

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 Nos.: 18-003-06-1-5-00763
)	18-003-06-1-5-00764
)	
Petitioners,)	Parcel Nos.: 1122405015000
)	181122405016000003
)	
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 22, 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 Indiana Code § 6-1.1-15-1, the Petitioners, David M. and Delinda L. Easterly, filed two Form 131 Petitions for Review of Assessment on May 29, 2008, petitioning the Board to conduct an administrative review of the above petitions. The Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on May 2, 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 Petitions,
Petitioners Exhibit 2 – Appraisal of the subject properties as of December 6, 2004.
5. The Respondent presented the following evidence:
Respondent Exhibit A – Property Record Card (PRC) for Parcel No. 1122405015000,
Respondent Exhibit A-a – PRC for Parcel No. 181122405016000003,
Respondent Exhibit B – List of sales in neighborhood 130450 for 2004 and 2005,
Respondent Exhibit C – Comparable sales analysis,

Respondent Exhibit 1 – PRC for 1301 East 22nd Street,
Respondent Exhibit 2 – PRC for 2719 South Grant Street,
Respondent Exhibit 2A – Sales disclosure form for 2719 South Grant Street,
Respondent Exhibit 3 – PRC for 2905 South Macedonia Avenue,
Respondent Exhibit 3A – Sales disclosure form for 2905 South Macedonia Street,
Respondent Exhibit D – PRC for 1505 East 21st Street,
Respondent Exhibit D-a – Sales disclosure form for 1505 East 21st Street,
Respondent Exhibit D-b – MLS listing sheet for 1505 East 21st Street,
Respondent Exhibit E – PRC for 2008 South Beacon Street,
Respondent Exhibit E-a – Sales disclosure form for 2008 South Beacon Street,
Respondent Exhibit E-b – MLS listing sheet for 2008 South Beacon Street,
Respondent Exhibit F – PRC for 123 West Memorial Drive,
Respondent Exhibit F-a – Sales disclosure form for 123 West Memorial Drive,
Respondent Exhibit F – MLS listing sheet for 123 West Memorial Drive.

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 Petitions,
 - Board Exhibit B – Notices of Hearing dated June 26, 2009,
 - Board Exhibit C – Hearing sign-in sheet.

7. The subject property is a single family residence situated on two parcels located at 2709 South Blaine 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 Parcel No. 1122405015000 to be \$10,700 for the land and \$11,700 for the improvements, for a total assessed value of \$22,400. For Parcel No. 181122405016000003, the PTABOA determined the assessed value to be \$7,300 for the land and \$400 for the improvements, for a total assessed value of \$7,700. The assessed value for both parcels totals \$30,100.

10. For 2006, the Petitioners contend that both parcels together should be assessed for \$19,000.

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 the properties' appraised value. *Easterly testimony*. According to Mr. Easterly, prior to the Petitioners' purchase of the property from Mr. Easterly's father, the bank ordered an appraisal for financing purposes. *Id.* The appraisal estimated the property's value to be \$19,000 as of December 6, 2004. *Petitioners Exhibit 2*. According to Mr. Easterly, Robert Taylor of Dietrick Appraisal Services performed the appraisal based on an exterior inspection of the house. *Id.* Mr. Easterly testified that he believes the appraised value was fair and represented what the property would have sold for on the open market at the time of the Petitioners' purchase of the property. *Easterly testimony*.
16. Mr. Easterly argues that it is unfair that the Petitioners' property was valued based on a "statewide analysis." *Easterly testimony*. According to Mr. Easterly, the property cannot be moved and therefore should be valued based on the property's location. *Id.*

RESPONDENT'S CONTENTIONS

17. The Respondent contends the properties' assessed values are 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 were \$47,795, \$61,750, and \$85,200,¹ or \$36.14, \$36.91, and \$53.19 per square foot, respectively. *Id.* The subject properties' assessed values only total \$27.45 per square foot. *Id.*

¹ The Board notes that the Respondent's third comparable property sold for \$44,900 and the Respondent made a negative \$4,500 adjustment to the property which results in an adjusted sale price of \$40,400 or \$49.63 per square foot as opposed to the \$85,200 and \$53.19 per square foot identified in *Respondent's Exhibit C* and testified to by the Respondent's representative in the hearing.

18. The Respondent's representative also argues that the Petitioners' appraisal is flawed. *Hisle testimony*. According to Ms. Hisle, the appraisal's first two comparable properties have considerably less land than the subject properties, but there is no adjustment to the sale prices of those properties for the size of the lots. *Id.*; *Respondent Exhibits D and D-b*. Similarly, Ms. Hisle argues, there was also no time adjustment for the sale dates, which were all in 2004. *Hisle testimony*; *Respondent Exhibits D-a, E-a and F-a*. Further, the appraisal's second and third comparable properties were both sold by banks. *Hisle testimony*; *Respondent Exhibits E-a and F-a*. According to Ms. Hisle, this indicates the properties were foreclosures. *Id.* Moreover, Ms. Hisle argues, those comparables both differed notably from the subject property in living area, but the appraisal made no adjustments for the size of the houses. *Hisle testimony*; *Respondent Exhibits E and F*.

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. 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.
20. 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.

21. 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.
22. In this case, the Petitioners presented an appraisal that valued the property as of December 6, 2004. *Petitioners Exhibit 2*. The appraisal was prepared by a licensed and certified appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* While the Petitioners did not trend their December 2004 appraised value to the January 1, 2005, valuation date, the appraisal estimated the value of the property within weeks of the proper valuation date. Thus, the Board finds the appraisal is sufficiently timely to be evidence of the property's market value-in-use. *See* 50 IAC 21-3-3(a) ("The local assessing official shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date.") Therefore, the Petitioners have established a prima facie case that the properties are over-valued.
23. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E. 2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise a prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E. 2d 1075, 1082 (Ind. Tax Ct. 2005).

24. Here, the Respondent contends that the properties were properly valued based on a comparable market analysis. *Hisle argument; Respondent Exhibit E*. In making this argument, the Respondent's representative essentially relies on a sales comparison approach. *See* MANUAL at 3 (stating 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."). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent 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. *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. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
25. While Ms. Hisle made adjustments to the properties in her comparative analysis, the Board finds that those adjustments are conclusory and unsupported. In form, Ms. Hisle's sales comparison may not differ significantly from those made by a certified appraiser in an appraisal report. The appraiser's assertions, however, are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Here, there is no evidence Ms. Hisle is a licensed appraiser in Indiana. Further, she did not certify that the opinion she prepared for the Respondent complied with USPAP in performing her valuation analysis. Nor did her report identify the data upon which such adjustments were made. The Board therefore finds that the Respondent's sales comparable analysis is insufficiently reliable to be probative of the property's market value-in-use.

26. The Respondent also argued that the Petitioners' appraisal was flawed and therefore should be disregarded by the Board. *Hisle argument*. According to the Respondent's representative, the appraiser used two foreclosure sales as comparable properties and failed to adjust his comparable properties for living area and lot size. *Hisle testimony; Respondent Exhibits D, E, E-a, F, and F-a*. However, it is well within an appraiser's expertise to choose the sales he or she deems most comparable to the subject property. Absent evidence to the contrary, the comparables chosen by the appraiser are deemed to have been reasonable. Further, it is uniquely within the expertise of an appraiser to apply or not apply adjustments to properties to value the differences between them. While the foreclosure sales may lessen the weight given to the Petitioners' appraisal, Ms. Hisle does not explain why this should invalidate the Petitioners' evidence.
27. It is not enough to simply point to potential flaws in the evidence or assert the property was assessed correctly to rebut a prima facie case. The Respondent must bring forth evidence justifying its decision and make an authoritative explanation of its determination. *See Meridian Towers East & West*, 805 N.E.2d at 479; *Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 948 (Ind. Tax 2001). Having failed to do so, the Respondent fell short of its burden and failed to rebut the Petitioners' prima facie case.

Conclusion

28. The Petitioners established a prima facie case. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of the Petitioners and holds that the property's value is \$19,000, based on the Petitioners' appraisal.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review determines that the subject property's assessment should be changed to \$19,000.

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>.