

REPRESENTATIVE FOR PETITIONER:

James M. Freytag, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kelly Hisle, Delaware County Assessor's Office

INDIANA BOARD OF TAX REVIEW

James M. and Melissa Freytag,	)	Petition No.:	18-003-06-1-5-001709
)		
Petitioners,)		
	)	Parcel No.:	181107252004000003
v.)		
	)	County:	Delaware
Delaware County Assessor,	)	Township:	Center
)		
Respondent.	)	Assessment Year:	2006

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

May 19, 2010

FINAL DETERMINATION

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

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioners' property is assessed in excess of its market value-in-use.

PROCEDURAL HISTORY

2. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners, James M. and Melissa Freytag, filed a Form 130 Petition to the Delaware County Property Tax Board of Appeals (the PTABOA) for review of their property's 2006 assessment on August 23, 2007. A Form 115 Notification of Final Assessment Determination was mailed to the Petitioners on August 8, 2008. The Petitioners subsequently filed a Form 131 Petition to the Board to conduct a review of the PTABOA's decision on September 5, 2008.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Alyson Kunack, the duly designated Administrative Law Judge (the ALJ), held a hearing on March 2, 2010, in Muncie, Indiana.
4. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioners:
 - James M. Freytag, Petitioner
 - For the Respondent:
 - Kelly Hisle, appeals clerk, Delaware County Assessor's Office
5. The Petitioners presented the following evidence:
 - Petitioners Exhibit 1 –Appraisal of the Petitioners' property as of November 4, 2009,
 - Petitioners Exhibit 2 –Excerpt from the Petitioners' loan application dated November 10, 2009,
 - Petitioners Exhibit 3 –Current market analysis prepared by Ginny Lazar, real estate broker.
6. The Respondent presented the following evidence:
 - Respondent Exhibit 1 – Neighborhood sales comparison spreadsheet,
 - Respondent Exhibit 2 – Sales comparison spreadsheet for the Petitioners' property,
 - Respondent Exhibit 3 – Petitioners' property record card (PRC),

James M. and Melissa Freytag
Pet. No. 18-003-06-1-5-01709
Page 2 of 10

Respondent Exhibit 4 – PRC for 1007 North Bittersweet Lane,
Respondent Exhibit 5 – MLS listing sheet for 1007 North Bittersweet Lane,
Respondent Exhibit 6 – Sales disclosure form for 1007 North Bittersweet Lane,
Respondent Exhibit 7 – PRC for 1005 North Bittersweet Lane,
Respondent Exhibit 8 – Printout of County sales record for 1005 North
Bittersweet Lane,
Respondent Exhibit 9 – Printout of County exchange record for 1005 North
Bittersweet Lane,
Respondent Exhibit 10 – PRC for 809 North Tyrone Drive,
Respondent Exhibit 11 – Sales disclosure form for 809 North Tyrone Drive,
Respondent Exhibit 12 – PRC for 809 North Bittersweet Lane,
Respondent Exhibit 13 – Sales disclosure form for 809 North Bittersweet Lane,
Respondent Exhibit 14 – Mortgage record for the Petitioners dated November 19,
2009,
Respondent Exhibit 15 – Mortgage record for the Petitioners dated July 22, 2005,
for \$29,000,
Respondent Exhibit 16 – Mortgage record for the Petitioners dated July 22, 2005,
for \$116, 000.

7. The following items, in addition to the electronic recording of the hearing, are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 131 Petition,
 - Board Exhibit B – Notice of Hearing dated January 25, 2010,
 - Board Exhibit C – Hearing sign-in sheet.
8. The property under appeal is an improved residential parcel located at 1100 North Tyrone Drive in Muncie, Center Township, Delaware County.
9. The ALJ did not conduct an on-site inspection of the Petitioners' property.
10. For 2006, the PTABOA determined the assessed value of the property to be \$19,700 for the land and \$149,400 for the improvements, for a total assessed value of \$169,100.
11. The Petitioners requested an assessed value of \$17,145 for the land and \$130,891 for the improvements, for a total assessed value of \$148,036.

OBJECTION

12. The Respondent's representative objected to the admission of the Petitioners' exhibits because, she argued, the evidence was not provided to her at least five business days before the hearing date as required by the Board's procedural rules. Mr. Freytag admitted that he did not provide any of the Petitioners' evidence to the Respondent, but, he argued, he was not aware of the exchange requirement.

13. The Board's rules are clear and unambiguous regarding the parties' obligation to exchange copies of their exhibits prior to the hearing date. 52 IAC 2-7-1. Further, those requirements are specifically stated on the hearing notice issued by the Board. *Board Exhibit 2*. Mr. Freytag's failure to notice the exchange requirement language on the hearing notice is unfortunate, but hardly sufficient to allow for an exception to the Board's procedural rules. The Board sustains the Respondent's objection, and the Petitioners' exhibits will not be considered in determining the outcome of this case.

JURISDICTIONAL FRAMEWORK

14. 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

15. 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).

16. 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”).
17. 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.

PETITIONERS’ CONTENTIONS

18. The Petitioners contend the subject property is over assessed. *Freytag testimony*. In support of this contention, Mr. Freytag testified that the Petitioners refinanced their home in November 2009 for \$141,000. *Freytag testimony*. According to Mr. Freytag, the Petitioners did not qualify for a conventional loan because the loan amount represented 95% of the home’s appraised value, so they had to refinance through the Federal Housing Administration (FHA). *Id.*
19. Further, Mr. Freytag argues that the Petitioners’ home is one of the highest-valued homes on the block, which includes homes with more features and living area. *Id.* According to Mr. Freytag, the County applied a flat 63% increase to the assessed values of all homes in the neighborhood, which unfairly raised the Petitioners’ assessment beyond that of their neighbors who had not been reassessed “in decades.” *Id.*

RESPONDENT'S CONTENTIONS

20. The Respondent contends the property's assessed value is fair based on an analysis of four properties in the Petitioners' neighborhood that sold in 2004 and 2005. *Hisle testimony; Respondent Exhibit 2*. For each of the comparable properties, Ms. Hisle testified that she made adjustments to the sales prices for the differences in features between the properties, resulting in adjusted prices of \$161,100, \$152,800, \$110,600, and \$141,300, respectively. *Id.* According to Ms. Hisle, the average price per square foot of the comparable sales was \$79.54; whereas the assessed value of the Petitioners' property was only \$77.67 per square foot. *Id.*
21. Ms. Hisle also contends that recorded mortgages for the Petitioners' property from 2005 show that the property's assessed value is correct. *Hisle testimony*. In support of this contention, Ms. Hisle presented printouts of the County records showing two mortgages were recorded for the Petitioners' property on July 22, 2005, in the amounts of \$116,000 and \$29,000 respectively. *Hisle testimony; Respondent Exhibits 15 and 16*. According to Ms. Hisle, based on her experience, lenders were generally loaning eighty percent of the appraised value of a property at that time. *Hisle testimony*.

ANALYSIS

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 (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. 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).

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 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 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*, 826 N.E.2d at 505, 506 n.6. 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
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. 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 date, the valuation date is January 1, 2005. 50 IAC 21-3-3.
25. Here, the Petitioners contend their property is assessed in excess of its actual market value. *Freytag testimony*. In support of this contention, Mr. Freytag testified that they refinanced their house in 2009 for \$141,381 which, Mr. Freytag argues, represents 95% of the property's appraised value. *Freytag testimony*. Mr. Freytag, however, presents no evidence to support his contention that the mortgage amount represents 95% of the property's value. Moreover, Mr. Freytag failed to relate the 2009 mortgage value to the January 1, 2005, valuation date for the assessment year under appeal. As stated above, a petitioner offering evidence of a property's value relating to a different date must provide some explanation relating that evidence to the valuation date in question. *Long*, 821 N.E.2d at 471. Thus, the Petitioners' mortgage evidence is insufficient to raise a prima facie case that their property is over-valued.¹

¹ The Board further notes that the Petitioners' appraisal and market analysis suffer from the same deficiency because both reports estimated the property's value as of 2009. Thus, even if the Board had not excluded the Petitioners' evidence, the Petitioners still would have failed to raise a prima facie case that their property was assessed in error.

26. Mr. Freytag also argues that many of the homes in his neighborhood had not been reassessed “for decades,” unlike his newer home. *Id.* He further contends that the County applied a flat 63% increase to the assessed values of the Petitioners’ home and their neighbors’ properties. *Id.* The Board notes, however, that Mr. Freytag presented no evidence to support his contention that the assessed values of the properties increased by 63%. Nor did he present evidence that the Petitioners’ neighbors’ properties have not been assessed in “decades.” Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
27. Further, to the extent that Mr. Freytag contends the assessed value of the Petitioners’ property exceeds the assessed values of comparable properties, that argument was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer’s lack of uniformity and equality claim where the taxpayer showed neither its own property’s market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property’s market value-in-use. *Id.*
28. Where a Petitioner fails to provide probative evidence for an assessment change, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).²

² The Board notes, however, that the Respondent’s “comparable analysis” suggests that the property is, in fact, over-assessed. The Respondent’s “adjusted” comparable sales valued the property at \$161,100, \$152,800, \$110,600, and \$141,300, respectively. Thus, even the highest valued “comparable” property was \$8,000 below the value of the Petitioners’ property’s assessed value.

SUMMARY OF FINAL DETERMINATION

29. The Petitioners failed to provide sufficient evidence to support a change in their assessment. The Board finds in favor of the Respondent.

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

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>>