

REPRESENTATIVE FOR PETITIONERS:

Alan Fetters, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Beverly Fields, Randolph County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

ALAN AND JASON FETTERS,	)	Petition No.:	68-014-06-1-5-00022
)		
Petitioners,	)	Parcel No.:	017-00700-00
)		
v.)		
	)	County:	Randolph
RANDOLPH COUNTY	)	Township:	Union
ASSESSOR,)		
)		
Respondent.	)	Assessment Year:	2006

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

June 25, 2008

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Rather than providing market-based evidence to rebut their property's assessment, the Petitioners claimed that properties in Union City were collectively over-assessed and that the tax rate applied to their property was excessive. But the fact that other properties may have been over-assessed does nothing to prove whether the Petitioners' property was correctly assessed. And the Board lacks jurisdiction to address claims that tax rates are too high. We therefore deny the Petitioners' request to reduce their property's assessment beyond a small reduction conceded by the Respondent.

PROCEDURAL HISTORY

2. On June 26, 2007, the Petitioners filed a written petition contesting their property's assessment. On December 17, 2007, the Randolph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination upholding the original assessment. On January 12, 2008, the Petitioners timely filed a Form 131 petition with the Board. The Board has jurisdiction over the Petitioners' appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On April 10, 2008, the Board held an administrative hearing through its Administrative Law Judge, Alyson Kunack.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Alan Fetters, Petitioner

For the Respondent:

Beverly Fields, Randolph County Assessor
Charles Ward, Witness

5. The Petitioners presented the following exhibits:¹
 - Petitioners' Exhibit 1 – Sale information from Muncie Multiple Listing Service
 - Petitioners' Exhibit 2 – Sale information from Richmond Multiple Listing Service
 - Petitioners' Exhibit 3 – Seven photographs of 524 West Pearl Street
 - Petitioners' Exhibit 4 – Letter from Alan Fetters

6. The Respondent presented the following exhibits:
 - Respondent's Exhibit 1 – Third page of Form 131 petition
 - Respondent's Exhibit 2 – Form 130
 - Respondent's Exhibit 3 – Form 115
 - Respondent's Exhibit 4 – Subject's property record card
 - Respondent's Exhibit 5 – Subject property photograph
 - Respondent's Exhibit 6 – Comparable property information

7. The Board officially recognizes the following additional items as part of the record of proceedings and labels them Board Exhibits:
 - Board Exhibit A – The Form 131 petition
 - Board Exhibit B – Notice of hearing dated March 6, 2008
 - Board Exhibit C – Hearing sign-in sheet

8. The subject property contains a house and is located at 528 West Pearl Street in Union City, Indiana.

9. Neither the Board nor the ALJ inspected the subject property.

10. The PTABOA determined that the assessed value of the property is \$8,750 for the land and \$55,500 for the improvements for a total assessed value of \$64,250.

¹ Documents comprising Petitioners Exhibits 1 and 2 and part of Petitioners Exhibit 3 were originally attached to the Petitioners' Form 131 petition. Because Mr. Fetters did not bring copies of those documents to the hearing, the ALJ allowed him to remove them from the Form 131 petition and label them as exhibits.

11. The Petitioners request a value of \$5,100 for the land and \$53,700 for the improvements for a total value of 58,800.

ADMINISTRATIVE REVIEW AND THE PETITIONERS' BURDEN

12. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates 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”).
14. If the taxpayer establishes a prima facie case, the burden shifts to the assessing official to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Parties' Contentions

15. The Petitioners contend that their property's assessment and taxes are both too high. Their taxes more than tripled in the past year, from approximately \$700 to \$2,400 annually. *Fetters testimony*.
16. According to the Petitioners, properties throughout Union City are assessed for more than their market value. Mr. Fetters obtained Multiple Listing Service (MLS) data sheets from

Richmond and Muncie, which together show all Union City property sales from 2006 and 2007. *Fetters testimony; Pet'rs Exs. 1-2*. The Muncie sheet shows 15 sales totaling \$319,900. *Fetters testimony; Pet'rs Ex. 1*. Those properties, however, are collectively assessed for \$783,863. *Id.* Similarly, the Richmond sheet shows 13 sales totaling \$396,800. Once again, those properties are collectively assessed for \$783,863.² *Fetters testimony; Pet'rs Ex. 2*.

17. The home next to the Petitioners' property is uninhabitable and is in foreclosure. *Fetters testimony; Pet'rs Ex. 3*. That further reduces the value of the Petitioners' property. *Fetters argument*.
18. Mr. Fetters "keeps the house in good shape." *Fetters testimony*. He made major repairs both when the Petitioners bought the home and later after it was vandalized. *Id.* Those repairs cost approximately \$10,000, although Mr. Fetters did as much of the work as he could by himself. *Id.* Mr. Fetters now lives in Ohio and he is trying to sell the property. *Id.*
19. To support the property's current assessment, the Respondent pointed to three purportedly comparable properties from the same neighborhood. *Resp't Ex. 6*. Like the Petitioners' property, the three comparable properties have wood-frame construction and detached garages, although the Petitioners' garage is significantly newer and larger. *Fields testimony*. Those comparable properties sold in 2003 and 2004 for prices ranging from \$45,000 to \$66,000. *Id.* The Petitioners' property sold for \$45,000 in 2005. *Id.*; *Resp't Ex. 4*.
20. The Respondent based the Petitioners' 2006 assessment on trended sales from 2002-2005. By contrast, the sales that the Petitioners identified all occurred in 2006-2007. The Respondent also contends that the Petitioners failed to verify the MLS-sheet information by looking at the properties' actual sales-disclosure forms. *Fields testimony*. The

² Both exhibits contain math errors. The Muncie sheet (Pet'rs Ex. 1) lists sales that actually total \$358,850, and the Richmond sheet lists assessments that actually total (Pet'rs Ex. 2) \$790,600.

Petitioners' sales information therefore might include related-party sales and foreclosures. *Ward testimony.*

21. After the PTABOA hearing, the Respondent determined that the Petitioners' house was in "average" condition rather than "good" condition. That change would reduce the property's assessment to \$62,500. *Fields testimony.*

Discussion

22. 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, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. 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.
23. 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 Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But 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 any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
24. 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. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006 assessment, that valuation date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.

25. The Petitioners contend that properties in Union City are collectively overassessed. *Pet'rs Exs. 1, 2*. From that proposition, they conclude that their property must also be over-assessed. But the fact that other properties have been assessed for more than their market values-in-use does nothing to show that an appealed property has similarly been over-assessed, much less the amount of the purported over-assessment.
26. Instead, if a taxpayer wishes to rebut the presumption that its property has been correctly assessed, the taxpayer must offer market-based evidence to show the property's market value-in-use. And the Petitioners offered no such evidence. At best, they pointed to problems in the surrounding area, such as the presence of a dilapidated house next door. But they failed to offer any evidence to quantify the effect of those conditions on their property's market value-in-use.
27. The only market-based evidence addressing the subject property's value came from the Respondent, who testified that the Petitioners bought the property for \$45,000 on July 15, 2005. Although, as explained above, real property must be assessed based on its value as of a specified valuation date, an assessor must consider the property as it physically existed on the assessment date. Here, there was a seven-and-a-half-month lag between the date the Petitioners bought the property and the assessment date. And Mr. Fetters testified that he made substantial repairs to the house after the Petitioners bought it, without identifying when he made those repairs. Thus, on the assessment date, the house's physical condition may have differed significantly from its condition when the Petitioners bought it. The July 1, 2005, purchase price therefore doesn't establish the property's true tax value.

28. As for their concerns about assessment levels, a taxpayer has the right to show that its “property taxes were higher than they would have been had other property been properly assessed.” *Indiana Dep’t of Local Gov. Fin. v. Commonwealth Edison Co.* 820 N.E.2d 1222, 1227 (Ind. 2005). The relief sought in that type of claim is often termed an “equalization adjustment.” But the Petitioners don’t make that claim. Indeed, they appear to make the opposite claim—that, while their property is assessed near its market value, other properties within Union City are assessed for far more than their market values. Thus, even if the Petitioners had proved their claim, they would not have been entitled to have their property’s assessment reduced.
29. Even if the Petitioners had forthrightly sought an equalization adjustment, their evidence would not have been sufficient for at least four reasons. First, while the Petitioners offered some evidence to establish the assessed-value-to-market-value-in-use ratios for 15 other properties, they did not show that ratio for their own property, because they didn’t establish its market value-in-use. Second, those ratios are simply raw data without any statistical analysis. Third, Mr. Fetters acknowledged that he didn’t attempt to verify any of the information from the MLS sheets. Fourth, Mr. Fetters used sales information from 2006-2007 without adjusting those sale prices to January 1, 2005 values.
30. Finally, the Board lacks jurisdiction to address the Petitioners’ claims about Union City’s tax rates. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001)(citing *Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or county property assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. By contrast, no statute authorizes the Board to review the propriety of local tax

rates.³ Even if the Board had jurisdiction to decide the Petitioners' claim in that regard, the Petitioners do not point to any authority for the proposition that local officials exceeded their authority in setting the tax rate applied to the Petitioners' property.

31. Although the Petitioners failed to make a prima facie case of error, the Respondent conceded that the house's condition should be changed from "good" to "average." That change would reduce the property's total assessment to \$62,500. *Fields testimony*. The Board therefore finds that the property's assessment should be changed in accordance with the Respondent's concession.

SUMMARY OF FINAL DETERMINATION

32. The Petitioners failed to make a prima facie case of error in the assessment. Based on the Respondent's concession, however, the Board orders that the house's condition rating be changed from "good" to "average" and that the property's total assessment be reduced to \$62,500.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

³ That is not to say that the Board lacks jurisdiction simply because the Petitioners' claim implicates a local tax rate. In a budget driven taxation system, the Board may have jurisdiction over claims that implicate or affect tax rates, provided the claims concern assessed value. See *U.S. Steel Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 785 N.E.2d 1209, 1212-13 (Ind. Tax Ct. 2003) *aff'd in part and rev'd in part on other grounds, Lake County Property Tax Assessment Bd. of Appeals v. U.S. Steel Corp.*, 820 N.E.2d 1237 (Ind. 2005). Here, the Petitioners contest the tax-rate itself. Thus, the Board lacks jurisdiction over the Petitioners' claim.

- 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>