

REPRESENTATIVE FOR PETITIONER:

Robert C. Brown, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Kristie L. Dressel, Center Township Assessor

Robert W. Metz, Commercial Supervisor, Center Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Robert C. Brown Trust,)	Petition Nos.: 45-032-03-1-5-00029
)	45-032-03-1-5-00030
Petitioner)	45-032-03-1-5-00031
)	
v.)	Parcels: 003-31-25-0119-0024
)	003-31-25-0119-0025
Center Township Assessor)	003-31-25-0119-0026
)	
Respondent)	County: Lake
)	Township: Center
)	
)	Assessment Year: 2003
)	

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

March 4, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the subject property is over-stated because the house is in poor condition and it does not have a foundation.

PROCEDURAL HISTORY

2. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations upholding the Center Township Assessor's 2003 assessment of the subject property on March 8, 2007.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on April 5, 2007, petitioning the Board to conduct an administrative review of the subject properties' 2003 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on January 13, 2009, in Crown Point, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Robert C. Brown, Representative of the Petitioner
Carol Brown, Witness for the Petitioner,

For the Respondent:

Kristie L. Dressel, Center Township Assessor
Robert W. Metz, Commercial Supervisor, Center Township.

6. The Petitioner presented the following exhibits:
Petitioner Exhibit 4-7 – Photographs of the parcels.¹
7. The Respondent did not present any exhibits.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
Board Exhibit A – Form 131 Petitions
Board Exhibit B – Notices of Hearing dated November 6, 2008
Board Exhibit C – Sign-in Sheet.
9. The subject property consists of one residential lot improved with a dwelling, parcel 003-31-25-0119-0025 (Parcel 25), located at 12740 Hilltop and two adjacent vacant residential lots, parcels 003-31-25-0119-0024 (Parcel 24) and 003-31-25-0119-0026 (Parcel 26), located on Blaine Street in Cedar Lake.²
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2003, the PTABOA determined the assessed value of Parcel 25 to be \$7,400 for the land and \$17,500 for the improvements, for a total assessed value of \$24,900. The PTABOA determined the assessed values of Parcels 24 and 26 to be \$4,500 each.
12. On its petitions for 2003, the Petitioner contends the assessed value for the parcels should total \$32,000.

¹ Petitioner Exhibits 1-3 were presented at an earlier hearing and did not apply to the subject properties here.

² The Petitioner did not specifically address individual parcels and so the Board will consider the parcels collectively as the subject property.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
15. 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”).
16. 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

17. The Petitioner contends that the property is over-valued and presented the following evidence in support of its contentions:
 - A. The Petitioner contends the house is small and has pillar and post construction. *R. Brown testimony*. According to the Petitioner's representative, the house has no foundation and the cost of lifting the house would be \$10,000. *Id.* In support of this contention, the Petitioner presented a photograph of the foundation. *Petitioner Exhibit 6*.
 - B. Additionally, the Petitioner argues the house is in poor condition. *R. Brown testimony*. In support of this contention, the Petitioner presented photographs showing the exterior of the house. *Petitioner Exhibits 4 and 5*.
 - C. The Petitioner further contends that the land is low and argues that the property may not be buildable. *R. Brown testimony*. In support of this contention, the Petitioner presented a photograph showing the parcels. *Petitioner Exhibit 7*.
 - D. Finally, the Petitioner's representative argued that the assessment might be a little high, but he admitted that he could accept the assessment as correct. *R. Brown testimony*. Mr. Brown testified that if the foundation had not been accounted for in the assessment, the assessed value could be adjusted lower. *Id.*
18. The Respondent contends that the Petitioner requested a total assessed value of \$32,000 for all the parcels but the current assessment is only \$33,900. *Metz*

testimony. Id. According to the Respondent, the Petitioner did not prove that the foundation was not accounted for in the assessment. *Id.*

ANALYSIS

19. The 2002 Real Property Assessment Manual defines “true tax value” 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). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as 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 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
21. The Petitioner first contends that the assessment of the house should be lowered if the property’s lack of foundation was not taken into account in the property’s assessment. The Petitioner, however, failed to offer any evidence to show that the house had been assessed with a foundation other than its pillar and post

foundation. Thus, the Petitioner failed to prove that the Respondent erred in its assessment. Further, even if the Petitioner had shown that the foundation was incorrect on its assessment – which it did not – the Petitioner failed to show that the assessment did not accurately reflect the market value of the property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).

22. The Petitioner also contends that the house is in poor condition. *Brown testimony*. The Board interprets this to be an argument that the condition of the subject dwelling was improperly assessed. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5*, (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. While the Petitioner’s representative testified that the house “was not in the best condition,” the Petitioner presented no evidence which would justify a determination that the structure’s condition rating is incorrect. Conclusory statements, unsupported by factual evidence are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).³

³ The Petitioner also argues that the lots may be unbuildable. Significantly, the Petitioner does not contend the lots *are* unbuildable, merely that they *may be* unbuildable. Raising hypothetical defects on a property falls far short of the burden the Petitioner faces to prove its assessment is incorrect.

23. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

24. The Petitioner failed to establish a prima facie case of error. The Board finds for the Respondent. No change in the assessment is warranted.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, 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>>