

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

**Petition No.:** 12-013-07-1-5-00001  
**Petitioner:** Betty Albright Hinkle Estate  
**Respondent:** Clinton County Assessor  
**Parcel No.:** 121301300009000013  
**Assessment Year:** 2007

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Clinton County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 23, 2008.
2. The PTABOA issued its decision on June 17, 2009.
3. The Petitioner filed a Form 131 petition with the Board on July 8, 2009. The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 7, 2010.
5. The Board held an administrative hearing on January 14, 2010, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
  - a) For Petitioner:<sup>1</sup> Kimberlee Jo Hinkle, executrix
  - b) For Respondent: Brian Thomas, County representative  
Jada Ray, Chief Deputy Assessor, Clinton County

**Facts**

7. The property is a residence located at 4576 West County Road 600 South in the city of Frankfort, Perry Township in Clinton County.
8. The Administrative Law Judge (ALJ) did not inspect the property.

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<sup>1</sup> M. Morrill Morrison appeared as the attorney for the Petitioner.

9. For 2007, the PTABOA determined the assessed value of the subject property to be \$20,300 for the land and \$66,600 for the improvements, for a total assessed value of \$86,900.
10. The Petitioner requests an assessed value of \$20,300 for the land and \$30,300 for the improvements, for a total assessed value of \$50,600.<sup>2</sup>

### Issues

11. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
  - a) The Petitioner contends that the subject property is over-valued based on a 2008 appraisal of the property. *Morrison argument.* According to the Petitioner's representative, Kimberlee Jo Hinkle, the property owner, Betty Hinkle, passed away on January 24, 2008. *Hinkle testimony; Petitioner Exhibit 1.* As a part of the estate, Ms. Hinkle testified, Appraisals by Harris appraised the property for \$50,000 as of that date. *Hinkle testimony; Petitioner Exhibit 2.* In an effort to relate the appraisal's 2008 valuation date to the March 1, 2007, assessment date, Mr. Morrison argued that property values in Clinton County were down in early 2007, in part due to an increased number of Mexican immigrants moving into the County.<sup>3</sup> *Morrison argument; Hinkle testimony.*
  - b) The Petitioner further argues that the property is over-valued based on its condition. *Hinkle argument.* In support of this contention, Ms. Hinkle testified that little maintenance has been done on the house since it was built in 1977. *Id.* According to Ms. Hinkle, the house's foundation has settled, it has leaks in the roof and buckling floors, and the air conditioning system does not work. *Id.; Petitioner Exhibit 2.*
  - c) In response to the Respondent's contentions, Mr. Morrison argued that the appraisal did not undervalue the property. *Morrison argument.* According to Mr. Morrison, it is important to have an accurate appraisal for estate purposes, because if the property is later sold for more than its appraised value, income taxes will be levied based on the difference in value. *Id.* Thus, Mr. Morrison concludes, the estate would not seek an appraisal that would estimate the property's value lower than its market value. *Id.*

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<sup>2</sup> At the hearing, the Petitioner's counsel requested a total assessed value of \$50,000 based on the property's appraisal.

<sup>3</sup> Although the Board is compelled to relate the testimony and arguments raised by the Petitioner and her counsel, it finds this testimony to be overtly racist and offensive and will give no weight to the conclusions the Petitioner or her counsel draw here.

12. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent's representative, Mr. Thomas, contends that an appraisal valuing the property as of January 24, 2008, is insufficient to show that the Petitioner's property is incorrectly assessed for the March 1, 2008, assessment date. *Thomas testimony; Respondent Exhibit 2*. Furthermore, Mr. Thomas objected to the appraisal as hearsay because the appraiser did not appear for cross-examination. *Id.* According to Mr. Thomas, such an examination is necessary to answer questions about the correlation of the appraised value to the valuation date and the appraiser's choice of comparables. *Id.*
  - b) The Respondent's representative further argues that the Board should give little weight to the Petitioner's appraisal because the comparable sales in the appraisal are all repossession sales, and there are other sales of the same properties that would better indicate the actual market value of those properties. *Thomas testimony; Respondent Exhibit 3*. For example, Mr. Thomas testified that the property at 4686 Jackson Street sold as a repossession from the Federal National Mortgage Association for \$48,200, but six months prior to that it sold for \$83,194. *Id.* Similarly, Mr. Thomas presented evidence showing that the property at 4694 West Jackson Street sold for \$56,000 in 2007, but in 2005 it sold for \$76,500, and in between those two sales, the same property sold again for \$67,682. *Id.*
  - c) Finally, the Respondent's representative argues that the assessment is correct. *Thomas testimony*. In support of this contention, Mr. Thomas testified that he inspected the property on December 31, 2008, for the purposes of the appeal. *Thomas testimony; Respondent Exhibit 2*. He further testified that as a result of his inspection, the Assessor changed the condition of the house to fair because there was a considerable amount of delayed maintenance and upkeep. *Id.* Similarly, he testified that the condition of the utility shed was changed to poor because it was in "deplorable condition." *Id.* In addition, the Assessor applied a negative 10% functional obsolescence to the house to account for roof deterioration and soft areas in the floors. *Id.* According to Mr. Thomas, these changes sufficiently address the problems identified by the Petitioner. *Thomas testimony*.

### **Record**

13. The official record for this matter is made up of the following:
- a) The Petition.
  - b) The digital recording of the hearing.
  - c) Exhibits:

Petitioner Exhibit 1: Letters Testamentary of the estate of Betty M. Hinkle,

Petitioner Exhibit 2: Appraisal of the subject property as of January 24, 2008,

Respondent Exhibit 1: Exhibit list,

Respondent Exhibit 2: Written summary of testimony,

Respondent Exhibit 3: Property record cards for the comparable properties used in the Petitioner's appraisal,

Board Exhibit A: Form 131 Petition,

Board Exhibit B: Notice of Hearing,

Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: 30-day Notice Waiver.

- d) These Findings and Conclusions.

### Analysis

14. The most applicable governing cases are:

- a) 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).
- b) 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”).
- 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.

15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of its property. The Board reached this decision for the following reasons:

- a) The 2002 Real Property Assessment Manual defines “true tax value” 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 at 2 (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 value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

- b) A property’s assessment 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.
- c) Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d) Here, the Petitioner presented an appraisal report prepared by an Indiana licensed appraiser in which the appraiser valued the subject property at \$50,000 as of January 24, 2008.<sup>4</sup> *Petitioner Exhibit 2*. The appraiser certified that her report conformed to the Uniform Standards of Professional Appraisal Practice (USPAP). While a market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice to establish the value of a property, the Petitioner must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation

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<sup>4</sup> The Respondent’s representative objected to the Petitioner’s appraisal on the basis that the appraisal is hearsay. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a “statement” can be either oral or written. The appraiser who prepared the appraisal did not appear at the hearing to testify and be cross-examined. Consequently, the appraisal is hearsay. *See Indiana Rules of Evidence*, Rule 801. Nevertheless, Mr. Thomas is a certified tax representative and not a lawyer. While the Board has allowed tax representatives to argue that evidence is untimely pursuant to the Board’s procedural rules, Mr. Thomas has crossed this threshold and now attempts to refer to the Indiana Rules of Evidence. By making an evidentiary objection of the kind Mr. Thomas makes here, Mr. Thomas improperly attempts to practice law before the Board. The Board, therefore, strikes this objection and admits the Petitioner’s appraisal as if no objection had been made.

date. MANUAL at 5; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1; *O'Donnell*, 854 N.E.2d at 95.

- e) To support the Petitioner's contention that the appraised value is relevant to the value of the house as of the assessment date, Ms. Hinkle testified that she believed property values in Clinton County were generally low through 2007. *Morrison Argument; Hinkle testimony*. Mr. Morrison argued therefore that the January 24, 2008, appraised value also reflected the property's value as of March 1, 2007. *Morrison argument*. Yet neither Mr. Morrison, nor Ms. Hinkle offered any support for their opinions on the state of the real estate market. Thus, Mr. Morrison's arguments and the corresponding testimony from Ms. Hinkle are conclusory and do not constitute probative evidence. *Lacy Diversified Indus., Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f) Even if the Board accepted the Petitioner's unsupported conclusions as to the state of the market in 2007, the Petitioner failed to relate the valuation date of its appraisal to the valuation date for the 2007 assessment. While Mr. Morrison is correct in his assertion that the assessment date is March 1, 2007, the relevant valuation date for the 2007 tax year is January 1, 2006. 50 IAC 21-3-3. Therefore, when presenting market value evidence such as an appraisal, a party must explain how the evidence relates to the relevant valuation date – in this case, January 1, 2006. *O'Donnell*, 854 N.E.2d at 95. The Petitioner's appraisal is dated more than two years past the relevant valuation date and, because the Petitioner offered no testimony or evidence as to how the appraisal's estimate of value relates to the valuation date of January 1, 2006, the Petitioner failed to raise a prima facie case that its property was assessed in error.
- g) To the extent that the Petitioner can be seen as arguing its property is over-assessed based on the condition of the house, the Board finds that it failed to raise a prima facie case. *Hinkle testimony*. A condition rating is a "rating assigned each structure that reflects its effective age in the market." See GUIDELINES, app. B, at 5. The rating is determined by relating a structure to comparable structures within the property's neighborhood. *Id.* While Ms. Hinkle testified that the house has settled, the roof leaks, the floors are buckling, and the air conditioning system does not work, there is no evidence that the condition of the property differs from other houses in the neighborhood. Moreover, the Respondent's representative testified that the condition rating on the house was lowered to fair and the condition of the utility shed was changed to poor. *Thomas testimony*. A property in "fair" condition shows "marked deterioration" in the structure. GUIDELINES, Chap. 3, pg. 60. "There are a substantial number of repairs that are needed" and "many items need to be refurbished, overhauled, or improved." *Id.* A dwelling in "fair" condition has "deferred maintenance that is obvious." *Id.* The Petitioner failed to present any evidence to show that this rating was incorrect.

- h) Further, even if the Petitioner had proven that the house was assessed in error, an assessor's failure to comply with the Guidelines alone does not show that the assessment is not a reasonable measure of a property's market value-in-use. 50 IAC 2.3-1-1(d); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) ("Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") Thus, the Petitioner failed to raise a prima facie case that its house was assessed in error based on the condition of the home.
- i) The Petitioner failed to raise a prima facie case that its property was assessed in excess of its market value-in-use. When 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. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**Conclusion**

- 14. The Petitioner failed to establish a prima facie case. The Board finds in favor of the Respondent.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

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

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Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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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>.**