

REPRESENTATIVE FOR PETITIONER:

James A. Strode, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Dana M. Myers, Clinton County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

James A. Strode,	)	Petition No:	12-016-08-1-5-10000
)		
Petitioner,	)	Parcel No:	12-10-02-476-002.000-021
)		
v.	)	County:	Clinton
	)	Township:	Center
Clinton County Assessor,)		
)		
Respondent.	)	Assessment Year:	2008

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

May 18, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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. The issue presented for consideration by the Board is whether the assessed value of the Petitioner's property is overstated.

PROCEDURAL HISTORY

2. The Petitioner, James A. Strode, initiated his assessment appeal by filing a "Request for Review" with the Clinton County Assessor on December 18, 2008. The Clinton County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on September 28, 2010. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Strode filed a Form 131 Petition for Review of Assessment on November 3, 2010, petitioning the Board to conduct an administrative review of his petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on March 15, 2011, in Frankfort, Indiana.
4. The following persons were sworn and presented testimony at the hearing:¹

For the Petitioner:

James A. Strode, property owner
William Seibert, contract purchaser of the property

For the Respondent:

Dana M. Myers, Clinton County Assessor
Jada Ray, Clinton County Deputy Assessor
Brian Thomas, Ad Valorem Solutions

¹ Mr. Seibert, Ms. Myers and Ms. Ray were sworn in as witnesses but did not present any testimony.

5. The Petitioner presented a contract for sale of real estate, which is labeled Petitioner Exhibit 1. The Petitioner also offered testimony about an appraisal that was attached to his Form 131 petition, which is labeled Board Exhibit A.
6. The Respondent presented a written summary which is labeled Respondent Exhibit A.
7. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated January 20, 2011,
Board Exhibit C – Hearing sign-in sheet.

8. The subject property is a 1,455 square foot house and utility shed located at 1836 Washington Avenue, Frankfort, Center Township in Clinton County.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2008, the PTABOA determined the assessed value of the Petitioner's property to be \$18,000 for land and \$28,700 for the improvements, for a total assessed value of \$46,700.
11. For 2008, the Petitioner contends the total assessed value of his property should be \$25,000.

JURISDICTIONAL FRAMEWORK

12. 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, and (3) property tax exemptions, 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

13. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. 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 Township 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”).
15. 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.

PETITIONER’S CONTENTIONS

16. The Petitioner contends that his property was over-assessed for the March 1, 2008, assessment based on its appraised value. *Strode testimony*. In support of his position, the Petitioner submitted a residential appraisal report prepared in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) by Kristen L. Beardsley and Stephen L. Harris of Appraisals by Harris. *Board Exhibit A*. Ms. Beardsley and Mr. Harris are Indiana certified appraisers. *Id*. In their appraisal report, the appraisers estimated the property’s value to be \$25,000 as of November 12, 2008. *Id*.
17. Additionally, the Petitioner contends his property was valued incorrectly based on his sale of the property. *Strode testimony*. According to Mr. Strode, the property under

appeal was sold on contract on December 31, 2010, for \$32,500 after being on the market for approximately a year and a half. *Id.*; *Petitioner Exhibit 1*.

RESPONDENT'S CONTENTIONS

18. The Respondent's representative contends that the property under appeal was correctly assessed at \$46,700 for the March 1, 2008, assessment. *Thomas testimony*. According to Mr. Thomas, the PTABOA recognized that the subject property was a garage converted into living quarters, and applied 40% economic obsolescence to the structure. *Id.*; *Respondent Exhibit A*. Mr. Thomas testified that the PTABOA calculated the obsolescence by using the median sales prices from two of the comparable sales in the Petitioner's appraisal,² which resulted in a value of \$37.49 per square foot. *Id.* The PTABOA then discounted the \$37.49 per square foot by 15% based on the appraiser's estimate that the average house price had fallen 15% in the previous year, which resulted in a per square foot price of \$32.00. *Id.* Finally, the PTABOA multiplied the Petitioner's house's living area by the \$32.00 per square foot to arrive at the property's assessed value of \$46,700. *Id.* Thus, the Respondent's representative concludes, the Petitioner's property is not over-valued. *Thomas testimony*.

19. The Respondent's representative further argues that the Petitioner's 2008 appraisal should be given little weight. *Thomas testimony*; *Respondent Exhibit A*. According to Mr. Thomas, the Petitioner's appraised value is more than one year and ten months removed from the proper valuation date. *Id.* In addition, the Respondent's representative contends, two of the comparable sales used in the appraisal were not valid sales because they were real estate owned properties.³ *Id.* Moreover, the Respondent's representative argues, the appraiser was not made available to the county to answer questions about the appraisal. *Id.*

² The PTABOA deemed that the second comparable sale, which sold in twenty days, had insufficient exposure to the market to be a valid sale.

³ "Real estate owned" is a class of property owned by a lender, typically a bank, government agency or government loan insurer after an unsuccessful sale at a foreclosure auction. See William Roark (2006), *Concise Encyclopedia of Real Estate Business Terms*.

ANALYSIS

20. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment 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 (MANUAL) (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 use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the GUIDELINES).
21. A property’s assessment, determined 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.
22. 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, 2008, assessment date, the valuation date is January 1, 2007. 50 IAC 21-3-3.

23. The Petitioner first argues that his property is over-valued based on its appraised value. *Strode testimony*. In support of this contention, the Petitioner offered an appraisal report prepared by Indiana certified appraisers in which the appraisers estimated the value of his property to be \$25,000 as of November 12, 2008. *Board Exhibit A*. The appraisers certified that the report conformed to USPAP. *Id.* Appraisals performed in accordance with generally recognized appraisal principles are often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the appraisal estimates the property's value approximately 23 months after the relevant valuation date of January 1, 2007. Because the Petitioner did not relate the property's November 12, 2008, appraised value to the property's value as of the January 1, 2007, valuation date, the appraisal lacks probative value. *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).
24. The Petitioner also contends that his property is over-valued based on its sale price. *Strode testimony*. According to Mr. Strode, he sold the property on contract for \$32,500 on December 31, 2010. *Strode testimony; Petitioner Exhibit 1*. The Indiana Tax Court has held that the purchase 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, the sale was in 2010. Again, this sales date is too far removed from the January 1, 2007, valuation date at issue in this appeal. Thus, the Petitioner failed to raise a prima facie case that his property was over-assessed for the March 1, 2008, assessment.
25. Where a taxpayer fails to provide probative evidence 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

26. The Petitioner failed to raise a prima facie case that his property was over-valued for the March 1, 2008, assessment year. The Board finds in favor of the Respondent and holds that the property's assessed value should not be changed.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.