
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Francis Edward Paschal,)	Petition No. 48-003-08-1-5-08263
)	Parcel No. 481101304014000003
Petitioner,)	(Old County Parcel No. 18 710-1B)
)	
v.)	
)	Madison County
Madison County Assessor,)	Anderson Township
)	2008 Assessment
Respondent.)	

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

May 19, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

Did the Petitioner prove that his assessment as of March 1, 2008, is not the market value-in-use of the subject property and did the Petitioner prove what the correct assessment would be?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The property is a single family residence located at 807 Hickory Street in Anderson.
2. On May 19, 2010, the Madison County Property Tax Assessment Board of Appeals issued its determination that the property's 2008 assessment is \$54,700 for land and \$74,700 for improvements (total \$129,400).
3. On June 29, 2010, the Petitioner filed a Form 131 Petition seeking the Board's review of that determination. The Form 131 stated the assessed value should be \$18,800 for land and \$60,000 for improvements (total \$78,800).
4. Paul Stultz, the Board's designated Administrative Law Judge, held the hearing on March 3, 2011. He did not conduct an on-site inspection of the property.
5. Francis E. Paschal, his son Mark A. Paschal, and County Assessor Larry Davis were sworn as witnesses.
6. The Petitioner presented one exhibit, which is a spreadsheet with data about various assessments and sale prices.
7. The Respondent presented one exhibit, which is the property record card for the subject property.
8. The following additional items are recognized as part of the record:
 - Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign in Sheet.

SUMMARY OF THE PETITIONER'S CASE

9. The taxes on the subject property were static for years prior to 2008. Then the 2008 assessment increased by 310%, an amount not in line with market values. The following year the assessment was reduced to an amount consistent with prior assessments. The Petitioner could not sell the property for its assessed amount. *M. Paschal testimony.*
10. The assessed value of the Petitioner's land is more than \$20,000 per acre. Land located at 713 Hickory Street is the only other neighborhood property that is assessed at an amount close to the subject's value per acre. Other properties in the neighborhood are assessed in the \$3,000 to \$5,000 range and do not support the Petitioner's land assessment. *M. Paschal testimony; Pet'r Ex. 1.*
11. Although the home is in the proximity of a country club, railroad tracks separate the Petitioner's property from the club's golf course. *M. Paschal testimony.*
12. Water from adjoining properties flows onto the Petitioner's land. *F. Paschal testimony.*

SUMMARY OF THE RESPONDENT'S CASE

13. The subject property was assessed using guidelines from the State. *Davis testimony; Resp't Ex. 1.*
14. The land value increased substantially as a result of trending. *Davis testimony; Resp't Ex. 1.*
15. The land value increased because properties on Hickory Street are adjacent to a golf course, although those homes and golf course are separated by railroad tracks. The properties on Indiana Avenue identified by the Petitioner do not abut the golf course. *Davis testimony.*

16. The PTABOA made a market adjustment and reduced the total assessed value by decreasing the value of the improvements by 30%. The assessment under appeal is now similar to that of the property the Petitioner presented as comparable. *Davis testimony*.
17. The properties identified by the Petitioner are all smaller than the property under appeal. Therefore, their assessments are proportionately smaller. *Davis testimony*.

ADMINISTRATIVE REVIEW AND BURDEN

18. 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).
19. 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”).
20. 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.

ANALYSIS

21. The Petitioner complained that taxes on his property increased dramatically in 2008. But several factors determine a tax bill. The Board is a creature of the legislature. It has only the powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002), *citing Matonovich v. State Bd. of Tax Comm’rs*, 705 N.E.2d

1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). And Ind. Code § 6-1.5-4-1 gives the Board authority to determine appeals concerning assessed valuation, deductions, or exemptions, but not tax bills.

22. The Petitioner also complained that his 2008 assessment is significantly more than prior years or subsequent years. Each tax year, however, stands on its own. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). Consequently, assessments in other years have no relevance or probative value to this case.

23. Real property is assessed on the basis of its “true tax value,” which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are generally accepted techniques to calculate market value-in-use. The primary method for assessing officials to determine market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. 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.

24. A taxpayer cannot rebut the presumption that his assessment is correct without presenting evidence of his property’s market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-678 (Ind. Tax Ct. 2006). *See also Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). In this case, however, the Petitioner failed to present any such evidence.

25. The Petitioner attempted to use sales and assessments of other neighborhood properties to prove what a more accurate assessment would be. In order to effectively use any comparison approach, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “comparable” or “similar” or “superior” to another property do not constitute probative evidence. One must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). The Petitioner did not provide any such analysis. He provided only minimal comparison of similarities and differences. Even for the comparison factors that the Petitioner identified, he failed to meaningfully deal with how differences affected the relative values. It is impossible to draw any legitimate conclusion about the subject property from the purported comparables the Petitioner offered.
26. Furthermore, simply comparing assessments (rather than sales) is problematic. The Tax Court has held that it is not enough for a taxpayer to show his own property is assessed higher than comparable properties. *Westfield Golf*, 859 N.E.2d at 399. Instead, the taxpayer must present probative evidence that the assessed value as determined by the assessor is not an accurate market value-in-use. *Id.*; *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (focus is on determining whether the assessed value is actually correct.)
27. Finally, the Petitioner briefly mentioned a water problem on the subject property. From what was presented it is impossible to tell how extensive or how frequent the problem is. A water problem certainly could have a negative impact on value, but merely establishing the existence of such a situation is not enough to require changing the assessment. Assuming that standing water reduces value, the critical point becomes measuring that reduction. Again, to make his case, the Petitioner was required to offer probative evidence about what a more accurate valuation would be, but he failed to do so.

28. 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 Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

SUMMARY OF FINAL DETERMINATION

29. The Petitioner failed to make a prima facie case for a lower assessed value. The Board finds in favor of the Respondent. The assessment will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.

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, 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>