

REPRESENTATIVE FOR PETITIONER: Jeffrey K. Moore, Pro Se

REPRESENTATIVE FOR RESPONDENT: Bobby Keith, Ohio County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Jeffrey K. Moore,	)	Petition No.: 58-004-06-1-5-00011
	)	Parcel: 58-06-02-002-032.000-004
Petitioner,	)	
	)	
v.	)	
	)	Ohio County
Ohio County Assessor,	)	Randolph Township
	)	2006 Assessment
Respondent.	)	

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

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**November 24, 2008**

**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 that the current assessed value for the subject real property is too high and that his assessment should be reduced to \$130,000 by establishing how the assessment and taxes on his property have increased from prior years or by establishing that there are several other properties in the area with lower assessments?

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

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

1. The subject property is a 4,033 square foot house on a lot measuring 66 feet by 130 feet located at 222 South Walnut Street in Rising Sun.
2. On October 30, 2007, the Ohio County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the 2006 assessment on the subject property is \$181,100. On November 19, 2007, the Petitioner filed a Form 131 Petition seeking the Board's administrative review of that determination and opted out of small claims procedures. The Petitioner contends the assessed value should be \$130,000.
3. The Board's designated Administrative Law Judge, Kay Schwade, held the hearing in Rising Sun on September 19, 2008. She did not conduct an on-site inspection of the property.
4. The Petitioner, Jeffrey K. Moore, and County Assessor Bobby Keith were sworn as witnesses and testified at the hearing.
5. The Petitioner presented the following exhibits:
  - Exhibit 1 – Subject property record card,
  - Exhibit 2 – Subject property assessment information sheet from the Ohio County Assessment website,
  - Exhibit 3 – Photograph of the subject property,
  - Exhibit 4 – Assessment information sheet from the Ohio County Assessment website for the property at 220 South Walnut Street,
  - Exhibit 5 – Photograph of the property at 220 South Walnut Street,
  - Exhibit 6 – Assessment information sheet from the Ohio County Assessment website for the property at 307 South Walnut Street,
  - Exhibit 7 – Photograph of the property at 307 South Walnut Street,
  - Exhibit 8 – Assessment information sheet from the Ohio County Assessment website for the property at 301 South Walnut Street,
  - Exhibit 9 – Photograph of the property at 301 South Walnut Street,
  - Exhibit 10 – Photograph of the property at 304 South Walnut Street,

- Exhibit 11 – Assessment information sheet from the Ohio County Assessment website for the property at 310 South Walnut Street,
- Exhibit 12 – Assessment information sheet from the Ohio County Assessment website for the property at 120 South High Street,
- Exhibit 13 – Assessment information sheet from the Ohio County Assessment website for the property at 122 South High Street,
- Exhibit 14 – Assessment information sheet from the Ohio County Assessment website for the property at 105 North High Street,
- Exhibit 15 – Photograph of the property at 105 North High Street.

6. The Respondent presented the following exhibits:

- Exhibit A – Subject property record card,
- Exhibit B – Multiple listing sheet for the subject property.

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

- Board Exhibit A – The 131 Petition,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing Sign in Sheet.

#### **SUMMARY OF THE PETITIONER’S EVIDENCE**

8. The property taxes for the subject property have increased each year for the last five years. In 2006, the assessment originally increased from \$144,500 to \$242,900. That increase was 68% over the prior year’s assessment. Even though the PTABOA reduced it, the current assessment of \$181,100 still is excessive. *Moore testimony; Pet’r Ex. 1 and 2.*

9. The property located at 220 South Walnut Street is next door to the subject property. It is comparable in size, but it has a larger lot than the subject property. Its current assessed value is \$116,800. *Moore testimony; Pet’r Ex. 4 and 5.*

10. The property located at 307 South Walnut Street is across the street from the subject property. It is comparable in size to the subject property. Its current assessed value is \$142,200. *Moore testimony; Pet’r Ex. 6 and 7.*

11. The property located at 301 South Walnut Street is also across the street from the subject property. It is comparable in size to the subject property. Its current assessed value is \$82,700. *Moore testimony; Pet'r Ex. 8 and 9.*
12. The property located at 304 South Walnut Street is two doors down from the subject property. It is comparable in size to the subject property. Its current assessed value is \$109,700. *Moore testimony; Pet'r Ex. 10.*
13. The property located at 310 South Walnut Street is one block down from the subject property. It is comparable in size to the subject property. Its current assessed value is \$76,900. *Moore testimony; Pet'r Ex. 11.*
14. The property located at 120 South High Street is two blocks away from the subject property. It is currently assessed at \$99,500. *Moore testimony; Pet'r Ex. 12.*
15. The property located at 122 South High Street is currently assessed at \$104,000. The property located at 105 North High Street is currently assessed at \$115,600. *Moore testimony; Pet'r Ex. 13, 14 and 15.*
16. "I think by the photographs ... you can clearly see that these properties are comparable size—some of their lots are significantly larger than mine anyway." *Moore testimony.*<sup>1</sup> These properties are in the immediate area of the subject property. The assessed values of the comparable properties are significantly less than the assessed value of the subject property. Based on the comparable properties, the subject property's assessed value should be \$130,000. *Moore testimony; Pet'r Ex. 3-15.*
17. There is no sales data supporting or indicating that the subject property's assessed value should be as high as \$181,100. *Moore testimony.*

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<sup>1</sup> The Petitioner's use of the term "these properties" is ambiguous. The photographs to which he refers show houses. Therefore, it appears that the Petitioner means the houses are comparable in size and some of the other lots are larger than his. On cross examination, however, the Petitioner admitted he did not have actual measurements for his comparables.

## SUMMARY OF THE RESPONDENT'S EVIDENCE

18. The subject property is a 4,033 square foot home. Most of the properties the Petitioner offered as comparables are smaller homes between 1,800 square feet and 2,000+ square feet. Because the subject property is larger, its assessed value should be higher. *Keith testimony; Resp't Ex. A.*
19. The subject property was listed for sale with an asking price of \$229,000. The current assessed value is less than the Petitioner's asking price. *Keith testimony; Resp't Ex. B.*

## ANALYSIS

20. 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).
21. In making a 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”).
22. Real property is assessed on the basis of 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 similar user, from the property.” *See Ind. Code § 6-1.1-31-6(c)*; 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine fair market value-in-use is the cost approach. MANUAL at 3. To that end,

Indiana promulgated a series of guidelines that explain the application of the cost approach. See Real Property Assessment Guidelines for 2002 – Version A. 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 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.

23. Each tax year stands alone. Therefore, the amount or percentage of change to assessed value for 2006 does not help to prove that the current assessment is wrong or what a more accurate value-in-use might be. Furthermore, any increases in the taxes for the subject property over the past several years are irrelevant. See *Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 757 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001).
24. The Petitioner compared the assessments of several other properties to the assessment of the subject property in an attempt to show that the subject property is over assessed. But he failed to establish specific facts or explain how the properties are truly comparable and he failed to deal with how any differences affect the relative values of the properties. His conclusory testimony that the properties are the same size, the photographs, and bits of other information about the properties are entirely insufficient to be the basis for any legitimate comparison. Without facts and analysis to establish comparability, such evidence is conclusory and does not constitute probative evidence. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (stating that the parties are responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant market value-in-use of the properties).
25. 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 v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

### SUMMARY OF FINAL DETERMINATION

26. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent. 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.

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>