

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 71-018-07-1-5-00919
Petitioner: André Gingerich Stoner
Respondent: St. Joseph County Assessor
Parcel No.: 18-1067-2866
Assessment Year: 2007

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner, André Gingerich Stoner, initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 26, 2009.
2. The PTABOA issued notice of its decision on September 16, 2009.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed a Form 131 petition with the Board on October 26, 2009.¹ The Petitioner elected to have his case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated March 23, 2011.
5. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the Board held an administrative hearing on May 26, 2011, before the duly appointed Administrative Law Judge (ALJ) Dalene McMillen.
6. The following persons were present and sworn in at the hearing:
 - a. For Petitioner: André Gingerich Stoner, property owner

¹Mr. Stoner testified that he purchased a lien on the property under appeal in October of 2006, but he did not obtain title and access to property until February of 2008. *Stoner testimony*. The Respondent did not contest Mr. Stoner's right to appeal the property for the March 1, 2007, assessment. Because the Petitioner is "the taxpayer responsible for the property taxes on the subject property," the Petitioner has standing to bring this appeal. *See* 52 IAC 2-2-13.

- b. For Respondent:² Rosemary Mandrici, St. Joseph County Assessor

Facts

7. The property under appeal is a house located at 808 Lindsey Street, South Bend, Portage Township in St. Joseph County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2007, the PTABOA determined the assessed value of the property to be \$600 for the land and \$17,000 for the improvements, for a total assessed value of \$17,600.
10. The Petitioner requested an assessed value of \$600 for the land and \$2,400 for the improvements, for a total assessed value of \$3,000.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
 - a. The Petitioner testified that he purchased a tax lien on the subject property in October of 2006 for about \$5,000. *Stoner testimony*. In response to questions, Mr. Stoner testified that he also paid a tax bill of approximately \$1,500 and \$1,500 in attorney fees, for a total of approximately \$8,000 to acquire the property under appeal. *Id.* Although he requested an assessed value of \$3,000 for the property, Mr. Stoner admitted that his opinion of the property's value was "an arbitrary number." *Id.*
 - b. The Petitioner contends that his property is over-assessed based on the condition of the house which, he argues, was vacant and abandoned for several years prior to 2008. *Stoner testimony*. According to Mr. Stoner, the exterior is run-down, there was water damage in the kitchen and the house has no heat. *Id.* Similarly, the Petitioner contends birds and animals inhabited the house. *Id.* The house had been vandalized and copper pipes were removed. *Id.* In response to cross examination, Mr. Stoner testified that he has been renting the first floor of the property for \$375 a month since August of 2008. *Id.*
 - c. The Petitioner also argues that the back-taxes that he owed on the property were too high because they were based on an assessed value of approximately \$35,000 for 2006. *Stoner testimony*. According to Mr. Stoner, he was unable to obtain title or take possession of the property until February of 2008. *Id.* Because he

² Mr. Frank Agostino appeared as counsel for the Respondent.

had no right to the property until 2008, Mr. Stoner argues, it was too late to appeal the property's 2006 assessment or the previous sixteen months of taxes accruing on the property. Thus, Mr. Stoner argues he should not be responsible for the taxes on the property or the penalty on those taxes. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends that the Petitioner's property is properly assessed. *Mandrici testimony.* Because the property was a rental property, Ms. Mandrici testified, it was valued in 2006 using a gross rent multiplier, resulting in a value of \$36,400. *Id.* According to Ms. Mandrici, between March 1, 2006, and March 1, 2007, the property's assessment was reduced to \$17,600. *Id.* Ms. Mandrici testified that the PTABOA sustained the March 1, 2007, assessment of \$17,600 because the Petitioner failed to appear or submit evidence at the local hearing. *Id.*
- b. The Respondent admitted, however, that there was an error in the condition rating of the property. *Mandrici testimony.* According to Ms. Mandrici, the condition rating should be lowered from average to poor. *Id.* Thus, the Respondent requested that the Board lower the Petitioner's total assessed value to \$11,500 for March 1, 2007. *Id.*

Record

13. The official record for this matter is made up of the following:

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Summary of the Petitioner's argument,
Petitioner Exhibit 2 – Petition to the Indiana Board of Tax Review for
Review of Assessment – Form 131,
Petitioner Exhibit 3 – Notification of Final Assessment Determination –
Form 115,
Respondent Exhibit 1 – Letter from André Stoner to St. Joseph County
Assessor, dated May 27, 2009,
Respondent Exhibit 2 – County's preliminary conference proposal letter,
dated August 13, 2009,
Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

- 14. The most applicable governing cases are:
 - a. 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 Township 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).
 - b. 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 Township 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”).
 - c. 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.
- 15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of his property. The Board reached this decision for the following reasons:
 - a. 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, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (the 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 to value. *Id.* at 3, 13-15. In 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 (the GUIDELINES).
 - b. 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 Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut

the presumption, however, 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. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

- c. 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, 2007, assessment date, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. Here the Petitioner argues that the property is over-assessed because of the condition of the house which, he argues, was vacant and abandoned for several years. *Stoner testimony*. The Board interprets this to be an argument that the condition of the house was improperly assessed. A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See* GUIDELINES, App. B at 5. A condition rating is determined by relating the structure to comparable structures within the property's neighborhood. While the Petitioner testified the exterior is run-down, there was water damage in the kitchen, no heat and that animals inhabited the house, the Petitioner presented no evidence which would justify a determination that the structure's condition rating is incorrect. *See Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999) (stating that references to photographs or State Board regulations, without further explanation, do not qualify as probative evidence for purposes of grading issues). Conclusory statements, unsupported by factual evidence are not sufficient to establish an error in an assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- e. Further, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the Petitioner must show that the assessment does not accurately reflect the subject property's market value-in-use. *Id.*; *see also P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor's technical failure to comply strictly with the Guidelines). Thus, regardless of

whether the assessment did not fully comply with the Guidelines, the Petitioner failed to show the property's assessed value is not a reasonable measure of the property's true tax value.³

- f. The Petitioner also argues that the back-taxes owed on the property were too high because they were based on the 2006 assessed value of the property of approximately \$35,000. *Stoner testimony*. To the extent that the Petitioner contends that his tax liability was too high for 2006, the Board lacks jurisdiction to hear this claim. The Board is a creation of the legislature and has only those powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). The Board therefore must address appeals from determinations made by local assessing officials or county PTABOs that concern property valuations, property tax deductions, or property tax exemptions. Ind. Code § 6-1.5-4-1. By contrast, no statute authorizes the Board to review the propriety of local tax rates or delinquent penalties. Similarly, to the extent that the Petitioner seeks to have the Board review the property's 2006 assessed value, the Board has no jurisdiction over an assessment that has not been appealed.

- g. The Petitioner failed to raise a prima facie case that his property was over-assessed. Where the Petitioner fails to provide probative evidence 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). Nonetheless, the Respondent conceded that the condition rating of the house should be lowered from average to poor for the March 1, 2007, assessment year. *Mandrici testimony*. Ms. Mandrici testified that adjusting the condition rating from average to poor results in a reduction of the property's assessed value to \$11,500. *Id.* We

³ To the extent that the Petitioner can be seen as arguing that his purchase of the subject property proves the property is over-valued, the Board finds that there is insufficient evidence that the purchase of the property at a tax sale represented the property's market value-in-use. While an actual sale of a property may be a good indicator of its market value, the sale must be an "arm's-length transaction." In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. "Fair market value" is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell." *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). A tax sale purchase of property does not satisfy the conditions of a competitive and open market. In a tax sale, the seller is not typically motivated. The sale of the property is for non-payment of taxes. The seller is attempting to sell the property in order to return the property to the county tax rolls. The required price for a tax sale property is a minimum bid. Ind. Code § 6-1.1-24-2. Thus, the purchase price of property obtained in a tax sale is not, by itself, probative evidence of market value of a property.

commend the Respondent's candor and find that the property should be valued at \$11,500.

Conclusion

16. The Petitioner failed to raise a prima facie case that his property was over-valued for the March 1, 2007, assessment. The Respondent, however, agreed that the property's assessment was in error due to the condition rating of the house. The Board accepts the Respondent's concession and finds that the property's assessed value should be reduced to \$11,500.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the Petitioner's property's assessed value should be changed.

ISSUED: _____

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>.