

REPRESENTATIVE FOR PETITIONER:

David M. Easterly, *pro se*

REPRESENTATIVES FOR RESPONDENT:

Kelly Hisle, Delaware County Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

David M. and Delinda L. Easterly,	)	Petition No.:	18-003-06-1-5-00758
	)		
Petitioners,	)	Parcel No.:	181122206013000003
	)		
v.	)		
	)	County:	Delaware
Delaware County Assessor,	)	Township:	Center
	)		
Respondent.	)	Assessment Year:	2006

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

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**December 21, 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

### PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-15-1, David M. and Delinda L. Easterly, the Petitioners, filed a Form 131 Petition for Review of Assessment on May 29, 2008, petitioning the Board to conduct an administrative review of the above petition. The Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on May 2, 2008.

### HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Alyson Kunack, the Board's designated Administrative Law Judge (the ALJ) held a hearing on September 23, 2009, in Muncie, Indiana.
3. The following persons were sworn and presented testimony at the hearing:  
For the Petitioners:  
David M. Easterly, Petitioner  
  
For the Respondent:  
Kelly Hisle, Delaware County Deputy Assessor
4. The Petitioners presented the following evidence:  
Petitioners Exhibit 1 – Form 131 Petition,  
Petitioners Exhibit 2 – Settlement statement for the subject property,  
Petitioners Exhibit 3 – Settlement statement for 2116 South Ebright Street.<sup>1</sup>

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<sup>1</sup> The Respondent objected to the admission of this exhibit because it had not been exchanged prior to the hearing as required by the Board's procedural rules. In appeals such as this, parties must exchange a list of witnesses and exhibits at least 15 business days before the hearing date. 52 IAC 2-7-1. They also must exchange summaries of witness testimony and copies of documentary evidence at least 5 business days before the hearing. *Id.* The Petitioners did not argue that the exhibit was included in the materials exchanged prior to hearing. Nor was any explanation offered as to why it could not have been exchanged. Therefore, the Respondent's objection to Petitioners Exhibit 3 is sustained and the evidence will not be considered.

5. The Respondent presented the following evidence:
  - Respondent Exhibit A – Property Record Card (PRC) for the subject property,
  - Respondent Exhibit A(a) – MLS listing sheet for the subject property,
  - Respondent Exhibit B – List of sales in neighborhood 130480 for 2004 and 2005,
  - Respondent Exhibit C –Comparable sales analysis,
  - Respondent Exhibit 1 – PRC for 2201 South Hackley Street,
  - Respondent Exhibit 1A – Sales disclosure form for 2201 South Hackley Street,
  - Respondent Exhibit 1B – MLS listing sheet for 2201 South Hackley Street,
  - Respondent Exhibit 2 – PRC for 2102 South Ebright Street,
  - Respondent Exhibit 2A – Sales disclosure form for 2102 South Ebright Street,
  - Respondent Exhibit 2B – MLS listing sheet for 2102 South Ebright Street,
  - Respondent Exhibit 3 –PRC for 2316 South Ebright Street.
  
6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – The Form 131 Petition,
  - Board Exhibit B – Notice of Hearing, dated June 26, 2009,
  - Board Exhibit C – Hearing sign-in sheet.
  
7. The subject property is a residence located at 2108 South Hackley Street in Muncie, Center Township, Delaware County.
  
8. The ALJ did not inspect the subject property.
  
9. For 2006, the PTABOA determined the assessed value of the property to be \$7,900 for the land and \$35,000 for the improvements, for a total assessed value of \$42,900.
  
10. For 2006, the Petitioners contend the assessed value of the property should be \$4,000 for the land and \$18,000 for the improvements, for a total assessed value of \$22,000.

### **JURISDICTIONAL FRAMEWORK**

11. 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**

12. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).
13. 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”).
14. 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.

#### **PETITIONERS' CONTENTIONS**

15. The Petitioners contend the assessed value of the subject property is excessive. *Easterly argument*. According to Mr. Easterly, he purchased the subject property as a foreclosure in August 2005 for \$15,000. *Easterly testimony; Petitioner Exhibit 2*.
16. Similarly, the Petitioners contend the property is over-valued based on the sale of a comparable property. *Easterly argument*. According to Mr. Easterly, a house down the

street was listed for sale at \$43,900. *Easterly testimony*. Mr. Easterly testified that the property sat on the market for some time but it only sold after the price was reduced to \$22,000. *Id.* Mr. Easterly contends that the comparable house is nearly identical to the Petitioners' property, except it has a two car garage, whereas the subject property only has a single-car garage. *Id.* According to Mr. Easterly, the comparable sale shows that the value of homes in the neighborhood have dropped significantly. *Id.*

17. Finally, in response to the Respondent's questions, Mr. Easterly admitted that the property appraised for \$36,000, but he argues that \$22,000 more accurately reflects the property's value. *Easterly testimony*.

#### **RESPONDENT'S CONTENTIONS**

18. The Respondent contends the property's assessed value is fair based on an analysis of three comparable properties in the Petitioners' neighborhood that sold in 2004 and 2005. *Hisle testimony; Respondent Exhibit E*. For each of the three properties, the Respondent's representative testified that she started with the sale price and then made adjustments for the differences in features between the comparable sales and the subject property. *Id.* According to Ms. Hisle, the adjusted prices of the three comparable properties were \$50,400, \$53,425, and \$54,295, respectively. *Id.* The subject property's assessed value is only \$42,900. *Id.*
19. The Respondent further contends that the Petitioners' evidence of the property's value based on their purchase price should be disregarded because the property was purchased in foreclosure. *Hisle argument*. Ms. Hisle also argues that the Petitioners' purchase price is rebutted by the Petitioners' appraisal prepared by Community Bank which valued the property at \$36,000. *Id.* Ms. Hisle, however, chose not to submit the appraisal into evidence. *Id.*

## ANALYSIS

20. 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.
21. 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 Ct. 2006). A taxpayer may rebut that presumption, however, 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 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties or any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
22. Regardless of the method used to rebut the presumption that an assessment is correct, the evidence must reflect the value of the property as of the proper valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2006 assessment, that valuation date is January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of the proper valuation date. *Long*, 821 N.E.2d at 471.

23. In this case, the Petitioners argue the assessed value of the subject property is over-stated based on the Petitioners' purchase of the property. *Easterly argument*. In support of this contention, Mr. Easterly submitted the settlement statement showing that the Petitioners bought the property for \$15,000 in August 2005. *Easterly testimony; Petitioners Exhibit 2*. Mr. Easterly, however, admitted that the Petitioners purchased the property out of foreclosure. *Easterly testimony*.
24. The sale of a property often is the best evidence of that property's market value. This general rule, however, presupposes that the circumstances surrounding the sale are indicative of a market value transaction. 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:

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

MANUAL at 10.

25. It is apparent from the Manual's definition that a property purchased out of foreclosure may not reflect its market value for reasons such as a lack of exposure to the open market or the seller acting under some type of compulsion. Therefore, it is incumbent upon the

party relying upon that sale to offer specific evidence to allay these concerns. *See Lake County Assessor v. U.S. Steel Corp*, 901 N.E.2d 85, 91-92 (Ind. Tax Ct. 2009) (approving of the use of bankruptcy sales when taxpayer established that such sales were a market norm), *review denied*. This the Petitioners failed to do. Absent evidence that foreclosures were the norm in the neighborhood or that the foreclosure sale represented the fair market value of the property, the Board finds that the Petitioners' purchase of the property fails to raise a prima facie case the property is over-valued.<sup>2</sup>

26. The Petitioners also contend that the sale of a nearby property supports their requested value. *Easterly testimony*. According to Mr. Easterly, a house down the street was listed for sale at \$43,900 but only sold after the price was reduced to \$22,000. *Id.* Mr. Easterly, however, failed to present any settlement statement, sales contract or disclosure form to support his testimony. Nor did he provide any evidence of the date of the sale. Further, while Mr. Easterly testified that the house was “nearly identical” to their property, he offered no property record card or other evidence to show the features of the comparable property. Unsupported and conclusory statements are not probative evidence. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Thus, the Petitioners' “comparable sale” fails to raise a prima facie case that the Petitioners' property is over-assessed.
  
27. The Petitioners failed to raise a prima facie case that their 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).

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<sup>2</sup> In fact, Mr. Easterly admitted that the property appraised for \$36,000 which strongly suggests that the foreclosure sale did not represent the market value of the property. To the extent that the appraisal shows that the assessed value of \$42,900 is in error, however, the Board notes that it does not have the appraisal before it. Nor did the Petitioners present any testimony regarding the quality or date of that appraisal. Therefore, the Board is unable to determine the probative value of that evidence.



**SUMMARY OF FINAL DETERMINATION**

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

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

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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>.