

FOR PETITIONER: Joseph Alan, Representative

FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

JANICE K. EASTERDAY,)	Petition No. 47-010-08-1-5-00061
)	
)	Parcel No. 47-06-14-301-037.000-010
Petitioner,)	
)	
v.)	
)	Lawrence County
LAWRENCE COUNTY ASSESSOR,)	Shawswick Township
)	Assessment Year: 2008
Respondent.)	

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

January 22, 2014

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

The issue on appeal in this case is whether the assessment exceeds the market value-in-use. The evidence presented by the Petitioner was insufficient to show that the 2008 assessment was incorrect.

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The property is a single family home located at 1414 10th Street in Bedford.
2. The Petitioner initiated her 2008 assessment appeal by filing a Form 130 on September 9, 2009, petitioning for a review of the assessment. The Lawrence County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its assessment determination denying her appeal on March 12, 2010.
3. The Petitioner filed a Form 131 Petition for Review of Assessment petitioning the Indiana Board of Tax Review (Board) to conduct an administrative review of the 2008 assessment. The Petitioner elected to have this matter heard pursuant to the Board's standard hearing procedures.
4. On January 28, 2013, the Board issued a Final Determination in this matter denying the Petitioner's petition for failure to appear at the hearing scheduled for July 31, 2012. The Petitioner did not appeal that determination. But on October 18, 2013, the Board set aside that Final Determination denying the petition due to a possible error in service of the Notice of Hearing for the hearing on July 31, 2012. *See Order Setting Aside Dismissal for Failure to Appear; Board Ex. B.* At the time the Order Setting Aside Dismissal for Failure to Appear was issued, a Notice of Hearing was issued scheduling a hearing for November 20, 2013. *Board Ex. B.*
5. Administrative Law Judge Elizabeth Rogers held the hearing on November 20, 2013. Neither she nor the Board inspected the property.

6. Joseph Alan represented the Petitioner and testified.¹ County Assessor April Stapp Collins and Kirk Reller, technical advisor to the County Assessor, were both sworn as witnesses, but the Assessor did not testify.

7. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Letter to Lawrence County Assessor and Board from Joseph Alan

Petitioner Exhibit 2 – Statement of Facts in support of contention that assessment is incorrect.

8. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Form 130 short received September 25, 2009

Respondent Exhibit 2 – Form 115 mailed on March 12, 2010

Respondent Exhibit 3 – Property Record Card

Respondent Exhibit 4 – Fax from Lisa Fennel

Respondent Exhibit 5 – Picture of Subject Property

Respondent Exhibit 6 – Property Record Card, 47-06-14-323-042.000-010

Respondent Exhibit 7 – Picture of Parcel Number, 47-06-14-323-042.000-010

Respondent Exhibit 8 – Sales Disclosure, 47-06-14-323-042.000-010, August 31, 2006

Respondent Exhibit 9 – Property Record Card, 47-06-14-312-011.000-010

Respondent Exhibit 10 – Picture of Property, 47-06-14-312-011.000-010

Respondent Exhibit 11 – Sales Disclosure, 47-06-14-312-011.000-010

Respondent Exhibit 12 – Property Record Card, 47-06-14-323-041.000-010

Respondent Exhibit 13 – Picture of Property, 47-06-14-323-041.000-010

Respondent Exhibit 14 – Sales Disclosure, 47-06-14-323-041.000-010, former parcel number 11 001426 00, September 25, 2006

Respondent Exhibit 15 – Property Record Card, 47-06-14-313-011.000-010

Respondent Exhibit 16 – Picture of Property, 47-06-14-313-011.000-010

Respondent Exhibit 17 – Sales Disclosure, 47-06-14-313-011.000-010, former parcel number 11 000268 00, August 29, 2006

Respondent Exhibit 18 – Spreadsheet comparing subject property to sales in area

Respondent Exhibit 19 – Aerial map showing the location of subject and comparable properties.

9. The following additional items are recognized as part of the record:

Board Exhibit A – The 131 Petition

¹ At the hearing, Joseph Alan insisted upon being called Joseph, rather than Mr. Alan. Joseph is the property owner's son-in-law and is representing her interests at the hearing. She was unable to attend due to age and poor health. *See Board Ex. B.*

Board Exhibit B – Notices of Hearing, with Order Setting Aside Dismissal for
Failure to Appear attached
Board Exhibit C – Hearing Sign in Sheet.

10. The PTABOA determined the market value-in-use of the property is \$3,900 for land and \$27,500 for improvements for a total of \$31,400. The Petitioner contends the land should be assessed for \$1,500 and the improvements for \$10,500 for a total assessment of \$12,000. *Board Ex. A.*
11. The assessment year under appeal is 2008. The valuation date for tax year 2008 is January 1, 2007.

BURDEN OF PROOF

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should 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). Recently, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

13. According to the Property Record Card, the 2007 assessment was \$31,100 and the assessment at issue is \$31,400. An increase of \$300 is less than a 5% increase. The Petitioner has the burden. *Resp't Ex. 3.*

SUMMARY OF THE PETITIONER'S CASE

14. The owner of the property, Janice Easterday, listed the property for sale in August of 2008 for \$25,000. In October, the price was lowered to \$22,900. There were no offers at this price despite the lowered price being \$8500 lower than the assessed value. *Joseph testimony.*
15. The property was listed on the internet from March to September of 2009. The initial asking price was \$19,000. Subsequently that price was lowered to \$12,000. When the price was lowered, a conditional \$12,000 offer was made, but it included repairs at Easterday's expense for approximately \$2000. The repairs were made and Easterday made a counter-offer for \$13,500. The counter offer was rejected and negotiations ended. *Joseph testimony.*
16. The Petitioner has tried to sell the property since August of 2008, but she has been unable to sell it for even \$12,000. Based on this fact, an assessment of \$31,400 is too high. The property should be assessed at \$12,000. *Joseph testimony.*
17. The subject property has an active rail line very close to the house and no street parking. *Joseph testimony.*

SUMMARY OF THE RESPONDENT'S CASE

18. The valuation date for the assessment in this case is January 1, 2007, so it is appropriate to look at sales data from January 1, 2006, to December 31, 2007, for sales comparison purposes. *Reller testimony.*
19. Four comparison sales occurred in the same general neighborhood during the designated time. *Resp't Exs. 18-19.*

20. The subject property was built in 1920 and is 768 square feet. *Resp't Exs. 3. It is considered in average condition and grade D+1. Resp't Ex. 3; Reller testimony.*
21. The first comparable is 1315 Q Street. *Resp't Exs. 6-8. This property was built in 1900 and is 920 square feet. Resp't Ex. 6. It is considered average condition and grade D. Resp't Ex. 6. It sold for \$42,000 on March 1, 2007. Resp't Exs. 8, 18.*
22. The second comparable is 1511 11th Street. *Resp't Exs. 9-11. This property was built in 1895 and is 966 square feet. Resp't Ex. 9. It is considered in good condition and is a D+1 grade. Resp't Ex. 9. It sold for \$51,500 on June 5, 2007. Resp't Exs. 11, 18.*
23. The third comparable is 1311 Q Street. *Resp't Exs. 12-14. This property was built in 1895 and is 954 square feet. Resp't Ex. 9. It is considered in good condition and is grade C-1. Resp't Ex. 12. It sold for \$59,000 on September 8, 2006.² Resp't Exs. 14, 18.*
24. The forth comparable is 1518 11th Street. *Resp't Exs. 15-17. This property was built in 1900 and is 808 square feet. Resp't Ex. 15. It is considered in good condition and is D+2 grade. Resp't Ex. 15. This property sold for \$50,000 on August 29, 2006. Resp't Exs. 17-18.*
25. All of the comparables are located near the subject property. *Reller testimony; Resp't Exs. 18-19. The comparables do not have adjacent rail lines, but rail lines are very common in Bedford. Reller testimony. Because rail lines are so common in Bedford, there generally is no difference in value for a property with a rail line in comparison to a property without an adjacent rail line. Reller testimony.*
26. A \$10,000 - \$15,000 sale price in Bedford is very rare. A property selling for that price would likely be a shack or a property in poor condition. *Reller testimony.*

² The Assessor's Exhibit 18 is a spreadsheet showing the sales data of the subject property and the comparable properties. It states that 1311 Q Street sold for \$52,000. The sales disclosure form for this property shows that this property sold for \$59,000. The different number appears to be a mistake on Exhibit 18.

ANALYSIS

27. In 2008, Indiana's real property tax assessments were to reflect a property's "market value-in-use" as of January 1, 2007. *See* Ind. Code § 6-1.1-31-6(c)(2006); 2002 Real Property Assessment Manual (incorporated by reference at 50 IAC 2.3-1-2 (2002 Supp.)). Market value-in-use is the value of a property "for its current use, as reflected by the utility received by the owner or a similar user, from the property." Manual at 2. Generally, a property's market value-in-use "may be thought of as the ask price of property by its owner, because this value . . . represents the utility obtained from the property [] and . . . how much utility must be replaced to induce the owner to abandon the property." *Id.* at 2. In markets where property types are frequently exchanged and used by both buyer and seller for the same general purpose, a sale will be representative of utility and market value-in-use will equal value-in-exchange. *Id.* at 2.
28. An assessment is presumed correct, but a taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
29. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2008 assessment is January 1, 2007. 50 IAC 21-3-3 (2006).
30. In this case, the Petitioner is attempting to use listing prices rather than a selling price to establish value. She claims that the assessment is wrong based on her inability to sell this property in 2008 and 2009 for a price well below the disputed assessment.

31. More specifically, she claimed that the land value is assessed too high based on the fact that she was unable to sell the property in late 2008 through 2009 for an amount between \$12,000 to \$25,000. The Petitioner first listed the property for sale with Remax in August of 2008 for \$25,000. Soon after, the price was lowered to \$22,900. The property received no offers at this price. The property was then listed on the internet from March to September of 2009 for \$19,000. The asking price was eventually lowered to \$12,000 and it still did not sell.
32. The Petitioner's argument fails because she failed to show how her evidence related to the required valuation date of January 1, 2007. The time period of August of 2008 through September of 2009 is beyond both the assessment date and the appropriate valuation period, which included January of 2006 to December of 2007. The Petitioner offered no other evidence as to the purportedly "correct" valuation of the property other than the fact that she could not sell it for a range of \$25,000 to \$12,000 during the period of August of 2008 to September of 2009. With only this evidence, the Petitioner failed to make a prima facie case that the 2008 assessment needs to be changed.
33. When a taxpayer fails to provide probative evidence supporting the position 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); *Whitley*, 704 N.E.2d at 1119.

CONCLUSION

34. The Board finds in favor of the Respondent. The 2008 assessment will not be changed.

This Final Determination of the above captioned matter is issued by the Board.

Commissioner, Indiana Board of Tax Review

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- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.