
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Cantor Whipp,)	Petition No.: 78-008-11-1-5-00001
)	Parcel: 78-09-26-700-012.003-008
Petitioner,)	
)	
v.)	
)	Switzerland County
Switzerland County Assessor,)	York Township
)	2011 Assessment
Respondent.)	

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

January 14, 2013

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 fact and conclusions of law.

ISSUE

1. Did the Respondent prove that the current assessment of \$342,100 accurately reflects the market value-in-use of the subject property?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is 34.31 acres of land, a residence, and seven mobile homes. The Petitioner resides in the residence. The property is located at 13283 Beatty Ridge Road in Florence.
2. On November 10, 2011, the Switzerland County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the 2011 assessment on the subject property is \$342,100.
3. On November 21, 2011, the Petitioner filed a Form 131 Petition seeking the Board's review of that determination and opted out of small claims procedures. On the Form 131 Petition, the Petitioner stated the assessed value should be \$190,347.
4. The Board's designated Administrative Law Judge, Paul Stultz, held the hearing in Vevay on November 20, 2012. He did not conduct an on-site inspection of the property.
5. The property owner, Cantor Whipp, and Deputy County Assessor Frank McDavid were sworn as witnesses and testified at the hearing.
6. The Petitioner presented the following exhibits:
 - Exhibit 1 – Comparable property – 9650 West State 56, Hanover,
 - Exhibit 2 – Comparable property – 4945 Pendleton Run Road, Vevay,
 - Exhibit 3 – Comparable property – 6661 Arnett Road, Vevay,
 - Exhibit 4 - Comparable property – 12513 Arnold Miller Road, Vevay,
 - Exhibit 5 – Comparable property – 6704 Markland East Pike, Vevay,
 - Exhibit 6 – Comparable property – 6062 East 300 North, Milan,
 - Exhibit 7 – Petitioner's Federal Tax Form 1040 and attached Schedule E's,
 - Exhibit 8 – Comparable property – Parcel #58-06-03-004-095.000-004,
 - Exhibit 9 – Comparable property – 1 Ashland Cove Road #18, Vevay,
 - Exhibit 10 – Comparable property – 305 Sycamore Street, Osgood,
 - Exhibit 11 – Comparable property – 9777 US 50, Aurora
 - Exhibit 11a – Comparable property – 2407 Columbia Street, Patriot,

7. The Respondent presented the following exhibits:
 - Exhibit 1 – 2010 Subject property record card (PRC),
 - Exhibit 2 – 2011 Subject PRC,
 - Exhibit 3 – Thirteen photos of the subject property,
 - Exhibit 4 – Form 115 dated November 10, 2011,
 - Exhibit 5 – 2011 Subject PRC showing Assessor decreased assessment to \$308,500,
 - Exhibit 6 – Form 11 written notice to Petitioner showing the 2011 assessment was changed to \$308,500.

8. The following additional items are recognized as part of the record:
 - Board Exhibit A – The 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign in Sheet.

SUMMARY OF THE RESPONDENT’S CASE

9. Mr. McDavid visited the subject property on April 22, 2010, to pick up an addition to the dwelling. He made the proper adjustments to the assessed value. No one was present at the residence at this time even though Mr. McDavid had previously called and left a message. *McDavid testimony; Resp’t Exs. 1, 2.*

10. There was nothing presented at the PTABOA hearing to justify a change in the assessment. *McDavid testimony; Resp’t Ex. 4.*

11. The Petitioner contacted the Respondent on July 17, 2012, and agreed with the changes that were made to decrease the assessed value to \$308,500. Mr. Whipp was mailed a Form 11 with the new assessed value of \$308,500. *McDavid testimony; Resp’t Exs.5, 6.*

12. The alleged comparables presented by Mr. Whipp either have a residence and other “out buildings” or they are mobile home parks. In contrast, the subject property has a residence and seven mobile homes. Therefore, the properties presented by the Petitioner are not comparable to the subject property. *McDavid testimony.*

SUMMARY OF THE PETITIONER'S CASE

13. The subject property consists of the Petitioner's residence which is 2550 square feet, located on approximately 34 acres, and was assessed at \$266,200. There are seven mobile homes on the subject property's land which the Petitioner attempts to rent out for a profit. It was recently converted into what is called a "mobile home park." *Whipp testimony.*

14. The Petitioner presented eleven properties he alleged were comparable to the subject property. The comparables range from around \$300,000 to around \$100,000. The following are descriptions of each property as compared to the subject which was previously described above:
 - a. The first comparable is located at 9650 West State Road 56 in Hanover and sold for \$193,000 on May 27, 2011. The home is 4000 square feet, includes a two car garage, walk-out basement, two porches/decks, and is located on six acres. *Whipp testimony; Pet'r Ex. 1.*

 - b. The second comparable is located at 4945 Pendleton Run Road in Vevay. The home is 2856 square feet, includes a walk-out basement, horse barn, and is located on eight acres. This property was listed for \$175,000 but did not sell even though it had been assessed for \$203,300 in 2011. This proves the assessed value for this property was too high. *Whipp testimony; Pet'r Ex. 2.*

 - c. The third and most similar comparable to the subject is located at 6661 Arnett Road in Vevay and sold for \$125,000 on November 17, 2011. The home is 2538 square feet, includes a three car garage, four bedrooms, three bathrooms, and is located on ten acres. *Whipp testimony; Pet'r Ex. 3.*

 - d. The fourth comparable is located at 12513 Arnold Miller Road in Canaan and sold for \$110,000 on May 31, 2012. The home is 3000 square feet, and includes

six bedrooms, a basement, and a barn. There are no bathrooms at this comparable because the home belonged to an Amish family. *Whipp testimony; Pet'r Ex. 4.*

- e. The fifth comparable is located at 6704 Markland East Pike in Vevay and sold for \$124,500 on November 22, 2011. The home is 2596 square feet, and includes outbuildings, basement, and is located on 1.2 acres. *Whipp testimony; Pet'r Ex. 5.*
- f. The sixth comparable is located at 6062 East 300 North in Milan and sold for \$140,000 on June 28, 2012. The home is 2774 square feet, and includes three bedrooms, two bathrooms, a garage, barn, deck, and is located on 2.5 acres. *Whipp testimony; Pet'r Ex. 6.*
- g. The seventh comparable is a mobile home park located at 923 State Road 262 in Dearborn County. In 2011, this property was worth \$29,500.¹ It has nine mobile home sites. *Whipp testimony; Pet'r Ex. 8.*
- h. The eighth comparable is a mobile home park located at 1 Ashland Cove Road, #18 in Vevay and sold for \$100,000 in 2012. It includes 28 acres, 18 to 20 units, and a house. It is also located on a river. This property was assessed for \$266,200 in 2011 and for \$211,000 in 2012. This property, therefore, must be over-taxed because it sold for significantly less than the assessed value. *Whipp testimony; Pet'r Ex. 9.*
- i. The ninth comparable is a commercial mobile home park located at 305 Sycamore Street in Ripley County. The Petitioner stated that this property must have sold last year, in 2011, for \$11,100.² *Whipp testimony; Pet'r Ex. 10.*

¹ It is uncertain what Petitioner meant by "it" in reference to this comparable. The PRC shows the land was assessed at \$29,500 while the building was assessed at \$29,200, for a total assessed value of \$58,700 in 2011.

² The PRC for this property shows that the land only was assessed at \$11,100 in 2011. The total assessed value, however, was \$79,300 at that time.

- j. The tenth comparable is a trailer court located at 9985 Cole Lane in Aurora. It consists of 41 to 43 units and is located on 77 acres. This property was assessed for \$160,000 in 2012 and was previously assessed for \$310,000 in 2009. The Petitioner stated that this property's assessed value dropped by almost half by use of the income approach.³ *Whipp testimony; Pet'r Ex. 11.*
 - k. The eleventh comparable is a mobile home platted lot located at 2407 Columbia Street in Patriot. This property sold for \$83,500 in 2010 but was assessed at \$68,800 in 2012. *Whipp testimony; Pet'r Ex. 11a.*
15. The Petitioner's Federal Tax Return shows little income was produced by the seven mobile homes he rented on the subject property. The total income for 2011 was \$4,973. Three of the mobile homes lost money. The Petitioner was advised by the Respondent to value the rental properties using the income approach. *Whipp testimony; Pet'r Ex. 7.*

ADMINISTRATIVE REVIEW AND BURDEN

16. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

I.C. §6-1.1-15-17.2.

³ The Petitioner's exhibit 11 states that the income approach was used to adjust the assessment of this property.

17. Turning to the case at hand, both parties agree the 2011 assessment under appeal increased over 5% from the 2010 assessment. They further agree the Respondent has the burden of proof.
18. Mr. McDavid testified that he made a site visit on April 22, 2010, to pick up an addition to the residence. He failed to point out or explain to what extent the addition made the property different or how it affected the true tax value of the property. This information could have been important in determining which party had the burden of proof had it been provided. I. C. § 6-1.1-15-17 states the 5% increase from year to year is compared to the *same* property. I. C. § 6-1.1-15-17 would not apply to a property that had been sufficiently changed. The Respondent, therefore, has the burden of proving that the subject's March 1, 2011, assessment is correct.
19. In making a case, a party 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”). As stated previously, in this case the duty will be on the Respondent.
20. Once the Respondent establishes a prima facie case, the burden shifts to the Petitioner to rebut the Respondent's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The Petitioner must offer evidence that impeaches or rebuts the assessing official evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

21. Real property is assessed on the basis of 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 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 fair market value-in-use is the cost approach. MANUAL at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. Real Property Assessment Guidelines for 2002—Version A. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer or in this case, the Respondent is permitted to offer evidence relevant to market value-in-use to support the assessment. 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.

22. The Respondent did not make a prima facie case that supports the assessment of subject property under review.
23. As stated above, Mr. McDavid testified that he made a site visit on April 22, 2010, to pick up an addition to the residence. He failed to explain how the value he arrived at after the visit demonstrates the current assessment is an accurate market value-in-use.
24. Mr. McDavid claimed the Petitioner presented no evidence to justify a change in the assessment, and therefore, the PTABOA made no change to the assessment. Again, this is not probative evidence to support the contention that current assessment is an accurate market value-in-use.
25. Mr. McDavid asserted the Petitioner contacted him by phone on July 17, 2012, to agree with the changes in the assessment that decreased the assessment to \$308,500. He also stated he mailed Mr. Whipp a Form 11 with the \$308,500 assessment shown on it. The Form 11 is dated September 17, 2012. Mr. Whipp's petition to the Board is dated November 21, 2011. Mr. Whipp testified he did not withdraw his petition to the Board at any time. There is nothing in the record, with the exception of Mr. McDavid's testimony which Mr. Whipp rebutted, that supports the allegation that Mr. Whipp agreed to the

amount of \$308,500 as suggested by the Respondent. The Board did not receive notice from Mr. Whipp that he wanted to withdrawal his petition.

26. The Petitioner presented several properties he claimed had sold with the exception of one, from values of \$110,000 to \$193,000. The sale dates range from May 27, 2011 to June 28, 2012. While the Petitioner brought out a few isolated facts about how the subject property and the sold properties compared to one another, the Petitioner failed to provide the kind of detailed facts and analysis that would be required to establish how the value-in-use of the properties truly compares. A party is responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant market values-in-use of the properties. Without sufficient, meaningful facts and analysis, conclusory comparisons are not probative evidence. *See Long*, 821 N.E.2d at 470-471; *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). The Petitioner did not provide a prima facie case to support his contended value.
27. Because the Respondent failed to provide probative evidence supporting the position that the assessment is correct, however, the Petitioner'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, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
28. In other cases where the Respondent had the burden to prove the assessment is correct and the Respondent failed to carry that burden, the Board has ordered that the assessment be returned to the assessed value of the year before. In this case doing so reduces the assessment to \$239,800.
29. To the extent that the Petitioner sought an even lower assessed value, he had the burden to prove it. He did not do so. His evidence regarding the alleged comparables and his interpretation of the income approach were not probative and did not support his request to lower the assessment to \$190,347.

SUMMARY OF FINAL DETERMINATION

30. The Respondent failed to make a prima facie case that supported the assessed value of the subject property. The Petitioner failed to support the lower assessment he sought. The assessment will be changed to the prior year's (2010) assessment, \$239,800.

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

Commissioner, Indiana Board of Tax Review

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- 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>