

**Small Claims
Final Determination
Findings and Conclusions**

Petition Number: 77-012-08-1-5-00002
Petitioner: Mary R. Johnson
Respondent: Sullivan County Assessor
Parcel No.: 77-07-27-333-049.000-012
Assessment Year: 2008

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

PROCEDURAL HISTORY

1. The Petitioner initiated an assessment appeal with the Sullivan County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 24, 2009.
2. The Petitioner received notice of the decision of the PTABOA dated October 27, 2009.
3. The Petitioner filed a Form 131 petition with the Board on November 26, 2009. The Petitioner elected to have her case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 14, 2010.
5. The Board scheduled an administrative hearing on July 7, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.

FACTS

6. The property at issue is a storage building on a commercial parcel located at 2 East Snow Street, Sullivan, in Sullivan County, Indiana.
7. The ALJ did not conduct an on-site visit of the property.
8. For 2008, the PTABOA determined the assessed value of the subject property to be \$5,300 for the land and \$10,400 for the improvements, for a total assessed value of \$15,700.
9. The Petitioner failed to specify the value she was requesting for her 2008 assessment.

ISSUES

10. Summary of the Petitioner's contentions in support of an alleged error in her assessment:
 - a. The Petitioner contends her property's 2008 assessed value is over-stated because the improvements are in such poor condition as to have no value. *Johnson argument.* According to Ms. Johnson, while the Sullivan County PTABOA changed the grade and condition of the building, the resulting assessment is still over-stated. *Id.*
 - b. Further, the Petitioner testified, she has lived next door to the subject property for six years and that the property has been vacant the entire time. *Johnson testimony.* According to Ms. Johnson, the structure continues to deteriorate even after her purchase of the property at tax sale. *Id.* In support of her contention, the Petitioner submitted seven photographs of the building showing its condition over the course of a year. *Petitioner Exhibits 5 through 8.*

11. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the Petitioner's 2008 assessment is correct based on the property's market value-in-use. *Talpas argument.* According to Ms. Talpas, the grade and condition were lowered by the PTABOA. *Id.* In addition, the PTABOA changed the use of the building from residential to storage and added a 10 percent obsolescence adjustment. *Id.*
 - b. The assessor further argued that the Petitioner's purchase of the property is not probative of the property's value. *Talpas argument.* According to Ms. Talpas, the sale was the result of a tax default and, thus, was not a market sale. *Id.*

RECORD

13. The official record for this matter is made up of the following:
 - a. The Petition and the attached documents.
 - b. Exhibits:
 - Petitioner Exhibit 1 – Order issuing the property's deed after tax sale,
 - Petitioner Exhibit 2 – Copy of the county-issued tax bill on the subject property,
 - Petitioner Exhibit 3 – Copy of an updated county property tax bill,
 - Petitioner Exhibit 4 – Copy of Form 115 Notification of Final Assessment Determination,
 - Petitioner Exhibit 5 – Copies of two July, 2009, photographs showing a wavy wall on the east side of the building,
 - Petitioner Exhibit 6 – Copies of July, 2009, photographs showing deterioration of the roof area,

Petitioner Exhibit 7 – Copy of a July, 2009, photograph of the west side of the roof showing deterioration,

Petitioner Exhibit 8 – Copies of June, 2010, photographs showing continued deterioration of the roof,

The Respondent failed to submit any exhibits,

Board Exhibit A – Form 131 Petition and related attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

ANALYSIS

14. The most applicable governing cases are:
- a. 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 Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. 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 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”).
 - c. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to raise a prima facie case for a reduction in her property's assessed value. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally 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 assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.

- b. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. 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 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*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c. 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, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
- d. Here, the Petitioner contends that the building is in extremely poor condition after having been vacant for more than six years. *Johnson argument*. Thus, Ms. Johnson argues, the building has no value. *Id.* The Board interprets this to be an argument that the condition of the structure was improperly assessed. A condition rating is a "rating assigned each structure that reflects its effective age in the market." See GUIDELINES, app. B, at 5. The ratings range from "excellent" to "very poor" and are determined by relating the structure to comparable structures within the subject property's neighborhood. *Id.* at 7. While the Petitioner presented some evidence that the roof is collapsing, the parties both agreed that the building is already being assessed in "very poor" condition. There is no lower "category" of condition that the structure could be given. Thus, the Board cannot determine that the assessment was in error.
- e. Even if the Petitioner had proven that the condition of the building was assessed in error, an assessor's failure to comply with the Guidelines alone does not show that the assessment is not a reasonable measure of a property's market value-in-use. 50 IAC 2.3-1-1(d); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) ("Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") Thus, the Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. Here, the Petitioner merely contends that the structure "has no value." However, the Petitioner presented no appraisal or sales information or other market data in support of her argument. Conclusory statements regarding a property's value do not constitute probative evidence. See *Whitley*

Products, Inc. v. State Board of Tax Commissioners, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).¹

- f. Where 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).

CONCLUSION

16. The Petitioner failed to raise a prima facie case that the subject property is over-valued. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

¹ To the extent the Petitioner's purchase at tax sale could be considered some evidence of the property's market value-in-use, the Board finds that the sale was untimely. As state above, for the March 1, 2008, assessment, the valuation date was January 1, 2007. The Petitioner purchased the property on October 29, 2008 – more than 22 months after the valuation date. *See Petitioner Exhibit 1.*

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>.