

**Small Claims
Final Determination
Findings and Conclusions**

Petition Number: 26-028-07-1-3-00001
Petitioners: Betty S. Kendall
Respondent: Gibson County Assessor
Parcel No.: 26-12-07-400-003.701-028
Assessment Year: 2007

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 Gibson County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated August 25, 2008.
2. The Petitioner received notice of the decision of the PTABOA dated October 29, 2008.
3. The Petitioner filed a Form 131 petition with the Board on November 10, 2008. 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 February 24, 2010.
5. The Board scheduled an administrative hearing on April 28, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter. The Petitioner's son, Keith Kendall,¹ notified the Board that because of his and his mother's health they were unable to attend the hearing and requested that the matter be determined based on written evidence. Under 52 IAC 3-1-6, "[t]he parties in small claims may elect to waive a hearing and have the board issue a final determination based solely on the written and documentary evidence submitted by the parties." The Respondent did not object to the request for waiver of hearing. The Board therefore granted Mr. Kendall's request and issues this final determination based on the written evidence submitted by the parties.

¹ Mr. Kendall appeared on behalf of his mother according to the Board's rules for representation of minor and incapacitated parties. *See* 52 IAC 1-2-1.1.

FACTS

6. The property at issue is a funeral home on a 204 foot by 144 foot lot located at 520 S. Main Street, Patoka Township, Princeton, Gibson County, Indiana.
7. The ALJ did not conduct an on-site visit of the property.
8. For 2007, the PTABOA determined the assessed value of the subject property to be \$45,500 for the land and \$129,300 for the improvements, for a total assessed value of \$174,800.
9. The Petitioners requested an assessed value of \$20,000 for the land and \$75,000 for the improvements, for a total assessed value of \$95,000.

ISSUES

10. Summary of the Petitioner's contentions in support of an alleged error in her assessment:
 - a. The Petitioner contends her property's 2007 assessed value is over-stated because the assessor used properties that were not comparable to the subject property to estimate the property's market value-in-use. *Petitioner Exhibit 1*. According to the Petitioner, the property was originally assessed at a much lower value when the assessment was performed by a local assessor. *Id.* When the re-assessment was done by an out of state company, it used properties in Evansville, Indiana, which are more valuable than properties in Princeton. *Id.*
 - b. Similarly, the Petitioner contends its property is over-valued based on its market value-in-use. *Petitioner Exhibit 1*. According to the Petitioner's representative, Princeton is an economically depressed town and properties have virtually no value. *Id.* Further, when US 41 was widened, some of the Petitioner's property was taken leaving the building right next to the road. *Id.* Because of its proximity to the street, cars have run into the building twice, resulting in thousands of dollars in damage. *Id.*
 - c. Finally, the Petitioner's representative argues that the Governor mandated that the county reassess properties at a higher rate because the state needed the revenue. *Petitioner Exhibit 1*.
11. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the Petitioners' 2007 assessment is correct based on the property's market value-in-use. *Respondent Exhibit 1*. According to the Respondent, the funeral home is currently being leased and operated by another individual. *Id.* Moreover, the Petitioner is offering to sell the funeral home for \$800,000 for the business and property. *Id.*

RECORD

13. The official record for this matter is made up of the following:

- a. The Petition and all other submitted documents.
- b. Exhibits:

Petitioner Exhibit 1 – A letter from the Petitioner’s son detailing the Petitioner’s contentions,

Respondent Exhibit 1 – The Respondent’s memorandum detailing the relevant facts about the subject property,

Respondent Exhibit 2 – A copy of the property’s property record card,

Board Exhibit A – Form 131 Petition and related attachments,

Board Exhibit B – Notice of Hearing.

- 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 the 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. Here, the Petitioner’s representative first contends that the “out of state company” that did the assessment used Evansville properties to value the subject property. However, the Petitioner presented no evidence of any property that was used as a comparable property to establish the subject property’s assessed value. In fact, to the contrary, the Respondent’s evidence shows that the property was assessed based on the cost approach. *See Respondent Exhibit 2*. There is no evidence that the Assessor used a sales comparable analysis in valuing the Petitioner’s property. Even if the Petitioner had shown that the assessor erred in its assessment, the Petitioner failed to show that its assessment did not accurately reflect the market value-in-use of its property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).

- e. The Petitioner also contends its property is over-valued because Princeton is a depressed town and some of its property was taken when US 41 was widened. According to the Petitioner's representative, the property is worth less than it had been before because the building is so close to the street that vehicles have run into it. However, merely arguing that a property has lost value is insufficient to quantify the market value-in-use of a property. Here, 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) (Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in an assessment).
- f. Finally, the Petitioner's representative alleges that the property's assessed value increased because the Governor ordered the county to reassess properties at a higher amount because the state needed the revenue. However, starting in 2006, assessments were annually adjusted to reflect changes in value between general reassessment years. *See* Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Under the trending rules, the property's 2007 assessment was based on a January 1, 2006, valuation date, rather than the January 1, 1999, valuation date of the 2002 through 2005 assessments. *See* MANUAL at 2, 4, 8 (making January 1, 1999, the valuation date for 2002 through 2005 assessments); and 50 IAC 21-3-3(b) (making January 1 of the calendar year preceding the assessment date the valuation date for annually adjusted assessments beginning with the March 1, 2006, assessment). The Petitioner presented no evidence to show that the increase in value was unreasonable; nor did the Petitioner show that her 2007 assessment did not reflect the property's market value-in-use. *See also Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year).
- g. In waiving her right to a hearing, the Petitioner elected to have the Board make its decision based on her documents. However, the letter that her representative submitted to the Board included no probative evidence to establish the property's assessed value was in error. 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

- 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>.