

REPRESENTATIVE FOR PETITIONER:
Kenneth E. Drapinski, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Frank J. Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kenneth E. Drapinski,)	Petition Nos.: 71-026-07-1-5-02170
)	71-026-08-1-5-02576
Petitioner)	
)	Parcel No.: 71-09-18-432-006.000-026
v.)	
)	County: St. Joseph
St. Joseph County Assessor,)	Township: Portage
)	
Respondent.)	Assessment Years: 2007 and 2008

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

June 25, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Although the Petitioner, Kenneth Drapinski, showed that his home suffered from deferred maintenance, he did nothing to quantify the property’s market value-in-use or even to show a likely range of values for the property. Nonetheless, the Assessor conceded that

the property's assessment should be reduced to \$16,000 for both assessment years under appeal, and the Board orders that those assessments be changed accordingly.

Procedural History

2. Mr. Drapinski filed separate Form 130 petitions with the St. Joseph County Assessor contesting the subject property's March 1, 2007 and March 1, 2008 assessments. On December 14, 2009, the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") issued a determination lowering the property's 2007 assessment, but not to the level that Mr. Drapinski requested. The PTABOA denied Mr. Drapinski's 2008 appeal via a "corrected" determination dated June 16, 2011. Mr. Drapinski filed Form 131 petitions with the Board for both assessment years.
3. The Board originally scheduled a hearing on Mr. Drapinski's 2007 appeal for January 31, 2012. That hearing was continued and rescheduled for March 28, 2013. On that date, the Board's administrative law judge, Joseph Stanford ("ALJ"), held a hearing on both of Mr. Drapinski's petitions. Neither the Board nor the ALJ inspected the property.

Hearing Facts and Other Matters of Record

4. The following people were sworn in and testified:
 - For the Mr. Drapinski: Kenneth E. Drapinski
Michael-Lynn Goble
 - For the Assessor: Rosemary Mandrici, St. Joseph County Assessor
5. Mr. Drapinski offered the following exhibits, all of which the ALJ admitted over the Assessor's relevancy objection:
 - Petitioner Exhibit 1: Photograph of water damage in kitchen ceiling
 - Petitioner Exhibit 2: Close-up photograph of water damage in kitchen ceiling
 - Petitioner Exhibit 3: Photograph of water damage in bedroom ceiling
 - Petitioner Exhibit 5: Photograph of bathroom with no sink
 - Petitioner Exhibit 6: Photograph of bathroom with no bathtub
 - Petitioner Exhibit 7: Photograph of bathroom with no toilet
 - Petitioner Exhibit 8: Photograph of water damage in ceiling

- Petitioner Exhibit 9: Photograph of arson and water damage to back porch ceiling
- Petitioner Exhibit 11: Close-up photograph of back porch
- Petitioner Exhibit 12: Close-up photograph of back porch and kitchen
- Petitioner Exhibit 13: Photograph of broken step near second floor
- Petitioner Exhibit 15: Photograph of roof over back porch
- Petitioner Exhibit 16: Photograph of the view from second-story back bedroom
- Petitioner Exhibit 17: Photograph of the view from second-story back bedroom, to the right
- Petitioner Exhibit 24: Copies of photographs of roof above porch
- Petitioner Exhibit 25: Printout from Assessor's website dated 2/3/2010 with listing of property sales
- Petitioner Exhibit 26: Screenshot with listing of property sales

6. The Assessor offered the following exhibit, which the ALJ admitted over Mr. Drapinski's objection:

- Respondent Exhibit 1: Comparable sales report, date of comparison 3/25/2013
- Respondent Exhibit 2: Comparable sales report, date of comparison 3/28/2013

7. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A: Form 131 petitions
- Board Exhibit B: Hearing notices
- Board Exhibit C: Hearing sign-in sheet

8. The subject property contains a home located at 1922 Randolph Street in South Bend.

9. The PTABOA determined the following assessments for the subject property:

Year	Land	Improvements	Total
March 1, 2007	\$2,000	\$44,000	\$46,000
March 1, 2008	\$2,000	\$43,700	\$45,700

10. On his Form 131 petitions, Mr. Drapinski requested assessments of \$23,000 for 2007 and \$14,000 for 2008.

Administrative Review and the Parties' Burdens

11. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect 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). The taxpayer must explain how each piece of evidence relates to its 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”). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Summary of Mr. Drapinski's Evidence and Arguments

12. The subject property is assessed too high in light of the home's extremely poor condition. The home suffers from extensive deferred maintenance due to Mr. Drapinski's limited income and ailing health. A leaky roof has caused severe water damage. The home also has damage from arson. While the photographs depicting this damage were taken in early 2012, the property was in similar condition in 2007 and 2008, except for the arson damage, which occurred later. *Drapinski, Goble testimony; Pet'r Exs. 1-24.*
13. Five or six years ago, a man verbally offered Mr. Drapinski \$15,000 for the subject property, but the man wanted to repair the home first. The man began making repairs, which included throwing a bathtub and toilet “out the back door,” but he later lost interest in the property. *Drapinski testimony.* The property is likely only worth \$5,000 now. *Goble testimony.*
14. The Assessor failed to inspect the home's interior despite having two appointments to do so. And the homes on the Assessor's comparable sales reports are in much better condition than the subject home. Even if the homes were comparable, the Assessor chose

the highest sale price in her report. To counter the Assessor's position, Mr. Drapinski offered two documents that he got from the Assessor's office listing various sales between 2005 and 2009. Those properties sold for prices ranging from \$15,000 to \$25,000. *Drapinski testimony; Pet'r Exs. 25-26.*

Summary of the Assessor's Evidence and Arguments

15. An employee from the Assessor's office twice attempted to inspect the subject house's interior, but nobody was home at the scheduled appointment times. *Mandrici testimony.* Mr. Drapinski's photographs were taken in 2012 and are therefore irrelevant to the subject home's condition as of the two assessment dates at issue in these appeals. *Agostino argument.*
16. Nonetheless, the Assessor agrees that the subject property is in poor condition. In fact, despite the value of \$51,000 as shown in her comparable sales report, the Assessor believes that the property was worth \$16,000 for both assessment years.¹ *Mandrici testimony; see also, Resp't Ex. 2.*

Discussion

17. Indiana assesses real property based on its true tax value, which the Manual defines 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). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice ("USPAP") often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) *reh'g den. sub nom.* A party may also offer actual construction costs, sales information for the

¹ In his closing argument, the Assessor's counsel said that the Assessor had conceded a value of \$16,500. But the Assessor actually testified she believed the property was worth \$16,000.

subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

18. The bulk of Mr. Drapinski's evidence consists of photographs from 2012 depicting the subject home's condition and his testimony that the home was in substantially the same condition on the March 1, 2007 and March 1, 2008 assessment dates. Those photographs show significant deferred maintenance. But Mr. Drapinski did not offer any probative evidence to quantify the effect of that deferred maintenance on the subject property's market value-in-use or even to show a likely range of values for the property. Thus, without more, Mr. Drapinski's photographs are not enough to make a prima facie case for changing the subject property's assessment.
19. Mr. Drapinski also offered evidence showing the sale prices for several other properties. But he did little to explain how those properties compared to the subject property or how any differences affected the properties' relative values. Those sale prices therefore have little or no probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72. (Ind. Tax Ct. 2005) (holding that sales data lacked probative value where taxpayers failed to explain how the characteristics of their property compared to the characteristics of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).
20. While Mr. Drapinski failed to make a prima facie case for reducing the subject property's assessment, the Assessor conceded that the property was worth only \$16,000 for both 2007 and 2008. The Board accepts the Assessor's concession.

SUMMARY OF FINAL DETERMINATION

21. Mr. Drapinski failed to make a prima facie case. The Board, though, accepts the Assessor's concession that the subject property's assessment should be reduced to \$16,000 for both March 1, 2007, and March 1, 2008.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>>.