

REPRESENTATIVE FOR PETITIONER: Joe Shields, Pro Se

REPRESENTATIVE FOR RESPONDENT: County Assessor Teresa Rigsby

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Joe Shields,)	Petition No.: 72-006-07-1-5-00002
)	Parcel: 72-03-36-230-002.000-003
Petitioner,)	
)	
)	
v.)	
)	Scott County
Scott County Assessor,)	Jennings Township
)	Assessment Year: 2007
Respondent.)	

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

January 5, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts, evidence, and arguments presented in this case. The Board now finds and concludes the following:

ISSUE

This case challenges a 2007 assessment for three rental duplexes. Does the evidence prove that the assessment should be changed?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Petitioner initiated an appeal on September 30, 2008. The Scott County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for that appeal on October 8, 2008.
2. The Petitioner filed a Petition for Review of Assessment (Form 131) challenging the PTABOA's determination. The Petitioner elected to proceed under the Board's plenary rules (52 IAC 2) rather than under its rules for small claims (52 IAC 3).
3. The PTABOA determined the assessed value is \$14,500 for land and \$159,300 for improvements (total \$173,800).
4. The Petitioner contended the total assessed value should be \$130,000.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. The subject property consists of three rental duplexes on English Avenue in Austin.
6. Administrative Law Judge Paul Stultz held the hearing on October 7, 2009. He did not conduct an on-site inspection of the subject property.
7. The following persons were sworn as witnesses at the hearing:

For the Petitioner – Joe Shields,

Albert Thormyer,

For the Respondent – County Assessor Teresa Rigsby,

Deputy Assessor Jennifer Binkley.

8. The following items are officially recognized as part of the record:
 - Board Exhibit A – Form 131 Petition with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign In Sheet.

9. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Appraisal of the subject property,
 - Petitioner Exhibit 2 – Letter from Albert Thormyer with his opinion of value.

10. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Property record card (PRC) for the subject property,
 - Respondent Exhibit 2(a) – “Parcel Characteristics Report by Neighborhood”
Neighborhood 7200311 sales from 01/01/2005 to
12/31/2006,
 - Respondent Exhibit 2(b) – “Parcel Characteristics Report by Neighborhood”
Neighborhood 7200311 sales from 01/01/2005 to
12/31/2006,
 - Respondent Exhibit 3 – Not offered,
 - Respondent Exhibit 4 – Valuation date disclaimer,
 - Respondent Exhibit 5 – 50 IAC 21-3-3 (Valuation date and time adjustment),
 - Respondent Exhibit 6 – International Association of Assessing Officers standards
on mass appraisal, page 9,
 - Respondent Exhibit 7 – Tax Court decision, *O’Donnell v. Department of Local
Government Finance*,
 - Respondent Exhibit 8 – Sales disclosure form and PRC for 55 Broadway Street,
 - Respondent Exhibit 9 – Sales disclosure form and PRC for 2615 Melody Street,
 - Respondent Exhibit 10 – Sales disclosure form and PRC for 1177 Highway 31
North.

OBJECTIONS

11. In plenary appeals such as this one, the parties must exchange copies of documentary evidence at least five business days before the hearing. 52 IAC 2-7-1(b)(1). In addition to the procedural rule, this exchange requirement is specified in the hearing notice. The purpose of this requirement is to allow both parties to be informed, to avoid surprises, and to assure a more organized, efficient and fair consideration of the issues.

12. Apparently, neither side actually exchanged their documentary evidence as the rule requires—at least *five business days before the hearing*.
13. Nevertheless, the Petitioner’s exhibits were offered and admitted into evidence without a timely objection from the Respondent.¹
14. The Petitioner, however, objected to the admission of Respondent Exhibits 1, 2, 4, 5, 6, and 7 because the Respondent did not exchange them prior to the hearing.² The Petitioner testified that he took copies of his exhibits to the Assessor’s Office on Friday, October 2, 2009, and at that time asked the Respondent for copies of her exhibits. According to the Petitioner, at that time the Respondent told him she did not have any. And the Respondent provided no copies at any time prior to the hearing. The Respondent did not dispute that testimony, but primarily emphasized the point that the Petitioner should have provided copies of his exhibits at least five *business* days before the hearing, not five calendar days. (The hearing was on Wednesday, October 7, 2009.)
15. The Petitioner argued that under these circumstances the Respondent had time to review his exhibits, but he had no time to review hers.³ While reviewing the PRC for the subject property (Respondent Exhibit 1) probably would not be a serious burden, some of the other documents such as the several pages of sales data in Respondent Exhibits 2A and 2B are much more problematic. Most troubling, however, is the Respondent’s misleading statement on October 2 when the Petitioner went to her office and specifically requested copies of her exhibits.

¹ When the Petitioner later objected to her exhibits, the Respondent attempted to object to the admission of Petitioner’s exhibits. But as the ALJ explained at the hearing, the Respondent previously stated that she had no objections and those exhibits already were admitted. The Respondent offered no substantial reason for revisiting that ruling. Therefore, the Petitioner’s Exhibits 1 and 2 remain as part of the evidence to be considered with this appeal.

² The Petitioner did not object to the admission of Respondent Exhibits 8, 9, and 10.

³ In response to that point, the Respondent asked for a continuance of the hearing, but the Petitioner objected. And the ALJ correctly denied that motion.

16. Under these circumstances, the Petitioner should have had as much time to review the evidence as the Respondent had. Having precluded that opportunity to review the Respondent's evidence prior to the hearing, it is appropriate to preclude its use in defending the assessment.
17. Therefore, the Petitioner's objection is sustained. This appeal will be determined without further consideration of Respondent Exhibits 1, 2, 4, 5, 6, and 7.

CONTENTIONS

18. Summary of the Petitioner's case:
 - a. An appraiser determined that the value of the property was \$135,000 as of March 1, 2007. *Shields testimony; Pet'r Ex. 1.*
 - b. Albert Thormyer has over thirty years experience in the banking business. In a letter dated September 12, 2009, he stated the value of the property as of March 1, 2007, was \$120,000. *Shields testimony; Pet'r Ex. 2.*
 - c. Property values in Austin have fallen significantly over the past several years. *Thormyer testimony.*
19. Summary of the Respondent's case:
 - a. An appraisal must reflect the value as of the correct valuation date. If the appraisal is for a different date, the value has to be trended from the appraisal date to the valuation date. *Rigsby testimony.*
 - b. The first comparable sale used in the appraisal was a bank sale. *Binkley testimony, Resp't Ex. 8.* Comparable sales 1 and 2 are from the year 2000. *Id.;* *Resp't Ex. 9.*

- c. A sales disclosure form establishes comparable sale 3 sold for \$133,000 rather than \$135,000, as indicated in the appraisal. *Rigsby testimony; Resp't Ex. 10.*
- d. The appraiser used a factor of 1% per year to trend comparable sales 1 and 2 to March 1, 2007, without explaining how the trending factor was determined. *Rigsby testimony, referring to Pet'r Ex. 1.*
- e. The current rents for the subject property are below market rents. The Petitioner chose to keep rents low because he has good tenants who are on fixed incomes. *Rigsby testimony, referring to Pet'r Ex. 1.*

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

- 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 its 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. 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

23. Real property is assessed based on 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 a 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). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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.
24. The Petitioner offered a letter from Albert Thormeyer, a local banker, stating his opinion the subject property had a value of \$120,000. Nothing in the record explains how that purported valuation was determined and nothing indicates that valuation is based on generally accepted appraisal principles. Such conclusory statements do not constitute probative evidence. *See Whitley Products Inc. v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
25. The Petitioner offered an appraisal from Sexton Real Estate and Appraisal Service (Petitioner's Exhibit 1) valuing the property at \$135,000 as of March 1, 2007. The Tax Court has stated a market value in use appraisal, completed in conformance with the Uniform Standards of Appraisal Practice (USAP) can be the most effective method to rebut the assumption that an assessment is correct. *See French Lick Twp. Assessor v. Kimball International*, 865 N.E.2d 732, 736 n.4 (Ind. Tax Ct. 2007); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Petitioner provided such an appraisal. It is by an Indiana Certified Residential Appraiser and appears to comply with USPAP standards. It considered all three approaches to valuation: cost, comparable sales, and income. Ultimately, it relied most heavily on comparable sales to determine the valuation of the subject property.

26. The Respondent “questioned” some of the appraiser’s methodology and his choices for comparable sales, but the Respondent failed to effectively impeach or rebut the appraisal with substantial, probative evidence. Although the Respondent perhaps poked a few holes in the credibility of the appraisal, it was not destroyed. The appraisal remains substantial, credible evidence that a more accurate valuation for the subject property as of March 1, 2007, would be \$135,000.
27. A 2007 assessment, however, must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
28. In this case, the record provides no such explanation. The Petitioner did not establish how the appraised value relates to the value of the subject property as of January 1, 2006. As a result, the appraisal does not establish what the 2007 assessment should be. *Long*, 821 N.E.2d at 471.
29. After considering all the evidence and arguments that both parties submitted, the Board is unable to determine how either the letter from Albert Thormyer or the value suggested by the Sexton appraisal relates to the required valuation date of January 1, 2006, which is essential to granting any relief on Petitioner’s claim.
30. 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, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

CONCLUSION

31. The Petitioner did not make a prima facie case for any assessment change.

FINAL DETERMINATION

In accordance with the above findings and conclusions, there will be no change in the assessment.

ISSUED: _____

Commissioner, 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>>