

REPRESENTATIVE FOR PETITIONER:

Glen Roberson, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kelly Hisle, Delaware County Appeals Clerk

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Glen Roberson,	)	Petition No.:	18-003-06-1-5-01059
)		
Petitioner,	)	Parcel No.:	18-11-04-352-015.000-003
)		
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

September 22, 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. To support his claim that the subject property was assessed too high, Glen Roberson, relied on his unsuccessful history of trying to sell the subject property and on recent

listings for what he believed were comparable properties. But Mr. Roberson's testimony about his attempts to sell the property was too vague to be given probative weight, and he did not explain how the recent listings related to the subject property's value as of the relevant valuation date for the March 1, 2006 assessment at issue in this appeal. Mr. Roberson therefore failed to carry his burden of proof.

Procedural History

2. On May 7, 2007, Mr. Roberson filed a written notice with the Delaware County Assessor contesting the subject property's 2006 assessment. On May 30, 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 Mr. Roberson had requested.
3. Mr. Roberson then timely filed a Form 131 petition with the Board. The Board has jurisdiction over Mr. Roberson's appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
4. On June 24, 2010, the Board's Administrative Law Judge, Patti Kindler ("ALJ"), held a hearing on Mr. Roberson's appeal. Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

5. The following people were sworn in as witnesses:
Glen Roberson, *pro se*
Kelly Hisle, Delaware County Appeals Clerk
6. Mr. Roberson submitted the following exhibits:
Petitioner Exhibit 1: Lease-Rental Agreement
Petitioner Exhibit 2: Seven listings from *Yahoo Real Estate*
7. The Assessor submitted the following exhibits:
Respondent Exhibit 1: Copy of 50 IAC 21-3-1 -2 and part of -3,

- Respondent Exhibit 1A: Comparable grid with three neighborhood sales
- Respondent Exhibit 2: Subject property record card
- Respondent Exhibit 3: Property record card for 2021 North Glenwood Avenue
- Respondent Exhibit 4: MLS data for 2021 North Glenwood Avenue
- Respondent Exhibit 5: Warranty Deed for 2021 North Glenwood Avenue
- Respondent Exhibit 6: Property record card for 2212 North Janney Avenue
- Respondent Exhibit 7: MLS data for 2212 North Janney Avenue
- Respondent Exhibit 8: Warranty Deed for 2212 North Janney Avenue
- Respondent Exhibit 9: Property record card for 2013 North New York Avenue
- Respondent Exhibit 10: MLS listing for 2013 North New York Avenue
- Respondent Exhibit 11: Warranty Deed for 2013 North New York Avenue

8. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Notice of hearing
- Board Exhibit C: Hearing sign-in sheet

9. The subject property is a residential rental property located at 2013 Ball Avenue, Muncie Indiana.

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

Land: \$8,200 Improvements: \$56,100 Total: \$64,300

11. On his Form 131 petition, Mr. Roberson requested the following assessment:

Land: \$6,000 Improvements: \$40,000 Total: \$46,000

Administrative Review and the Parties’ Burdens

12. 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).

13. 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”).

14. 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. Mr. Roberson’s Contentions

15. Mr. Roberson has had problems consistently finding tenants to rent the subject property. Mr. Roberson has also tried to sell the property to tenants on contract or through leases with options to buy. *Roberson testimony; see also, Pet’r Ex. 1*. The first tenants could not afford the monthly rent much less put down 5% of Mr. Roberson’s \$45,000 asking price. Mr. Roberson, however, hopes that his current tenants will be able to afford the down payment when they renew their lease. *Roberson testimony*.
16. Over the last seven years, Mr. Roberson has also advertised the property for sale in the “Homes for Sale” section of the local newspaper. But Mr. Roberson would remove his advertisements when he found tenants, because the tenants were afraid that they would be kicked out if Mr. Roberson sold the property. In part of 2004-05, Mr. Roberson advertised the property for sale at \$49,900, but he lowered the price to \$40,000 in 2007. He still received no offers. *Roberson testimony*.
17. Properties in the subject’s neighborhood are currently listing and selling for \$30,000 to \$55,000. *Id.* Mr. Roberson offered listing data from YAHOO! REAL ESTATE for the following seven properties, all of which were listed in May or June 2010:

- 2509 North Maplewood - \$30,400. Although the property lacks a garage, it still compares to the subject property because the subject property's garage is boarded up.
- 4809 North Hollywood - \$55,000. It has 2.5 bathrooms compared to the subject's single bathroom.
- 1601 West Glenn Ellyn - \$47,200. It has two bathrooms, three bedrooms, and is similar in size to the subject house.
- 1509 West Glenn Ellyn - \$30,600. It has three bedrooms and one bathroom and is similar in size to the subject house.
- 2504 North Maplewood - \$49,900.
- 2100 North Rosewood - \$54,900. It has four bedrooms and 2.5 bathrooms, and it is only three blocks away from the subject property.
- "Bank Owned" property on North Maplewood - \$35,900. It has four bedrooms and one bathroom.

Roberson testimony; Pet'r Ex. 2.

18. According to Mr. Roberson, property values are decreasing. And while he once asked for \$49,900 for the subject property, he would now gladly accept \$40,000. A local realtor will probably list the subject property at between \$45,000 and \$49,000 if the pending sale to the current tenants falls through. *Roberson testimony.*

B. The Assessor's Contentions

19. Because Mr. Roberson did not trend his 2010 listing data, that data has no bearing on whether the subject property's March 1, 2006 assessment was correct. *Hisle argument.* In determining 2006 assessments, 50 IAC 21-3-3 instructed assessors either to use sales from January 1, 2004 to December 31, 2005, or to trend sales that occurred outside that period. *Hisle testimony; Resp't Ex. 1.*
20. The Assessor's representative, Kelly Hisle, offered her own sales-comparison analysis to support the subject property's assessment. Ms. Hisle used three neighborhood properties

that sold in 2004 and 2005. For each property, Ms. Hisle trended the sale price to January 1, 2005, using a 3%-per-year factor suggested by Marshall & Swift guidelines. She then adjusted each property's sale price to reflect relevant ways in which it differed from the subject property. Those adjusted sale prices ranged from \$55,000 to \$62,200 and \$67 per square foot to \$72 per square foot. In light of those sales, the subject property's assessment was reasonable. *Hisle testimony and argument; Resp't Ex. 1A.*

Discussion

21. 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 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.
22. 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 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 (“USPAP”) often will suffice. *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 any other information compiled according to generally accepted appraisal principles. *MANUAL at 5.*
23. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant

valuation date. *O'Donnell v. Dept' of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *See id.* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without *some explanation* as to how these values relate to the January 1, 1999 value.”)(emphasis in original). For March 1, 2006 assessments, the valuation date was January 1, 2005. Ind. Code § 6-1.1-31-6 (c); 50 IAC 21-3-3.

24. Mr. Roberson points to two main things to support his claim that the subject property is assessed for more than its market value—recent listings for nearby properties and his unsuccessful attempts to sell the subject property. Neither is probative of the subject property’s true tax value.
25. True, one can show a property’s value through sales information for comparable properties. Indeed, that is what the sales-comparison approach contemplates. *See MANUAL* at 3 (explaining that the sales-comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). To use the sales-comparison approach as evidence, however, the proponent must show that the properties being examined are comparable to each other. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 470-71 (Ind. Tax Ct. 2005). Conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *See Long*, 821 N.E.2d at 466, 470. Instead, the proponent must explain how the subject property’s characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, he must explain how any relevant differences between those properties affect their relative market values-in-use. *Id.*
26. Mr. Roberson, however, did little to explain how the properties in his seven listings compared to the subject property and nothing to explain how any differences affected the properties’ relative values. By themselves, therefore, those seven listings did little to show the subject property’s market value-in-use.

27. Also, all of those listings were from 2010—more than five years after the relevant January 1, 2005 valuation date. Thus, Mr. Roberson needed to explain how the listings related to the properties' values as of January 1, 2005. At most, Mr. Roberson conclusorily asserted that property values had been declining. That was not sufficient.
28. By contrast, Mr. Roberson's testimony about his unsuccessful attempts to sell the subject property related, at least in part, to the relevant valuation date. While unsuccessful attempts to sell a property for a given asking price do not show the property's market value, they may at least tend to show that the property is worth no more than that asking price. But the probative value of that evidence hinges on how widely and forcefully the property was marketed. *See* MANUAL at 10 (explaining that consummation of a sale under conditions whereby "reasonable time is allowed for exposure in the open market" is implicit in the definition of "market value."). Here, Mr. Roberson offered only vague testimony that he advertised the property for sale in the local newspaper at some point in 2004-05. He did not offer a copy of the ad or say for how long it ran. In fact, he acknowledged that he removed the ad when he found tenants. Without more, Mr. Roberson's testimony did not show that he sufficiently exposed the property to the open market for the Board to infer that the property was worth no more than his \$49,900 (his original asking price). And while Mr. Roberson testified to periodically advertising the property for sale after 2004-05, he did not explain how his later unsuccessful attempts to sell the property related to its market value-in-use as of the relevant January 1, 2005 valuation date.
29. Finally, Mr. Roberson testified that the subject home's basement floods and that the home has lead-based paint. While those things might affect the subject property's value, Mr. Roberson offered no evidence to quantify that effect.

SUMMARY OF FINAL DETERMINATION

30. Because Mr. Roberson did not offer probative evidence to rebut the presumption that the subject property was correctly assessed, he failed to make a prima facie case. The Board therefore finds for the Assessor.

The Indiana Board of Tax Review issued this Final Determination of the above captioned matter 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>>