

REPRESENTATIVE FOR PETITIONERS:
Rev. Ralph J. & Tierney A. Scantlin, Pro Se

REPRESENTATIVES FOR RESPONDENT:
F. John Rogers, Allen County Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Rev. Ralph J. and Tierney A. Scantlin,)	Petition No.: 02-067-03-1-5-00491
)	Parcel: 02-12-30-277-001.000-067
Petitioners,)	
)	
v.)	
)	County: Allen
Wayne Township Assessor,)	Township: Wayne
)	
Respondent.)	Assessment Year: 2003

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

August 3, 2007

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

ISSUE

1. *Should the Board sustain the Respondent's objection to the admission of an appraisal report offered by the Petitioners on grounds that the Petitioners did not follow the Board's procedural rules for pre-hearing disclosures?*
2. *Did the Petitioners make a prima facie case that the subject property is assessed for more than its market value-in-use?*

PROCEDURAL HISTORY

3. The Petitioners, Rev. Ralph J. and Tierney A. Scantlin, initiated an assessment appeal by written document dated October 26, 2004. The PTABOA issued notice of its decision on April 3, 2006.
4. The Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment ("Form 131 petition") on May 1, 2006. The Board has jurisdiction over the Petitioners' appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. The Board held an administrative hearing on May 10, 2007, in Fort Wayne, Indiana before Alyson Kunack, the Board's duly designated Administrative Law Judge ("ALJ").
6. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Ralph J. & Tierney A. Scantlin, Petitioners
Glen Ellenberger, witness

For the Respondent:

Sam Walker, Chief Deputy, Wayne Township Assessor

Beverly Zuber, Wayne Township Assessor

7. John Rogers, the Wayne Township Attorney, was also present at the hearing on behalf of the Respondents.
8. The Petitioners offered two exhibits. The Respondent objected to Petitioners' Exhibit 1, and the Board sustains that objection. Petitioners' Exhibit 2 was admitted into evidence without objection. The following is a description of those exhibits:
 - Petitioners' Exhibit 1 – Appraisal of the subject property as of April 24, 2006
 - Petitioners' Exhibit 2 – Photographs of the subject property and surrounding area
9. The Respondent offered the following exhibits, all of which were admitted into evidence:
 - Respondent's Exhibit A – Summary of Respondent's testimony
 - Respondent's Exhibit B – Notice of Hearing
 - Respondent's Exhibit C – Allen County PTABOA appeal form
 - Respondent's Exhibit D – PTABOA determination
 - Respondent's Exhibit E – PTABOA Findings and Conclusions
 - Respondent's Exhibit F – Subject property record card (PRC)
 - Respondent's Exhibit G – Photograph of subject property
 - Respondent's Exhibit H – Aerial photograph of subject property
 - Respondent's Exhibit I – Trending of 2006 sales for subject area
 - Respondent's Exhibit J – List of sales for subject neighborhood
10. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 131 Petition
 - Board Exhibit B – Notice of Hearing dated April 2, 2007.
 - Board Exhibit C – Hearing Sign-in sheet
 - Board Exhibit D – Appearance of Counsel on behalf of Respondent
 - Board Exhibit E – Respondent's List of Witnesses & Exhibits
 - Board Exhibit F – Respondent's Exhibits and Summary of Witness Testimony
11. The subject property is a single-family residence located at 5431 Sandpoint Road, Fort Wayne, Indiana.
12. The ALJ did not inspect the property.

13. The PTABOA determined that the assessed value of the property is \$18,600 for the land and \$78,300 for the improvements for a total assessed value of \$96,900.
14. At hearing, the Petitioners requested a total value of \$68,000.

OBJECTIONS

15. The Respondent objected to the admission of the Petitioners' Exhibit 1, an appraisal report for the subject property prepared by Joan I. Randall. The Respondent asserted three separate grounds for its objection. First, the Respondent argued that the Petitioners failed to comply with pre-hearing disclosure requirements set forth in 52 Ind. Admin. Code, r. 2-7-1. Second, the Respondent argued that the appraisal report is hearsay, because the appraiser was not present at the hearing. Finally, the Respondent argued that the appraiser estimated the subject property's value as of April 2006, while the assessment date in dispute is March 1, 2003. *Rogers argument*. As permitted by 52 IAC 2-7-2(a), the ALJ deferred ruling on the Respondents objection.
16. The Board need not address the Respondent's second and third asserted grounds for excluding the appraisal report because it sustains the Respondent's objection based upon the Petitioners' failure to comply with the Board's rules for pre-hearing disclosures. The Board's procedural rules clearly state that each party must provide all other parties a list of the witnesses and exhibits it intends to offer at least 15 business days before any administrative hearing and copies of documentary evidence and summaries of its witnesses' anticipated testimony at least five business days before the hearing. 52 IAC 2-7-1(b)(2). The Board may exclude evidence based on a party's failure to comply with those deadlines. 52 IAC 2-7-1(f). The Board also may waive those deadlines for materials that were submitted at the PTABOA hearing below. 52 IAC 2-7-1(d).
17. Here, the Petitioners do not contend that they served the Respondent with an exhibit list or a copy of Ms. Randall's appraisal report. Instead, Ms. Scantlin testified that she "sent-in" the appraisal report more than a year before the hearing. *T. Scantlin testimony*.

Indeed, the appraisal report was attached to the Form 131 petition that the Petitioners filed with the Allen County Assessor.¹ While one might be tempted to assume that the Allen County Assessor provided a copy of the appraisal report to the Respondent along with the Petitioners' Form 131 petition long before 52 IAC 2-7-1(b)'s exchange deadlines, Mr. Rogers indicated that he had not seen the appraisal report before the hearing. The Petitioners could have removed any ambiguity regarding whether the Respondent received the appraisal report by simply following the Board's pre-hearing disclosure rules, which are clearly stated on the notice scheduling the May 10, 2007, administrative hearing. Given that the appraisal report was central to the Petitioners' case, their failure to assure that the Respondent received a copy of that report until the day of the hearing significantly prejudiced the Respondent.

18. This case therefore differs from one where a party has not followed the Board's pre-hearing disclosure rules, but the disputed evidence was submitted at the PTABOA hearing below. The Board's rules explicitly anticipate waiving 52 IAC 2-7-1(b)(2)'s disclosure deadlines in such cases. 52 IAC 2-7-1(d). But the opposing party is not prejudiced under those facts. As a party to the PTABOA appeal, the opposing party had actual or constructive notice of the evidence well before the Board's hearing, and it could have anticipated that its opponent would continue to rely on that evidence. Here, by contrast, the Respondent could not prepare to address an appraisal report that, through no fault of its own, it did not even know existed.

19. And the appraisal report would not help the Petitioners even if it were admissible. The 2002 Real Property Assessment Manual ("Manual") provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Thus, where a party relies on an appraisal performed substantially after January 1, 1999, it must explain how that appraisal relates to the subject property's value as of January 1, 1999. Failure to do so deprives the appraisal of probative value. *See e.g., Long v. Wayne*

¹ The appraisal report is no longer attached to the Form 131 petition. At the hearing, the ALJ removed the appraisal from the Petition and labeled it as Petitioners Exhibit 1.

Twp. Assessor, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). Here, Ms. Randall's appraisal report estimates the subject property's value as of April 24, 2006—more than seven years after the relevant valuation date and four years after the assessment date. The Petitioners, however, did not explain how Ms. Randall's estimate related to the subject property's value as of January 1, 1999.

ADMINISTRATIVE REVIEW AND THE PETITIONERS' BURDEN

20. A petitioner seeking review of an assessing official's has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
21. In making its case, the taxpayer must explain how each piece of evidence is relevant 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”).
22. 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 OF MERITS

Parties' Contentions

23. The subject property sits across the street from a landfill, which the Petitioners can see from the front of their home. *See Pet'rs Ex. 2*. The only street separating the subject property and the landfill is Standpoint Road, the street on which the subject property is

located. The strong and unpleasant smell from the landfill often reaches the subject property. *T. Scantlin testimony*.

24. According to the Petitioners, the landfill is the only possible buyer for the subject property, and the landfill has not shown any interest in purchasing the property. The landfill has bought properties on the opposite side of the street, but none on the Petitioners' side of the street. And the landfill has indicated that it will not be buying any homes in 2007. *Id.*
25. Some property sales in the area involved the landfill buying neighboring homes and they brought generous prices. *Ellenberger testimony*. The Petitioners contend that using those sales to determine the subject property's value can be misleading because value depends greatly on location. For example, a property with a lake view is more valuable than one without such a view. The subject property's location, however, has the opposite effect on its value. *Ellenberger argument*.
26. The Respondent agrees that, because the current system requires assessments to be based on market value-in-use, only sales where the buyer intends to use the property for the same purposes as the seller should be analyzed. The Respondent described those transactions as "buyer-to-buyer" sales. *Walker testimony*. There were only two buyer-to-buyer sales in the subject property's area, and those sales support the respective properties' assessments. *See Resp't Ex. J*. The Respondent was unable to find any information showing that the landfill's presence is affecting sale prices. *Walker testimony*.

Discussion

27. The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real property 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 2 (incorporated by reference at 50 IAC 2.3-1-2). As

related in the Manual, the appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”).

28. A property's market value-in-use, as determined by applying the Guidelines' cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may offer evidence to rebut that presumption, provided such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. An appraisal prepared in accordance with the Manual's definition of true tax value generally will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also rely upon sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
29. While the Petitioners and Mr. Ellenberger all testified to their belief that the neighboring landfill affected the subject property's market value, they did not present any admissible evidence to quantify the extent to which it did so. Indeed, the only market-based evidence that the Petitioners offered was Ms. Randall's appraisal report, which the Board has excluded in response to the Respondent's objection. And, as explained above, Ms. Randall's appraisal report would not have helped the Petitioners given their failure to relate Ms. Randall's value estimate to the subject property's market value-in-use as of the relevant valuation date of January 1, 1999.
30. The Petitioners therefore failed to establish a prima facie case in support of their claims.

SUMMARY OF FINAL DETERMINATION

31. The Petitioners failed to make a prima facie case. The Board finds for the Respondent.

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

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>