

REPRESENTATIVE FOR PETITIONER:
Michael L. White, Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Marlene Knipp, Lake County Hearing Officer

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Sayta Pal Singh,)	Petition Nos.: 45-026-06-1-5-00013
)	45-026-07-1-5-00002
)	45-026-08-1-5-00002
Petitioner,)	
)	Parcel No.: 45-03-33-229-015.000-024
)	
v.)	
)	
)	
Lake County Assessor,)	County: Lake
)	Township: North
)	
Respondent.)	Assessment Years: 2006, 2007 and 2008

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

January 26, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Sayta Pal Singh
4908 Parrish Avenue
Findings & Conclusions
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioner's property is over-stated for the 2006, 2007 and 2008 assessment years.

PROCEDURAL HISTORY

2. The Petitioner initiated his 2006 assessment appeal by filing a Form 130 Petition to the Property Tax Assessment Board of Appeals for Review of Assessment on February 22, 2008. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination for 2006 on May 27, 2010. The Petitioner filed a Form 130 petition appealing his 2007 assessment on March 9, 2009. Although the record does not include a Form 130 petition for 2008, the Lake County Assessor signed Form 134 reports for both 2007 and 2008.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on July 1, 2010, petitioning the Board to conduct an administrative review of the property's 2006 assessment. The Petitioner filed his petitions for the 2007 and 2008 assessment years on July 7, 2010. According to Mr. White, he filed the Petitioner's 2007 and 2008 appeals upon receipt of the Form 134, Joint Report by the Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting because, Mr. White contends, Lake County assessing officials informed him that the taxpayer would not receive a Form 115, Notification of Final Assessment Determination.¹

¹ The Respondent's representative did not object to Mr. White's testimony and, in fact, all parties agreed on the record to waive the 30-day hearing notice requirement and proceed with the hearing on all three tax years.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana 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 November 8, 2010, in Crown Point, Indiana.

5. The following persons were sworn at the hearing:

For the Petitioner:

Sayta Pal Singh, property owner,
Michael L. White, tax representative,
Thomas S. Bochnowski, appraiser,

For the Respondent:

Marlene Knipp, Lake County Hearing Officer,
Robert W. Metz, Lake County Hearing Officer.

6. The Petitioner presented the following exhibits:

Petitioner Exhibit A – Appraisal of the Petitioner’s property.

7. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Exhibit coversheet,
Respondent Exhibit 2 – The subject property’s property record card,
Respondent Exhibit 3 – Spreadsheet for the Petitioner’s 2006 appeal,
Respondent Exhibit 4 – Market data for 4919 Carey Street,
Respondent Exhibit 5 – Market data for 4932 Euclid Avenue,
Respondent Exhibit 6 – Market data for 4936 Euclid Avenue,
Respondent Exhibit 7 – Market data for 4829 Ivy Street,
Respondent Exhibit 8 – Market data for 4807 Drummond Street,
Respondent Exhibit 9 – Spreadsheet for the Petitioner’s 2007 appeal,
Respondent Exhibit 10 – Market data for 4936 Euclid Avenue,
Respondent Exhibit 11 – Market data for 4723 Grasselli Avenue,
Respondent Exhibit 12 – Market data for 4819 Grasselli Avenue,
Respondent Exhibit 13 – Market data for 4721 Drummond Street,
Respondent Exhibit 14 – Spreadsheet for the Petitioner’s 2008 appeal,
Respondent Exhibit 15 – Market data for 4819 Grasselli Avenue,
Respondent Exhibit 16 – Market data for 4721 Drummond Street,
Respondent Exhibit 17 – Market data for 4839 Euclid Avenue,

Respondent Exhibit 18 – Market data for 4830 Carey Street.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing, dated September 29, 2010,
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a single-family home located at 4908 Parrish Avenue, East Chicago, Indiana.
10. The ALJ did not conduct an on-site inspection of the property.
11. For 2006, the PTABOA determined the assessed value of the subject property to be \$15,400 for the land and \$54,200 for the improvements, for a total assessed value of \$69,600. For 2007 and 2008, the Lake County Assessor determined the assessed value of the property to be \$15,400 for the land and \$54,900 for the improvements, for a total assessed value of \$70,300.
12. The Petitioner contends his property's assessment should be \$35,000 for 2006, 2007 and 2008.

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 Indiana 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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PARTIES' CONTENTIONS

17. The Petitioner contends that the assessed value of his property is over-stated based on an appraisal. The Petitioner presented the following evidence in support of his contention:
 - A. The Petitioner's representative contends that the property is over-valued based on its appraised value. *White testimony*. In support of this contention, the Petitioner presented the appraisal of Cassandra K. Schmidt, a licensed residential appraiser, and Thomas Bochnowski, a certified general appraiser. *Petitioner Exhibit A*. The appraisers estimated the value of the property to be \$35,000 as of January 1, 2007. *Id.* According to Mr. White, because the property was assessed the same for 2007

and 2008, the property's market value-in-use would be \$35,000 for both years. *White testimony*. Further, while the property's assessment for 2006 was approximately 1% less than the property's 2007 and 2008 assessments, Mr. White agreed that the Petitioner would accept the same \$35,000 valuation for the March 1, 2006, assessment year also. *Id.*

B. The Petitioner's appraiser, Mr. Bochnowski testified that he and Ms. Smith inspected the subject property on October 15, 2009. *Bochnowski testimony*. According to Mr. Bochnowski, they compared the subject property to four comparable properties and made adjustments to the properties' sales prices where adjustments were appropriate. *Id.; Petitioner Exhibit A*. Mr. Bochnowski testified that their analysis resulted in adjusted prices that ranged from \$34,000 to \$45,500. *Id.* Mr. Bochnowski argues that the appraisers did not select properties merely because they had low sales prices; there were simply not a lot of sales around the appraisal's "as of" date. *Bochnowski testimony*.

C. Finally, Mr. White argues that Board should give little weight to the Respondent's comparable sales. *White testimony*. According to Mr. White, the sales are simply nearby properties that the Respondent made no attempt to show were comparable to the Petitioner's property. *White testimony*. Moreover, Mr. White contends, the Respondent failed to make any adjustments to those properties' sales prices to account for the differences between the properties. *Id.* Mr. White argues that the Petitioner's appraisers, on the other hand, actually inspected the subject property and made adjustments to the comparable sales to value the Petitioner's property. *Id.*

18. The Respondent contends the property's assessed value is correct. The Respondent presented the following evidence in support of the assessment:

A. The Respondent's representative, Ms. Knipp, argues that the Petitioner's property is properly assessed based on other sales in the Petitioner's neighborhood. *Knipp*

testimony. In support of this contention, Ms. Knipp presented five comparable properties that sold in 2004 and 2005 for the Petitioner’s 2006 appeal; four properties that sold in 2005 and 2006 for the 2007 appeal; and four properties that sold in 2006 and 2007 for the 2008 appeal. *Respondent Exhibits 3 – 18.* According to Ms. Knipp, she compared the finished living area, the condition of the house, the number of bedrooms, the assessed values of the properties, and the sales prices of each property from either a Multiple Listing Service (MLS) listing or from the county’s sales disclosure system. *Id.; Knipp testimony.*

B. Further, Ms. Knipp argues, the Petitioner’s appraisal should be given little weight by the Board. *Knipp testimony.* According to Ms. Knipp, the comparable properties used on the Petitioner’s appraisal are all foreclosure sales and sheriff’s sales. *Id.* Ms. Knipp testified that the second “comparable” property in the Petitioner’s appraisal resold in April of 2008 for \$99,000; the third “comparable” property sold in January of 2007 for \$83,500; and the fourth “comparable” property sold in April of 2008 for \$87,000. *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. In 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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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 other information compiled according to generally accepted appraisal principles. MANUAL at 5.
21. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3. For the March 1, 2007, assessment, the valuation date was January 1, 2006, and for the March 1, 2008, assessment, the valuation date was January 1, 2007. *Id.*
22. Here, the Petitioner presented an appraisal report prepared by two licensed appraisers in which they valued the property at \$35,000 as of January 1, 2007. *Petitioner Exhibit A*. The appraisers certified that the appraisal report was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* Further Mr. White testified that the Assessor did not change the property's assessed value between 2007 and 2008. *White testimony*. Therefore, he argues, because property values did not change in that time, the property's estimated value as of January 1, 2007, for the March 1, 2008, assessment date should also apply to the March 1, 2007, assessment date. *Id.* Similarly, he argues that the property's assessed value was approximately 1% less in 2006 than it was for the 2007 assessment dates. *Id.* Thus, Mr. White contends, the appraised value should be reduced approximately 1% for the 2006 assessment year. *Id.* Mr. White

testified, however, that the Petitioner sought the same value for each of the three assessment years. *Id.* Because the Petitioner’s representative presented some evidence relating the property’s market value to the relevant valuation dates, the Board finds that the Petitioner raised a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479 (An appraisal performed in accordance with generally recognized appraisal principles is often enough to establish a prima facie case).

23. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioners’ evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner’s case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).

24. The Respondent’s representative first contends that the Board should give little weight to the Petitioner’s appraisal because the appraiser used foreclosure sales and properties that sold at sheriff’s sales. *Knipp testimony*. While the fact that a particular sale is a foreclosure or sheriff’s sale alone is insufficient to impeach or rebut the Petitioner’s appraisal, here Ms. Knipp presented evidence that the sales prices from those sales did not reflect the market value-in-use of the comparable properties. According to Ms. Knipp, the Petitioner’s second “comparable” property resold six months after the \$30,000 sale cited by the appraiser for \$99,000. *Id.* Similarly, the Petitioner’s appraisers reported that their third “comparable” property sold in November of 2006 for \$31,700, but the Respondent testified it sold two months later for \$83,500 and the fourth “comparable” property sold six months after the \$30,000 sale cited in the Petitioner’s appraisal for \$87,000.² The fact that the appraisers, who prepared the appraisal in 2009, failed to acknowledge or discuss the subsequent sales in 2007 and 2008 of their “comparable” properties significantly weighs on the credibility of the Petitioner’s appraisal.

² Here the Respondent’s testimony was uncontroverted by the Petitioner or his representative. Further, the Petitioner did not object to the testimony. The Respondent, however, would be better served providing the Board with some supporting evidence of those subsequent sales such as MLS listing sheets or sales disclosure forms in future cases.

25. Moreover, the appraisal report acknowledges that the appraisers' fourth comparable property, located at 4919 Carey Street, sold on October 29, 2004, for \$79,900. Thus, arguably, the appraisers had a \$79,900 sale of the property in 2004 and an \$87,000 sale in 2008 to choose from, but instead chose a \$30,000 sale in 2007 as "representative" of the market value of the property. In addition, the appraiser's themselves acknowledge that fourteen sales of "similar and proximate" properties occurred during the relevant timeframe with sales prices ranging from \$63,000 to \$75,000. Perhaps most troubling, however, is the appraisal's notation that the Petitioner had the property listed in 2006 for \$89,900. Although the property did not sell for that amount, the listing strongly suggests that even the Petitioner did not find the property's appraised value credible. Thus, the Board finds that the Respondent provided sufficient evidence to impeach the Petitioner's appraisal.
26. The Respondent's representative also argued the Petitioner's property was properly assessed based on other sales in the neighborhood. *Respondent Exhibits 3-18*. In support of this contention, Ms. Knipp presented five comparable properties that sold in 2004 and 2005 for the Petitioner's 2006 appeal; four properties that sold in 2005 and 2006 for the 2007 appeal; and four properties that sold in 2006 and 2007 for the 2008 appeal.³ *Respondent Exhibits 3 – 18*. For each of the properties, the Respondent provided property record cards, MLS listing sheets or sales disclosure forms. Those sales ranged in value from \$69,900 to \$115,000. *Id.* While the Respondent's "comparable" sales alone would be insufficient to rebut the Petitioner's case,⁴ when the comparable

³ Most of the comparable properties were "bungalows" like the Petitioner's property. *Respondent Exhibits 3-18*. However there were also a couple ranch-style homes and one cape cod identified by the Respondent's representative in her sales comparable analyses. *Id.*

⁴ In order to effectively use the sales comparison approach as evidence in a property assessment appeal, 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. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Respondent failed to show how the neighboring properties were comparable to the subject property. Moreover, the Respondent failed to value the differences between the properties.

sales are considered together with the subsequent sales values of the properties that the Petitioner's appraiser deemed "comparable" to the Petitioner's property, the appraisers' disclosure that fourteen of the "most similar and proximate" properties sold for between \$63,000 and \$75,000, and the Petitioner's offering the property for sale for \$89,900 in 2006, the Board finds that the weight of the evidence supports the property's \$69,600 assessed value for the 2006 assessment year and the property's \$70,300 assessed values for the 2007 and 2008 assessment years.

CONCLUSION

27. The Petitioner raised a prima facie case. The Respondent provided sufficient evidence to rebut or impeach the Petitioner's case. The Board finds the weight of the evidence supports the property's assessed values and finds in favor of the Respondent for 2006, 2007 and 2008 assessment years.

FINAL DETERMINATION

In accordance with the findings of fact and conclusions of law above, the Indiana Board of Tax Review determines that the Petitioner's property's assessed value should not be changed for 2006, 2007 or 2008.

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>