

REPRESENTATIVE FOR PETITIONER:

Daniel Guyinn, Property Owner

REPRESENTATIVE FOR RESPONDENT:

Larry Unversaw, Center Township Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Daniel Guyinn,	)	Petition No.:	49-101-02-1-5-04420
	)	Parcel:	1012942
Petitioner,)		
)		
v.)		
	)	County:	Marion
James Maley,	)	Township:	Center
Center Township Assessor	)	Assessment Years:	2002
Respondent.)		

Appeal from the Final Determination of
Marion Property Tax Assessment Board of Appeals

August 16, 2005

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 exceeds its market value as indicated by sales of comparable properties from the same area.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Daniel Guyinn, filed Form 131 Petition for Review of Assessment (“Form 131 Petition”), petitioning the Board to conduct an administrative review of the above petition. The Form 131 Petition was filed on May 23, 2004. The determination of the Marion County Property Tax Assessment Board of Appeals (PTABOA) was mailed to the Petitioner on April 23, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on February 23, 2005, in Indianapolis, Indiana before Debra Eads, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:
For the Petitioner:
Daniel Guyinn, Property Owner¹

For the Respondent:
Larry Unversaw, Center Township Representative
5. The following exhibits were presented for the Petitioner:
Petitioner’s Exhibit 1 – Form 131 Petition

¹ Reginald B. Bishop filed an appearance on behalf of the Petitioner. Mr. Bishop, however, did not appear at the hearing, and the Petitioner proceeded *pro se*.

Petitioner's Exhibit 2 – PTABOA Final Assessment Determination (Form 115)
for the subject property

Petitioner's Exhibit 3 – Comparative Market Analysis for the subject property –
three (3) properties

Petitioner's Exhibit 4 – Property record card (PRC) for the subject property

6. The following exhibits were submitted by the Respondent:

No exhibits were submitted by the Respondent.

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

Board's Exhibit A – Form 131 Petition

Board's Exhibit B – Notice of Hearing on Petition

Board's Exhibit C – Notice of Appearance for Reginald B. Bishop

8. The subject property is a residential duplex located at 3122 Guilford Avenue,
Indianapolis, Center Township, Marion County, Indiana.

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

10. For 2002, the PTABOA determined the assessed values of the property to be:

Land: \$5,100	Improvements:	\$57,500
---------------	---------------	----------

11. For 2002, the Petitioner contends the assessed values of the property should be:

Land: \$3,000	Improvements:	\$16,000
---------------	---------------	----------

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; 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

13. 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).
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 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”).
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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Whether the assessed value of the subject property exceeds its market value as indicated by sales of comparable properties from the same area.

Parties' Contentions

16. The Petitioner contends that sales of properties in the subject's area support a lower value than the assessed value currently assigned to the subject property. *Guyinn testimony*.

17. The Respondent stated that it would leave the decision regarding the appropriate value of the subject property to the State and that the assessed values should stand. *Unversaw testimony.*

18. The Petitioner presented the following evidence and argument in support of his position:
 - A. The Petitioner compared the subject property to properties in the area that were similar to the subject property in size and year of construction. Those properties sold for amounts less than the amount for which the subject property is assessed. The Petitioner obtained his information from sales disclosures and links used in the real estate market. *Guyinn testimony.*

 - B. The Petitioner compared the subject property to the following properties: 3345 Carrollton Avenue, which sold for \$17,500; 2417 N. Carrollton Avenue, which sold for \$18,300; and 3042 Guilford Avenue, which sold for \$18,500. The average value for those properties is \$18,100 rounded to \$19,000. *Guyinn testimony; Petitioner's Exhibit 3.* That amount represents the true “real world value” of the subject property. *Guyinn testimony.*

 - C. The Petitioner is a licensed real estate broker and has access to sales information for 250 properties within a one (1) mile radius of the subject property. *Id.* None of those properties sold for \$57,500. *Id.*

 - D. The County used reproduction costs to assess the subject property rather than using an appraisal or other evidence of “real world value.” *Id.*

19. The Respondent failed to present any evidence in support of the current assessment. The Respondent’s representative stated that he would leave the assessed values up to the State. *Unversaw testimony.*

Discussion

20. The Petitioner compared the subject property to three (3) properties from the same area that sold for between \$17,500 and \$18,500. *Guyinn testimony; Petitioner's Exhibit 3*. The Petitioner further asserted that out of two-hundred and fifty (250) properties within a one-mile radius of the subject property, none sold for an amount as high as the subject property's current assessment. *Guyinn testimony*.

21. Real property in Indiana is assessed on the basis of its "true tax value." *See* I.C. § 6-1.1-31-6(c). "True tax value" is defined as "[t]he 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 2 (incorporated by reference at 50 IAC 2.3-1-2) ("Manual").

22. The market value-in-use of a property may be calculated utilizing several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). One such approach is known as the "sales comparison approach." *Id.* 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." *Id.*

23. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent of such evidence 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 two properties. *See Long*, 821 N.E.2d at 470. 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.*

24. In the case at bar, the Petitioner did not compare the characteristics of the subject property to the characteristics of any of the two-hundred and fifty (250) properties he generally referenced. The Petitioner, however, did compare several characteristics of the subject property to the characteristics of three properties located at 3345 Carrollton Ave., 2417 Carrollton Ave., and 3042 N. Guilford, respectively. *Petitioner's Exhibit 3*. The characteristics identified by the Petitioner include: number of units, year of construction, lot size, kitchen size, total square footage, and parking. *Petitioner's Exhibit 2*. In some instances, the information provided by the Petitioner is incomplete. For example, he lists the subject property as having a lot of .15 acres, but does not provide a lot size for the property located at 3345 Carrollton Ave. *Id.* Moreover, the Petitioner did not explain why he chose those particular characteristics for comparison, or why they are more reflective of value than characteristics such as the number of bedrooms and bathrooms within the units, or the quality of design and condition of the dwellings.
25. The Petitioner made the following downward adjustments to the sale prices of the purportedly comparable properties: \$7,000 to the property located at 3345 Carrollton to account for it being 92 square feet smaller than the subject property; \$7,200 to the property located at 2417 N. Carrollton to account for it being 800 square feet larger than the subject property; and \$4,000 to the property located at 3042 N. Guilford to account for it being 1256 square feet larger than the subject property. *Id.*
26. The Petitioner, however, did not explain how he determined the amount of his adjustments. The adjustments are inconsistent on their face. The Petitioner made downward adjustments to sale prices both for dwellings that were larger than the subject dwelling and for those that were smaller than the subject dwelling. Moreover, the amounts of the adjustments vary considerably. A property that is 1256 square feet larger than the subject property received an adjustment of little more than half the amount of adjustment received by a property that is only 800 square feet larger than the subject property.

27. In short, although the Petitioner engaged in some level of comparison of the properties in question, he did not provide sufficient explanation to render his analysis probative of the subject property's market value-in-use.
28. The Petitioner also contends that the current assessment is erroneous because it is based upon "reproduction" costs rather than "real world values." *Guyinn testimony*.
29. As set forth above, the Manual defines "true tax value" for purposes of assessment. MANUAL at 2. The underlying concept of the Manual, however, is to allow local assessing officials to select an acceptable mass appraisal method to arrive at that value. *Id.* at 7; *see also*, 50 IAC 2.3-1-1. The Manual and 50 IAC 2.3 incorporate the Real Property Assessment Guidelines for 2002 – Version A ("Guidelines") as a pre-approved mass appraisal method. 50 IAC 2.3-1-2; PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, intro at 1. As with many mass appraisal methods, the Guidelines are based upon the cost approach to value, one of the three approaches to value traditionally used in the appraisal profession. *Id.*; MANUAL at 3.
30. Thus, a valuation performed in accordance with the Guidelines, such as the assessment at issue in this case, is a specifically recognized method by which to determine a property's true tax value. It is not the exclusive method, and a taxpayer in a given case may present even more persuasive evidence, such as a fee appraisal performed in accordance with generally accepted appraisal principles. The Petitioner, however, did not present any such evidence in this case.
31. Based on the foregoing, the Petitioner failed to establish a prima facie case of error.

SUMMARY OF FINAL DETERMINATION

32. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent².

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

Commissioner, Indiana Board of Tax Review

² The Petitioner's failure to establish a prima facie case mandates a finding in favor of the Respondent. The Respondent's position that it will leave the determination "to the State," however, is an unacceptable response in proceedings before the Board. It is the Respondent's responsibility, not the Board's, to assess property within the Respondent's jurisdiction. Similarly, it is the Respondent's duty to defend its assessment before the Board. The Board will not make the Respondent's case for it.

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.