

REPRESENTATIVE FOR PETITIONER:

William Finks, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Judy Lewis, Cass County Assessor

Brian Thomas, County Representative, Ad Valorem Solutions

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

William and Janet Finks,	)	Petition No:	09-025-06-1-5-00223
)		
Petitioners	)	Parcel No:	2511084004
)		
v.)		
	)	County:	Cass
Cass County Assessor,	)	Township:	Eel
)		
Respondent.	)	Assessment Year:	2006

Appeal from the Final Determination of
Cass Property Tax Assessment Board of Appeals

July 22, 2009

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 subject property is overstated.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, William Finks filed a Form 131 Petition for Review of Assessment on July 1, 2008, petitioning the Board to conduct an administrative review of the above petition. The Cass County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on June 20, 2008.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on April 29, 2009, in Logansport, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

William Finks, Owner

For the Respondent:

Judy Lewis, Cass County Assessor

Brian Thomas, County Representative, Ad Valorem Solutions

5. The Petitioners requested Board Exhibit A be incorporated as Petitioner Exhibit 1, which included the following exhibits:

Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131; Notification of Final Assessment Determination – Form 115, dated June 20,

2008; letter from Shelby Ridenour, Eel Township Assessor to William and Janet Finks, dated April 29, 2008; Township Conference sheet, dated May 1, 2008; property record card for Parcel No. 2511084004; and Cass County Request for Review sheet, dated July 9, 2007.

6. The Respondent presented the following exhibits:

Respondent Exhibit A – Respondent’s testimony brief,
Respondent Exhibit B – Four exterior photographs of the property under appeal,
Respondent Exhibit C – Property record card for 117 10th Street, Logansport,
Respondent Exhibit D – Notice of Appearance of Consultant on Behalf of Assessor, dated April 29, 2009,
Respondent Exhibit E – Verification by Local Government Representative pursuant to 52 IAC 1-1-3.5 (b).

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated February 18, 2009,
Board Exhibit C – Hearing sign-in sheet.

8. The subject property is a 1,604 square foot residential dwelling on a 65’ x 224’ lot located at 1701 Michigan Avenue, Logansport, Eel Township in Cass County.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2006, the PTABOA determined the assessed value of the property to be \$9,700 for land and \$42,600 for the improvements, for a total assessed value of \$52,300.
11. On their petition, the Petitioners contend the total assessed value of the property should be \$35,000 for 2006.

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 Ind. 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, 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).
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. Wash. 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”).
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 evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

PARTIES' CONTENTIONS

16. The Petitioners contend that the property is overvalued. *Finks testimony*. According to Mr. Finks, they placed the property under appeal up for auction and the highest bid they received was \$24,000. *Board Exhibit A; Finks testimony*. Additionally, the Petitioners contend they listed the property with a realtor for \$35,000 for two years. *Board Exhibit A; Finks testimony*. According to Mr. Finks, they received no offers on the property. *Finks testimony*.¹
17. The Petitioners also argue that the property is currently empty and has been for most of the time they have owned it. *Finks testimony*. Further, the Petitioners contend the year of construction listed on the county's property record card is incorrect. *Finks testimony*. According to Mr. Finks, the house was constructed in approximately 1860. *Finks testimony*.
18. The Respondent contends the property under appeal is correctly assessed at \$52,300. *Thomas testimony*. According to the Respondent, the Petitioner has not presented any probative evidence to establish the current assessment is incorrect. *Thomas testimony*.
19. The Respondent further contends that the house located at 117 – 10th Street is very similar to the property under appeal. *Thomas testimony; Respondent Exhibit C*. According to Mr. Thomas, the comparable property has an assessed value of \$49,400, but its house and lot are both slightly smaller than the subject property. *Id*. Therefore, the Respondent argues, the Petitioners' 2006 assessment of \$52,300 is consistent with other similar properties. *Thomas testimony*.

¹ On July 7, 2009, Mr. Finks attempted to add additional information to the record by leaving a recorded message in the voice mail box of Senior Administrative Law Judge Carol Comer. Pursuant to the Board's rules, "No posthearing evidence will be accepted unless it is requested by the administrative law judge or the board." 52 IAC 2-8-8(a). Here, neither the presiding officer nor the Board requested post-hearing evidence from the parties. Even if the Board were to accept the Petitioners' offering, it was not in written form and served on the Respondent. See 52 IAC 2-8-8(c) ("Posthearing evidence submitted must be served on all parties."). Therefore, the Board will disregard any information that Mr. Finks purported to offer in his telephone message.

ANALYSIS

20. Real property is assessed based on 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 a 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). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction costs, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
21. Regardless of the approach used to prove the market value-in-use of a property, a 2006 assessment is required to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation of how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
22. The Petitioners first argue that their property is over-valued because they have been unable to sell the property for a price less than the assessed value. *Finks testimony*. The only evidence the Petitioners presented, however, was Mr. Fink’s testimony that the property was offered at an auction and the highest bid it received was \$24,000 and that the property was also offered for sale through a realtor for two years for \$35,000. While a taxpayer’s unsuccessful attempts to sell a property may, in fact, be some indication of a property’s value, here the Petitioners presented no details about the auction bid, such as date the auction was conducted, how the auction was advertised, the terms and conditions of the bidding, and information to establish whether the bid was rejected or accepted. In addition the Petitioners failed to show when the property was listed for sale. Conclutory

statements that the property would not sell for as much as the current assessed value are not probative evidence. *Whitley Products v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Moreover there is no evidence that would allow the Board to determine how the auction or listing prices related to the January 1, 2005, statutory valuation date.² *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Therefore, the auction bid and list price are not probative of the property's value pursuant to *Long*.

23. The Petitioners also contend the house's assessment was in error because the Respondent incorrectly applied the year of construction in calculating the property's value. Mr. Finks, however, only offered vague testimony that he thought the house was constructed in approximately 1860, not 1900 as listed on the subject's property record card. *Board Exhibit A; Finks testimony*. Even if the year of construction is incorrect, the Petitioners failed to show that the assessment did not accurately reflect the market value of the property. A taxpayer fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determine whether the assessed value is *actually correct*").
24. The Petitioners failed to present probative evidence in support of their contentions. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered.

² Mr. Finks testified that the property was listed for two years. Two years from the hearing would be April of 2007 which is approximately 27 months removed from the January 1, 2005, valuation date.

Lacey Diversified Indus. v. Department of Local Government Finance, 799 N.E.2d 1215,
1221 – 1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

25. The Petitioners failed to raise a prima facie case. The Board finds in favor of the Respondent.

The Final Determination of the above captioned matter is issued this 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>.