

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

**Petition #:** 71-023-02-1-5-00026  
**Petitioner:** Carolyn Sommerfield  
**Respondent:** Penn Township Assessor (St. Joseph County); St. Joseph County Assessor<sup>1</sup>  
**Parcel #:** 16-2116-3745  
**Assessment Year:** 2002

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

**Procedural History**

1. On January 8, 2004, the Petitioner initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”).
2. The PTABOA issued notice of its determination on May 20, 2004.
3. On June 4, 2004, the Petitioner filed her Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment. She elected to proceed under the Board’s rules for small claims.
4. The Board issued a notice of hearing to the parties dated September 13, 2007.
5. On October 24, 2007, the Board held an administrative hearing before its duly appointed Administrative Law Judge, Alyson Kunack.
6. Persons present and sworn in at hearing:
  - a) For the Petitioner: Carolyn Sommerfield, taxpayer
  - b) For the Respondent Penn Twp. Assessor: Terrence F. Wozniak, Deputy County Attorney<sup>2</sup>  
Ross A. Portolese, PTABOA  
Dennis J. Dillman, PTABOA

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<sup>1</sup> The St. Joseph County Assessor intervened as an additional party under Ind. Code § 6-1.1-15-4(p) (2006). For ease of reference, the Board captions the county assessor as a Respondent

<sup>2</sup> Mr. Wozniak’s appearance actually references the Portage Township Assessor rather than the Penn Township Assessor. Given that the appearance contains the petition number for this case, however, the Board assumes that Mr. Wozniak intended to appear for the Penn Township Assessor.

- c) David Wesolowski, St. Joseph County Assessor, appeared as a separate party to this matter.

### **Facts**

7. The property is a single-family residence located at 308 Park Avenue, Mishawaka, Indiana. The Petitioner currently uses it as a rental property.
8. The Administrative Law Judge did not inspect the property.
9. The PTABOA determined the following values for the subject property:  
Land: \$12,600      Improvements: \$55,600      Total: \$68,200.
10. While the Petitioner contends that her property is over-assessed, she did not request a specific value either on her Form 131 petition or at the administrative hearing.

### **Issue**

11. The Petitioner offered the following evidence and arguments:
  - a) The Petitioner points to several grounds for her belief that the Respondent assessed her property for more than it is worth. First, her house is in poor condition. It has serious structural problems because of cracking and falling plaster around the chimney area. *Sommerfield testimony; Pet'r Exs. 4-5*. The kitchen's linoleum floor has cracks that can be seen from the basement. *Id.* In the basement, the floor needs to be replaced, and paint is blistering off the walls. *Id.* In other areas of the house, a sewer-vent pipe and insulation blowing have damaged walls. *Id.*
  - b) Second, the house has many undesirable features. The kitchen is only eight-and-a-half feet wide. *Sommerfield testimony*. Plus, it has only one built-in cabinet, and a 1920s-style, double-drain-board sink. *Id.* The bathroom is very small, with only 11 inches between the front of the toilet and the tub. *Id.* In fact, the bathroom door does not open completely, because it hits the tub. *Id.*
  - c) Third, the subject property has an undesirable location. It is surrounded by light-industrial properties, including a vacant warehouse and the city motor pool. *Id.* The motor pool creates a lot of noise at all hours. *Id.* And, during hard rains, the back of the subject property floods with water that flows from the motor pool. *Id.* This flooding causes water and sewage to back up into the basement. *Id.; Pet'r Ex. 4*.
  - d) Fourth, the Petitioner believes that comparable properties have sold for less than her property's assessment. She presented listing information for various properties in Mishawaka. But she testified that she did not know whether any of

those properties had actually sold, and if so, what their sale prices were. *Sommerfield testimony; Pet'r Ex. 6.* She also contends that three nearby houses are assessed similar to her house, yet they are larger, nicer houses with more rooms. *Sommerfield testimony.* Plus, those properties all have lower assessed land values than the subject property. *Pet'r Ex. 2.*

- e) Fifth, the Petitioner offered an appraisal report from 1993 when she inherited the subject property. That appraisal estimates the property's value at \$35,000. *Pet'r Ex. 7.*
- f) Finally, the Petitioner argues that a breezeway built to replace an old stoop is incorrectly assessed as finished living area.

12. The Respondent, Penn Township Assessor, offered the following evidence and arguments:

- a) The Petitioner did not meet her burden of proof. She failed to adequately address her property's market value. Her appraisal did not relate to the appropriate valuation date, and the market information she provided for purportedly comparable properties contained only asking prices, not sale prices. Plus, she failed to show how any of those properties compared to the subject property. *Wozniak argument.* And those properties are from all over Mishawaka. *Portolese argument.*
- b) Also, while the Petitioner identified several problems with her house, the majority of those problems were maintenance issues. Maintenance issues are not typically considered in determining a home's condition rating. *Wozniak argument.*
- c) Three properties, all of which sold near the assessment date, support the subject property's assessment. *Resp't Ex. 4; Portolese testimony.* The first property is located at 426 Park Avenue, and it sold for \$72,000 in June 2001. *Id.* A second property located at 407 Park Avenue sold for \$88,900 in December 2001. *Id.* The third property, located at 425 Park Avenue, sold for \$71,000 in September 2001. *Id.* All three houses are within one block of the subject property. And they are of a similar design and age as the subject house. *Portolese testimony.*

13. The St. Joseph County Assessor concurred with the Penn Township Assessor's evidence and arguments.

### **Record**

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

- a) The Form 131 Petition.
- b) The digital recording of the hearing.

c) Exhibits:

Petitioner Exhibit 1: Form 131 petition  
Petitioner Exhibit 2: Aerial photograph with assessed values  
Petitioner Exhibit 3: Pictures showing views from subject property  
Petitioner Exhibit 4: Interior photographs of home  
Petitioner Exhibit 5: Photographs of nearby and neighboring homes  
Petitioner Exhibit 6: Sales listing information for multiple properties  
Petitioner Exhibit 7: Appraisal report for subject property as of February 1993  
Petitioner Exhibit 8: Form 115

Respondent Exhibit 1: Form 131 petition  
Respondent Exhibit 2: Petition to the PTABOA for Review of Assessment (Form 130)  
Respondent Exhibit 3: Form 115  
Respondent Exhibit 4: Comparable properties used in establishing assessment of subject property<sup>3</sup>

Board Exhibit A: Form 131 petition  
Board Exhibit B: Notice of Hearing  
Board Exhibit C: Hearing Sign-In sheet  
Board Exhibit D: Notice of Appearance for Respondent and Notice of County Assessor as Additional Party  
Board Exhibit E: Authorization letter from Penn Township Assessor

d) These Findings and Conclusions.

### **Analysis**

#### **Burden of Proof**

15. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically 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).
16. 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”).

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<sup>3</sup> Although the St. Joseph County Assessor appeared as an additional party to this matter, he did not submit any exhibits.

17. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut 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.

#### The Petitioner's Case

18. The Petitioner did not prove that her property's assessment is incorrect. The Board arrives at this conclusion 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 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, sales-comparison and income approaches to value. *Id.* at 3, 13-15. 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 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. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But 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 or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c) By contrast, a taxpayer does not rebut the presumption that an assessment is correct simply by contesting the assessor's methodology in computing the assessment. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect its property's market value-in-use. *Id.* And strictly applying the Guidelines is not enough to make that showing. *Id.*
  - d) The Petitioner first attempted to rebut the assessment's presumption of accuracy by pointing to her house's physical deterioration and location in an industrial-zoned neighborhood. Those types of problems might well detract from a property's market value-in-use. But the Petitioner failed to offer any market-based evidence quantifying the extent to which they did so in this case.

- e) The Petitioner’s attempts to compare her property’s assessment both to the assessments of nearby properties and to the asking prices for other properties throughout the Mishawaka area meet the same fate. The Petitioner did not explain how examining purportedly comparable properties’ assessments and asking prices—rather than their sales prices—comports with generally accepted appraisal principles. She also failed to explain how any of the properties in question compared to her property. It is not enough to state that properties are “similar” or “comparable” to each other. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). Instead, a party seeking to establish a property’s value through the sales-comparison approach must explain how that property’s relevant characteristics compare to those of purportedly comparable properties. *Id.* He or she must also explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f) The Petitioner did include at least one generally acceptable piece of market-based evidence—an appraisal report. But that report estimated her property’s value as of February 1993. The Manual provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. Thus, the Petitioner had to explain how the appraisal related to her property’s value as of January 1, 1999. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). She did not do so, and the appraisal therefore lacks probative value.
- g) Finally, the Petitioner’s claims that the Respondent erred by assessing her breezeway as finished living area is equally unpersuasive. As explained above, showing an assessor’s technical methodological errors is not enough to rebut an assessment’s presumption of accuracy. A taxpayer must offer market-based evidence showing that the assessment does not accurately reflect her property’s market value-in-use. The Petitioner, however, did not offer any probative market-based evidence.
- h) Because the Petitioner offered no probative market-based evidence to rebut the assessment’s presumption of correctness, she failed to make a prima facie case of error.

### **Conclusion**

- 19. The Petitioner failed to make 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: **January 30, 2008**

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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>>