

REPRESENTATIVE FOR PETITIONERS:

John D. Miller, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:

Kelly Hisle, Delaware County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

John, Barbara, Kirk, & Sherry	)	Petition No.:	18-002-06-1-5-00608
Miller,)		
	)	Parcel No.:	18-11-26-177-011.000-002
Petitioners,)		
)		
v.	)	County:	Delaware
)		
Delaware County Assessor,	)	Township:	Center
)		
Respondent.	)	Assessment Year:	2006

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

August 9, 2010

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Rather than addressing the subject property's market value-in-use, the Petitioners, John, Barbara, Kirk, and Sherry Miller argued mainly that their property taxes were too high. The Board, however, lacks jurisdiction to address that claim. Because the Millers offered no probative evidence to show the subject property's market value-in-use, they failed to make a prima facie case for lowering the property's assessment.

Procedural History

2. On July 27, 2007, the Millers filed notice with the Delaware County Assessor contesting the subject property's March 1, 2006 assessment. On July 11, 2008, the Delaware County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the subject property's assessment, but not to the level that the Millers requested. The Millers then filed a Form 131 petition asking the Board to review the PTABOA's determination.

Hearing Facts and Other Matters of Record

3. On May 11, 2010, the Board's designated administrative law judge, Joseph Stanford ("ALJ"), held a hearing on the Millers' appeal. Neither the Board nor the ALJ inspected the subject property.
4. The following people were sworn in as witnesses:
 - John D. Miller, Owner
 - Kelly Hisle, Delaware County Deputy Assessor
5. The Millers did not submit any exhibits.
6. The Assessor submitted the following exhibits:
 - Respondent Exhibit 1: Subject property record card ("PRC") and sales disclosure form

- Respondent Exhibit 1A: Spreadsheet for comparable properties
- Respondent Exhibit 3: PRC for 3412 South Grant Street
- Respondent Exhibit 4: Multiple Listing Service (“MLS”) listing for 3412 South Grant Street
- Respondent Exhibit 5: PRC for 1304 East 28th Street
- Respondent Exhibit 6: MLS listing for 1304 East 28th Street
- Respondent Exhibit 7: PRC for 3001 South Cherokee Road
- Respondent Exhibit 8: MLS listing for 3001 South Cherokee Road
- Respondent Exhibits 9-10: Two pages from recorded mortgage
- Respondent Exhibit 11: “Exhibit A-Legal Description”
- Respondent Exhibit 12: PTABOA hearing minutes
- Respondent Exhibits 13-14: Executor’s Deed

7. The Board recognized the following additional items as part of the record of proceedings:

- Board Exhibit A: The Form 131 petition
- Board Exhibit B: Hearing notice
- Board Exhibit C: Hearing sign-in sheet

8. The subject property is a residential rental property located at 2301 East 29th Street in Muncie, Indiana.

9. The PTABOA determined the following values for the subject property:

Land: \$9,600 Improvements: \$37,800 Total: \$47,400

10. On their Form 131 petition, the Millers requested the following values:

Land: \$5,000 Improvements: \$20,000 Total: \$25,000

Administrative Review and the Parties’ Burdens

11. A taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that the current assessment is incorrect and what the 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).

12. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).

13. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Analysis

Parties’ Contentions

A. The Millers’ Contentions

14. The Millers’ property taxes are too high. *Miller argument*. When they bought the subject property in 2002, the taxes were only \$162 per year. Currently, the taxes are \$1,500 per year, which is more than anyone else in the subject property’s neighborhood pays. *Miller testimony*. Taxes on the subject property should be no more than \$400 every six months. *Miller argument*.
15. In August 2002, the Millers bought the subject property for \$42,000 at an estate auction. *See Miller testimony; Resp’t Ex. 1*. The Millers were told that the subject property appraised for only \$25,000 when they bought it, although they have never seen that appraisal. *Miller testimony*.
16. The Millers rent out the subject property, but they are losing money on it. The Millers pay \$326 per month on their loan and \$47 per month on their sewage bill. They only charge \$450 per month in rent, and the current tenant is not even paying that. *Miller testimony*.

B. The Assessor's Contentions

17. The subject property's assessment is correct, as shown by the sales-comparable spreadsheet that Ms. Hisle prepared. *Hisle argument*. In that analysis, Ms. Hisle compared the subject property to three properties that sold in 2004 and 2005. Ms. Hisle adjusted each comparable property's sale price to account for various ways in which it differed from the subject property. The adjusted sales prices ranged from \$43,000 to \$61,800. *Hisle testimony; Resp't Ex. 1A*.
18. The increase in the Millers' property tax could be the result of exemptions having been dropped. *Hisle testimony*.

Discussion

19. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
20. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 506 n. 6. A taxpayer may also offer actual construction costs, sales

information for the subject 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 presumed 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). Otherwise, that evidence lacks probative value. *Id.* For the March 1, 2006 assessment date at issue in this appeal, the valuation date was January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.
22. The Millers mainly claim that their property taxes are too high. To the extent that the Millers contest their taxes—as opposed to their property's assessment—the Board lacks jurisdiction to hear their claim. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001)(citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). The Board therefore must address appeals from determinations made by local assessing officials or county PTABOAs that concern property valuations, property tax deductions, or property tax exemptions. Ind. Code § 6-1.5-4-1. By contrast, no statute authorizes the Board to review the propriety of local tax rates.¹
23. The Millers, however, also challenged the subject property's assessment—a claim over which the Board does have jurisdiction. Although the Millers spent little time on that claim at the hearing, Mr. Miller did testify that he thought the property should have been assessed for only \$25,000. But the Millers did not offer any probative evidence to

¹ That is not to say that the Board lacks jurisdiction simply because a taxpayer's claim implicates a local tax rate. In a budget driven tax system, the Board may have jurisdiction over claims that implicate or affect tax rates, provided the claims concern assessed value. *See U.S. Steel Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 785 N.E.2d 1209, 1212-13 (Ind. Tax Ct. 2003) *aff'd in part and rev'd in part on other grounds, Lake County Property Tax Assessment Bd. of Appeals v. U.S. Steel Corp.*, 820 N.E.2d 1237 (Ind. 2005). The Board, however, separately deals with the Millers' claims about the subject property's assessment.

support such an assessment. Although Mr. Miller testified that the Millers bought the subject property for \$42,000 in 2002 and that the property had appraised for only \$25,000 at that time, the Millers did not explain how that sale price or appraisal related to the subject property's market value-in-use as of the relevant January 1, 2005 valuation date. Also, the Millers did not offer the appraiser's report or any other evidence to show how the appraiser reached his or her valuation opinion. Mr. Miller's testimony about the appraisal and the property's sale price therefore lacked probative value.

24. Mr. Miller also testified to the amount of rent that the Millers charged and that their current tenant had not been paying. By itself, that evidence does nothing to quantify the subject property's market value-in-use and therefore lacks probative value.

Summary of Final Determination

25. The Millers failed to make a prima facie case for reducing the subject property's assessment. The Board therefore finds for the Assessor.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date written above.

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>>