

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

**Petition #:** 71-026-02-1-5-03043  
**Petitioner:** Jeanette Sharpe  
**Respondents:** Portage Township Assessor, St. Joseph County Assessor<sup>1</sup>  
**Parcel #:** 18-3080-319501  
**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. The Petitioner initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) on January 8, 2004.
2. The PTABOA issued its decision on September 23, 2004.
3. On October 19, 2004, the Petitioner filed its Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment.<sup>2</sup> The Petitioner elected to have this case heard under the Board’s procedures for small claims.
4. The Board issued a notice of hearing to the parties dated September 18, 2007.
5. On October 25, 2007, the Board held an administrative hearing through its Administrative Law Judge, Alyson Kunack (ALJ).
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Juliann Michalak, Petitioner’s sister  
Dayle Moore, Petitioner’s niece
  - b) For Respondents: Terrence E. Wozniak, St. Joseph Deputy County Attorney  
Rosemary Mandrici, Portage Township Assessor

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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> The Petitioner erroneously filed the Form 131 directly to the Board. The Board issued defect notices to the Petitioner, and, on February 15, 2005, the Petitioner correctly filed the Form 131 with the St. Joseph County Assessor. The assessor then transmitted the petition to the Board. The Board treats the Form 131 petition as timely filed based on the original filing date of October 19, 2004.

Kevin Klaybor, President, St. Joseph County PTABOA

- c) PTABOA members Ralph J. Wolfe and Dennis J. Dillman appeared only to observe the hearing, and were not sworn as witnesses.

### Facts

- 7. The property is a single-family residence located at 1301 Sample Street, South Bend, Indiana.
- 8. Neither the Board nor the ALJ inspected the property.
- 9. The PTABOA determined that the assessed value of the subject property is \$1000 for the land and \$15,500 for the improvements for a total assessment of \$16,500.
- 10. The Petitioner requests a total assessment of \$5500, broken down as follows: \$500 for the land and \$5000 for the improvements.

### Contentions

- 11. The Petitioner offered the following evidence and arguments:
  - a) The Petitioner originally bought the subject property to use as a rental property. *Moore testimony*. But due to her poor health and other factors, she has not rented it for nearly 20 years. *Id.* The Petitioner keeps the property only for safety purposes. It is located near the Petitioner's house and she wants to keep undesirable people, such as drug dealers, from moving in. *Id.*
  - b) Even if the Petitioner were capable of maintaining the property, the neighborhood's poor condition would make the property un-rentable. *Michalak testimony*. There is drug activity all around. Plus, known pedophiles live a block away and get off the bus in front of the property. *Id.*
  - c) Ms. Moore asked a realtor to help her find comparable houses. The realtor could not find any one-bedroom houses in the area that compared to the subject property. The most comparable house that realtor found was located one block away from the subject property at 1512 Fisher Street. That property sold for \$13,500. And its MLS listing indicates that it was assessed for only \$5,700. *Moore testimony; Pet'r Ex. 4*. Because nobody rents the subject property, there is no rental schedule to use in computing a value. *Moore testimony*. Thus, the comparable property's assessment is the only basis for determining the subject property's value. *Id.*

12. The Respondents offered the following evidence and arguments:
- a) According to Ms. Mandrici, she used the correct grade and condition rating in determining the subject property's assessment. *Mandrici testimony.*
  - b) Ms. Mandrici is unsure whether the \$5700 assessment listed on the 1512 Fisher Street property's MLS sheet is correct. *Mandrici testimony.* In any event, that property's \$13,500 sale price actually supports the subject property's assessment. Plus, according to Ms. Mandrici and Mr. Klaybor, one sale is insufficient for performing a market comparison. *Mandrici testimony; Klaybor testimony.*

### **Record**

13. 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: Power of Attorney
    - Petitioner Exhibit 2: Photographs of subject property
    - Petitioner Exhibit 3: Comparison of subject and property at 1512 Fisher
    - Petitioner Exhibit 4: MLS listing sheet for property at 1512 Fisher
    - Petitioner Exhibit 5: Form 11 Notice of Assessment
    - Petitioner Exhibit 6: Discussion items
  
    - Respondents Exhibit 1: Notice of Defect in Completion form dated  
January 4, 2005
    - Respondents Exhibit 2: Notice of Defect in Completion form dated  
February 1, 2005
    - Respondents Exhibit 3: Form 131 Petition
  
    - 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
  - d) These Findings and Conclusions.

### **Ms. Michalak's Attempt to Represent the Petitioner**

14. The Petitioner did not appear at the hearing. She did file a power of attorney form purporting to authorize her sister, Juliann Michalak, to represent her. *See Board Ex. A; Pet'r Ex. 1*. Ms. Michalak, however, is not a certified tax representative. Thus, under the Board's administrative rules in effect at the time of the hearing, Ms. Michalak was not authorized to represent the Petitioner. *See* Ind. Admin. Code tit. 52, r. 1-1-6 (defining "tax representative" as one who represents another person before the Board) and 52 IAC 1-2-1 (requiring tax representatives who practice before the Board to be certified by the Department of Local Government Finance).
15. The Board recently amended its rules to allow a legally appointed guardian or other appropriate representative to appear for an incapacitated party. Ind. Admin. Code tit. 52, r. 1-2-1.1 (filed November 14, 2007). And that guardian or representative may do so even if she is not a certified tax representative or attorney. *See id.* But the Board will only allow that specialized representation upon a specific request that is supported by independent documentation, such as medical records or a doctor's statement. 52 IAC 1-2-1.1(b)(3) and (4). Neither the Petitioner nor Ms. Michalak offered such documentation.
16. Nonetheless, Ms. Moore testified to the Petitioner's poor health, and the Respondent did not object to Ms. Michalak appearing for the Petitioner. Under those unique circumstances, the Board will address Ms. Michalak's testimony and arguments on the Petitioner's behalf, even though the Petitioner did not technically appear at the hearing.

### **Analysis**

#### **Burden of Proof**

17. 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).
18. 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").
19. 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

20. The Petitioner did not provide sufficient evidence to support her contentions. The Board reaches 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. *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) Here, Ms. Michalak offered little market-based evidence to support the Petitioner’s claims. She largely focused on the neighborhood’s condition and the Petitioner’s current living situation. To the extent either of those factors affected the subject property’s market value-in-use, Ms. Michalak failed to quantify that effect.
  - d) Ms. Michalak did offer an MLS listing on a purportedly comparable property located at 1512 Fisher Street. But she focused on that property’s assessed value rather than its sale price. The Fisher Street property’s assessment, however, does little to establish either its, or the subject property’s, market value-in-use.
  - e) The Fisher Street property’s sale price is at least market related. But to prove a property’s value using the sales-comparison approach, a party must do more than simply assert that the property being valued is “comparable” or “similar” to other properties that have sold in the market. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, he or she must identify the subject property’s characteristics and explain how they compare to the purportedly comparable properties’ characteristics. *Id.* at 471. And the party must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- f) Neither Ms. Michalak nor Ms. Moore explained how the subject and Fisher Street properties compared to each other or how any relevant differences between the two properties affected their relative market values-in-use. The Petitioner therefore failed to make a prima facie case for a change in assessment.

### **Conclusion**

21. The Petitioner failed to establish a prima facie case. The Board finds in favor of Respondents.

### **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: \_\_\_\_\_

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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>