

REPRESENTATIVE FOR PETITIONERS: Jack S. Miles

REPRESENTATIVE FOR RESPONDENT: Kirk Reller

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Jack S. Miles,)	Petition No. 47-010-08-1-5-00015
)	
Petitioner,)	Parcel No. 47-06-14-324-010.000-010
)	
v.)	
)	
Lawrence County Assessor,)	Lawrence County
)	Shawswick Township
)	2008 Assessment
Respondent.)	

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

October 24, 2011

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

Did the Petitioner prove the assessment of \$64,800 is not an accurate market value-in-use for the subject property and did he prove specifically what a more accurate valuation would be?

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is a single family residence located at 1917 12th Street in Bedford.
2. The Petitioner initiated an assessment appeal for 2008 with the Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 Petition on June 16, 2009.
3. On May 5, 2010, the PTABOA issued its Notification of Final Assessment Determination (Form 115), concluding that the 2008 assessment is \$8,000 for land and \$56,800 for improvements (total \$64,800).
4. On June 11, 2010, the Petitioner filed a Form 131 Petition seeking the Board's review of that determination. The Form 131 stated the assessed value should be \$5,000 for land and \$1,000 for improvements (total \$6,000). At that time the Petitioner elected to not proceed according to small claims procedures.
5. Administrative Law Judge (ALJ) Rick Barter held the Board's administrative hearing on August 2, 2011. He did not conduct an on-site inspection of the property.
6. Jack Miles, Debra Miles, County Assessor April Stapp Collins, and her technical advisor, Kirk Reller, were sworn as witnesses.
7. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Copies of photographs of the subject property taken after the Petitioner's purchase,
 - Petitioner Exhibit 2 – Property record card (PRC) for the subject property,
8. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Form 130,
 - Respondent Exhibit 2 – Form 115,
 - Respondent Exhibit 3 – PRCs for the subject property showing 2008, 2009 and 2010 assessments,

Respondent Exhibit 4 – Special Warranty Deed,
Respondent Exhibit 5 – Settlement Statement.

9. The following additional items are 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.

SUMMARY OF THE PETITIONER’S CASE

10. The 2008 assessed value of the subject property is overstated because of its poor condition, which is demonstrated by the photographs. The ten copies of photographs show the interior and exterior of the subject property. At the request of the ALJ, Petitioner’s wife wrote notes on the exhibit identifying the rooms and various elements shown in the photographs. *Petitioner testimony; Petitioner Exhibit 1.*
11. The property was in foreclosure and had been vacant for more than a year when the Petitioner purchased it as an investment. On November 20, 2008, the Petitioner paid \$3,000 for it, but he had not seen the property when he bought it. The photographs were taken after the Petitioner bought the property. The Petitioner sold the subject property for \$5,000 on June 17, 2009. *Petitioner testimony; Petitioner Exhibit 1, 2.*
12. The photographs from November 2008 demonstrate that the property had been deteriorating for a long time. This degree of deterioration could not have happened in only a few months. The property must have been in poor condition on March 1, 2008. *Petitioner testimony.*

SUMMARY OF THE RESPONDENT'S CASE

13. The assessed value should remain unchanged because the Petitioner failed to make a prima facie case with probative evidence related to March 1, 2008, or the required valuation date, January 1, 2007. *Reller argument.*
14. The photographs taken in November 2008 show poor condition, but the Petitioner failed to establish how that relates to a relevant time. *Reller argument.*
15. Although the Petitioner paid only \$3,000 for this property, it had sold for \$56,000 in October 2004. That sale was about as close to January 1, 2007, as the Petitioner's purchase on November 20, 2008—about 2 years. Furthermore, significant facts about the deterioration are not established. For example, if the damage shown in the photographs is from water, there can be a tremendous amount of damage in a very short time. You cannot assume the condition in November 2008 was much the same as it was on March 1, 2008, or January 1, 2007. Therefore, the Petitioner's purchase price cannot be considered as a reliable indication of value for assessment as of March 1, 2008, or for the required valuation date of January 1, 2007. *Reller testimony.*
16. The Petitioner presented no evidence about the value of the property for a time that is relevant to this case. *Reller argument.*

ADMINISTRATIVE REVIEW AND 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. 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”).
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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

20. 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 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to the 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.
21. Merely disputing how the methodology in the Guidelines was applied, however, is not enough to prove an assessment must be changed. A taxpayer cannot rebut the presumption that his assessment is correct without presenting evidence of the property’s market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-678 (Ind.

Tax Ct. 2006). *See also Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007).

22. Furthermore, regardless of the method used to rebut an assessment's presumption of accuracy, a party to an appeal 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). The valuation date for a 2008 assessment was January 1, 2007. 50 IAC 21-3-3 (2009). 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. *Long*, 821 N.E.2d at 471.
23. It frequently has been recognized that the sale of the subject property can be some of the best evidence of its actual market value-in-use and here there is no dispute about the fact that the Petitioner bought the subject property for \$3,000. Nevertheless, in this case we conclude that the Petitioner failed to prove what a more accurate assessment would be.
24. The subject property was in foreclosure. The Petitioner bought it without even seeing it first. The Petitioner failed to establish that under such circumstances his purchase price is a reliable indication of market value.
25. The Petitioner offered no probative evidence about the condition of the property before his November 2008 purchase. He simply relied on speculation about how long the property must have been deteriorating—in essence claiming the condition of the property would have been no better on the assessment date than when he bought it. The Respondent, however, correctly pointed out that some forms of deterioration can happen rather quickly and it is possible that substantial deterioration took place between March and November 2008 while the house was vacant. The speculative, conclusory testimony from the Petitioner and his wife about the past condition of the property are not probative evidence. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215,

1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

26. More importantly, although the subject property probably was suffering from some physical deterioration on March 1, 2008, the Petitioner failed to provide substantial, probative evidence of value at that time.
27. Finally, the failure to relate the evidence back to the required valuation date means it does not help to prove what a more accurate 2008 assessment might be. *O'Donnell*, 854 N.E.2d at 95; *see also Long*, 821 N.E.2d at 471.
28. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy*, 799 N.E.2d at 1221-1222.

SUMMARY OF FINAL DETERMINATION

29. The Petitioner failed to make a prima facie case for any assessment change. The Board finds in favor of the Respondent. Therefore, the assessment will 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.

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>.