 18, 2010,

Petitioner Exhibit 2 – Multiple listing service (MLS) sheet for 1828 Clifton Avenue, Logansport, November 19, 2008, sale,

Petitioner Exhibit 3 – MLS sheet for 1828 Clifton Avenue, Logansport, April 12, 2010, sale,

Petitioner Exhibit 4 – MLS sheet for 10525 East 775 North, Denver,

Petitioner Exhibit 5 – MLS sheet for 11761 South 700 East, Galveston,

Petitioner Exhibit 6 – MLS sheet for 5207 East 150 South, Logansport, 6486 North 600 West, Royal Center, and 7278 East Old US 24, Logansport,

Petitioner Exhibit 7 – MLS sheet for 1078 East 800 South, Galveston, 127 Minor Street, Logansport, and 1530 Seaton, Logansport,

Petitioner Exhibit 8 – MLS sheet for 5927 East 1100 South, Galveston, 10525 East 775 North, Denver, and 11761 South 700 East, Galveston,

Petitioner Exhibit 9 – MLS sheet for 1828 Clifton Avenue, Logansport, 2661 North County Road 500 East, Logansport, and 3701 West Willow Woods Drive, Logansport,

Petitioner Exhibit 10 – Petitioners’ property’s property record card,

Petitioner Exhibit 11 – Five interior photographs of the house under appeal.

6. The Respondent offered no exhibits.

7. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing, dated April 28, 2011,

Board Exhibit C – Hearing sign-in sheet.

8. The subject property is an 864 square foot house with an attached garage and two detached garages located at 718 West Melbourne Avenue, Logansport, in Cass County.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2009, the PTABOA determined the assessed value of the Petitioners' property to be \$10,600 for the land and \$62,300 for the improvements, for a total assessed value of \$72,900.
11. For 2009, the Petitioners contend the total assessed value of their property should be \$55,000.

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, (3) property tax exemptions, and (4) property tax credits 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 Indiana 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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. Washington Township 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PETITIONER'S CONTENTIONS

16. The Petitioners contend that their property was over-assessed based on the property's market value. *Bingaman testimony*. In support of their position, the Petitioners submitted a one-page opinion of value prepared by Cindy Heinzman, who is a broker associate with Galloway, Murray & Scheetz Real Estate, and four MLS listings.² *Petitioner Exhibits 1 through 5*. In her opinion of value, Ms. Heinzman estimated the property's value to be \$55,000 as of October 18, 2010. *Bingaman testimony*; *Petitioner Exhibit 1*.
17. Additionally, the Petitioners contend the value of their property was over-stated compared to the sale prices of other manufactured homes in Cass County. *Bingaman testimony*. In support of their position, the Petitioners submitted twelve MLS listings showing that manufactured home properties sold in 2010 for prices ranging from \$13,000 to \$107,000. *Petitioner Exhibits 6 – 9*.
18. The Petitioners also argue that the character of the surroundings or "location" of a manufactured home affects its sale price. *Bingaman testimony*. Mr. Bingaman argues that, because their home is not located in the "best location," it would not sell for its assessed value. *Id.* According to Mr. Bingaman, their property is located approximately 44 feet from some railroad tracks and is surrounded by numerous rental properties. *Id.* The neighborhood has several poorly maintained businesses and condemned houses that have collapsed roofs, junk vehicles in their yards, and missing windows and siding and

² Mr. Bingaman referred to the document prepared by Ms. Heinzman as an "appraisal." *Bingaman testimony*; *Petitioner Exhibit 1*.

vandalism frequently occurs. *Id.* In addition, lights from the surrounding businesses shine into the house all night and one business in the area has live entertainment that plays loud music into the early morning hours. *Id.*

19. Finally, Mr. Bingaman contends that assessing officials are not “trending” properties correctly.³ *Bingaman testimony.* According to Mr. Bingaman, trending is a good tool for adjusting property values when homes are selling. *Id.* However, Mr. Bingaman argues that the housing market has been declining for the last few years. *Id.* Because local officials have not “reversed” the trending and lowered assessed values in the neighborhood, Mr. Bingaman concludes, their property was over-valued. *Id.*

RESPONDENT’S CONTENTIONS

20. The Respondent’s representative contends that the property under appeal was correctly assessed at \$72,900 for the March 1, 2009, assessment. *Thomas testimony.* According to Mr. Thomas, the county combined the Petitioners’ two adjoining parcels into one property, which increased the property’s assessed value between 2008 and 2009. *Id.* Mr. Thomas testified that Karen Moss of Ad Valorem Solutions conducted a site visit to the property on October 15, 2010, prior to the PTABOA hearing. *Id.* As a result of that site visit, the PTABOA changed the property’s lot size, applied a negative influence factor for excess frontage to the land, lowered the condition on the 12’ x 34’ detached garage to fair, and changed the grade to D+2 on the house and granted 10% obsolescence depreciation due to a leak in the roof. *Id.; Board Exhibit A.* Thus, Mr. Thomas concludes, the Petitioners’ property was not over-valued. *Thomas testimony.*
21. The Respondent’s representative further argues that the Petitioners’ 2010 broker’s opinion of value should be given little weight. *Thomas testimony.* According to Mr.

³ Mr. Bingaman appears to be referring to Indiana Code § 6-1.1-4-4.5, which states “The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took place.” Ind. Code § 6-1.1-4-4.5.

Thomas, the Petitioner's broker's opinion of value is more than two years and ten months removed from the proper valuation date.⁴ *Id.* Moreover, Mr. Thomas argues, the Petitioner's broker was not made available to the county to answer questions about her opinion of value. *Id.*

ANALYSIS

22. The 2002 Real Property Assessment Manual defines "true tax value" 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). 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 to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).
23. A property's assessment, determined under the Guidelines, is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

⁴ Mr. Thomas testified that the broker's opinion of value that the Petitioners submitted to the PTABOA was dated December 6, 2010; whereas the opinion of value presented to the Board by the Petitioners was dated October 18, 2010. *Thomas testimony; Board Exhibit A.*

24. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3.
25. The Petitioners first argue that their property was over-assessed based on a broker's opinion of value that estimated the property's value to be \$55,000 as of October 18, 2010. *Bingaman testimony; Petitioner Exhibit 1*. However, the valuation date for the March 1, 2009, assessment date was January 1, 2008. The Petitioners failed to show how the 2010 broker's estimate of their property's market value was relevant to the January 1, 2008, valuation date. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date).
26. Further, the broker's opinion of value does not state whether Ms. Heinzman used generally accepted appraisal methods to arrive at her opinion of market value. In fact, the entire document is comprised of a single paragraph that states "As per your request I have performed a search of manufactured homes that are similar to yours at the above mentioned address that have sold in the past 6 months. There has been limited sales activity of manufactured homes in the past 6 months due to market conditions. I have included 3 sold properties for your consideration. #1 1828 Clifton Ave. has considerable more square footage, an additional bedroom, 2 full baths and sold for \$73,500 on 6/8/2009 and again on 5/4/10 for \$74,000. #2 10525 E. 775 North in Denver (Cass County) has more interior square footage, an additional bedroom and bath and 1.5 acres. This property sold on 4/26/2010 for \$53,500. #3 11761 S. 700 East in Galveston 1.49 acres and a 50 x 30 heated pole barn with electric garage door openers. This property sold on 5/21/2010 for \$69,900. With all of the facts considered, I give the estimated

market value of your property to be \$55,000.” Consequently, the broker’s “estimated market value” is insufficient to prove the subject property’s market value-in-use. *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).

27. The Petitioners also contend that their property is over-valued based on the sale prices of other manufactured homes in Cass County. *Bingaman testimony*. In support of this contention, the Petitioners submitted listing sheets for twelve properties that sold in 2010 for prices ranging from \$13,000 to \$107,000. *Petitioner Exhibits 6 – 9*. While a taxpayer may offer sales information for comparable properties in order to show an error in his or her assessment, MANUAL at 5, here, all of the sales occurred at least two years after the relevant valuation date. Like the broker’s opinion of value above, the Petitioners did not relate the comparable properties’ 2010 sale prices to the property’s value as of the January 1, 2008, valuation date. Thus, the Petitioners’ comparable sales fail to raise a prima facie case that their property’s assessed value is too high. *See Long*, 821 N.E.2d at 471.
28. Moreover, the Petitioners failed to show how those manufactured homes compared to their property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioners merely presented the sale prices of twelve manufactured homes in Cass County whose sale prices

ranged from \$13,000 to \$107,000. The Petitioners made no attempt to show how the other manufactured homes compared to their house. More importantly, the vast range of sale prices renders the Petitioners' evidence virtually meaningless.

29. Finally, the Petitioners contend that the value of their property is diminished by the condition and inadequacies of properties in the surrounding area. *Bingaman testimony*. External obsolescence is caused by an influence outside of a property's boundaries that has a negative influence on the property's value. GUIDELINES, app. B at 4. To receive an adjustment for obsolescence, the Petitioners must identify the causes of obsolescence present and quantify the amount of obsolescence they believe should be applied to their property. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioners must present probative evidence that the causes of obsolescence identified are resulting in an actual loss in value to the property. *See Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001).
30. Here, the Petitioners contend that their house is located by railroad tracks, rental properties and condemned houses. However, it is not sufficient for the Petitioners to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioners must explain how the purported causes of obsolescence cause the property to suffer an actual loss in value. *See Indian Industries, Inc. v. Department of Local Government Finance*, 791 N.E.2d 286, 290 (Ind. Tax Ct. 2003) ("All Indian has done in this case is provide the State Board with a laundry list of factors that may cause obsolescence to its improvements and then say 'as a result, we're entitled to a 70% obsolescence adjustment.' However, Indian needed to link one with the other by showing an actual loss of value.") Thus, in failing to tie the condition of neighboring properties to an actual loss in the value of their property, the Petitioners have failed to raise a prima facie case that the subject property's assessment was incorrect.
31. Even if the Petitioners had shown that obsolescence should have been applied to their property, the Petitioners failed to show that their property's assessment did not accurately

reflect the property's market value-in-use. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*.").

32. Where the Petitioners fail to provide probative evidence that their property's assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

33. The Petitioners failed to raise a prima facie case that their property was over-valued for the March 1, 2009, assessment year. The Board finds in favor of the Respondent and holds that the property's assessed value should not be changed.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.