

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 18-003-05-1-5-00035  
**Petitioner:** Joanne Davis  
**Respondent:** Center Township Assessor (Delaware County)  
**Parcel:** 11-04-407-018  
**Assessment Year:** 2005<sup>1</sup>

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Delaware County Property Tax Assessment Board of Appeals (the PTABOA) by filing Form 130 with Respondent dated July 6, 2004.
2. The PTABOA mailed notice of the decision to the Petitioner on November 4, 2005.
3. The Petitioner appealed to the Board by filing a Form 131 with the Delaware County Assessor on November 28, 2005. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 25, 2006.
5. Administrative Law Judge Paul Stultz held the administrative hearing in Muncie on September 28, 2006. He did not conduct an inspection of the property.
6. Persons present and sworn as witnesses at the hearing were:  
Joanne Davis, property owner,  
John Davis,  
Kelly Hisle, Center Township Deputy Assessor,  
Charles Ward, authorized representative.

**Facts**

7. The subject property is a 1,065 square foot single story home on a lot measuring 48 feet by 145 feet located at 2205 N. Buckles in Muncie.

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<sup>1</sup> Although the Form 131 petition indicated that 2004 was the assessment year under appeal, the parties agreed at the hearing the correct assessment year under review is 2005.

8. The assessed value as determined by the Delaware County PTABOA is:  
Land: \$6,200                      Improvements: \$38,100                      Total: \$44,300.
9. The assessed value requested by Petitioner is:  
Land: \$6,200                      Improvements: \$23,500                      Total: \$29,700.

### **Issues**

10. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The assessment of the subject property is greater than its market value. The Petitioner purchased the subject property for \$13,500 in May 2004. *Resp't Ex. 3.* The Petitioner purchased it through a real estate company in "as-is" condition. *Joanne Davis testimony.*
  - b. The sales information for other properties in the neighborhood is evidence that the assessments are greater than the market values for the area. The sales information provides the assessment, sale price, square footage, and number of bedrooms for each property. *Joanne Davis testimony; Pet'r Ex. 1.*
  - c. The market in Muncie is soft and affects the value of property. Muncie also has one of the highest foreclosure rates in the country due to the loss of industry. *Joanne Davis testimony; Pet'r Ex. 3.* The level of taxation in the Muncie area is higher than neighboring communities. This fact forces the loss of homes and a loss in value for investment properties. *Joanne Davis testimony.*
  - d. The newspaper articles from local papers discuss the statistics regarding the effect of rising property taxes have on the market in Muncie. *John Davis; Pet'r Ex. 3.*
  - e. The condition of the subject property was very bad at the time of purchase. The interior and exterior photographs demonstrate the condition of the subject property in May 2004. *Pet'r Ex. 2.* The condition of the subject property was better as of March 1, 2005, after investing \$10,000 to make improvements. *Joanne Davis testimony; Pet'r Ex. 2.*
11. Summary of Respondent's contentions in support of the assessment:
- a. Market value-in-use is the value determined for a property's specific use. Under the current system, assessments are based on the sales of property during 1998 and 1999. For the subject property's neighborhood, sale prices from 1998 and 1999 were used to establish the values for the 2002 Reassessment. Those sales range from \$38,500 to \$77,900. *Ward testimony; Resp't Ex. 1.*
  - b. The sale price for the property located at 2210 N. High, which is superior to the subject property, is \$42,900. The sale price for the property located at 2216 N. Milton, which is superior to the subject property, is \$39,900. The sale price for

the property located at 2013 N. Milton is \$40,000. These are recent sales in the subject property's neighborhood. *Ward testimony; Resp't Ex. 5, 6, 7.*

- c. The sale price of the properties recently sold in the neighborhood and the sales information used to support the 2002 Reassessment values demonstrate that the values for the neighborhood range from \$39,000 to \$78,000. The current assessment of \$44,300 for the subject property is correct and fair in relation to the market data. *Ward testimony.*
- d. The sale of the subject property was the result of a foreclosure, which indicates that the property was sold under duress. A duress sale is not an indicator of market value. The sale price of the subject property only indicates the value of a foreclosed property in extremely poor condition. There is no evidence that the sale price of the subject property has any connection to the assessed value for March 1, 2005. *Ward testimony.*
- e. The subject property has been renovated and rented since the Petitioner purchased it. *Ward testimony.*

### **Record**

12. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. A digital recording of the hearing,
  - c. Petitioner Exhibit 1 – A list of eight properties (including the subject property) with the assessed value, the sale price, the square footage, and number of bedrooms for each property,  
Petitioner Exhibit 2 – Twelve photographs showing the interior and exterior of the subject property,  
Petitioner Exhibit 3 – Six newspaper articles from local newspapers,  
Respondent Exhibit 1 – A list of eleven properties in the subject neighborhood with the sale price, assessed value, assessment ratio, and deviation for each property,  
Respondent Exhibit 2 – The property record card for the subject property,  
Respondent Exhibit 3 – The sales disclosure form reporting the May 2004 sale of the subject property,  
Respondent Exhibit 4 – The sales disclosure form reporting the transfer of the subject property on October 22, 2003,  
Respondent Exhibit 5 – The sales listing information, photograph and property record card for a property located at 2210 N. High,  
Respondent Exhibit 6 – The sales listing information, photograph, and property record card for a property located at 2216 N. Milton,

Respondent Exhibit 7 – The sales listing information and property record card for a property located at 2013 N. Milton,

Respondent Exhibit 8 – The sales listing and property record card for a property located at 1712 N. Buckles,

Board Exhibit A – Form 131 Petition for Review,

Board Exhibit B – Notice of Hearing on Petition,

Board Exhibit C – Hearing Sign in Sheet,

- d. These Findings and Conclusions.

### Analysis

13. The most applicable governing cases are:

- a. A Petitioner seeking review of an assessing official's determination 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).
- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the disputed 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.”).
- c. 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.

14. The Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:

- a. Real property assessments are based on "true tax value," which does not mean fair market value. It 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). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT

GUIDELINES FOR 2002 — VERSION A. The value established from the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may 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.

- b. The 2005 assessment is to reflect a value as of January 1, 1999. MANUAL at 4. When evidence of value relates to a different time, the proponent must provide some explanation about how those values demonstrate, or are relevant to January 1, 1999. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c. The Petitioner relied on the actual purchase price of the subject property to establish the correct assessment of the subject property. The purchase price of a property could be evidence of its market value, but the fact that the Petitioner bought this property from a bank that acquired it by foreclosure casts some doubt on how reliably the price indicates actual market value. In this case, the Petitioner failed to establish that she paid full market value for this property. Furthermore, the purchase price reflects a value as of May 2004. For this evidence to have any probative value, the Petitioner must explain how that value demonstrates or relates to January 1, 1999. *Long*, 821 N.E.2d 466, 471. The Petitioner did not do so. Thus, the May 2004 purchase price has no probative value.
- d. In addition, the evidence established that the property got substantial repairs after the Petitioner bought it, but before the assessment date. Although the valuation date is January 1, 1999, the assessment must be made based on the physical condition of the property as it stood on the assessment date, March 1, 2005. The Petitioner failed to provide probative evidence regarding how the repairs might have changed the value of the property from when she bought it. This failure is another reason that the Petitioner's purchase price is not probative or persuasive evidence of value in this case.
- e. In order to establish probative evidence based on comparability, one must explain the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affect the market value-in-use of the properties. *Long*, 821 N.E.2d at 471. Without such a comparison, statements that the properties are similar or comparable are conclusory and they have no probative value. *Id.*; *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f. The Petitioner compared the assessed value to sale price of seven properties in the area. According to the Petitioner, the comparison demonstrates that the assessed values exceed the market values in the area. *Pet'r Ex. 1*. The limited number of properties in the comparison and the conclusory presentation of the data seriously impinge on the credibility of any conclusion that one might reach. Assuming,

*arguendo*, that this comparison shows the assessed values are greater than the asking price or sale price of the properties listed, this evidence might go a little way toward proving that the assessed value of the subject property is higher than it should be. That point is only the first step for the Petitioner to make a case. This comparison does absolutely nothing toward the second required step, which is to establish what the correct assessment would be.

- g. The Petitioner offered testimony that the Muncie area has a high foreclosure rate, a "soft" market, and a level of taxation that lowers property values. These statements, however, were entirely conclusory in nature. They have no probative value. *Whitley Products*, 704 N.E.2d at 1119.
- h. The Petitioner offered evidence pertaining to condition. The Petitioner did not explain how the condition of the subject affected the value as of January 1, 1999 or what specific relief she sought. It is the Petitioner's duty to explain the relevance of each piece of evidence presented and how it is relevant to the requested assessed value. *Indianapolis Racquet Club*, 802 N.E.2d 1018, 1022. Lacking such an explanation to relate condition to market value-in-use, this evidence does not make a case. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006).

### **Conclusion**

- 15. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, the assessment should not be changed.

ISSUED: \_\_\_\_\_

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Commissioner,  
Indiana Board of Tax Review

## IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.