

PETITIONER:

Fennith Leon Evans, Petitioner

RESPONDENT:

Sara J. Arnold, Spencer County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Fennith Leon & Peggy Sue Evans	)	Petition No.:	74-017-07-1-5-00001
)		
Petitioner,	)	Parcel:	74-15-26-204-058.000-018
)		
v.)		
)		
Spencer County Assessor,	)	County:	Spencer
	)	Township:	Ohio
Respondent.	)	Assessment Year:	2007
)		

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

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:

ISSUES

1. The issue presented for consideration by the Board is whether the assessed value of the property exceeds its market value-in-use because the condition of the property is poor and the Petitioners have been unable to sell the property.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, Fennith Leon Evans and his wife Peggy Sue, filed a Form 130 Petition for Review of Assessment on April 7, 2008, petitioning the Spencer County Property Tax Assessment Board of Appeals (the PTABOA) to conduct an administrative review of the property's 2007 assessment.
3. The PTABOA issued its determination on July 5, 2008.
4. Pursuant to Ind. Code § 6-1.1-15-1, Evans filed a Form 131 Petition for Review of Assessment on August 7, 2008.
5. An amended Petition curing defects was filed by Petitioner on September 4, 2008. The Petitioners chose to opt out of the small claims process.¹

¹ The Board's small claims procedures apply to, *inter alia*, "a parcel of land, as improved, with an assessed value for the land and improvements not in excess of one million dollars." 52 IAC 3-1-2(a)(2). A property under appeal meeting this requirement will be subject to the Board's small claims procedures unless a party elects to transfer out under 52 IAC 2-5-1(c)(6). *See* 52 IAC 3-1-2(a). The property at issue here is assessed at \$28,100, and Petitioner did opt out of the small claims procedures. The main differences between the Board's regular procedural rules and its small claims rules lie in its document exchange rules and the small claims procedures' limitation on the issues that can be presented at hearing and the time allotted for presenting evidence at hearing. Here, the hearing was conducted under small claims rules, without objection by either Petitioner or Respondent. Therefore, the Board views any objection to the application of the Board's small claims procedures to these matters to be waived by the parties.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on April 14, 2009, in Rockport, Indiana.

7. The following persons were sworn and presented testimony at the hearing:
 For the Petitioner:
 Fennith Leon Evans, Petitioner

 For the Respondent:
 Sara J. Arnold, Spencer County Assessor
 Kirk Reller, witness

8. The Petitioners and Respondent chose to present no exhibits in support of their respective cases.

9. The following items are officially recognized as part of the record of proceedings:
 Board Exhibit A – Form 131 petition with attachments,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Hearing sign-in sheet.

10. The property in question consists of an improved commercial parcel located at 206 S. Fourth Street, Rockport in Spencer County, Ohio Township.

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

12. For 2007, the PTABOA determined the assessed value of the property to be \$8,300 for the land and \$19,800 for the improvements, for a total assessed value of \$28,100.

13. For 2007 the Petitioner requests the assessed value of the property be \$6,000 for the land and \$13,500 for the improvements, for a total assessed value of \$19,500.

PETITIONER'S CONTENTIONS

14. The Petitioners contend that the property's 2007 assessed value is over-stated at \$28,100. *Evans testimony.* In support of this contention, Mr. Evans testified that he has attempted to sell the property, a former church partially converted to a residential apartment, for \$18,000. *Id.* According to Mr. Evans, he has had no purchase offers for the year and a half that he has been trying to sell the property. *Id.*
15. The Petitioners further contend that the condition of the structure is so poor that a majority of the building cannot be used. *Evans testimony.*
16. Finally, the Petitioners contend that their taxes went up from \$500 to \$700 per year on a property that is not worth that much. *Evans testimony.*

RESPONDENT'S CONTENTIONS

17. The Respondent contends that the PTABOA valued the property correctly. *Reller testimony.* According to the Respondent's witness, the property was valued using the income approach to value because it was virtually impossible to develop a sales comparison approach for a church building converted to an apartment. *Id.* Mr. Reller testified that the county used a Gross Rent Multiplier (GRM) of 100, which was provided by PTABOA member and appraiser Ronald Magnus. *Id.* Thus, the county argues, the \$300 monthly rent received by the Petitioners supports a \$30,000 assessment. *Id.*
18. The Respondent's witness, however, acknowledged that the structure suffers from a lack of maintenance and some obsolescence. *Reller testimony.*

JURISDICTIONAL FRAMEWORK

19. 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.

ANALYSIS

20. A Petitioner seeking review of a determination of an assessing official 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).
21. 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”).
22. 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.

The Petitioners Failed To Raise a Prima Facie Case

23. 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 MANUAL). 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 assess real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).

24. 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 Ct. 2006). But a taxpayer may rebut that assumption 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. *See id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n. 1. A taxpayer may also offer sales information compiled according to generally accepted appraisal principles. MANUAL at 5.
25. Here, the Petitioners contend that they have attempted to sell the property for approximately \$10,000 less than the assessed value under appeal. *Evans testimony*. Mr. Evans testified he has been trying to sell the property for \$18,000 for the past year and a half. *Id.* While a taxpayer’s unsuccessful attempts to sell a property may, in fact, be some indication of a property’s value, merely stating that one has attempted to sell a property and has been unable to does not constitute probative evidence of the market value-in-use of the property. The Petitioners provided no evidence of their efforts to market the property. In fact, in response to Judge Barter’s inquiry, Mr. Evans testified that he did not have the property listed for sale on the open market. *Evans testimony*. Absent such supporting evidence, the Petitioners’ contention that the property has not sold for \$18,000 is not probative that the property’s 2007 assessment was in error.

26. Further, a 2007 assessment is required to reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation of how it demonstrates or is relevant to, the value of the property as of that required valuation date. *See Long v. Wayne Township Assessor*, 821 at N.E.2d 466, 471 (Ind. Tax Ct. 2005). Thus, had Petitioner provided sufficient evidence of the steps they took to market their property, they provided no explanation of how the price at which they attempted to sell the property during the time period of October 2007 through April 2009 is relevant to the January 1, 2006, valuation date.² *Long*, 821 at N.E.2d at 471.
27. The Petitioners also contend that the structure is in such poor condition as to be almost unusable. *Evans testimony*. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See* GUIDELINES, app. B, at 5. A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* Here the Petitioners presented no evidence of how the improvements are currently assessed. Nor did they present any evidence of the actual condition of the property other than Mr. Evans’ vague testimony that the majority of the building cannot be used. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
28. Finally, the Petitioners argue that their taxes increased from \$500 per year to \$700 per year. *Evans testimony*. The Board, however, lacks jurisdiction to address the Petitioners’ claims about their taxes. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions,

² Mr. Evans testified that the property had been for sale for eighteen months at the time of the April 14, 2009, hearing. *Evans testimony*. The Board infers, therefore, that the Petitioners’ attempts to sell the property began in approximately October 2007.

and property tax exemptions that are made from a determination by an assessing official or county property assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. By contrast, no statute authorizes the Board to review the propriety of local tax rates. Even if the Board had jurisdiction to decide the Petitioners' claim in that regard, the Petitioners do not point to any authority for the proposition that local officials exceeded their authority in setting the tax rate applied to the Petitioners' property.

29. Where a petitioner has failed to support its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *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

30. The Petitioners failed to raise a prima facie case that the subject property's 2007 assessment is over-stated. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessment should not be changed.

ISSUED: _____

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>.