

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 10-012-07-1-4-00001  
10-012-07-1-4-00002  
**Petitioner:** FKBC Investors  
**Respondent:** Clark County Assessor  
**Parcels:** 14-00033-001-0  
14-00033-003-0  
**Assessment Year:** 2007

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated assessment appeals regarding the subject properties by filing written notices with the Clark County Property Tax Assessment Board of Appeals (PTABOA) on November 26, 2008.
2. The PTABOA issued notice of its decision for each property on April 22, 2009.
3. The Petitioner appealed to the Board by filing a Form 131 for each property on May 22, 2009. It elected to have the cases heard according to small claims procedures.
4. The Board issued a notice of hearing for each property dated October 16, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on December 9, 2009. He did not inspect the properties.
6. The following persons were present and sworn as witnesses:

For the Petitioner – John Francke,  
For the Respondent – County Assessor Vicky Haire,  
Frank Kelly.

**Facts**

7. The properties are commercial properties located at 651 Eastern Boulevard in Clarksville.

8. The PTABOA determined the total assessed value for parcel 14-00033-001-0 is \$20,500 (land \$20,500 and improvements \$0). It also determined the total assessed value for parcel 14-00033-003-0 is \$158,800 (land \$59,500 and improvements \$99,300).
9. The Petitioner requests an assessed value of \$6,720 for parcel 14-00033-001-0 and an assessed value of \$131,700 for parcel 14-00033-003-0.

### **Record**

10. The official record for this matter is made up of the following:
  - a. Petitions for Review of Assessment (Form 131) with attachments,
  - b. Notice of Hearing,
  - c. Hearing Sign-In Sheet,
  - d. Digital recording of the hearing,
  - e. Petitioner Exhibit 1 – Payment Summary,  
Petitioner Exhibit 2 – Property Tax Bill,  
Petitioner Exhibit 3 – Property Tax Bill,  
Petitioner Exhibit 4 – Property Tax Bill,  
Petitioner Exhibit 5 – Property Tax Bill,  
Petitioner Exhibit 6 – Copy of property tax payment made by Society of St. Vincent De Paul,  
Petitioner Exhibit 7 – Property Tax Bill,  
Petitioner Exhibit 8 – Property Tax Bill,  
Petitioner Exhibit 9 – Property Tax Bill,  
Petitioner Exhibit 10 – Three year summary of taxes,  
Petitioner Exhibit 11 – Three year summary of taxes,  
Petitioner Exhibit 12 – Summary of Petitioner’s contentions,  
Respondent Exhibit 1 – Appraisal of subject property,
  - f. These Findings and Conclusions.

### **Contentions**

11. Summary of Petitioner’s contentions:
  - a. The tax liability for this property is excessive. The tax liability has increased more than 20% over a three year period. The property tax for one parcel increased from \$3,000 to \$4,600 and the property tax for the other parcel increased from \$150 to \$570 between 2007 and 2009. *Francke testimony; Pet’r Ex. 10, 11.*

- b. The properties generate approximately \$3,600 monthly income. A tax burden of \$5,200 is close to two months rent. The tax liability should be about one month's rent. In most other states, the tax liability is about 1% of a property's value. One of the Petitioner's other properties generates \$16,000 a month in income and has an annual tax liability of \$20,000. Another of the Petitioner's properties located in Lexington, Kentucky, generates \$24,000 a month in income. That property's tax liability has increased from \$16,000 annually to \$24,000 annually over the last three years. *Francke testimony.*
- c. The value of \$345,000 stated in the appraisal the Respondent is offering is close to the properties' market value. With a monthly income of about \$3,600, the properties' value would work out to \$360,000. The problem is how the tax liability is determined. *Francke testimony; Resp't Ex. 1.*

12. Summary of Respondent's case:

- a. While the Petitioner has discussed what the tax liability is for the properties, the Petitioner has not presented any valuation information that would establish a prima facie case to change the assessment determined by the PTABOA. *Kelly testimony.*
- b. An appraisal of the properties was prepared for the Clarksville Department of Redevelopment Eastern Boulevard Project by a local, licensed appraiser. It values these properties at \$345,000 as of September 9, 2009. While this appraisal does not speak to value as of the valuation date, it does indicate that the properties would not have been valued substantially less than the current combined assessed value of \$179,300 because an observation of the market indicates that values in the area have remained relatively stable between January 1, 2006, and September 2009. *Kelly testimony; Resp't Ex. 1.*
- c. In Indiana the assessor determines an assessed value for property. The auditor and treasurer determine the tax liability based on the budgets and tax levies adopted by local government units. *Kelly testimony.*

### Analysis

13. A petitioner who seeks 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). In making its case, a petitioner 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”).

14. The Petitioner did not make a case for any assessment change.
- a. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Indiana promulgated Guidelines for assessing officials that are based on the cost approach. The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
  - b. The Petitioner failed to offer any probative evidence regarding market value-in-use. The evidence addressing market value-in-use came from the Respondent in the form of an appraisal valuing the properties at \$345,000. While the valuation date of that appraisal is well beyond the valuation date for the 2007 assessment, the Petitioner acknowledged that the appraisal fairly represents the value of the subject property. Nevertheless, the Petitioner argued that the tax liability should not be as high as it is. *Francke testimony; Resp't Ex. 1.*
  - c. The Petitioner proved increased tax liability over the years, but that fact does nothing to indicate that the current assessments are incorrect or what the correct assessments should be. Similarly, the fact that tax liability is higher than the tax liability for other property is not relevant or probative—comparing tax liabilities gives no indication about what the actual market value-in-use should be.
  - d. The Petitioner acknowledged that the current assessments are lower than the market value-in-use. The underlying complaint is the tax rates. The Board, however, lacks jurisdiction to address tax rates or tax bills. The Board 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)).
  - e. 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); *Whitley Products*, 704 N.E.2d at 1119.

## Conclusion

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

## Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: February 19, 2010

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Commissioner, Indiana Board of Tax Review

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### - 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>>