

REPRESENTATIVE FOR PETITIONER:

David M. Easterly, *pro se*

REPRESENTATIVES FOR RESPONDENT:

Kelly Hisle, Delaware County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

David M. and Delinda L. Easterly,	)	Petition No.:	18-003-06-1-5-00756
)		
Petitioners,	)	Parcel No.:	181122333005000003
)		
v.)		
	)	County:	Delaware
Delaware County Assessor,	)	Township:	Center
)		
Respondent.	)	Assessment Year:	2006

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

December 21, 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

PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-15-1, David M. and Delinda L. Easterly, the Petitioners, filed a Form 131 Petition for Review of Assessment on July 14, 2008, petitioning the Board to conduct an administrative review of the above petition. The Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on June 20, 2008.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Alyson Kunack, the Board's designated Administrative Law Judge (the ALJ) held a hearing on September 23, 2009, in Muncie, Indiana.
3. The following persons were sworn and presented testimony at the hearing:
For the Petitioners:
David M. Easterly, Petitioner

For the Respondent:
Kelly Hisle, Delaware County Deputy Assessor
4. The Petitioners presented the following evidence:
Petitioners Exhibit 1 – Form 131 Petition,
Petitioners Exhibit 2 – Appraisal of the subject property as of July 27, 2006.
5. The Respondent presented the following evidence:
Respondent Exhibit A – Property Record Card (PRC) for the subject property,
Respondent Exhibit B – MLS listing sheet for the subject property,
Respondent Exhibit C – Sales disclosure form for the subject property,
Respondent Exhibit D – List of sales in neighborhood 131080 for 2004 and 2005,
Respondent Exhibit E – Comparable sales analysis,
Respondent Exhibit 1 – PRC for 3018 South Hackley Street,

Respondent Exhibit 1A – MLS listing sheet for 3018 South Hackley Street,
Respondent Exhibit 1B – Sales disclosure form for 3018 South Hackley Street,
Respondent Exhibit 2 – PRC for 3000 South Monroe Street,
Respondent Exhibit 2A – MLS listing sheet for 3000 South Monroe Street,
Respondent Exhibit 2B – Sales disclosure form for 3000 South Monroe Street,
Respondent Exhibit 3A – Sales disclosure form for 3108 South Vine Street,
Respondent Exhibit F – PRC for 3503 South Beacon Street,
Respondent Exhibit F-1 – MLS listing sheet for 3503 South Beacon Street,
Respondent Exhibit F-2 – Sales disclosure form for 3503 South Beacon Street,
Respondent Exhibit G – PRC for 2301 South Vine Street,
Respondent Exhibit G-1 – MLS listing sheet for 2301 South Vine Street,
Respondent Exhibit G-2 – Sales disclosure form for 2301 South Vine Street,
Respondent Exhibit H – PRC for 2205 South Grant Street,
Respondent Exhibit H-1 – MLS listing sheet for 2205 South Grant Street
Respondent Exhibit H-2 – Sales disclosure form for 2205 South Grant Street.

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

Board Exhibit A – The Form 131 Petition,
Board Exhibit B – Notice of Hearing dated June 26, 2009,
Board Exhibit C – Hearing sign-in sheet.

7. The subject property is a residence located at 2724 South Hackley Street in Muncie, Center Township, Delaware County.
8. The ALJ did not inspect the subject property.
9. For 2006, the PTABOA determined the assessed value of the property to be \$7,100 for the land and \$32,900 for the improvements, for a total assessed value of \$40,000.
10. For 2006, the Petitioners contend the assessed value of the property should be \$4,000 for the land and \$9,500 for the improvements, for a total assessed value of \$13,500.

JURISDICTIONAL FRAMEWORK

11. 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 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

12. 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 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).
13. 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”).
14. 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.

PETITIONERS' CONTENTIONS

15. The Petitioners contend the subject property is over-assessed based on its appraised value. *Easterly testimony*. In support of this contention, the Petitioners presented an appraisal prepared by Robert Taylor of Dietrick Appraisal Services. *Petitioner Exhibit 2*. The appraiser estimated the value of the property to be \$13,500 as of July 27, 2006. *Id.* Mr. Easterly argues that the appraised value was fair. *Easterly testimony*.

RESPONDENT'S CONTENTIONS

16. The Respondent contends the property's assessed value is fair based on an analysis of three comparable properties in the Petitioners' neighborhood that sold in 2004 and 2005. *Hisle testimony; Respondent Exhibit E.* For each of the three properties, the Respondent's representative testified that she started with the sale price and then made adjustments for the differences in features between the comparable sales and the subject property. *Id.* According to Ms. Hisle, the adjusted prices of the three comparable properties are \$44,900, \$51,360, and \$23,100, which result in a price per square foot of \$33.12, \$37.35, and \$42.41, respectively. *Id.* The subject property's assessed value is only \$33.17 per square foot. *Id.*
17. The Respondent's representative also argued that the Petitioners' appraisal is flawed. *Hisle argument.* According to Ms. Hisle, the Petitioners' appraisal estimates the property's value as of July 27, 2006. *Id.* For the 2006 assessment, however, state guidelines require the use of 2004 and 2005 sales to value the property as of January 1, 2005. *Id.* Further, Ms. Hisle argues, the appraisal's second and third comparable sales were foreclosure sales. *Id.; Respondent Exhibits H-2 and G-2.*

ANALYSIS

18. 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.

19. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that presumption, however, 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. *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 or any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
20. Regardless of the method used to rebut the presumption an assessment is correct, the evidence must reflect the value of the property as of the proper valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2006 assessment, that valuation date is January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of the proper valuation date. *Long*, 821 N.E.2d at 471.
21. In this case, the Petitioners argue the assessed value of the subject property is over-stated based on the property's appraised value. *Easterly argument*. In support of this contention, the Petitioners presented an appraisal prepared by Robert Taylor of Dietrick Appraisal Services. *Petitioner Exhibit 2*. The appraisal, however, valued the property as of July 27, 2006. *Petitioners Exhibit 2*. Mr. Easterly failed to provide any evidence indicating how the property's appraised value as of July 27, 2006, related to the property's value as of January 1, 2005, valuation date. *See Long*, 821 N.E.2d at 471. Thus, the appraisal fails to establish a prima facie case for a reduction in the property's assessed value.

22. The Petitioners failed to raise a prima facie case that their property was assessed in excess of its market value-in-use. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent'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).

SUMMARY OF FINAL DETERMINATION

23. The Petitioners failed to raise a prima facie case. The Board finds in favor of the Respondent.

This Final Determination of the above captioned matter is issued 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

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>.