

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

**Petition No.:** 71-018-07-1-5-01776  
**Petitioner:** MA Investments, LLC  
**Respondent:** St. Joseph County Assessor  
**Parcel No.:** 18-5175-6702/71-09-05-402-025.000-026<sup>1</sup>  
**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 St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) by written document on February 16, 2009.
2. The Petitioner received notice of the PTABOA's decision on October 29, 2009.
3. The Petitioner filed an appeal to the Board by filing a Form 131 on November 18, 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 June 28, 2011.
5. The Board held an administrative hearing on August 31, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:<sup>2</sup>

For Petitioner: Michael Auriemma, president of MA Investment, LLC,

For Respondent: Patricia St. Clair, Chief Deputy Assessor, St. Joseph County.

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<sup>1</sup> The Board notes that the Petitioner inadvertently identified the property as Parcel No. 71-08-24-182-008.000-026 on its Petition.

<sup>2</sup> Frank J. Agostino appeared as counsel for the Respondent.

## Facts

7. The subject property is a single-family residence located at 3208 Corby Street, South Bend, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$13,100 for the land and \$37,300 for the improvements, for a total assessed value of \$50,400.
10. The Petitioner requested an assessed value of \$13,100 for the land and \$16,400 for the improvements, for a total assessed value of \$29,500.

## Issues

11. Summary of the Petitioner's contentions in support of an error in its property's assessment:
  - a. The Petitioner's representative contends that its property is over-assessed based on three comparable sales. *Auriemma testimony*. In support of this contention, the Petitioner submitted sales information for three properties. *Petitioner Exhibits 1-3*. Mr. Auriemma contends the properties, which are in the same subdivision as the subject property, sold for \$29,000, \$37,500, and \$35,000 respectively. *Id.*; *Auriemma testimony*.
  - b. In its rebuttal, the Petitioner's representative argues that the Petitioner has standing to appeal the assessment. *Auriemma argument*. According to Mr. Auriemma, although the Petitioner did not own the property on the March 1, 2007, assessment date, it was responsible for paying the property taxes on the property. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
  - a. The Respondent's witness contends that the property's assessed value reflects the property's market value-in-use as of the January 1, 2006, valuation date for the March 1, 2007, assessment. *St. Clair testimony*. According to Ms. St. Clair, the PTABOA determined the property's assessed value by using a rent of \$700 per month multiplied by a gross rent multiplier of six, resulting in an assessed value of \$50,400. *Id.*; *Respondent Exhibit 3*. Ms. St. Clair argues that the gross rent multiplier method of valuation is an authorized means of calculating the income value of a property. *Id.*
  - b. The Respondent also contends the Board should give no weight to the Petitioner's comparable sales. *St. Clair argument*. According to the Respondent's witness, the Petitioner's comparable sales all occurred outside the time frame for the 2007 assessment. *St. Clair testimony*. According to Ms. St. Clair, relevant sales for the 2007 assessment occurred between January 2006 and December 2006; whereas the

Petitioner's comparable sales occurred in January 2009, March 2007, and October 2007 respectively. *Id.*; *Respondent Exhibit 4*.

- c. Finally, the Respondent argues that the Petitioner's representative has not established that the Petitioner has any standing in this appeal because it was not the owner of the property on March 1, 2007. *Agostino argument*. According to Mr. Agostino, the Petitioner purchased the property on September 29, 2008. *Id.*; *Respondent Exhibit 5*. Furthermore, Mr. Agostino contends, the Petitioner received a credit on the closing statement for the taxes due and has not proven that it paid any additional amount for the property's 2007 taxes. *Agostino argument*.

### **Record**

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled 71-018-07-1-5-01776 MA Investments,
- c. Exhibits:

Petitioner Exhibit 1-3 – Sales information for three properties,<sup>3</sup>

Respondent Exhibit 1 – Form 131 petition,

Respondent Exhibit 2 – Form 130 petition,

Respondent Exhibit 3 – Form 115,

Respondent Exhibit 4 – Sales information for three properties,

Respondent Exhibit 5 – Property record card for the subject property,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing dated June 28, 2011,

Board Exhibit C – Hearing sign-in sheet,

- 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*

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<sup>3</sup> The Petitioner used Respondent Exhibit 4 for its sales information. The same sales information is attached to Board Exhibit A.

*v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also*, *Clark v. State Board of Tax Commissioners*, 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 Township 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case that its property was over-valued for the March 1, 2007, assessment year. 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). Appraisers traditionally have 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 assess real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines – 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. Taxpayers may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
  - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his evidence relates to the 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 the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.

- d. The Petitioner argues that its property is over-assessed based on comparable sales in the subject property's subdivision. *Auriemma testimony*. In support of this contention, the Petitioner submitted Multiple Listing Service information on three properties that sold in 2007 and 2009. *Petitioner Exhibits 1-3; Respondent Exhibit 4*. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the property under appeal. *See MANUAL* at 13 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, the Petitioner presented no evidence to show that its sales were comparable to the subject property. The Petitioner's representative merely noted that the properties were all located in the same subdivision. Moreover, the sales occurred years after the relevant valuation date. Therefore, the sales are not probative of the subject property's market value-in-use for the 2007 assessment year.
- e. To the extent that the Petitioner can be seen as arguing that its property is over-valued based on its purchase price that argument also fails. The purchase of a property is often the best evidence of a property's value. *See Hubler Realty Co .v. Hendricks County Ass'r.*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (The Board's determination assigning greater weight to the property's purchase price than its assessed value was proper and supported by the evidence). Like the Petitioner's comparable sales, however, the purchase of the property was far too removed from the relevant valuation date to be probative of the property's value for the 2007 assessment. *See Long*, 821 N.E.2d at 471.<sup>4</sup>
- f. The Petitioner failed to establish a prima facie case that its property was over-valued for the 2007 assessment year. Where the Petitioner has not supported its claim with

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<sup>4</sup> The Respondent also contends that the Petitioner's representative has not shown the Petitioner has standing to appeal the property's 2007 assessment because the Petitioner was not the owner of the property on March 1, 2007. Further, the Petitioner did not prove that the amount it paid for the property taxes exceeded the amount it was credited in closing for those taxes. 52 IAC 2-2-13 reads, in relevant part, “Party” means a participant in a matter governed by this article, which may include the following: (1) The owner of the property; (2) The taxpayer responsible for the property taxes payable on the subject property...” Thus, the fact that the Petitioner was not the owner of the property on the March 1, 2007, assessment date does not automatically deprive the Petitioner of standing to appeal the assessment. Similarly, the fact that the taxes may have been higher or lower than the amount credited on the closing statement has no relevance. The Petitioner was still the party responsible for the 2007 taxes regardless of the source of the funds.

probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**Conclusion**

- 16. The Petitioner failed to establish a prima facie case that its property was over-valued for the March 1, 2007, assessment date. The Board finds in favor of the Respondent.

**Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property 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

- 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>.