

PETITIONER:

W. Wyatt Rauch, Petitioner

RESPONDENT:

Jody Hoover, Pike County Assessor

INDIANA BOARD OF TAX REVIEW

W. Wyatt Rauch,	)	Petition No.:	63-012-06-1-4-00017
)		
Petitioner,	)	Parcel:	012-00837-00
)		
v.	)	County:	Pike
	)	Township:	Washington
Pike County Assessor,)		
	)	Assessment Year:	2006
Respondent.)		

Appeal from the Final Determination of
Pike County Property Tax Assessment Board of Appeals (PTABOA)

July 22, 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:

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the subject property is overstated compared to the sales of nearby properties and because the second story of the structure is in such poor condition.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner, W. Wyatt Rauch, filed a Form 130 Petition to the Pike County Property Tax Assessment Board of Appeals (the PTABOA) for review of the property's 2006 assessment on June 22, 2007. A Form 115 Notification of Final Assessment Determination was mailed to Mr. Rauch on November 9, 2007. The Petitioner subsequently filed a Form 131 Petition to the Board to conduct a review of the PTABOA's decision on December 19, 2007.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing to consider the appeal on April 28, 2009, in Petersburg, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

W. Wyatt Rauch, Petitioner
Paul A. Lake, Witness
Ginny Hensler, Witness

For the Respondent:

Jody Hoover, Pike County Assessor
Wilma Jones, Pike County PTABOA, Witness

5. The Petitioner presented the following evidence:

Petitioner Exhibit 1 – Summary of contentions, exhibits and witnesses,
Petitioner Exhibit 2 – Hand-drawn sketch of the second floor of the structure under appeal,
Petitioner Exhibit 3 – Copies of nine photographs of second floor of the building.

6. The Respondent presented no documentary evidence.¹
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 petition with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
8. The property under appeal is an improved commercial parcel located at 612 Main Street, Washington Township, in Petersburg, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2006, the PTABOA determined the assessed value of the property to be \$4,900 for the land and \$27,300 for the improvements, for a total assessed value of \$32,200. *Board Exhibit A.*
11. The Petitioner requested an assessed value of \$2,500 for the land and \$20,000 for the improvements, for a total assessed value of \$22,500. *Board Exhibit A.*

JURISDICTIONAL FRAMEWORK

12. 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.

¹ The Petitioner objected to the admission of any evidence from the Respondent because the Assessor did not follow the rules of exchange and notice as required by Ind. Admin. Code § 52-2-7-1(b). The Respondent admitted that she did not comply with the Board's rules and the objection was sustained.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. 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).
14. 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”).
15. 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.

PETITIONER'S CONTENTIONS

16. The Petitioner contends that the assessed value of his property is overstated compared to the sales prices of several other improved commercial properties and commercial lots. *Rauch testimony*. In support of this contention, the Petitioner submitted evidence consisting of hand-written notations and testimony regarding the sales of buildings and lots in downtown Petersburg and on Third Street in Washington, Indiana. *Petitioner Exhibit 2; Rauch testimony*.
17. Mr. Rauch further contends that the condition of the second floor of his building is so poor that between \$50,000 and \$85,000 would have to be spent to make that story usable. *Rauch testimony*. In support of this contention the Petitioner testified he has received

information from a building contractor as to the cost of improving the second story, as well as an estimate from the County Building Commissioner. *Id.*

18. The Petitioner further contends that the economic conditions in Indiana and Petersburg are such that commercial property has lost value and the market has been flooded by unsold property. *Rauch testimony.* In support of this argument the Petitioner called as a witness real estate broker/assessor Ginny Hensler of Klipsch Realty in Petersburg. *Id.* Ms. Hensler testified that there are a lot of buildings for sale in the area and the buildings are not selling for what Ms. Hensler believes they should be selling for. *Hensler testimony.*
19. The Petitioner also argues that the state's efforts to assess property at market value, as dictated by the Indiana Tax Court, has been hindered by the low values of older commercial properties and the high cost of renovation to bring the buildings up to acceptable standards. *Rauch testimony.* In support of this argument the Petitioner called Paul Lake as a witness.² *Id.* Mr. Lake testified that the market value approach to value used by Indiana assessors suggests that assessors are now performing appraisals to determine value. *Lake testimony.* According to Mr. Lake, what is recorded on the property record card then amounts to "backing into a value." *Id.*
20. Finally, the Petitioner argues that the decision of the Pike County PTABOA was arbitrary and capricious and violated his due process rights because a formal hearing was not conducted as required by state law. *Rauch testimony.*

RESPONDENT'S CONTENTIONS

21. The Respondent contends that the 2006 assessment is correct and that the county granted an eight percent obsolescence on the building based on the Petitioner's arguments in his Form 130 appeal. *Hoover testimony.* According to Ms. Hoover, an agreement was

² The Respondent objected to this witness because he is a former member of the Pike County PTABOA. The Respondent, however, presented no evidence that Mr. Lake was involved in the county's determination in this matter. Thus, the Respondent's conflict of interest objection was therefore overruled.

reached at an informal meeting with Petitioner on November 2, 2007. *Id.* Ms. Hoover argues that the application of the eight percent obsolescence factor resulted in the lowering of the assessment to its current level, which was reflected on Form 115 Notification of Final Assessment Determination. *Id.*; *Board Exhibit A.*

22. The Respondent also argues that the comparable sales cited by Petitioner included only the purchases of a single investor and ignored the sale of a very comparable neighboring building, which is adjacent to the property under appeal. *Hoover testimony.* Further, Ms. Hoover argued that one sale was of a church building and another sale cited by the Petitioner was not an arms' length transaction. *Id.*

ANALYSIS

23. 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 (MANUAL) (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. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).
24. 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 property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

25. The Petitioner argues that his property was assessed in excess of its market value based on the sale of several properties he contends are comparable to the subject property. *Rauch testimony*. In making this argument, the Petitioner attempts to rely on a sales comparison approach to establish the market value-in-use of the subject property. See MANUAL at 13. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. See *Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.*
26. Here Mr. Rauch testified only that the properties were commercial in nature, but provided no other evidence as to the characteristics of the individual properties or how they compared to his property. The Petitioner did not produce a property record card, a sales disclosure form, or address in any substantive manner the ways in which the selling prices of the purportedly comparable properties were related to the assessed value of his property. Without market evidence valuing those differences, the Petitioner’s statements are nothing more than conclusions unsupported by probative evidence. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
27. Further, the Petitioner failed to tie whatever market value information might have been contained in his testimonial evidence to the January 1, 2005, valuation date for the 2006 assessment he is appealing. When a taxpayer is submitting evidence regarding the value

of property related to years other than the challenged assessment year, the taxpayer must also provide an explanation as to how the evidence relates to the challenged assessment period. *O'Donnell v. Dept. of Local Government Finance*, 854 N.E.2d 90, 97 (Ind. Tax Ct. 2006). For this reason, too, the Petitioner's evidence fails to raise a prima facie case that his property's 2006 assessment is in error.

28. The Petitioner also contends that it would cost between \$50,000 and \$85,000 to bring the second story of the appealed structure up to a functional condition. These amounts were purportedly based on estimates by two men, one identified as "the county building commissioner." The Petitioner, however, did not provide the estimates, did not provide any details of the estimates and did not identify when such estimates were prepared. Again, statements that are unsupported by probative evidence are conclusory and fail to raise a prima facie case. *Whitley Products*, 704 N.E.2d at 1118.
29. Lastly, the Petitioner contends that his due process rights were violated because he was not afforded a formal hearing at the local level. Indiana Code § 6-1.1-15-1 sets forth the requirements for appeals and hearings with regards to property assessments. If the maximum time elapses for the county board to conduct a formal hearing, then the taxpayer may take action to initiate a proceeding for review before the Indiana Board at anytime after the maximum time elapses. *Id.* Thus, if the PTABOA has failed to act, the taxpayer's remedy is to petition the Board. Here, this is precisely what the Petitioner has done – petitioned the Board to review his case. Therefore, any violation that may have occurred at the local level has been remedied by Petitioner's hearing before this Board.
30. For the reasons outlined above, Petitioner has failed to raise a prime facie case. Where the Petitioner has not supported its claims 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

31. The Petitioner failed to raise a prima facie case that the 2006 assessed value of his property was overstated. The Board finds in favor of the Respondent and holds that the Petitioner's 2006 assessment should 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.

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>.