

REPRESENTATIVE FOR PETITIONER:

Melanie Siddens, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Patricia Richey, County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

David J. and Melanie Siddens,)	Petition: 83-005-06-1-5-00192
)	
Petitioners,)	Parcel: 005-019-0014-00
)	
v.)	
)	Vermillion County
Vermillion County Assessor,)	Eugene Township
)	
Respondent.)	2006 Assessment

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

July 24, 2008

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 on the question of whether the Petitioners proved the assessed value of the subject property is excessive. The short answer is no—they failed to prove the current assessment should be changed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Petitioners initiated an appeal of the 2006 assessment on the subject property with a Form 130 Petition For Review. On September 7, 2007, the Vermillion County Property Tax Assessment Board of Appeals (PTABOA) issued its decision. On October 12, 2007, the Petitioners filed a Form 131 Petition, seeking an administrative review by the Board.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Paul Stultz, the Board's designated Administrative Law Judge, held the hearing in Newport on May 1, 2008.
3. David Siddens, Melanie Siddens, and Vermillion County Assessor Patricia Richey were sworn as witnesses at the hearing.
4. The Petitioners presented the following exhibits:
 - Petitioners Exhibit 1 – Statement of contentions,
 - Petitioners Exhibit 2 – Ten photographs of the subject property.
5. The Respondent presented the following exhibit:
 - Respondent Exhibit 1 – Property record card.
6. The following additional items are recognized as part of the record:
 - Board Exhibit A – The Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign In Sheet.
7. The subject property is located at 5471 N. High Street in Cayuga, Indiana.
8. The Administrative Law Judge did not conduct an on-site inspection of the property.

9. The PTABOA determined the assessed value of the property is \$7,100 for land and \$34,800 for improvements (total \$41,900).
10. The Petitioners contended the total assessed value should be \$13,000.

PETITIONERS' CONTENTIONS

11. The Petitioners built a new home a few blocks away and moved from the subject property in December 2003. Since that time, the old house has been vacant and without heat. The Petitioners do not and cannot live in the house due to the condition, but they do use it for storage. *Pet'rs Ex. 1; M. Siddens testimony.*
12. Ten photographs taken in September 2007 show there is extensive deterioration and water damage. *M. Siddens testimony; Pet'rs Ex. 2.*
13. An appraiser estimated the value of the property at \$15,000 in the spring of 2003. The appraiser was not able to give the Petitioners a copy of the appraisal because he had computer hard drive problems and lost the appraisal. *M. Siddens testimony.*
14. There was no physical change in the property between 2006 and 2007. The 2007 assessed value of the property is \$13,000. That amount would be a fair assessment for 2006 as well. *M. Siddens testimony.*

RESPONDENT'S CONTENTIONS

15. The property record card indicates the house was built in 1879. It was assessed with a condition rating of poor for 2006. *Richey testimony; Resp't Ex. 1.* As a result of additional deterioration, the assessor changed the condition rating to very poor for the 2007 assessment. *Richey testimony.*

16. The photographs presented by the Petitioners were taken approximately 18 months after the 2006 assessment date. They do not establish the condition for that date. The current assessment is correct. *Richey testimony*.

ADMINISTRATIVE REVIEW AND BURDEN

17. 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).
18. 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”).
19. 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

20. Real property is assessed on the basis of 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). 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 market value-in-use is

the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). 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.

21. Although one is not required, an appraisal can be a very good way to prove what the market value-in-use of a property really is. *See Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) (stating that the Tax Court believes the most effective method to make a case is by presenting a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice). According to the Petitioners, a 2003 appraisal established the value of the property was \$15,000, but they were unable to obtain a copy of that appraisal. The Board will give no weight or credibility to such testimony or to an appraisal that has not been introduced into the record. The testimony regarding the appraised value is conclusory and has no probative value. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Furthermore, a 2006 assessment must reflect value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. If a Petitioner presents evidence of value relating to a different date, there must be some explanation about how it demonstrates, or is relevant to, the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Even if the Petitioners had introduced the appraisal at the hearing, they would still need to establish how the 2003 value relates to the required valuation date for this case. They failed to do so. *See Long*, 821 N.E.2d at 471. The evidence relating to a purported \$15,000 appraisal does not make their case.

22. The Petitioners attempted to make a case by proving that the condition rating of the home is incorrect—that it should be very poor and not just poor. Identifying condition is an

important part of making a valuation according to the Guidelines, but, as previously noted, the Guidelines are only a starting point. Their purpose is to accurately determine market value-in-use, not to mandate any specific assessment method. Failure to comply with the Guidelines does not itself show that an assessment is not a reasonable measure of market value-in-use. Ind. Admin. Code tit. 50, r. 2.3-1-1(d). *See Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006) (explaining that a taxpayer cannot rebut the presumption that an assessment is correct without presenting evidence of the property's market value-in-use). "The overarching goal of Indiana's new assessment scheme is to ascertain a property's market value-in-use." *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 93 (Ind. Tax Ct. 2006). Alleged assessment errors that merely focus on methodology do not make a case. *Id.* at 95. Arguing about specific condition ratings focuses entirely on the methodology that local officials used to make the assessment and it does not prove what the market value-in-use really is. The evidence and arguments relating to condition fail to overcome the presumption in favor of the existing assessment.

23. The 2007 assessment for the subject property was reduced to \$13,000 based on lowering the condition rating to very poor. The Petitioners claimed that the 2006 assessed value should be the same because there was no physical change in the property between 2006 and 2007. This part of the case, however, merely seeks to revisit how the Guidelines were applied and completely lacks probative evidence regarding what the value-in-use really is. It does not make a case for the Petitioners. *Westfield Golf*, 859 N.E.2d at 399; *O'Donnell*, 854 N.E.2d at 95; *Eckerling*, 841 N.E.2d at 677-78. Furthermore, each assessment and each tax year stands alone. Consequently, the 2007 assessment does not prove what the 2006 assessment should be. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001).
24. When a taxpayer fails to provide probative evidence supporting its 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*, 704 N.E.2d at 1119.

SUMMARY OF FINAL DETERMINATION

25. The Petitioners failed to present a prima facie case. The Board finds in favor of the Respondent.

This Final Determination is issued on the date first written above.

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>>