

REPRESENTATIVE FOR PETITIONERS:

David C. Cox, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Judy Dancy, Fulton County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

David C. & Karen E. Cox,	)	Petition No.:	25-010-07-1-5-00010
	)		
Petitioners,	)	Parcel No.:	25-07-92-478-007.000-009
	)		
v.	)	County:	Fulton
	)		
Fulton County Assessor,	)	Township:	Rochester
	)		
Respondent.	)	Assessment Year:	2007

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

*July 29, 2010*

**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:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

1. To support their claim that the subject property was assessed too high, David and Karen Cox offered evidence about the amount they paid to buy the property, Multiple Listing Service (“MLS”) data for two neighboring properties, and evidence that the property had

deteriorated. But the Coxes did not relate their market-based data to the relevant valuation date for the March 1, 2007 assessment under appeal. And they did not quantify how the property's deterioration affected its market value-in-use. The Coxes therefore failed to meet their burden of proof.

### **Procedural History**

2. On November 28, 2007, the Coxes filed written notice with the Fulton County Assessor contesting the subject property's 2007 assessment. On July 6, 2009, the Fulton County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the subject property's assessment, but not to the level that the Coxes had requested.
3. The Coxes then timely filed a Form 131 petition with the Board. The Board has jurisdiction over the Coxes' appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
4. On May 6, 2010, the Board's Administrative Law Judge, Patti Kindler ("ALJ"), held a hearing on the Coxes' appeal. Neither the Board nor the ALJ inspected the subject property.

### **Hearing Facts and Other Matters of Record**

5. The following people were sworn in as witnesses:
  - David Cox, taxpayer
  - Judy Dancy, Fulton County Assessor
  - Dudley Scheumann, Appraisal Research
6. The Coxes submitted the following exhibits:
  - Petitioners Exhibit 1: MLS sheet for 1428 College Avenue
  - Petitioners Exhibit 2: MLS sheet for 1710 S. Audubon Avenue
7. The Assessor submitted the following exhibits:
  - Respondent Exhibit 1: Form 131 petition with PTABOA determination
  - Respondent Exhibit 2: Subject property record card and photograph

- Respondent Exhibit 3: Property record card and photograph for 1435 Bancroft Avenue
- Respondent Exhibit 4: Property record card and photograph for 1502 Bancroft Avenue
- Respondent Exhibit 5: Property record card and photograph for 1526 College Avenue
- Respondent Exhibit 6: Property record card and photograph for 1216 College Avenue
- Respondent Exhibit 7: Property record card and photograph 1607 Wallace Avenue
- Respondent Exhibit 8: Comparable adjustment grid
- Respondent Exhibit 9: Site map

8. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Notice of hearing
- Board Exhibit C: Hearing sign-in sheet

9. The subject property is a residential property located at 730 East 15<sup>th</sup> Street, Rochester, Indiana.

10. The PTABOA determined the following values for the subject property:

Land: \$10,900            Improvements: \$51,200            Total: \$62,100

11. On their Form 131 petition, the Coxes requested the following assessment:

Land: \$5,000            Improvements: \$35,000            Total: \$40,000

### **Administrative Review and the Parties' Burdens**

12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the 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).

13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).

14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

## **Analysis**

### **Parties’ Contentions**

#### **A. The Coxes’ Contentions**

15. The Coxes bought the subject property for roughly \$45,000 in 2002. It contains a mobile home on a metal frame with a house constructed around it. The Coxes have made no improvements to the property to warrant the current \$62,100 assessment. In fact, the house has deteriorated. The roof sags because a fire damaged the trusses, and the decorative brick fascia is falling away from the house. *Cox testimony*.
16. The Coxes offered MLS sales data for two properties in the subject property’s neighborhood. In 2008, when the market was higher, a property located on the same block as the subject property sold for \$38,000. That property has a house that is a little smaller than the subject house. *Cox testimony; Pet’rs Ex. 1*. In 2009, another property located just six houses down from the subject property sold for only \$45,500. Although that house is comparable to the subject house in size, it is newer than the subject house and it has a garage. *Cox testimony; Pet’rs Ex. 2*.

#### **B. The Assessor’s Contentions**

17. The Coxes’ MLS sales data is not probative of the subject property’s correct assessment. *Scheumann argument*. The comparable sales were both foreclosed properties. Even if they had been market sales, they occurred outside the relevant period for determining 2007 assessments. *Scheumann testimony and argument*.

18. To compensate for the part of the subject house that was originally a mobile home, the PTABOA lowered the house's quality grade from "D+1" to "D." The Assessor generally gives stick-built homes and stick-built additions a "C" grade, but the areas in the subject house that were stick-built are graded "D" to account for the original manufactured construction. *Scheumann testimony.*
19. The Assessor offered property record cards, photographs for five neighborhood properties that sold between April 2005 and September 2007. *Resp't Exs. 3-9.* The average adjusted sale price for those five properties was \$61,060. *Scheumann testimony; Resp't Ex. 8.* Thus, argues the Assessor, the subject property's current assessment is correct. *Scheumann argument.*

### **Discussion**

20. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
21. 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 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 ("USPAP") often will suffice. *Kooshtard Property VI,*

836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

22. Regardless of the method used to rebut an assessment's presumed accuracy, however, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dept' of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *See id* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.”)(emphasis added) For March 1, 2007 assessments, the valuation date was January 1, 2006. Ind. Code § 6-1.1-31-6 (c); 50 IAC 21-3-3.
23. The Coxes challenge the subject property's \$62,100 assessment because they only paid “roughly \$45,000” for the subject property in 2002, and they have made no improvements to the property since buying it. *Cox testimony*. But that sale occurred four years before the relevant January 1, 2006 valuation date for the 2007 assessment under appeal. The Coxes therefore needed to explain how that earlier sale price related to the subject property's market value-in-use as of January 1, 2006. While Mr. Cox's testimony about the lack of improvements to the subject property is relevant, it does not address whether the real estate market in which the property was located changed during the four-year span between the date the Coxes bought the subject property and the relevant January 1, 2006 valuation date. Because the Coxes offered no evidence on that point, Mr. Cox's testimony about the earlier sale price lacks probative value.
24. The Coxes also offered MLS sales information for two purportedly comparable neighborhood homes. That evidence, however, suffers from the same problem as Mr. Cox's testimony about what the Coxes paid for the subject property. The MLS data was from 2008 and 2009, and the Coxes did not explain how that data related to the subject property's market value-in-use more than two years earlier.

25. Timeliness issues aside, the MLS data was still insufficient to show that the subject property's assessment was wrong. True, one can show a property's value through sales information for comparable properties. Indeed, that is what the sales-comparison approach contemplates. See MANUAL at 3 (explaining that the sales-comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."). To use the sales-comparison approach as evidence, however, the proponent must show that the properties under examination are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between those properties affect their relative market values-in-use. *Id.*
26. Here, the Coxes did little to explain how the two sold properties compared to the subject property and nothing to explain how any differences affected the properties' relative values. Thus, even if the Coxes had related their MLS sales data to the January 1, 2006 valuation date, that data still would not have proved the subject property's market value-in-use.
27. Finally, Mr. Cox testified that the subject house had fire damage, a sagging roofline, and falling brick exterior trim. While those things might have affected the subject property's value, the Coxes offered no evidence to quantify that effect. Mr. Cox's testimony about the subject house's deterioration therefore did not suffice to make a prima facie case for reducing the subject property's assessment.

**SUMMARY OF FINAL DETERMINATION**

28. Because the Coxes did not offer probative evidence to rebut the presumption that the subject property was correctly assessed, they failed to make a prima facie case. The Board therefore finds for the Assessor.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>