

REPRESENTATIVE FOR PETITIONER:

Rex Hume, Uzelac & Associates

REPRESENTATIVE FOR RESPONDENT:

Shirley LaFever, Chief Deputy Assessor, Porter County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mirko and Zora Gros,	)	Petition No.:	64-017-06-1-5-00056
)		
Petitioners,	)	Parcel:	02-26-405-025.000
)		
v.)		
	)	County:	Porter
Porter County Assessor,	)	Township:	Portage
)		
Respondent.	)	Assessment Year:	2006

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

December 16, 2008

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the assessed value of the subject property is excessive in comparison to the appraised value.

PROCEDURAL HISTORY

2. The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination upholding the Portage Township Assessor's 2006 assessment of the subject property on January 17, 2008.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioners filed a Form 131 Petition for Review of Assessment on February 15, 2008, petitioning the Board to conduct an administrative review of the subject property's 2006 assessment.¹

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. 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 October 1, 2008, in Valparaiso, Indiana.
5. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner:
 - Rex Hume, Uzelac & Associates
 - For the Respondent:
 - Shirley LaFever, Chief Deputy Assessor, Porter County.
6. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Summary Residential Appraisal Report,
 - Petitioner Exhibit 2 – Power of Attorney,
 - Petitioner Exhibit 3 – Form 130 filed by taxpayer,
 - Petitioner Exhibit 4 – Form 131 filed by taxpayer.

¹ On March 25, 2008, the Board denied the Petition for failure to respond to a Notice of Defect. The Petitioners thereafter provided evidence that they had, in fact, complied with the notice and the Board accepted the Petition and scheduled the matter for hearing.

7. The Respondent presented the following exhibits:
 - Respondent Exhibits 1 – 4 – Photographs showing exterior features,
 - Respondent Exhibit 5 – PTABOA Minutes.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notice of Hearing dated July 21, 2008,
 - Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a residential dwelling located at 32 Shore Drive, Ogden Dunes.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2006, the PTABOA determined the assessed value of the property to be \$317,600 for the land and \$178,300 for the improvements, for a total assessed value of \$495,900.

12. The Petitioners contend their assessed value should be \$400,000.

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 Ind. 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, by a preponderance of the evidence, 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

FACTS AND CONTENTIONS

17. The Petitioners contend that the subject property is over-valued based on an appraisal. In support of this contention, the Petitioners presented the following evidence in support:

- A. The Petitioners contend the assessed value of the subject property is overstated compared to its appraised value. *Hume testimony*. In support of this contention, the Petitioners presented a Uniform Residential Appraisal Report prepared by Mr. Buford Eddy, an Indiana certified residential appraiser. *Petitioner Exhibit 1*. The appraiser used the cost and the sales comparison approaches to value and estimated the value at \$400,000 as of January 1, 2005. *Id.*
- B. The Petitioner's representative testified that the property's value was even lower using the cost approach because of structural problems in the house. *Hume testimony; Petitioner Exhibit 1*. According to Mr. Hume, the home has foundation cracks, water damage, and its walls are shifting. *Id.* These conditions are shown in the photographs included in the appraisal report. *Id.*
- C. Finally, in response to the Respondent's case, Mr. Hume argued that the Petitioners are not contending that the property is not habitable, only that it is assessed at \$95,000 more than the appraised value. *Hume testimony*.
18. The Respondent contends that the subject property is assessed correctly and presented the following evidence in support of their contentions:
- A. The Respondent contends the subject property's assessment should stand, or be even higher, because the property is earning income. *LaFever testimony*. According to the Respondent, at the PTABOA hearing, the Petitioners claimed no one lived in the property full-time. *Id.*; *Respondent Exhibit 5*. During a telephone conversation with an employee of the water company, however, the employee stated the property has been rented for two years. *Id.*
- B. The Respondent also contends that the property is not in a bad condition. *LaFever testimony*. In support of this contention, the Respondent submitted four photographs showing the exterior of the property, including a new air

conditioner. *Respondent Exhibit 1-4*. According to the Respondent, the house could not be poorly insulated or the Petitioners would not have installed a new air conditioner. *LaFever testimony; Respondent Exhibit 5*.

ANALYSIS

19. 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.
20. 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); *P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). A taxpayer, however, 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. Taxpayers may also offer sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
21. Regardless of the approach used to prove the market value-in-use of a property, a 2006 assessment is required to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to

- a different date must also have an explanation of how it demonstrates or is relevant to the value of the property as of that required valuation date. *See Long v. Wayne Township Assessor*, 821 at N.E.2d 466, 471 (Ind. Tax Ct. 2005).
22. Here, the Petitioners presented an appraisal prepared by a certified appraiser that valued the subject property at \$400,000 as of January 1, 2005. *Petitioner Exhibit 1*. The appraiser certified that the appraisal was performed according to the Uniform Standards of Professional Appraisal Practice. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479.
23. 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.*, 803 N.E.2d 276. Here, the Respondent argued that a tenant occupied the house and had for the past two years and, therefore, the property was earning income. The Respondent, however, failed to present any evidence of the rent being received by the Petitioners and failed to present any income valuation of the subject property. The Respondent also contends the property's condition "does not appear to be as bad as the Petitioners claim." The Respondent's testimony, however, did not go forward to explain why or how these "flaws" invalidate the Petitioners' evidence. "Open-ended questions" and "conclusory statements" are not sufficient to rebut the Petitioners' case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005). The Respondent neither sufficiently impeached the probative value of the appraisal of the subject property, nor presented any evidence of the property's market value to rebut the appraised value.

SUMMARY OF FINAL DETERMINATION

24. The Petitioners raised a prima facie case that the subject property is over-valued on the basis of their appraisal. The Respondent failed to rebut the Petitioners' case with substantial evidence. The Board finds in favor of the Petitioners and determines that the value of the subject property is \$400,000 for the March 1, 2006, assessment.

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

Commissioner, 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>>