

FOR PETITIONER:
Robert Gentry, Pro Se

FOR RESPONDENT:
Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Robert Gentry,)	Petition No. 30-012-10-1-5-00001
)	Parcel No. 30-09-23-301-011.000-012
Petitioner,)	
)	
v.)	
)	Hancock County
Hancock County Assessor,)	Sugar Creek Township
)	2010 Assessment
Respondent.)	

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

August 24, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

Does the assessed value of the subject property exceed its market value-in-use on March 1, 2012, and if so, what would a more accurate market value-in-use be?

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The Petitioner timely initiated an assessment appeal with the Hancock County Property Tax Assessment Board of Appeals (PTABOA).
2. The PTABOA mailed notice of its decision (Form 115) on January 6, 2011.
3. The Petitioner appealed to the Board by filing a Form 131 on February 10, 2011.
4. The Board issued a notice of hearing dated May 1, 2012.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on June 6, 2012. He did not inspect the property.
6. Robert Gentry and County Assessor Mary Noe were sworn as witnesses.
7. The property is a single family residence located at 3850 South Woodfield Drive in New Palestine.
8. The PTABOA determined the assessed value is \$39,900 for land and \$189,000 for improvements (total \$228,900).
9. The Petitioner claims the total assessed value should be \$211,000.

SUMMARY OF THE PETITIONER'S CASE

10. The Petitioner presented an appraisal prepared by Anthony Akins, a licensed Indiana appraiser. The appraiser concluded the property was worth \$211,000 as of June 20, 2011. *Gentry testimony; Akins Appraisal.*
11. Home values in the area have declined. *Gentry testimony; Akins Appraisal at 2.*

12. Other properties in the area have sold for amounts greater than the assessed value of the Petitioner's home. Despite higher sale prices, those homes have lower assessments than the subject property. *Gentry testimony; Form 131 attachments showing differences in sales price and assessments of two properties.*

SUMMARY OF THE RESPONDENT'S CASE

13. The appraisal does not establish a value for the required valuation date of March 1, 2010. The appraisal gives a value as of June 20, 2011, which is approximately fifteen months after the relevant valuation date for 2010 assessments. *Akins Appraisal; Meighen argument.*
14. The appraiser concluded, "Home values in the area appear to be declining based on sales in the township in the past twelve months." *Akins Appraisal at 2.*
15. There were six sales of comparable properties in the Petitioner's neighborhood. All of them were for amounts greater than the disputed assessment. Those sales were included in the ratio study that the Department of Local Government Finance (DLGF) approved. *Noe testimony; Resp't Exs. B, C, D.* All of the sales used in the ratio study occurred within the 14-month time frame prior to the assessment date as allowed by the DLGF. *Noe testimony; Meighen argument, citing Indiana Administrative Code §§ 50-27-3-2 and 50-27-5-2.*
16. The two most comparable are properties one and two. They are located in close proximity to the Petitioner's property. Their sale prices per square foot are slightly higher than the assessed square foot value of the subject property. One comparable has slightly less square footage than the subject property and the other has slightly more square footage than the subject property. The subject property and comparable two were built in 1993, while comparable one was built in 1995. The quality of material and workmanship are the same and all three homes have a grade of B-1. All three properties

have the same condition rating. Comparable one sold for \$248,000 on April 24, 2009. Comparable two sold for \$275,000 on August 25, 2009. *Noe testimony; Resp't Ex. C.*

17. Single transactions show different dates. The sale date used on the ratio study comes from the sales disclosure form. The sale date on the property record card is the dates the sale was recorded. *Noe testimony; Resp't Exs. C, D, E.*

Record

18. The official record for this matter is made up of the following:
 - a. The Petition, including the Akins Appraisal¹ and other attachments showing differences in sales price and assessments of two properties,
 - b. Digital recording of the hearing,
 - c. Respondent Exhibit A – Property record card,
Respondent Exhibit B – Aerial map of the subject neighborhood,
Respondent Exhibit C – Ratio study,
Respondent Exhibit D – Property record cards for sales used in the ratio study,
Respondent Exhibit E – Comparable property summary,
Board Exhibit A – Form 131 Petition including attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

¹ This appraisal was not marked for identification purposes, but during the hearing the Petitioner asked that the appraisal be considered as documentary evidence in support of his claim. The Respondent agreed to that request. Therefore, the document, which we refer to as the Akins Appraisal, is part of the evidence in the record.

Analysis

19. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17.2 and in some cases it shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

20. There was no increase in the Assessor's assessment from 2009 to 2010. Consequently, Ind. Code § 6-1.1-15-17.2 does not apply. The Petitioner still has the burden of proof.
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. 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”).
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.

23. The Petitioner failed to make a prima facie case for any assessment change.
- a. Real property is assessed based on its "true tax value," which 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). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). A 2010 assessment must reflect the value of the property as of March 1, 2010. Ind. Code § 6-1.1-4-4.5. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long*, 821 N.E.2d at 471.
 - c. The Akins Appraisal concluded that the market value of the subject property was \$211,000 as of June 20, 2011. It also states that "home values in the area appear to be declining based on sales in the township in the past twelve months." The Akins Appraisal does not indicate how much that decline would have been between March 1, 2010, and June 20, 2011, but the statement is a clear indication that value as of the required date would have been more than \$211,000. And the Petitioner failed to otherwise relate the appraised value to a value as of March 1, 2010. Accordingly, the appraisal fails to prove the Petitioner's case.

- d. The Petitioner also argued that his house is over-valued based on the assessed values of comparable houses in the area. In order to effectively use a comparison approach to value a property, the proponent must establish actual comparability. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of comparability. *Long*, 821 N.E.2d at 470. Instead, comparability must be proved through the characteristics of the subject property and the comparable. How are they the same? How are they different? The Petitioner did not address these questions. Most importantly, one must explain how any differences between the properties affect their relative market values-in-use. *See Id.* at 470-71. The Petitioner failed to present the facts and analysis that are essential for any conclusion about the value of the subject property based on the purported comparables.
- e. Merely comparing assessments was found to be insufficient to show the Petitioner’s assessment needs to be corrected. *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). It is not enough for a taxpayer to show that its property is assessed for more than other comparable properties. Instead, the taxpayer must present probative evidence to show that the property’s assessed value does not accurately reflect market value-in-use. *Id.* The Petitioner presented no relevant, probative evidence to show that his assessment did not reflect the market value-in-use of his property.
- f. The Petitioner touched on the issue of uniformity and equality. He attached documents to his Form 131 petition that show differences between assessed value and sale price of the Stuczynski and the Guhl properties. This kind of approach *could* be significant: a taxpayer may offer ratio studies that compare the assessed values of properties in an assessing jurisdiction with objectively verifiable data, such as sales prices or appraisals. *Westfield Golf*, 859 N.E.2d at 399 n. 3. But the studies must be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They must be based on a statistically reliable sample. *See Bishop v. State Bd. of*

Tax Comm'rs, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001). “A study sample with fewer than five (5) sales shall not be used due [to] its exceptionally poor reliability.” 50 IAC 27-5-3(c). The Petitioner’s sample of two is not sufficient. Furthermore, the Petitioner did not offer or explain these attachments at the hearing. Accordingly, the Board gives the information about the Stuczynski and Guhl properties no weight. See *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

- g. When a taxpayer fails to make a prima facie case supporting his position 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).

Conclusion

24. The Board finds in favor of the Respondent.

Final Determination

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

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

- 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>>