

REPRESENTATIVE FOR PETITIONER:

Patrick Tolen, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Jennifer Becker, Consultant, Indiana Assessment Service

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Patrick M. & Nina R. Tolen	)	Petition No.: 04-016-06-1-5-00001
	)	Parcel No.: 04-03-26-800-001.000-016
Petitioners,	)	
	)	
v.	)	
	)	Benton County
Benton County Assessor	)	Union Township
	)	Assessment Year: 2006
Respondent	)	

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

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**June 25, 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 based on an appraisal or based on the assessed value of other neighboring properties. The short answer is no — they failed to prove the assessed value should be changed.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

1. The Benton County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination upholding the Union Township Assessor's 2006 assessment of the subject property on November 8, 2007.
2. The Petitioners filed a Form 131 Petition on December 14, 2007, seeking the Board's review of that assessment.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. The Board's designated Administrative Law Judge (ALJ), Ellen Yuhan, held a hearing in Fowler on April 29, 2008.
4. The following persons were sworn and presented testimony:
  - For the Petitioner – Patrick M. Tolen,  
Nina R. Tolen,
  - For the Respondent – Jennifer Becker,  
County Assessor Kelly Rose.
5. The Petitioner presented the following exhibits:
  - Petitioners' Exhibits 1-5 – Property record cards and photographs of five neighboring properties,<sup>1</sup>
  - Petitioners' Exhibit 6 – Appraisal for the subject property.<sup>2</sup>

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<sup>1</sup> The Respondent objected to Petitioner's Exhibits because they failed to follow the rules regarding the exchange of evidence. 52 IAC 2-7-1(b) requires a party to provide to all other parties with a list of the witnesses and exhibits at least 15 business days before the hearing and a copy of documentary evidence and summaries of anticipated testimony at least 5 business days before the hearing. The Petitioners claimed they failed to do so because they did not know where to send the material, but that excuse lacks merit. Clearly, the Petitioners did not follow the exchange rules. Therefore, the Board sustains the objection and it will not consider Petitioners' Exhibits 1-5 as evidence for purposes of this appeal.

<sup>2</sup> 52 IAC 2-7-1(d) permits an exception to the exchange deadlines under subsection (b) for anything that was submitted at the PTABOA hearing. According to both parties, the Petitioners submitted the appraisal at the PTABOA hearing. The Board, therefore, will consider the appraisal in making its determination.

6. The Respondent presented a written “Response” with the following exhibits:
  - Respondent Exhibit 1 – Subject 2006 property record card,
  - Respondent Exhibit 2 – Paired sales worksheet for Benton County,
  - Respondent Exhibit 3 – Comparable sales information,
  - Respondent Exhibit 4 – Notice of Appearance.
  
7. The following additional items are recognized as part of the record:
  - Board Exhibit A – Form 131,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Sign-in Sheet.
  
8. The subject property is a residential dwelling located at 4936 N. 200 E., Fowler.
  
9. The ALJ did not conduct an on-site inspection of the subject property.
  
10. The PTABOA determined the assessed value of the property for 2006 is \$191,700 (land \$14,800 and improvements \$176,900).
  
11. The Petitioners contend the assessed value should be \$145,000.

#### **FACTS AND CONTENTIONS**

12. The Petitioners contend that the subject property is over-valued based on an appraisal and comparison to similar properties in the neighborhood.
  - a) The Petitioners submitted an appraisal prepared by a certified Indiana appraiser. *Petitioners Exhibit 6*. The appraiser valued the property at \$145,000 as of 1999/2000. *Id.* A banker told Mr. Tolen that the appraisal was too old for a current loan because the value would be lower. *P. Tolen testimony*.

- b) The Petitioners contend their assessed value is higher than neighboring properties that are newer, larger, and nicer. *P. Tolen testimony*. According to the Petitioners, the neighboring properties have undergone extensive renovations and their original ages, which appear to be much older than the subject property, are unrealistic. Those other assessments are much lower than the Petitioners' assessment, but that should not be the case because assessments for comparable properties are supposed to be uniform and equal. *Id.*
  - c) The Petitioners contend that the Respondent's paired sales analysis is not valid because it did not verify the condition of the properties was unchanged between the first and second sale. (The properties might have been purchased cheap, then improved, and sold again.) Therefore, the trending factor derived from that analysis is not reliable. *P. Tolen testimony*.
13. The Respondent contends that the assessment should not be changed.
- a) The Petitioners' appraisal value (as of 1999) should be trended to the appropriate valuation date, which for the 2006 assessment is January 1, 2005. *Becker testimony*. Local officials collected sales information and performed a paired sales analysis to do so. *Id. Respondent Exhibit 2*. This analysis resulted in a median increase of 6% per year. *Id.* Applying that rate to the \$145,000 appraised value for the five years (1999 through 2004) results in a value of \$194,040, a value slightly higher than the assessed value. *Becker testimony. Response to Form 131 Petition Issues*.
  - b) The sales of two comparable properties further support the current assessment of \$191,700 for the subject property. *Becker testimony. Respondent Exhibit 3*. According to the Respondent, those comparables are similar in size, age, construction, and acreage to the subject property. They sold for \$150,000 and \$195,000. *Id.*

## 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”).

## ANALYSIS

16. Indiana assesses real property based on its “true tax value”, which is “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 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally uses three methods to determine value: the cost approach, the sales comparison approach, and the income approach. 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 (incorporated by reference at 50 IAC 2.3-1-2).
17. A property's market value-in-use as determined using those 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). 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 or comparable properties and other information compiled according to generally accepted appraisal practices. MANUAL at 5.

18. When a party relies on evidence of value as of a date substantially removed from the relevant valuation date, the record also must relate such evidence to the relevant valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *see also O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For a 2006 assessment, that valuation date is January 1 of the preceding year. IAC 50-21-3-3. Thus, for this case, the relevant valuation date was January 1, 2005.
19. The Petitioners presented an appraisal prepared by an Indiana certified appraiser with a value as of January 1, 1999. This appraisal, however, suffers from a major shortcoming in that it does not value the subject property as of the relevant valuation date. The Petitioners did not explain how the appraised value relates to the value as of January 1, 2005.<sup>3</sup> Therefore, the appraisal does not make a case for any assessment change.
20. The Petitioners attempted to submit evidence that indicated the subject property was not assessed equitably with similar, neighboring properties. As stated previously, the Respondent objected to this evidence because the Petitioners did not properly submit it within the statutory time frame. The Board sustained that objection. Therefore, it will not consider those exhibits in this determination.

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<sup>3</sup> Mr. Tolen's statement that a banker told him the appraisal was too old and that the current value would be lower is conclusory, and furthermore, even if the statement were true, it does not establish what the value for the assessment should be.

21. The Petitioners' conclusory testimony that their assessment must be changed because newer, larger, nicer neighboring properties are assessed for less does not help make their case. *See Long*, 821 N.E.2d at 470-471 (stating that conclusory statements another property is "similar" or "comparable" are not probative evidence, that taxpayers must provide specific reasons why a property is comparable, that taxpayers are responsible for explaining the characteristics of their own property as well as the purportedly comparable properties, and that taxpayers must account for how any differences affect the relevant market value-in-use of the properties).
  
22. 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).

#### **SUMMARY OF FINAL DETERMINATION**

23. The Petitioners failed to establish a prima facie case. The Board finds for the Respondent. No change in the assessment is warranted.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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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>>