

REPRESENTATIVE FOR PETITIONER:

Clarence J. Hensly, pro se

REPRESENTATIVES FOR RESPONDENT:

Kelly Hisle, Delaware County Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Clarence J. Hensly Rev. Trust,	)	Petition No.:	18-003-06-1-5-00946
)		
Petitioner,	)	Parcel:	181118256014000003
)		
v.)		
	)	County:	Delaware
Delaware County Assessor,	)	Township:	Center
	)	Assessment Year:	2006
Respondent.)		

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

May 27, 2009

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

PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-15-4, Clarence Hensly on behalf of the Clarence J. Hensly Rev. Trust (the Petitioner) filed a Form 131 Petition for Review of Assessment on May 23, 2008, petitioning the Board to conduct an administrative review of the above petition.

The Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued its determination of April 28, 2008.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Alyson Kunack, the Board's designated Administrative Law Judge (ALJ), conducted a hearing on March 5, 2009, in Muncie, Indiana.

3. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Clarence J. Hensly, Petitioner's representative

For the Respondent:

Kelly Hisle, Delaware County Assessor's Office

4. The Petitioner presented the following exhibits:

Petitioner Exhibit 1: Letter from the Petitioner,
Petitioner Exhibit 2: Property Record Card (PRC) for 709 Catalpa Drive,
Petitioner Exhibit 3: PRC for the subject property,
Petitioner Exhibit 4: Form 133 Petition filed for 709 Catalpa Drive,
Petitioner Exhibit 5: Notice of Hearing.

5. The Respondent submitted the following exhibits:

Respondent Exhibit 1: Spreadsheet of comparable properties,
Respondent Exhibit 2: PRC for the subject property,
Respondent Exhibit 3: PRCs and MLS listing sheets for comparable properties,
Respondent Exhibit 4: Photograph of subject property.

6. 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,
Board Exhibit C – Hearing sign-in sheet.

7. The property is a single-family residence located at 710 South Catalpa Drive, in the city of Muncie, Center Township in Delaware County.
8. The ALJ did not inspect the subject property.
9. For 2006, the PTABOA determined the assessed value of subject property was \$13,600 for the land and \$112,500 for improvements, for a total assessed value of \$126,100.
10. The Petitioner requested a value of \$8,000 for the land and \$67,000 for improvements for a total assessed value of \$75,000.¹

JURISDICTIONAL FRAMEWORK

11. 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

12. 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 Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
13. 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*

¹ At the hearing, the Petitioner specifically requested a value of \$83,048.

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. 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.

PETITIONER’S CONTENTIONS

15. The Petitioner contends its property is over-assessed based on the assessed value of the property located at 709 Catalpa. *Hensly testimony; Pet. Ex. 1*. According to the Petitioner’s representative, the property at 709 Catalpa has 1,849 square feet of living space and three bedrooms on .003 acres. *Id.*; *Pet. Ex.2*. It was assessed for \$103,000 after an appeal. *Id.*; *Pet. Exs. 1, 2 and 4*. The subject property only has 1,492 square feet of living space and two bedrooms on 0.21 acres. *Id.*; *Pet. Ex. 3*. Yet the subject property is assessed for \$126,000. *Id.*; *Pet. Exs. 1-3*. In addition, 709 Catalpa has a large patio in the front of the house and a wood deck out back, whereas the subject property only has a small patio in back of the house. *Id.*; *Pet. Exs. 2 and 3*.
16. The Petitioner argues that the subject property should be assessed like the property at 709 Catalpa. *Hensly testimony*. According to Mr. Hensly, 709 Catalpa was assessed for \$55.70 per square foot of living space. *Hensly testimony; Pet. Ex. 1*. Mr. Hensly argues that if the Board applied the \$55.70 per square foot rate to the subject property, the subject property’s value would be \$83,048.70. *Id.*

RESPONDENT’S CONTENTIONS

17. The Respondent contends the assessment is correct based on the adjusted sale prices of three purportedly comparable properties. *Hisle testimony*. According to the Respondent’s witness, the first property is located at 3800 W. Ethel. *Id.*; *Resp. Ex. 1 and 3*. It is similar in size to the subject property, and sold in March of 2004 for \$118,000. *Id.* Ms. Hisle contends the second comparable property is located at 2911 W. Ashland

and sold for \$100,000 in May of 2004. *Id.* The third property, located at 221 N. Alden, is slightly larger than the Petitioner's property, and sold for \$103,000 in April of 2004. *Id.* According to the Respondent's witness, the sale prices of the comparable properties were adjusted for various factors including sale date, size, and features, resulting in adjusted sale prices of \$123,000, \$110,604, and \$115,500, respectively. *Id.* Thus, the Respondent's witness argues, the subject property's assessed value of \$126,100 is "right in line" with these values. *Hisle testimony.*

18. The Respondent further argues that the Board should not be persuaded by the Petitioner's comparable. *Hisle testimony.* According to the Respondent's witness, 709 Catalpa, is a much older house than the subject property. *Hisle testimony.*

ANALYSIS

19. Real property in Indiana is assessed on the basis of its true tax value. *See* Ind. Code § 6-1.1-31-6(c). True tax value is defined as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of those guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The parties 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 principles. MANUAL at 5.

20. Whatever evidence the parties use, they must explain how it relates to the property's market value-in-use as of the relevant valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). For the March 1, 2006, assessments, that date is January 1, 2005. 50 IAC 21-3-3.
21. Here the Petitioner bases his argument solely on the assessed value of a neighboring property. According to the Petitioner's witness, because the home at 709 Catalpa is bigger and has more features than the subject property yet is assessed lower, the subject property's value should be lowered as well. *Hensly testimony; Pet. Exs. 1-3*.
22. The Petitioner's representative, however, fails to present any evidence that the subject property was assessed for more than its market value-in-use. Instead, Mr. Hensly's argument focuses solely on comparing the assessments of the two properties. This 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 taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.* This the Petitioner has failed to do.
23. The Petitioner failed to raise a prima facie case that the subject property was assessed in excess of its market value-in-use. When a taxpayer 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).

SUMMARY OF FINAL DETERMINATION

24. The Petitioner failed to establish a prima facie case showing an error in the 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 first 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>.