

REPRESENTATIVE FOR RESPONDENT:

Rafael Munoz, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Frank J. Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Rafael Munoz, and)	Petition Nos.: 71-016-07-1-5-00260
Rafael Munoz, as trustee)	71-016-07-1-5-00260B
)	
)	
Petitioner,)	Parcel Nos.: 16-2025-0818
)	16-1119-468401
)	
v.)	
)	
St. Joseph County Assessor,)	County: St. Joseph
)	
)	Assessment Year: 2007
Respondent.)	

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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 issues presented for consideration by the Board are whether the Petitioner has legal standing to appeal the subject properties' assessed values and whether the assessed values of the parcels are over-stated.

PROCEDURAL HISTORY

1. The Petitioner initiated its assessment appeals by filing written requests to the Property Tax Assessment Board of Appeals for Review of Assessment on January 7, 2009. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations on August 17, 2009.
2. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on September 24, 2009, petitioning the Board to conduct an administrative review of the properties' 2007 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana 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 June 7, 2011, in South Bend, Indiana.
5. The following persons were sworn at the hearing:
For the Petitioner:
Rafael Munoz, as property owner or trustee of the property owner,
For the Respondent:
Rosemary Mandrici, St. Joseph County Assessor.
6. The Petitioner did not present any exhibits.

7. The Respondent presented the following exhibits:

For 808 East Fifth Street:

Respondent Exhibit 1 – Property record card for the subject property,
Respondent Exhibit 2 – List of comparable properties used to adjust
market value,
Respondent Exhibit 3 – Comparable Sales Report,

For 724 West Grove Street:

Respondent Exhibit 1 – Property record card for the subject property,
Respondent Exhibit 2 – List of comparable properties used to adjust
market value.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing dated March 23, 2011,
Board Exhibit C – Hearing sign-in sheet.

9. The subject properties are houses located at 808 East Fifth Street and 724 West Grove Street, respectively.

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

11. For 2007, the PTABOA determined the assessed value of 808 East Fifth Street to be \$17,800 for the land and \$57,100 for the improvements, for a total assessed value of \$74,900. For 2007, the PTABOA determined the assessed value of 724 West Grove Street to be \$6,900 for the land and \$87,500 for the improvements, for a total assessed value of \$94,400.

12. For 2007, the Petitioner requested an assessed value of \$6,800 for the land, and \$13,700 for the improvements, for a total assessed value of \$20,500 for 808 East Fifth Street. The Petitioner requested an assessed value of \$6,900 for the land, and \$25,000 for the improvements, for a total assessed value of \$31,900 for 724 West Grove Street.

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, (3) property tax exemptions, and (4) property tax credits 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 Indiana 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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PARTIES' CONTENTIONS

17. The Petitioner's representative contends that the Petitioner's properties are over-assessed based on their purchase prices. *Munoz argument*. According to Mr. Munoz, the Petitioner purchased 808 East Fifth Street for \$18,500¹ and 724 West Grove Street for \$30,000. *Munoz testimony*. In response to questioning, Mr. Munoz admitted that both purchases occurred in 2008. *Id.* In addition, Mr. Munoz testified, the Petitioner sold 808 East Fifth Street on contract, on January 16, 2009, for \$22,500. *Id.* Mr. Munoz argues that the assessed values of the properties should be based on the purchase price closest to the date notices of the assessments are issued. *Id.*
18. Further, Mr. Munoz argues that he has the right to appeal the property's assessed value because he is the "beneficiary" of the Petitioner and the Petitioner owns both properties and the Petitioner is responsible for paying the property taxes on the properties. *Munoz argument*. According to Mr. Munoz, the Petitioner should have the right to appeal the properties' values regardless of when the properties were purchased, so long as he filed the appeal within 45 days after the county issues the assessment. *Id.*
18. The Respondent's counsel argues that the Petitioner does not have standing to appeal the properties' assessed values because it was not the owner of either property on the March 1, 2007, assessment date; nor did the Petitioner pay any part of the taxes. *Agostino argument*. In support of this argument, the Respondent submitted the property record cards for both properties. *Respondent Exhibit 1*. According to Mr. Agostino, Mr. Munoz does not appear on the list of owners shown on the property record cards. *Agostino argument*.
19. The Respondent further contends that both properties' assessed values are correct. *Mandrici testimony*. According to the Assessor, 808 East Fifth Street sold in 2008 for \$54,560. *Id.*; *Respondent Exhibit 1*. In addition, she argues, comparable sales support a value of \$86,200; whereas the property is assessed for only \$74,900. *Mandrici testimony*. Similarly, 724 West Grove Street sold in 2005 for \$102,000 and again in 2008 for

¹ The Petition states that the Petitioner purchased 505 East Fifth Street for \$20,500. *Board Exhibit A*.

\$85,000. *Id.*; *Respondent Exhibit 1*. According to Ms. Mandrici, six comparable properties sold in 2005 and 2006 ranging from \$72,400 to \$123,000, supporting the property's assessment of \$94,400. *Mandrici testimony*. The Respondent's counsel argues that the Petitioner is relying on a sale date that is too far removed from the valuation date of January 1, 2006, for the March 1, 2007, assessment. *Agostino argument*.

ANALYSIS

20. Before reaching the merits of the Petitioner's contentions, the Board must determine if Mr. Munoz had standing to bring these appeals. The Respondent contends that because the Petitioner was not the owner of the property on March 1, 2007, Mr. Munoz has no right to appeal the properties' 2007 assessments. 52 IAC 2-2-13 reads, in relevant part, "Party" means a participant in a matter governed by this article, which may include the following: (1) the owner of the property; (2) The taxpayer responsible for the property taxes payable on the subject property..." Thus, the fact that the Petitioner was not the owner of the property on the March 1, 2007, assessment date does not automatically deprive the Petitioner of standing to appeal the assessment.
21. The bigger issue is the relationship of Mr. Munoz to the property owner. For the property located at 724 West Grove Street, the owner of the property is identified as Merrifield Land Trust. Although Mr. Munoz stated that "he" purchased the property, he also testified that he is the "beneficiary" of the trust. Moreover, he signed the petition in that matter as "trustee." Therefore, Mr. Munoz appears to properly represent the Petitioner in its appeal of 724 West Grove Street. The relationship of Mr. Munoz to the property located 808 East Fifth Street is less clear. Mr. Munoz testified that "he" purchased the property for \$30,000, but he presented no evidence of his purchase or ownership of 808 East Fifth Street. More troublesome, the property record card identifies the property transferring from Judy Adams to Citimortgage, Inc. to the Federal National Mortgage Association and finally to Douglas Armstrong. Thus, there is no evidence that the Petitioner has or had any interest in the property located at 808 East Fifth Street and

therefore Mr. Munoz has failed to show that he has any standing to appeal the property's 2007 assessment.

22. Having determined that the Petitioner has standing to appeal the property located at 724 West Grove Street, the Board now turns to the merits of Mr. Munoz's appeal.
23. 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.
24. 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.
25. 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.

26. The Petitioner's representative argues that 724 West Grove Street is over-valued based on the Petitioner's purchase of the property for \$30,000. *Munoz testimony*. The purchase price of a property can be the best evidence of a property's value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). Here, however, while Mr. Munoz did not testify as to the date the property was purchased, he admitted the purchase occurred in 2008. *Munoz testimony*. Thus, the Petitioner's purchase of the property occurred at least two years after the January 1, 2006, valuation date for the March 1, 2007, assessment year. Because the Petitioner's representative did not relate the property's purchase price to its value as of the January 1, 2006, valuation date, the Petitioner failed to raise a prima facie case that 724 West Grove Street was over-valued for the 2007 assessment year. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date.)²
27. Mr. Munoz failed to show that he had standing to appeal the assessed value of 808 East Fifth Street and he failed to raise a prima facie case that 724 West Grove Street was over-valued for the March 1, 2007, assessment year.³ Where a 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. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

² Even if the Petitioner's purchase price was sufficient to raise a prima facie case that its property was over-valued for the March 1, 2007, assessment year, the county rebutted the Petitioner's case with evidence that the property sold on August 9, 2005, for \$102,000. The sale of the subject property within months of the valuation date has more weight than a sale of the property over two years after the valuation date.

³ The Board notes that the same analysis would apply to the 808 East Fifth Street property if Mr. Munoz had been found to have had standing to appeal. According to Mr. Munoz, he purchased the property in 2008 – which is more than two years after the relevant valuation date for the March 1, 2007, assessment year.

CONCLUSION

28. The Petitioner failed to show that he had standing to appeal the assessed value of 808 East Fifth Street and he failed to raise a prima facie case that 724 West Grove Street was over-valued for the March 1, 2007, assessment year. The Board finds in favor of the Respondent and holds that that the properties' assessments should not be changed.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the properties 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>