

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

**Petition No.:** 18-003-06-1-5-00889  
**Petitioners:** Joann Davis (a/k/a Joann Davis Ross) & John Davis  
**Respondent:** Delaware County Assessor  
**Parcel No.:** 1104403010000  
**Assessment Year:** 2006

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

**Procedural History**

1. On May 4, 2007, the Petitioners appealed the subject property’s assessment to the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its determination on September 30, 2008.
2. The Petitioners timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On April 7, 2010, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified at the hearing:
  - a) For the Petitioners: Joann Davis, Owner  
John Davis, Owner
  - b) For the Respondent: Kelly Hisle, Deputy County Assessor

**Facts**

5. The subject property contains a rental house located at 2505 N. Milton Street in Muncie.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following values for the subject property:  
Land: \$8,600            Improvements: \$43,900            Total: \$52,500
8. On their Form 131 petition, the Petitioners asked for the following assessment:  
Land: \$8,600            Improvements: \$22,900            Total: \$31,500

## Parties' Contentions

### 9. Summary of the Petitioners' contentions:

- a) The Petitioners appealed the assessments of both the subject property and another property located on Buckles Avenue. Although they offered the same evidence for both appeals the PTABOA lowered only the Buckles Avenue assessment. According to the Petitioners, if the evidence was good enough for the Buckles Avenue property, it should have been good enough for the subject property; the properties are two blocks away from each other and the houses are similar styles. *John Davis testimony; Joann Davis testimony.*
- b) The Petitioners also believe that the neighborhood should be changed from "static" to "declining." *John Davis testimony.* It is inhabited by people with low incomes, and the houses need a lot of work. *Id.* Last year, Ms. Davis, who is a realtor, sold the house next door to the subject property for \$4,000. The house has since been torn down and the owners are building a new house. A portable outhouse currently sits out front near the street. *Id.; Joann Davis testimony.* The Petitioners also offered 12 recent photographs of properties in the neighborhood, which Mr. Davis claimed show the neighborhood's quality. *Id.; Pet'rs Exs. 1 - 12.* Four of the properties were foreclosures and three others were vacant. Even in 2004 and 2005 there were foreclosures. The neighborhood has been declining for years. And the neighborhood makes a difference; every foreclosure brings values down. *John Davis testimony; Joann Davis testimony.*
- c) Sale prices from the neighborhood show that the subject property was assessed too high. To that end, Ms. Davis pointed to the sales of the following four neighborhood properties that she argued were comparable to the subject property:
  - 2005 N. Milton. The Petitioners bought this property for \$16,000 on April 24, 2009. It was a foreclosure.
  - 2604 N. Milton. This property sits across the street from the subject property. It was a foreclosure. It was listed at \$14,900 for 155 days without selling.
  - 2012 N. High. This property was listed for \$28,900 by a private seller
  - 1012 W. Elsie. This property was a foreclosure that sold for \$34,000.

*Joann Davis testimony; Pet'rs Exs. 13 - 16.* While the Assessor's witness also pointed to several sales, those sales involved the nicer houses on Milton Street and were not comparable to the subject property. *Joann Davis testimony.*

- d) Finally, the subject property itself sold for significantly less than its assessment. Joann Davis bought the subject property at an auction in October 2004. She paid \$31,500. *John Davis testimony; Joann Davis testimony; Pet'rs Ex. 17.* The seller was going into a nursing home and told the Petitioners that she was going to sell the property back to the bank if the Petitioners did not buy it for \$31,500. *Joann Davis*

*testimony; John Davis testimony.* Although the Assessor’s witness said otherwise, the sale was an arm’s-length transaction—the auction was “regular,” the seller was not under any duress, and the sale price showed what a willing buyer would pay on the open market. *Joann Davis testimony.* The property had been on the market for 180 days and nobody had offered to buy it for \$52,000. *Id.*

10. Summary of the Assessor’s contentions:

- a) The sales and listings that the Petitioners offered were from 2009-2010. According to 50 IAC 21-3-3,<sup>1</sup> however, assessors needed to use sales from 2004 and 2005 to determine March 1, 2006, assessments. *Hisle testimony.*
- b) Based on comparable sales, the subject property’s assessment was fair. Ms. Hisle, the deputy county assessor, testified that eight properties on Milton Street sold between January 1, 2004, and December 31, 2005. *Hisle testimony; Resp’t Exs. 2 - 6.* Those sale prices, which included foreclosures, averaged \$51 per square foot. *Id.* Ms. Hisle then discarded the foreclosures and focused on the following three houses that were closest in size to the subject house:
  - 2212 N. Milton, which sold for \$47,500 or \$63.33 per square foot.
  - 1912 N. Milton, which sold for \$58,900 or \$70.12 per square foot
  - 3319 N. Milton, which sold for \$69,900 or \$64.72 per square foot.

*Resp’t Exs. 4 – 6.* Those three sales show that the subject property’s assessment of \$50.39 per square foot is fair. *Hisle argument*

- c) At the PTABOA’s request, the Petitioners supplied an appraisal of the subject property that Robert E. Canan, an Indiana licensed residential appraiser, had prepared. *Hisle testimony; Resp’t Ex. 8.* In that appraisal, Mr. Canan estimated the property’s market value at \$60,500 as of October 13, 2004. *Id.* Mr. Canan reached his conclusion using the cost, sales-comparison, and income approaches to value. *Id.* Although the comparable properties listed in Mr. Canan’s appraisal had smaller houses than the subject house, he adjusted their sale prices accordingly. *Id.* Thus, Mr. Canan’s appraisal shows that the subject property’s assessment of \$52,500 was fair. *Hisle argument.*
- d) The Petitioners’ settlement statement shows that the auction at which Ms. Davis bought the subject property was not an arm’s-length transaction. Under IAAO standards, auction sales are not arms-length transactions. *Hisle argument; Pet’rs Ex. 17.*

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<sup>1</sup> Note: The Department of Local Government Finance repealed 50 IAC 21, Annual Adjustments, on April 8, 2010, and replaced it with 50 IAC 27, Annual Adjustments and Equalization Standards.

## Record

11. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibits 1 - 12: Photographs of neighboring properties,  
Petitioners Exhibit 13: MLS listing for 2005 N. Milton Street,  
Petitioners Exhibit 14: MLS listing for 2604 N. Milton Street,  
Petitioners Exhibit 15: MLS listing for 2012 N. High Street,  
Petitioners Exhibit 16: MLS listing for 1012 W. Elsie Street,  
Petitioners Exhibit 17: Settlement statement from purchase of subject property.

Respondent Exhibit 1: Property record card for the subject property,  
Respondent Exhibit 2: Listing of properties sold on Milton Street between January 1, 2004, and December 31, 2005,  
Respondent Exhibit 3: Listing of the three most comparable properties sold on Milton Street between January 1, 2004, and December 31, 2005,  
Respondent Exhibit 4: MLS listing for 2212 N. Milton Street,  
Respondent Exhibit 5: MLS listing for 1912 N. Milton Street,  
Respondent Exhibit 6: MLS listing for 3319 N. Milton Street,  
Respondent Exhibit 7: Copy of 50 IAC 21-3-3,  
Respondent Exhibit 8: Appraisal of the subject property dated October 13, 2004.

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Notice of hearing,  
Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

## Analysis

12. A petitioner seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).

13. In making its case, the petitioner must explain how each piece of evidence relates 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”).
14. If the petitioner makes a prima facie case, the burden shifts to the respondent to rebut or impeach the petitioner’s evidence. *See American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to prove that the subject property’s assessment should be reduced. The Board reaches this conclusion for the following reasons:
  - a) 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property’s market value-in-use, as determined using the Guidelines, 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. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer, however, 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 (“USPAP”) often will suffice. *Id.; Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual constructions costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. *MANUAL at 5.*
  - c) Regardless of the method used to rebut an assessment’s presumed 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. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2006 assessments, that valuation date was January 1, 2005. 50 IAC 21-3-3 (2009).
  - d) The Petitioners point to a variety of facts and opinions to support their claim. In most instances, it is readily apparent why those facts and opinions lack probative value. For example, the Petitioners claim that the PTABOA should have changed the subject property’s assessment because they offered the same evidence for the subject property that they offered for another property whose assessment the PTABOA did change. Each appeal, however, is decided on its own facts. The Petitioners did not

- explain what evidence they offered to the PTABOA or why it was relevant to both properties. More importantly, the Board's proceedings are *de novo*. The Petitioners needed to prove to the Board that the subject property was assessed for more than its market value-in-use, not that the PTABOA acted inconsistently in deciding different appeals.
- e) Next, Mr. Davis testified that the neighborhood is declining, and pointed to photographs of several properties to support his opinion. He also testified that four properties had been foreclosed upon and that others sat vacant. Assuming that similar conditions prevailed on or around the relevant valuation date, those conditions may have affected the subject property's market value-in-use. But simply pointing to those conditions does nothing to quantify that market value-in-use.
  - f) Ms. Davis also pointed to the sale prices for four nearby properties. That was at least a start in the right direction, because the sales-comparison approach recognizes that a given property's value can be estimated by comparing it to similar properties that have sold in the market. MANUAL at 3. Ms. Davis, however, did not follow the sales-comparison approach's basic requirements. When offering sales-comparison evidence in an assessment appeal, a taxpayer must explain "the characteristics of [the subject] property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Long*, 821 N.E.2d at 471. Conclusory statements that a property is "comparable" to another property do not suffice. *Id.* at 470.
  - g) Contrary to those requirements, Ms. Davis did little to compare the subject property to the properties for which she offered sale and listing information. She identified a few characteristics, such as the number of bedrooms, bathrooms, and garages, for two of her purportedly comparable properties. For the other two, she focused mainly on their locations. That falls well short of the type of comparison described by the Manual and Tax Court. Even if Ms. Davis had shown that the four properties were generally comparable to the subject property, she did not explain how any differences between the properties affected their relative values.
  - h) Ms. Davis's sales-comparison evidence fails for another reason. The Petitioners relied on sales and listings from 2009 - 2010 without explaining how those sale prices related to the subject property's market value-in-use as of the relevant January 1, 2005 valuation date. Absent such an explanation, that sale and listing evidence lacks probative value. *See Long*, 821 N.E.2d at 471 (holding that an appraisal lacked probative value where the taxpayers did not explain how it related to the property's market value-in-use as of the relevant valuation date).
  - i) The subject property's sale price is another matter. Ms. Davis bought the property for \$31,500 in October 2004—less than three months before the relevant January 1, 2005, valuation date. In many instances, a property's sale price on or near the relevant valuation date is the most compelling evidence of its market value-in-use.

Of course, that depends on circumstances of the sale. And in this case, those circumstances cast significant doubt on the sale price's probative weight.

j) The Manual provides the following definition of "market value":

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed and advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

MANUAL at 10.

- k) The fact that Ms. Davis bought the subject property at auction raises concerns about two aspects of that definition—whether the property was sufficiently exposed to the market, and whether the seller was typically motivated. Ms. Davis at least partially allayed concerns about the property's exposure to the market by testifying that the property had been listed for six months before the auction. Mr. Canan's appraisal confirms that fact and indicates that the list price was \$52,900. *Resp't Ex. 8 at addendum*. On the other hand, the Petitioners said almost nothing about how the auction was conducted other than Ms. Davis's conclusory statement that it was "regular." *Joann Davis testimony*. And the Petitioners did nothing to ease concerns about the seller's motivation. Mr. Davis, however, testified that seller was going into a nursing home and that she had told the Petitioners she would sell the property to the bank if they did not pay \$31,500. That creates significant doubt about whether the seller was typically motivated or was instead acting under duress.
- l) On top of that, the Respondent offered Mr. Canan's appraisal, which he apparently prepared after the Petitioners had bid at the auction but before they closed the sale. *See Resp't Ex. 8, at 2 of 2, addendum (referring to the auction sale and listing the \$31,500 bid price)*. And Mr. Canan estimated the property's value at \$60,500. In forming his opinion, Mr. Canan used all three generally accepted valuation approaches, and he certified that he preformed his appraisal in conformity with USPAP. *Resp't Ex. 8*. Of course, the property did not sell for its asking price of \$52,900, leaving at least some doubt as to the reliability of Mr. Canan's opinion. But when combined with the other factors that cast doubt upon the auction price as a reliable indicator of the subject property's market value, Mr. Canan's appraisal is

enough to convince the Board that the \$31,500 auction sale price lacks probative weight.

- m) Thus, while the subject property may have been worth something less than its \$52,900 list price or its \$52,500 assessment, the Petitioners did not offer any probative evidence to show how much less. Absent such evidence, the Petitioners failed to meet their burden of proof.

**Conclusion**

- 16. Because the Petitioners did not offer probative evidence to show the subject property's market value-in-use, they failed to meet their burden of proof.

**Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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>.