

REPRESENTATIVE FOR PETITIONER:

Jose E. Gutierrez, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Sherry Stone-Lucas, Director of Real Estate, Lake County Assessor's Office

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Jose E. Gutierrez	)	Petition No.:	45-026-06-1-5-00010
	)		
Petitioner,	)	Parcel No.:	45-03-29-451-028.000-024
	)		
v.	)		
	)	County:	Lake
Lake County Assessor,	)	Township:	North
	)		
Respondent,	)	Assessment Year:	2006

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

**January 24, 2011**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE**

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioner's property is over-stated.

### **PROCEDURAL HISTORY**

2. The Petitioner initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 31, 2007. The Lake County PTABOA issued its assessment determination on April 13, 2010.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on May 12, 2010, petitioning the Board to conduct an administrative review of the property's 2006 assessment.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on November 8, 2010, in Crown Point, Indiana.
5. The following persons were sworn at the hearing:

For the Petitioner:

Jose E. Gutierrez, property owner

For the Respondent:

Sherry Stone-Lucas, Director of Real Estate, Lake County.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Packet of 61 photographs.

7. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Sales disclosure form and property record card (PRC) for  
4511 Tod Avenue,  
Respondent Exhibit 2 – List of sales in the Petitioner’s neighborhood,  
Respondent Exhibit 3 – Sales disclosure form and PRC for 4907 Tod Avenue,  
Respondent Exhibit 4 – Sales disclosure form and PRC for 4938 Tod Avenue.

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

Board Exhibit A – Form 131 Petition,  
Board Exhibit B – Notice of Hearing, dated September 29, 2010,  
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a house located at 4734 Tod Avenue, East Chicago, Indiana.

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

11. For 2006, the PTABOA determined the assessed value of the property to be \$7,400 for the land and \$40,000 for the improvements, for a total assessed value of \$47,400.

12. The Petitioner contends the total assessed value should be \$13,400.

### **JURISDICTIONAL FRAMEWORK**

13. 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**

14. 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).
15. 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”).
16. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

#### **PARTIES' CONTENTIONS**

17. The Petitioner contends that the assessed value of his property is over-stated based on the appraised value of the property and due to the condition of the house and his neighborhood. The Petitioner presented the following evidence in support of his contentions:

- A. The Petitioner contends that his property is over-valued based on an appraisal of the property. *Gutierrez testimony*. According to Mr. Gutierrez, the property appraised for between \$13,000 and \$18,000. *Id.* Mr. Gutierrez contends that he submitted the appraisal to the North Township Assessor's office, but the employees either lost or destroyed it. *Id.* Mr. Gutierrez argues that his property should be reevaluated at the assessor's expense, because the assessor is responsible for the lost paperwork. *Id.* In response to the Respondent's questions, Mr. Gutierrez testified that his copy of the appraisal was destroyed and the appraiser who performed the appraisal did not have a copy. *Id.*
- B. The Petitioner further contends that his property is not worth its assessed amount because of the condition of his house and neighborhood. *Gutierrez testimony*. According to Mr. Gutierrez, the property is a negative asset because it would cost too much to renovate it. *Id.* In support of this contention, Mr. Gutierrez submitted photographs showing the condition of the property. *Petitioner Exhibit 1*. Mr. Gutierrez testified that the foundation sank which caused a crack in the ceiling and the floors to lean. Also, the windows and siding need to be replaced. *Id.*; *Gutierrez testimony*. In addition, Mr. Gutierrez argues, the neighborhood is dangerous and is full of abandoned buildings. *Id.*
- C. Finally, Mr. Gutierrez argues that the Respondent's comparable properties are not comparable to his property. *Gutierrez testimony*. According to Mr. Gutierrez, the Respondent's properties are not in the same block as his property and other blocks in the neighborhood do not have buildings that are in the same shape. *Id.* In fact, Mr. Gutierrez argues, the Respondent's properties – which sold for between \$95,000 and \$106,000 – cannot be in the same condition as the properties in his area because the house next door to his sold for \$12,000 and two other houses on his block sold for \$14,000 and \$18,000 respectively. *Id.* Moreover, Mr. Gutierrez claims, the Respondent's sales in 2006 were prior to the devaluation of all homes in the area. *Id.*

18. The Respondent contends the property's assessed value is correct. The Respondent presented the following evidence in support of the assessment:
- A. The Respondent's representative, Ms. Stone-Lucas, contends the property is correctly assessed. *Stone-Lucas testimony*. Ms. Stone-Lucas agreed there is deferred maintenance on the property, which was built in 1891, but argues that the Assessor applied a 50% physical depreciation factor, as well as a 65% completion factor to reduce the property's value. *Id.*
  - B. Ms. Stone-Lucas further contends that sales in the Petitioner's neighborhood show that the Petitioner's property is not assessed too high. *Stone-Lucas testimony*. In support of this contention, Ms. Stone-Lucas presented three sales disclosure forms for properties on the Petitioner's street and a list of sales in the neighborhood that the assessor used for trending purposes. *Respondent Exhibits 1-4*. According to Ms. Stone-Lucas, the properties listed on the sales disclosure forms are similar to the Petitioner's property and sold for \$95,000, \$100,000, and \$106,000 respectively. *Stone-Lucas testimony; Respondent Exhibits 1, 3, and 4*.
  - C. Finally, Ms. Stone-Lucas argues that the county assessor's office did not misplace the Petitioner's appraisal. *Stone-Lucas testimony*. Regardless, Ms. Stone-Lucas argues, Mr. Gutierrez should have kept a copy for himself or been able to obtain one from the appraiser. *Id.*

#### **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 2006). A taxpayer may rebut that presumption 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 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 and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
21. 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. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
22. Here the Petitioner argues that his property is over-valued based on an appraisal that estimated the value of the property to be between \$13,000 and \$18,000. *Gutierrez testimony*. The Petitioner, however, failed to present the appraisal or any evidence to support the appraised value. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. 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 Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *and Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

23. The Petitioner claims that disgruntled township personnel either lost or destroyed his appraisal and his copy of the appraisal was destroyed when his house sustained water damage. While these are unfortunate circumstances, Mr. Gutierrez may have been able to overcome them with detailed facts about the appraisal. Mr. Gutierrez, however, offered no testimony as to the date of the appraisal or the appraiser who performed it. Further, Mr. Gutierrez could not even testify as to the exact amount of the appraised value. Without evidence of the value with some certainty and reliability and without evidence of the date of the valuation and evidence that the valuation was determined pursuant to the Uniform Standards of Appraisal Practice, the Board can give little weight to Mr. Gutierrez's conclusions.
24. The Petitioner also contends that neighboring properties sold for between \$12,000 and \$18,000. *Gutierrez testimony*. Therefore his property cannot be worth its assessed value. *Id.* In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. 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."). *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). 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.* Here, the Petitioner made no attempt to compare the sale properties to his own properties. Nor did he testify as to the date of the sales. Again, without evidence of the date of the sales or evidence the



properties were comparable to the Petitioner's property, the Board can give little weight to the Petitioner's sales comparable analysis.

25. Finally, the Petitioner contends that his property is not worth its assessed value because of the condition of his house and the condition of other properties in his neighborhood. *Gutierrez 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 property's neighborhood. *Id.* Here, Mr. Gutierrez offered photographs of his property and neighboring properties and testified that his property had foundation problems and needed windows and siding. To support his assertion, however, the Petitioner must offer probative evidence that the condition of the structure was assessed in error. See *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999). The Board, however, cannot determine if Mr. Gutierrez's property was assessed in error, because Mr. Gutierrez did not offer any evidence showing how the property was assessed or what condition rating was assigned to his house. Further, mere reference to photographs is insufficient to prove his case. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999) (stating that references to photographs or State Board regulations, without further explanation, do not qualify as probative evidence for purposes of grading issues).
24. Even if the Board found that Mr. Gutierrez's condition rating was incorrect, Mr. Gutierrez needed to show that his assessed value exceeded his property's market value-in-use. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899,900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long s the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed

value is *actually correct*”). Thus, in failing to offer probative market evidence of the property’s value, the Petitioner failed to raise a prima facie case that his property’s assessment was incorrect.

25. Where the 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., Ltd. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

26. The Petitioner failed to raise a prima facie case that his property was over-valued for the 2006 assessment year. The Board finds in favor of the Respondent.

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner’s property should not be changed.

---

Chairman, 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>