

PETITIONER:

Wilma Hogan, Petitioner

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Meighen & Associates, P.C.

INDIANA BOARD OF TAX REVIEW

Wilma Hogan,	)	Petition Nos.:	53-013-06-1-5-00021
	)		53-009-07-1-5-00006
Petitioner,)		
	)	Parcel:	009-13420-72
v.)		
	)	County:	Monroe
Richland Township Assessor,	)	Township:	Richland
)		
Respondent.	)	Assessment Years:	2006 and 2007

Appeal from the Final Determination of
Monroe Property Tax Assessment Board of Appeals

April 9, 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:

ISSUE

1. The issue presented for consideration by the Board is whether the property is over-assessed when compared to the assessments of nearby properties and an opinion of value by a licensed Indiana real estate broker.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner, Wilma Hogan, filed a Form 130 Petition to the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) for review of the property's 2006 assessment on August 1, 2007. The PTABOA issued its determination on August 28, 2007. The Petitioner subsequently filed a Form 131 Petition to the Board to conduct an administrative review of the PTABOA's 2006 assessment on October 11, 2007. Similarly, Ms. Hogan, filed a Form 130 Petition to the Monroe County PTABOA for review of the property's 2007 assessment on January 14, 2008. The PTABOA issued its determination on April 23, 2008. The Petitioner subsequently filed a Form 131 Petition to the Board to conduct an administrative review of the PTABOA's 2007 assessment on June 5, 2008.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. 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 to consider both appeals on January 14, 2009, in Bloomington, Indiana.
4. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner:
 - Wilma Hogan, Petitioner
 - Verbia Sutherlen, Witness
 - For the Respondent:
 - Ken Surface, Monroe County assessment contractor
 - Judith Sharp, Monroe County Assessor
5. The Petitioner presented the following evidence:
 - Petitioner Exhibit 1 – List of real property sales, assessments, and data from 2001 through 2007,
 - Petitioner Exhibit 2 – Copy of plat map of the subject property's subdivision,

- Petitioner Exhibit 3 – Photograph and Property Record Card (PRC) for the subject property,
- Petitioner Exhibit 4 – Photograph and PRC for Parcel No. 53-04-15-205-017.000-013,
- Petitioner Exhibit 5 – Photograph of an unidentified property showing a yard barn,
- Petitioner Exhibit 6 – Photograph of an unidentified property showing an enclosed frame porch,
- Petitioner Exhibit 7 – Photograph and PRC for Parcel No. 53-04-15-208-039.000-013,
- Petitioner Exhibit 8 – Photograph and PRC for Parcel No. 53-04-15-205-013.000-013,
- Petitioner Exhibit 9 – Photograph and PRC for Parcel No. 53-04-15-205-018.000-013,
- Petitioner Exhibit 10 – Opinion of value letter dated April 21, 2008, from Verbia Sutherlen,
- Petitioner Exhibit 11 – Monroe County Geographical Information System (GIS) data report for Parcel No. 009-27450-12,
- Petitioner Exhibit 12 – GIS data report for Parcel No. 009-27450-47,
- Petitioner Exhibit 13 – GIS data report for Parcel No. 009-27450-28,
- Petitioner Exhibit 14 – GIS data report for Parcel No. 009-27450-29,
- Petitioner Exhibit 15 – GIS data report for Parcel No. 009-08990-00,
- Petitioner Exhibit 16 – GIS data report for Parcel No. 009-27450-02,
- Petitioner Exhibit 17 – GIS data report for Parcel No. 009-27450-34,
- Petitioner Exhibit 18 – Seven-page list of real property sales for the subject property's subdivision from year 2000 through 2007,

6. The Respondent presented the following evidence:

- Respondent Exhibit 1 – Photograph and PRC for the subject property,
- Respondent Exhibit 2 – A plat map of a portion of the subdivision identifying the appealed property and comparable properties,
- Respondent Exhibit 3 – Photograph and PRC for Parcel No. 53-04-15-205-017.000-013,
- Respondent Exhibit 4 – Photograph and PRC for Parcel No. 53-04-15-205-018.000-013,
- Respondent Exhibit 5 – Photograph and PRC for Parcel No. 53-04-15-208-039.000-013,
- Respondent Exhibit 6 – Photograph and PRC for Parcel No. 53-04-15-205-013.000-013,
- Respondent Exhibit 7 – Photograph and PRC for Parcel No. 53-04-15-208-029.000-013,
- Respondent Exhibit 8 – PRC and Monroe County GIS data report for parcel 009-27450-47,

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 petitions with attachments,
 - Board Exhibit B – Notices of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
8. The property under appeal is an improved residential parcel located at 557 N. Potawatami Drive, in Richland Township, Monroe County, Ellettsville, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2006, the PTABOA determined the assessed value of the property to be \$16,800 for the land and \$82,800 for the improvements, for a total assessed value of \$99,600. For 2007 the PTABOA determined the assessed value of the property to be \$16,800 for the land and \$82,600 for the improvements, for a total assessed value of \$99,400.
11. The Petitioner requested an assessed value of \$12,000 for the land and \$65,000 for the improvements, for a total assessed value of \$87,000 for 2006 and 2007.

JURISDICTIONAL FRAMEWORK

12. 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.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. 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).

14. 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”).
15. 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.

PETITIONER’S CONTENTIONS

16. The Petitioner contends her property’s 2006 and 2007 assessments are too high when compared to the sale and assessed values of nearby comparable properties. *Hogan testimony*. In support of this contention the Petitioner submitted photographs and PRCs for five improved parcels located near her property. *Petitioners Exhibits 2 through 9*. The Petitioner also entered into evidence Monroe County Geographical Information Services (GIS) data sheets for seven additional properties in the subdivision. *Petitioner Exhibits 11 through 17*. The Petitioner’s witness, Ms. Sutherlen argues that the subject property’s assessment calculated per square-foot basis is higher than nearby comparable properties’ per-square-foot assessments. *Sutherlen testimony*.
17. The Petitioner further contends the Respondent assessed the property for more than its market value-in-use. *Hogan testimony*. According to the Petitioner, the appealed property should be assessed at \$87,000 for 2006 and 2007. *Id*. In support of her position, the Petitioner submitted an opinion of value letter prepared by Verbia Sutherlen of Action

Real Estate. *Sutherlen testimony; Petitioner Exhibit 10.* Ms. Sutherlen is a licensed Indiana broker. *Id.* In her April 21, 2008, letter Ms. Sutherlen estimated that she would list the property in its current condition for \$87,000. *Id.*

18. The Petitioner also argues that the condition of her property as well as the fact that the house has not been updated contributes to the over-assessments. *Hogan argument.* In support of this contention the Petitioner presented testimony by Verbia Sutherlen, who developed and built the subject property and the comparable properties presented in this matter. *Sutherlen testimony.* Ms. Sutherlen testified that assessing officials use techniques that fail to take into consideration the condition or updates of a property and rely solely on square footage of improvements. *Hogan argument; Sutherlen testimony.* According to Ms. Sutherlen, placing a value on an improvement based on its square feet while ignoring that it has not been improved or updated is not a true assessed value. *Sutherlen testimony.*
19. Finally, the Petitioner contends that her assessment includes improvements such as a wood deck and an enclosed frame porch that other similar and nearby properties have but are not being assessed for and they therefore have lower assessments. *Hogan argument.* In support of this contention the Petitioner submitted into evidence two photographs of an unidentified improvement and testified that one photograph shows a yard barn, and the other photograph shows an enclosed frame porch. *Petitioner Exhibits 5 and 6; Hogan testimony.*

RESPONDENT'S CONTENTIONS

20. The Respondent contends that the Petitioner failed to raise a prima facie case because she did not prove the 2006 and 2007 total assessed values of the subject property were incorrect. *Meighen argument.* According to the Respondent, Indiana's new assessing system is a "bottom line value" system. *Id.* Because the Petitioner failed to address the

bottom line value of the appealed property, the Respondent argues, the Petitioner's arguments fail. *Id.*

21. The Respondent further argues that the Petitioner's contention that other assessments are lower than hers, even when there are similarities in square footage and amenities, was rejected by the Indiana Tax Court in *Westfield Golf Practice Center v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case the court found the petitioners had failed to make a prima facie case because the petitioner's argument was based on methodology of the assessment and not on the property's market value-in-use. *Id.*
22. The Respondent also contends that the sales and assessments of five properties in the subject property's neighborhood demonstrate that the Petitioner's 2006 and 2007 assessments are accurate. *Meighen argument.* In support of this argument the Respondent entered into evidence a map identifying the subject property and the comparable properties and photographs and PRCs for the properties. *Respondent Exhibits 1 through 7.*
23. The Respondent also contends that the values assessed to the Petitioner's 304-square-foot wood deck and 280-square-foot enclosed frame porch, add more than \$13,000 to her assessment. *Meighen argument.* As a result, the Petitioner's 2006 and 2007 assessed values are higher than her cited comparable properties without such amenities. *Meighen argument.* According to the Respondent, if the \$13,000 assessed value of the deck and enclosed porch was deducted from the subject property's assessments, the assessments would be very close to or even below the assessments of the Petitioner's comparable properties. *Id.*
24. Ms. Meighen further argues that some exhibits entered by Petitioner came from the county commissioner's internet website. *Meighen argument.* According to the Respondent, those exhibits have little evidentiary value because the site carries a

disclaimer that values listed there are not certified and are not currently from the 2006 and 2007 assessment time frames on which the Petitioner's appeals are based. *Meighen argument, Surface testimony*. For example, the Respondent argues, the Petitioner's testimony concerning Parcel No. 009-1324-91 was based on website data that reflects values used for the 2008 assessment, which is outside the time frame for the 2006 and 2007 appeals in question. *Surface testimony; Respondent Exhibit 8*.

25. Finally, the Respondent contends that the Petitioner's testimony that her property's condition has been ignored by the assessor fails to acknowledge the fact that the PTABOA, at the county-level hearing, lowered the condition of Ms. Hogan's improvements from "average" to "fair." *Sharp testimony*.

ANALYSIS

26. Real property is assessed based on its "true tax value." 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). True tax value is "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, for the property." *Id.* A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual's definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
27. Regardless of the method used to show a property's market value-in-use, however, a 2006 assessment must reflect the value of the property as of January 1, 2005, and a 2007 assessment must reflect the value of the property as of January 1, 2006. 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 those valuation dates. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

28. First, the Petitioner contends her property is over-valued based on the assessment of neighboring properties. *Petitioner Exhibits 2 – 8 and 11-17; Hogan testimony*. As the Respondent notes, however, this argument was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
29. The Petitioner next argues that the property was assessed in excess of its market value-in-use. *Hogan testimony*. In support of this contention, the Petitioner presented a list of real property sales and a list of sales disclosures. *Petitioner Exhibits 1 and 18*. According to the Petitioner, the appealed property should be assessed at \$87,000 for 2006 and 2007. *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. *See MANUAL* at 13. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.*

30. Here, while the Respondent acknowledges that the houses in the neighborhood are “cookie cutter” houses, the Petitioner did nothing to value the differences between the houses. She merely contends that each of her comparable properties is similar to the subject property. This falls far short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). As the Respondent notes, the Petitioner’s property is assessed higher than the Petitioner’s cited comparables because it has more living area than several of the comparables and also has a wood deck and an enclosed porch. Without market evidence valuing those differences, the Petitioner fails to raise a prima facie case.
31. The Petitioner also presented an opinion of value letter prepared by Verbia Sutherlen of Action Real Estate. *Sutherlen testimony; Petitioner Exhibit 10*. In her April 21, 2008, letter Ms. Sutherlen estimated that she would list the property in its current condition for \$87,000. *Id.* However, the letter does not state whether Ms. Sutherlen used generally accepted appraisal methods to arrive at her opinion of value. In fact, that letter merely states, “I have looked at the property located at 557 Potowatami Drive, Ellettsville, IN 47429. If I were to list this property on the market today in the condition it is in I would list this property for \$87,000.00.” *Petitioner Exhibit 10*. Consequently, the opinion of value is not probative of the subject property’s market value-in-use. *See Inland Steel Co. v. State Bd. of Tax Comm’rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique). Moreover, the Petitioner does not relate the letter’s April 21, 2008, estimated value to the January 1, 2005, and January 1, 2006, valuation dates for the March 1, 2006, and March 1, 2007, assessment dates respectively. Thus the Petitioner fails to raise a prima facie case that her assessment was in error.¹

¹ The Petitioner also contends that the assessment did not take into consideration the condition of her property. However the Petitioner presented no evidence of that condition other than her conclusory statement that the property “has not been updated since it was purchased.” 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). Similarly, the Petitioner contends that other properties were not assessed for exterior amenities such as yard barns and porches. In support of this contention, Ms. Hogan submitted two photographs of an unidentified property and no evidence of that property’s assessment. Thus, again, this is merely an unsupported allegation that has no probative value to the Board.

32. The Board acknowledges that the Petitioner worked diligently to prepare and gather evidence, and present it at the hearing. Nonetheless, her efforts fall short of a proving her 2006 and 2007 assessed values are incorrect. Where the Petitioner has not supported her 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.1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

33. The Petitioner failed to raise a prima facie case to establish that the 2006 and 2007 assessed values are over-stated. As such, the Board finds for Respondent. The 2006 and 2007 assessment should not be changed.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>.