

REPRESENTATIVES FOR PETITIONER:

Robert C. Brown, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Kristie L. Dressel, Center Township Assessor

Robert W. Metz, Commercial Supervisor, Center Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Robert C. Brown Trust,	)	Petition No.:	45-032-03-1-5-00016
)		
Petitioner,	)	Parcel:	003-31-25-0079-0058
)		
v.)		
	)	County:	Lake
Center Township Assessor,	)	Township:	Center
)		
Respondent.	)	Assessment Year:	2003
)		

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

April 6, 2009

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 is excessive when the condition of the structure and its lack of foundation are considered.

PROCEDURAL HISTORY

2. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination upholding the Center Township Assessor's 2003 assessment of the subject property on March 8, 2007.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on April 5, 2007, petitioning the Board to conduct an administrative review of the property's 2003 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on January 13, 2009, in Crown Point, Indiana.¹
5. The following persons were sworn and presented testimony at the hearing:
For the Petitioner:

Robert C. Brown, taxpayer's representative,
Carol Brown, witness for the taxpayer,

¹ The hearing was originally scheduled for January 14, 2009. Both parties agreed to hold the hearing on January 13, 2009.

For the Respondent:

Kristie L. Dressel, Center Township Assessor,
Robert W. Metz, Commercial Supervisor, Center Township.

6. The Petitioner presented the following exhibits:
Petitioner Exhibits 1-3 – Photographs of the property.
7. The Respondent did not present any exhibits.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing dated November 7, 2008,
Board Exhibit C – Hearing sign-in sheet.
9. The subject property is a residential dwelling located at 7321 West 126th Place, Cedar Lake.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. The PTABOA determined the assessed value of the subject property to be \$15,800 for the land and \$28,100 for the improvements, for a total assessed value of \$43,900.²
12. The Petitioner contends the assessed value of the property should be \$4,000 for the land and \$23,000 for the improvements, for a total assessed value of \$27,000.

² The record is not clear on the assessed value of the property. The Form 115 did not have any assessed values recorded. *Board Exhibit A*. A spreadsheet purportedly attached to the 115 identified the amount of the assessed value of the parcel.

JURISDICTIONAL FRAMEWORK

13. 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; 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

14. 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).
15. 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”).
16. 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.

PARTIES' CONTENTIONS

17. The Petitioner contends that its house has no foundation and the structure is not in good condition. The Petitioner presented the following evidence in support of its contentions:
- a. The Petitioner contends the house has pillar and post construction, which is the cause of uneven flooring. *R. Brown testimony*. Mr. Brown testified that there is no foundation *Id.* In support of this contention, the Petitioner presented photographs showing the house and its lack of foundation. *Petitioner Exhibits 1-3*. According to the Petitioner's witness, CLT applied a \$4,500 credit for lack of a foundation as a result of the first hearing. *R. Brown testimony*.
 - b. Additionally, the Petitioner argues, the house is not in the best condition. *R. Brown testimony*. Mr. Brown testified that if the house were to sustain any substantial damage, it might not be worth rehabilitating. *Id.*
18. The Respondent contends the property is correctly assessed as a slab with no foundation. *Metz testimony*.

ANALYSIS

19. 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. 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.

20. A property's market value-in-use, as determined using the Guidelines, 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). But 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 or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

21. The Petitioner first contends that the assessment of the house should be lowered because the property lacks a foundation. The Petitioner, however, failed to offer any evidence to show that the house had been assessed with a foundation other than its pillar and post foundation. Thus, the Petitioner failed to prove that the Respondent erred in its assessment. Further, even if the Petitioner had shown that the foundation was incorrect on its assessment – which it did not – the Petitioner failed to show that the assessment did not accurately reflect the market value of the property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology 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*”).
22. The Petitioner also contends that the house is in poor condition. *Brown testimony*. The Board interprets this to be an argument that the condition of the subject dwelling was improperly assessed. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5, (incorporated by reference at 50 IAC 2.3-1-2)*. A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. While the Petitioner’s representative testified that the house “was not in the best condition,” the Petitioner presented no evidence which would justify a determination that the structure’s condition rating is incorrect. Conclusory statements, unsupported by factual evidence are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998)*.
23. Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003)*.

SUMMARY OF FINAL DETERMINATION

24. The Petitioner failed to establish a prima facie case of error. The Board finds for the Respondent. No change in the assessment is warranted.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>