

Representative for Petitioner: Robert E. Huffman, Trustee

Representative for Respondent: Kelly Hisle, Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Robert E. Huffman Jr. Revocable Trust,)	Petition No.: 18-026-06-1-5-00012
)	Parcel: 18-14-07-101-002-000
)	
Petitioner,)	
)	
v.)	
)	
Delaware County Assessor,)	Delaware County
)	Salem Township
)	Assessment Year: 2006
Respondent.)	

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

August 11, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts, evidence, and arguments presented in this case. The Board now finds and concludes the following:

ISSUES

This case challenges a 2006 assessment for a residential property that the Petitioner bought in March 2007. Can the Petitioner pursue this appeal? If the Petitioner can properly pursue the appeal, does the evidence prove that the assessment should be changed?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The subject property is a residence at 8104 South Walnut Street in Daleville.
2. The Petitioner initiated an appeal regarding the subject property on or about April 26, 2007. The Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for that appeal on May 30, 2008.
3. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on July 1, 2008. The Petitioner elected *not* to follow small claims procedures.
4. The PTABOA determined the assessed value is \$8,800 for land and \$53,000 for improvements (total \$61,800).
5. The Petitioner claimed the assessed value should be \$8,000 for land and \$47,900 for improvements (total \$55,900).

HEARING FACTS AND OTHER MATTERS OF RECORD

6. Administrative Law Judge Paul Stultz held the hearing in Muncie on May 19, 2009. He did not conduct an on-site inspection of the subject property.
7. Robert E. Huffman Jr. and Deputy Assessor Kelly Hisle were sworn as witnesses at the hearing.
8. The following items are officially recognized as part of the record:
 - Board Exhibit A – Form 131 Petition with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign In Sheet.

9. The Petitioner presented the following exhibits:

- Petitioner Exhibit 1 – Mortgage, pages 1, 2, and 3 of 15,
- Petitioner Exhibit 2 – Online tax information regarding the subject property,
- Petitioner Exhibit 3 – Purchase Agreement, Counter Offer 1, and Counter Offer 2,
- Petitioner Exhibit 4 – Online tax information regarding the subject property and three other properties,
- Petitioner Exhibit 5 – Appraisal for the subject property as of March 6, 2007.

10. The Respondent presented the following exhibits:

- Respondent Exhibit 1 – Spreadsheet analysis with comparable properties,
- Respondent Exhibit 2 – Realtor multiple listing data (MLS), property record card (PRC), and sales disclosure form for the subject property,
- Respondent Exhibit 3 – MLS, PRC, and sales disclosure form for 8320 South May Street, Daleville,
- Respondent Exhibit 3(a) – MLS, PRC, and sales disclosure form for 13905 West Daleville Road, Daleville,
- Respondent Exhibit 3(b) – MLS, PRC, and sales disclosure form for 8415 South Lynn, Daleville,
- Respondent Exhibit 3(c) – MLS, PRC, and sales disclosure form for 13901 West Carol Street, Daleville,
- Respondent Exhibit 3(d) – MLS, PRC, and sales disclosure forms for 8401 South Lynn, Daleville.

OBJECTION TO RESPONDENT’S EXHIBITS

11. The Petitioner’s exhibits were offered and admitted into evidence without any timely objection from the Respondent. The Petitioner, however, objected to the admission of the Respondent’s exhibits because the Respondent did not exchange them prior to the hearing. The Respondent acknowledged that it failed to provide witness lists, summaries or copies of evidence to the Petitioner before the hearing, but argued that exchanging evidence before the hearing was only required “upon request.”¹

¹ The Respondent apparently was relying on the small claims rule, 52 IAC 3-1-5(d), which provides “If requested by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing.”

12. The Respondent is mistaken about which procedural rule applies because this is not a small claims case. The applicable procedural rule for this plenary case is 52 IAC 2-7-1, which provides as follows:

(b) A party to the appeal must provide the following to all other parties:

(1) Copies of documentary evidence and summaries of statements of testimonial evidence at least five (5) business days before the hearing.

(2) A list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) business days before the hearing.

(c) For purposes of determining compliance with the deadlines under subsection (b), the parties must either provide personal or hand delivery or deposit the materials in the United States mail or with a private carrier three (3) days before the deadline in accordance with the provisions of 52 IAC 2-3-1. If a party uses a private carrier that guarantees next day delivery, the materials must be sent one (1) day before the specified deadline.

This exchange of evidence rule is obviously very different from the small claims rule.

The mandatory exchange requirements should allow the parties to be better informed and avoid surprises. They are intended to assure a more organized, efficient and fair consideration of the issues at a hearing.

13. In response to the objection, the Respondent also asserted it did not receive a copy of the Petitioner's appraisal (*Pet'r Ex. 5*) prior to the hearing. And further statements made it clear that neither party actually complied with the applicable exchange of evidence requirements. Nevertheless, the Respondent failed to object when the Petitioner's exhibits were offered and thereby waived the point.

14. The Petitioner's objection is sustained. This case will be determined without further consideration of the Respondent's exhibits.²

² Exclusion of evidence that was not properly exchanged is permitted, but not required by 52 IAC 2-7-1(f). We are reluctant to exclude the Respondent's exhibits because *both* parties failed to properly exchange their exhibits before the hearing. But ultimately, the Respondent's exhibits would not have made any difference to the outcome of this case.

CONTENTIONS

15. Summary of the Petitioner's case:
 - a. The Petitioner purchased the property for \$55,900 on March 19, 2007. An appraisal valued the property at \$63,000 as of March 6, 2007. *Huffman testimony; Pet'r Ex. 5.*
 - b. The subject property is assessed for more than what the Petitioner paid for it and almost as much as its appraised value. *Huffman testimony; Pet'r Ex. 1; Pet'r Ex. 3; Pet'r Ex. 5.*
 - c. The assessed values of the appraisal's comparable properties are less than their selling prices. *Pet'r Ex. 4; Pet'r Ex. 5.* The assessed value of the subject property also should be less than its purchase price. *Huffman testimony.*

16. The Respondent argued that the Petitioner had no standing to appeal the 2006 assessment because it did not own the property on the assessment date. *Hisle testimony.* On cross examination it was admitted that the Petitioner did not own the property on March 1, 2006, the Petitioner was not responsible for paying the taxes assessed as of March 1, 2006, and the Petitioner did not pay the taxes resulting from the March 1, 2006, assessment. *Huffman testimony; Pet'r Ex. 1; Pet'r Ex. 3.*

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

17. 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).

18. 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”).
19. 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.

ANALYSIS

20. According to 52 IAC 2-2-13, a party to a Board appeal may include the owner of the subject property or one who is responsible for the property taxes payable on the subject property.
21. The Petitioner admitted it did not own the property on the assessment date and it was not responsible for paying any of the taxes assessed on the subject property for 2006. According to the Petitioner’s Purchase Agreement “[a]ll taxes assessed for any prior calendar year and remaining unpaid shall be paid by Seller, and all taxes assessed for the current calendar year [2007] shall be prorated between Seller and Buyer on a calendar-year basis as of the day immediately prior to the Closing Date.” *Pet’r Ex. 3*. The Petitioner failed to demonstrate any basis for being a proper party to the 2006 appeal. Accordingly, the Petitioner lacks standing to pursue this case or get any relief from it. Therefore, the assessment will not be changed.
22. But even if the Petitioner had standing to appeal the 2006 assessment, the evidence is insufficient to make a prima facie case for any change.
23. 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). 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.

24. A 2006 assessment must reflect the value of the property as of January 1, 2005. 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 about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
25. An appraisal can be a good way to prove value. The Petitioner provided an appraisal valuing the property at \$63,000 on March 6, 2007, but provided no explanation to relate this appraisal value to the required valuation date, January 1, 2005. Therefore, the appraisal does not help to prove what a more accurate assessed value might be. *See Long*, 821 N.E.2d at 471.
26. Sales information about the subject property can also be good evidence. The Petitioner bought it for \$55,900 in March 2007, but again provided no explanation to relate that amount to a value as of January 1, 2005. Accordingly, the purchase price does not help to prove what a more accurate assessed value might be. *Id.*
27. In further support of its contentions, the Petitioner presented evidence about three other properties with 2008 assessments that are less than their 2006 selling prices. In Indiana, however, each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, even if three other properties have 2008 assessments that arguably are too low, that point does not prove what the correct 2006 assessment for the subject property might be.

Furthermore, merely establishing that three other properties appear to be assessed for a little less than their selling prices does not prove that the subject assessment violates constitutional requirements for uniformity and equality. *See Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007).

28. When a taxpayer fails to provide probative evidence 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); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

CONCLUSION

29. The Petitioner lacks standing to appeal the 2006 assessment, but even if the Petitioner had standing, the evidence does not make a prima facie case for any assessment change.

FINAL DETERMINATION

In accordance with the above findings and conclusions, there will be no change in the assessment.

ISSUED: _____

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>>