

REPRESENTATIVE FOR PETITIONER:

Stella Bell, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Charles F. Ward, Center Township Representative

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

STELLA BELL,	)	Petition No.:	18-003-04-1-5-00265
	)	Parcel:	181110157011000003
Petitioner,	)		
	)		
v.	)		
	)	County:	Delaware
CENTER TOWNSHIP ASSESSOR,	)	Township:	Center
	)	Assessment Year:	2004
Respondent.	)		

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

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**June 14, 2006**

**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**

**ISSUE**

1. The parties presented the following restated issue for consideration by the Board:  
Whether the assessment exceeds the market value-in-use of the subject property.

## **PROCEDURAL HISTORY**

2. The Delaware County Property Tax Assessment Board of Appeals (the “PTABOA”) issued its determination with regard to the assessment of the subject property on November 23, 2004. On December 20, 2004, pursuant to Ind. Code § 6-1.1-15-3, Stella Bell (the “Petitioner”), filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (“Form 131 petition).

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on March 23, 2006, in Muncie, Indiana, before Alyson Kunack, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:
  - For the Petitioner:
    - Stella Bell, taxpayer
  - For the Respondent:
    - Charles F. Ward, Center Township and PTABOA representative
5. The following exhibits were presented for the Petitioner:
  - Petitioner Exhibit 1 – Appraisal of the subject property as of October 1, 1992
6. The following exhibits were presented for the Respondent:
  - Respondent Exhibit 1 – Subject Property Record Card (PRC)
  - Respondent Exhibit 2 – Neighborhood Sales
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 131 Petition
  - Board Exhibit B – Notice of Hearing dated February 16, 2006
  - Board Exhibit C – Hearing Sign In sheet

8. The subject property is a 1½ story single family residence located at 215 E. Myrtle Avenue, Muncie. It is a rental property.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2004, the PTABOA determined the assessed value of the property to be:  
Land: \$1,800            Improvements: \$15,400.
11. For 2004, the Petitioner contends the assessed value of the property should be:  
Land: \$1,800            Improvements: \$7,200.

#### **JURISDICTIONAL FRAMEWORK**

12. 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**

13. 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).
14. 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”).

15. 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.

### ANALYSIS

#### *Whether the assessment exceeds the market value-in-use of the subject property.*

16. The Petitioner contends the assessment of the subject property is too high. In support of her position, the Petitioner cites to the size of the subject lot, the condition of the subject neighborhood, and an appraisal of the subject property performed in 1992.
17. The Respondent contends the assessment is in line with market data for the neighborhood.
18. The Petitioner presented the following evidence and argument in support of her claims:
  - a) The taxes and value of the subject property are too high in light of the condition of the neighborhood in which the subject property is located. The neighborhood has gotten worse in the last 20 years. *Bell testimony.*
  - b) The Petitioner presented an appraisal estimating the market value of the subject property to be \$11,000 as of October 1, 1992. *Bell testimony; Pet’r Ex. 1.*
  - c) The subject property is a rental. The Petitioner charges \$250 per month in the winter and \$300 per month the remainder of the year. The rent is lower in the winter due to heating bills. *Bell testimony.*
  - d) The subject dwelling contains 1 ½ stories; not 2 stories. *Bell testimony.*
  - e) The subject lot is small; it has just enough room for the house. Other properties in the neighborhood have more land. *Bell testimony.*

19. The Respondent presented the following evidence and argument in support of the assessment:
- a) The subject lot is assessed as being 38' x 40,' and the subject house is assessed as having 1 ½ stories. *Ward testimony; Resp't Ex. 1.*
  - b) The Respondent applied a neighborhood factor of .72 in assessing the subject property. *Ward testimony; Resp't Ex. 1.*
  - c) The valuation date for assessing real property is January 1, 1999. The appraisal submitted by the Petitioner is too old to be of any value. *Ward testimony.*
  - d) The Respondent presented a list containing information regarding the sales of several properties from the subject neighborhood. Those sales occurred 1998 and 1999. The list does not include foreclosures. Parcel number 11-10-157-0007-000 sold for \$33,600 in September 1998. Parcel number 11-10-157-017-000 sold for \$50,000 in July 1999. Those two parcels are located within a few houses of the subject property. Sales prices for properties from the subject neighborhood ranged \$15,000 to \$50,000. The assessment of the subject property at \$17,200 is reasonable in light of that range. *Ward testimony; Pet'r Ex. 2.*
  - e) Taxes increased with the reassessment. The subject property does not receive a homestead credit because it is a rental property. *Ward testimony.*
20. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property 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). As set forth in the Manual, 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. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess real property.

21. A property's market value-in-use, as ascertained through application of the Guidelines' cost approach, 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. P/A Builders & Developers, LLC*, 824 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual's definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with [USPAP].”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
22. The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. This provision has significant consequences for appraisals performed substantially before or after that date. In order for such an appraisal to constitute probative evidence of a property's true tax value, there must be some explanation as to how the appraisal relates to the property's market value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
23. The Petitioner bases her claim largely upon the estimation of value set forth in an appraisal of the subject property. *Bell testimony; Pet'r Ex. 1*. The appraisal, however, estimates the value of the subject property as of October 1, 1992, more than six years prior to the relevant valuation date of January 1, 1999. The Petitioner did not explain how the appraised value from 1992 relates to the value as of the subject property as of January 1, 1999. The appraisal therefore lacks probative value.

24. The appraisal was the only market-based evidence offered by the Petitioner. The Petitioner did testify that the subject property was located in a bad neighborhood. *Bell testimony*. The Petitioner, however, neither explained how the subject property was less desirable due to the condition of the neighborhood, nor attempted to quantify the effect of the neighborhood on the subject property's market value-in-use. Similarly, although the Petitioner testified that the subject lot is small, she did not present any evidence to quantify the effect of the lot's size on the overall market value-in-use of the subject property. Finally, the Petitioner testified that the subject dwelling contains only 1 ½ stories. The Petitioner's testimony does not establish an error in assessment, however, because the Respondent assessed the subject dwelling as having 1 ½ stories. *See Resp't Ex. 1; Ward testimony*.
25. Based on the foregoing, the Petitioner failed to establish a prima facie case of error in the assessment of the subject property.

#### **SUMMARY OF FINAL DETERMINATION**

*Whether the assessment exceeds the market value-in-use of the subject property.*

26. The Petitioner did not make a prima facie case showing an error in the assessment. The Board finds in favor of the Respondent. There is no change to the assessment as a result of this issue.

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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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>>.