

REPRESENTATIVE FOR PETITIONER: Toni Morgan, Pro Se

REPRESENTATIVE FOR RESPONDENT: Brian G. McHenry, Tax Representative

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Toni Morgan,	)	Petition No. 83-003-08-1-5-00039
	)	Parcel No. 83-13-09-120-002.000-003
Petitioner,	)	
	)	
v.	)	
	)	Vermillion County
Vermillion County Assessor,	)	Clinton Township
	)	2008 Assessment
Respondent.	)	

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

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**April 7, 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**

The Petitioner claimed her property taxes increased “too much” and disputed the accuracy of some data about her house, but she failed to focus on the real issue. When correctly stated, the issue that determines this case is as follows: Did the Petitioner prove the existing assessment fails to accurately reflect market value-in-use and did she prove what a more accurate assessed value would be?

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

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

1. The subject property is rental house located at 875 East 4<sup>th</sup> Street or 875 Gilbert Street in Clinton. The record contains conflicting information, but neither party brought up this insignificant discrepancy.
2. The Petitioner initiated this appeal on February 23, 2009. The Property Tax Assessment Board of Appeals (PTABOA) mailed its decision on October 20, 2009. The Petitioner filed a Form 131 with the Board on December 14, 2009.
3. The PTABOA determined the assessed value is \$12,700 for land and \$76,400 for improvements (\$89,100 total).
4. The Petitioner could not say what the assessed value should be.
5. Administrative Law Judge Paul Stultz held a hearing for this petition on January 25, 2011. There was no on-site inspection of the subject property.
6. Toni Morgan and Tabitha Cole were sworn as witnesses for the Petitioner.
7. County Assessor Patricia Richey and Brian McHenry, who is a Tax Representative from Tyler Technology, were sworn as witnesses for the Respondent.
8. The Petitioner presented only one exhibit:  
Petitioner Exhibit 1 – Income approach.
9. The Respondent presented the following exhibits:  
Exhibit 1 – Property record card,  
Exhibit 2 – Two photographs of the garage.

10. The following additional items are recognized as part of the record:
  - Board Exhibit A – The 131 Petition,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing Sign in Sheet.

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

11. The property taxes on the subject property have gone up too much and they are too high. The assessment includes two fireplaces and a garage. At one time the property had a fireplace, but it was removed, even though the chimney is still there. It never had two. A car will not go into the area that is identified as a garage. Even though Respondent Exhibit 2 shows a vehicle parked in there, “I don’t know how he got that car in that garage.” The fireplaces and garage should not be included in the assessment. *Morgan testimony.*
12. The subject property is a rental house. It is not generating a profit even though it has been occupied for the last three years. The calculation shown on Exhibit 1 determines a value based on income. It is only \$683.33. An accountant said to use this method. *Morgan testimony; Cole testimony; Pet’r Ex. 1.*

#### **SUMMARY OF THE RESPONDENT’S CASE**

13. The photographs show a vehicle parked in the garage. It is a garage. The current assessment includes only one fireplace. Upon verification that the inside fireplace has been removed and only a chimney remains, the assessment can be adjusted. But as long as the chimney is still there, it must be included as part of the value. *McHenry testimony; Resp’t Ex. 2.*
14. An assessor is responsible only for property assessments. An assessor does not have any control over levies and tax rates or how much they go up. The Respondent does not control the amount of property tax on the subject property. *McHenry testimony.*

15. The “Income Approach” that the Petitioner offered does not prove anything. That calculation starts with showing a loss for 2006, 2007 and 2008. It is indicating no rent was received (negative number), but tax records indicate that rent was received. The calculation improperly deals with the property taxes. It is not a valid income approach to valuation. *McHenry testimony; Pet’r Ex.1.*

#### ANALYSIS

16. The Board is a creation of the legislature. It has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The Board determines appeals concerning assessed value of tangible property, deductions, and exemptions. Ind. Code § 6-1.5-4-1 (a). It lacks statutory authority to determine tax rates or tax bills. Accordingly, the Petitioner’s claim about any increase or the amount of her tax bill is outside of the Board’s jurisdiction.
17. Taxpayers who seek review of a determination of an assessing official have 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). They 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”).
18. The Petitioner was asked what the assessed value should be. In response she admitted she did not know. Unfortunately for the Petitioner, this answer demonstrates her failure to grasp the burden of making a case.

19. Real property is assessed on the basis of 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 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). 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. Indiana promulgated a series of guidelines that explain the application of the cost approach. 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 relevant to 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.
20. An income approach to value can be a valid method for determining a property’s market value-in-use. The Petitioner presented a calculation that purports to be an income approach to value, but there was no representation that this evidence was compiled according to generally accepted appraisal principles. We conclude that it was not. The Petitioner’s calculation starts with a representation that the subject property has been operating at a loss, but it does not give even basic income and expense data to support that conclusion. Furthermore, nothing explains the basis for using an 8% capitalization rate. The Petitioner failed to provide the kind of facts and analysis that might have proved a different valuation based on the income approach. Without the necessary facts and analysis to back it up, the conclusory income approach that the Petitioner presented is not probative evidence. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005); *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

21. Much of the case focused on assessment methodology disputes about the number of fireplaces and considering something to be a garage. But without substantial, probative evidence of a more accurate valuation, such disputes about the Respondent's methodology are not enough to make a case that overcomes the presumption that the assessment is correct. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). In this case, the Petitioner provided no substantial, probative evidence that the existing assessment fails to accurately reflect market value-in-use.
22. The Petitioner failed to make a prima facie case for any lower assessed value.
23. 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. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

24. The Board finds in favor of the Respondent. The assessment will not be changed.

This Final Determination of the above captioned matter is issued 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>