

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 12-016-06-1-5-00074
Petitioner: Ricky Lynn King
Respondent: Clinton County Assessor
Parcel No.: 016-06191-00
Assessment Year: 2006

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 Clinton County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 10, 2007.
2. The PTABOA issued its decision on February 23, 2009.
3. The Petitioner filed a Form 131 petition with the Board on March 16, 2009. The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 7, 2010.
5. The Board held an administrative hearing on January 14, 2010, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Rick L. King, Petitioner
 - b) For Respondent: Brian Thomas, authorized representative
Dana M. Myers, Clinton County Assessor
Jada Ray, Chief Deputy Assessor, Clinton County

Facts

7. The property is a single-family residence located at 1501 East Washington Street in the city of Frankfort, Center Township in Clinton County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

9. For 2006, the PTABOA determined the assessed value of the subject property to be \$10,600 for the land and \$94,300 for the house, for a total assessed value of \$104,900.
10. The Petitioner requests an assessed value of \$10,600 for the land and \$60,000 for the house, for a total assessed value of \$70,600.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his assessment:
 - a) The Petitioner contends that his property was assessed in error. *King testimony*. According to Mr. King, when he bought the house in May of 2006, the property did not have a swimming pool, a deck, or a privacy fence, although the property was assessed for those features. *Id.* Similarly, he testified, his property was assessed as having a crawl space when the house is actually built on a slab. *Id.*
 - b) The Petitioner further argues that the taxes on the property have unreasonably increased. *King testimony*. According to Mr. King, when he purchased the property in 2006, the taxes were \$853.17 for the tax year 2005 pay 2006. *Id.* The following year, the taxes more than tripled to \$2,949.04. *King testimony*.
 - c) The Petitioner also contends his property is over-assessed based on its market value. *King testimony*. According to Mr. King, the property was appraised for \$65,000 when he purchased it. *Id.* Mr. King testified, however, that the County increased the assessed value from \$84,900 in 2002 to \$104,900 in 2006, while property values in Clinton County were decreasing. *Id.*; *Petitioner Exhibit 5*.
 - d) Finally, the Petitioner argues, his property is assessed in excess of other nearby properties. *King testimony*. According to Mr. King, the properties located at 1708 East Ohio Street and 609 Center Drive, respectively, are three-bedroom homes that are assessed lower than the assessed value of his property. *Id.*; *Petitioner Exhibits 6 and 7*. Mr. King also argues that the Ohio Street property sold for more than what he believes the subject property would sell for, but the taxes on the Ohio Street property were lower. *King testimony*; *Petitioner Exhibit 6*.
12. Summary of the Respondent's contentions in support of the assessment:
 - a) The Respondent admits that the property's assessment had errors. *Thomas testimony*. According to the Respondent's representative, he made a physical inspection of the Petitioner's property and determined that the house is built on a slab not on a crawl space. *Thomas testimony*; *Respondent Exhibit 2*. Therefore, the Respondent recommends that the assessed value of the land be lowered to \$10,600 and the assessed value of the house lowered to \$85,700, for a total assessed value of \$96,300 for 2006. *Id.* However, Mr. Thomas argues, the

Petitioner presented no evidence of whether the swimming pool and deck were still on the property on the March 1, 2006, assessment date. *Thomas testimony.*

- b) The Respondent further argues that the Board should give no weight to the Petitioner's evidence of his purchase price. *Thomas testimony.* According to Mr. Thomas, the Petitioner purchased the property from the Federal National Mortgage Association as a repossession. *Thomas testimony; Respondent Exhibit 2.* Therefore, Mr. Thomas argues, that purchase was not indicative of market value because it was a sale under duress. *Id.* Similarly, the Respondent admits that the property sold to the previous owner for \$84,352 on November 18, 2005, but, he argues, that sales price was also invalid. *Thomas testimony; Petitioner Exhibit 5.* According to Mr. Thomas, the drop in sales price between 2005 and 2006 suggests that the previous sale was irrelevant and, perhaps, also a repossession. *Id.*
- c) Additionally, the Respondent argues that the Petitioner's comparable sales analysis fails to raise a prima facie case. *Thomas testimony.* According to Mr. Thomas, the properties on Ohio Street and Center Drive are listed for sale in 2007 and 2008, but the valuation date for the 2006 assessment year is January 1, 2005. *Thomas testimony; Petitioner Exhibits 6 and 7.*
- d) Finally, Mr. Thomas argues that the Petitioner's taxes increased because Mr. King did not have a homestead credit on the property. *Thomas testimony.* Further Mr. Thomas argued that Mr. King's contention that property values in Clinton County have been declining even while his taxes increased is based on his own opinion and is unsupported by any evidence in the record. *Id.*

Record

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

- a) The Petition.
- b) The digital recording of the hearing.
- c) Exhibits:¹

Petitioner Exhibit 1: Death certificate for Judith Ann King,
Petitioner Exhibit 2: Request for review, Clinton County (Appeal to the
PTABOA),
Petitioner Exhibit 3: Tax record for the subject property,
Petitioner Exhibit 4: Form 131 Petition,
Petitioner Exhibit 5: Excerpt of the property's property record card,
Petitioner Exhibit 6: Real estate listing for 1708 East Ohio Street,
Petitioner Exhibit 7: Real estate listing for 609 Center Drive,

¹ Although the Petitioner listed Exhibit 8 on his exhibit list, no Exhibit 8 was submitted or discussed at the hearing.

Respondent Exhibit 1: Exhibit list,
Respondent Exhibit 2: Written summary of testimony,

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: 30-day Notice Waiver,

- 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. Mr. King failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of his property. The Respondent, however, admitted the assessment was in error. 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). 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. In Indiana, assessing officials

generally value 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 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, the valuation date was January 1, 2005. 50 IAC 21-3-3.
- d) Here, the Petitioner first contends that his property's assessment is incorrect. *King testimony*. According to Mr. King, when he purchased the property on May 11, 2006, the property did not have a swimming pool, a deck, or a privacy fence. *King testimony*. The Petitioner also contends that his house was incorrectly assessed as having a crawl space. *King testimony*. The Respondent's representative agreed that the house was actually built on a slab, but argues that the Petitioner presented no evidence whether the swimming pool and deck existed on the March 1, 2006, assessment date. *Thomas testimony; Respondent Exhibit 2*. The Respondent is correct. Although the Petitioner testified that the swimming pool and deck did not exist on May 11, 2006, there is no evidence that they were not on the property on March 1, 2006. Therefore, while the property record card should be changed to reflect that the house is built on a slab, the Petitioner failed to show that his property was improperly assessed for a pool and a deck in 2006.²
- e) A taxpayer fails to sufficiently rebut the presumption that an assessment is correct, however, 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

² Fencing is not assessed for residential properties. *Thomas testimony*.

from mere methodology to determining whether the assessed value is *actually correct*). Thus, showing an error in the property record card alone is insufficient to raise a prima facie case that the assessed value of the Petitioner's property was incorrect.

- f) The Petitioner next contends the property is over-valued based on its market value. *King testimony*. According to Mr. King, he purchased the property on May 11, 2006, for \$54,900 and the property appraised for \$65,000 at that time. However, the valuation date for the March 1, 2006, assessment is January 1, 2005. 50 IAC 21-3-3. Thus, Mr. King purchased his property almost eighteen months after the relevant valuation date. Without evidence to show how his purchase price or appraised value relates to that valuation date, the Petitioner's purchase fails to establish a prima facie case that his assessment was in error.
- g) Mr. King also argues that the assessed value of his property increased from \$84,900 in 2002 to \$104,900 in 2006, even though property values in Clinton County were declining.³ However, the 2005 assessment was based on a January 1, 1999, valuation date, while the 2006 assessment is based on a January 1, 2005, valuation date. Thus, the 2006 assessment was designed to bring values forward from January 1, 1999, to January 1, 2005. *See* MANUAL at 2, 4, 8 (making January 1, 1999, the valuation date for 2002 – 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 March 1, 2006, assessments). The Petitioner presented no evidence to show that a \$20,000 increase in the property's assessed value is unreasonable over a six year period. More importantly, each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.* Therefore, the Petitioner's evidence that his property's assessed value increased from 2002 to 2006 does not rebut the presumption that the property was accurately assessed for the March 1, 2006, assessment date.
- h) Similarly, Mr. King argues, his taxes increased from \$853.17 for 2005 pay 2006 to \$2,949.04 for the following year. *King testimony; Petitioner Exhibits 3 and 5*. The Board, however, only has jurisdiction over matters concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or county PTABOA to the Board under any law. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction or authority over matters involving the amount of taxes paid. *Id.*

³ Mr. King failed to offer any market value evidence in support of his argument that "property values are declining." Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- i) Further, the Petitioner contends that his property is over-valued based on the assessed value of other nearby properties. This argument, however, 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 the 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 the property’s assessed value does not accurately reflect its market value-in-use.⁴ *Id.*
- j) Finally, the Petitioner argues his property’s assessment is over-valued based on the listing price of two nearby properties. By comparing the assessed value of his property to the sale or listing prices of other comparable properties, Mr. King essentially relies on a “sales comparison” method of establishing the market value of the property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. Here, Mr. King only testified that the comparable properties were three bedroom houses built on a slab. Further, he makes no effort to value the differences between the properties. This falls far short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).
- k) The Petitioner failed to raise a prima facie case that his property was assessed in excess of its market value-in-use. Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Despite Mr. King’s failure to establish a prima facie case, the Respondent’s representative testified that the property previously sold in 2005 for \$84,352. *Thomas testimony*. The property record card Mr. King presented likewise shows a sale of the property for \$84,352 on November 18, 2005. *Petitioner Exhibit 5*. Sales information regarding the subject property is often the most persuasive way to prove a case. Although Mr. Thomas argues that this sale is somehow “invalid,” he presents no evidence that the sale is anything other than an arms’ length

⁴ Despite Mr. King’s contentions, however, the Board notes that Petitioner Exhibit 7 shows that the property located at 609 Center Drive has a total assessed value of \$116,800. *Petitioner Exhibit 7*. The Petitioner’s property is assessed for only \$104,900.

transaction between a willing buyer and a willing seller under no compulsion to act. *See Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977) (“Fair market value’ is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell.”). Thus, the Board finds that the Petitioner’s property is over-valued based on the previous sale in November 18, 2005, for \$84,352.

Conclusion

16. The Petitioner failed to raise a prima facie case. The Respondent, however, admitted that there were errors in the property’s assessment. Further, the Respondent’s evidence the property sold on November 18, 2005, sufficiently rebutted the presumption that the assessment was correct. Thus, the Board finds that the assessment should be changed to \$84,352, reflecting the 2005 sale price of the property.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: March 29, 2010

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>.