

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

**Petition No.:** 76-004-06-1-5-00004  
**Petitioner:** BFD, LLC  
**Respondent:** Steuben County Assessor  
**Parcel No.:** 76-02-20-430-209.000-004  
**Assessment Year:** 2006

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

**PROCEDURAL HISTORY**

1. BFD, LLC filed a written notice contesting the subject property’s assessment. On October 20, 2008, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying BFD the relief it requested.<sup>1</sup>
2. BFD then timely filed a Form 131 petition with the Board and elected to have its appeal heard under the Board’s small claims procedures.
3. On June 2, 2009, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. People present and sworn in at hearing:
  - a) Douglas E. Vanette Member, BFD, LLC
  - b) For the Assessor: Larry May, Steuben County Assessor  
Jennifer Becker, representative

**FACTS**

5. BFD’s property is located at 810 West Toledo Street in Fremont, Indiana.
6. Neither the Board nor the ALJ inspected the property.

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<sup>1</sup> In its Form 131 petition, BFD attached a copy of the PTABOA’s determination for a property owned by Douglas & Cheryl Vanette. That property’s assessment is not part of this proceeding, and neither BFD nor the Assessor offered any evidence regarding that property.

7. The PTABOA determined the subject property's assessment at \$21,300 for the land and \$128,300 for the improvements, for a total assessment of \$149,600.
8. BFD requested values of \$21,300 for the land and \$83,700 for the improvements, for a total assessment of \$105,000.

#### **PARTIES' CONTENTIONS**

9. BFD offered the following evidence and arguments:
  - a) BFD offered a cover letter and portions of an appraisal report prepared by Lance E. Krebs, a certified general appraiser. *Pet'r Ex. 4*. Mr. Krebs estimated the subject property's market value at \$105,000 as of January 5, 2006. *Id.*
  - b) Mr. Krebs used both the cost and sales-comparison approaches to value. The comparable properties in his sales-comparison analysis were better than the properties that Ms. Becker used in her analysis. *Vanette argument*. Ms. Becker's comparables were all located in subdivisions. The subject property, by contrast, is located on Highway 20, which lowers its value. Similarly, Ms. Becker's comparables were in much better condition than the subject property. For example, 105 Abbot Drive was completely remodeled before it sold. Also, the \$135,500 sale price that Ms. Becker used did not actually reflect the property's value. It had been listed at \$129,900 and the parties raised the price to cover \$4,460 worth of concessions. *Vanette testimony; Pet'r Ex. 2*.
  - c) The subject property's condition and location detract from its value. BFD bought the property for \$90,000 in December 2005. The seller was "in trouble with the bank" and owed \$80,000 on the property. *Vanette testimony*. He wanted to walk away with \$10,000 in equity. BFD thought that \$90,000 was a good deal and bought the property. BFD has tried for three years to sell the property at \$115,000, but it has not sold. *Vanette testimony*.
  - d) Mr. Vanette also prepared a "Sold Market Analysis" showing that, from January 1, 2004, to December 31, 2005, residential property sales in Fremont ranged from \$90,000 to \$150,000. The average price was \$113,004, and the subject property is not above average. *Vanette testimony; Pet'r Ex. 1*. Mr. Vanette also offered Multiple Listing Service data for 106 North Tillotson Street—one of the 53 properties included in his market analysis. *Pet'r Ex. 3*. He believed that the North Tillotson Street property was comparable to the subject property—it was located only five or six blocks from the subject property and it was in better condition than the subject property. *Vanette testimony*. The North Tillotson Street property sold for \$108,000 after concessions. *Id.; Pet'r Ex. 3*.

10. The Assessor offered the following evidence and arguments:

- a) The Assessor identified three reasons why the Board should give Mr. Krebs's appraisal little weight. First, BFD did not offer a complete copy of the appraisal report. The last three pages, including the signature page and addendum, are missing. Second, only one of the three comparable properties that Mr. Krebs used in his sales-comparison analysis was located in the subject property's defined neighborhood. The other two were about  $\frac{3}{4}$  of a mile from the subject property. Finally, Mr. Krebs relied on a foreclosure sale for the property located at 300 East Albion. Mr. Krebs used a sale price of \$104,900, but the property resold on the same day for \$146,916. And it sold again in 2006 for \$138,000. *Becker testimony.*
- b) Ms. Becker offered her own sales-comparison analysis to support the subject property's assessment. *Resp't Ex. 5.* She used three properties located within the subject property's defined neighborhood, all of which sold between January 1, 2004, and December 31, 2005. *Becker testimony; Resp't Exs. 5, 5a-5d.* Ms. Becker compared the sold properties to the subject property in the following nine areas: size, story height, grade, number of baths, number of bedrooms, year built, exterior, foundation, and garage area. The three properties were almost identical to the subject property—two were comparable to the subject property in seven of the nine areas, and the third was comparable in six of the nine areas. Ms. Becker then adjusted each property's sale price to account for differences between it and the subject property in the remaining areas of comparison. *Becker testimony; Resp't Exs. 2 at 2, 5.*
- c) Because BFD said that it was not contesting the subject property's land assessment, Ms. Becker abstracted an improvement value from each sale and determined a price-per-square foot for those improvements. After making her initial adjustments, she arrived at prices ranging from \$72.47 to \$100.63 per square foot—all of which were higher than the subject property's assessment of \$60.07 per square foot. *Becker testimony.* Ms. Becker, however, further adjusted her comparable properties' sale prices by 15% to 20% because larger properties like the subject sell for less per square-foot than smaller properties. *Becker testimony; Resp't Ex. 2 at 3.* After those further adjustments, the comparable properties' sale prices ranged from \$57.98 to \$87.86 per square foot. *Id.*
- d) The properties that Mr. Krebs relied on in his sales-comparison analysis were less comparable to the subject property than were the properties that Ms. Becker used. Out of the nine areas of comparison that Ms. Becker identified, Mr. Krebs's properties were similar to the subject property in only four, five, and two areas, respectively. *Becker testimony.*

## RECORD

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

- a) The Form 131 petition
- b) A digital recording of the hearing
- c) Exhibits:

Petitioner's Exhibit 1 – Market data for residential sales in the Fremont area,  
Petitioner's Exhibit 2 – MLS listing and sales data for 105 Abbott Drive,  
Petitioner's Exhibit 3 – MLS listing and sales data for 106 N. Tillotson Street,  
Petitioner's Exhibit 4 – Cover letter and portions of appraisal report for the  
subject property.

Respondent's Exhibit 1 – Assessor's exhibit coversheet,  
Respondent's Exhibit 2 – Summary of testimony,  
Respondent's Exhibit 3 – Power of Attorney for Ms. Becker,  
Respondent's Exhibit 3a – Certification of Power of Attorney,  
Respondent's Exhibit 4 – BFD's 2006 property record card (PRC),  
Respondent's Exhibit 5 – "Sale Comparable Overview Spreadsheet,"  
Respondent's Exhibit 5a – Map with location of the Assessor's comparables,  
Respondent's Exhibit 5b – PRC for 20 Janedale Dr.,  
Respondent's Exhibit 5c – PRC for 109 Abbott Drive,  
Respondent's Exhibit 5d – PRC for 105 Abbott Drive,  
Respondent's Exhibit 6 – County GIS information for 300 E. Albion St.,  
Respondent's Exhibit 7 – Respondent signature and attestation sheet.

Board Exhibit A – The Form 131 petition,  
Board Exhibit B – Notice of hearing,  
Board Exhibit C – Hearing sign-in sheet.

- d) These Findings and Conclusions.

## ANALYSIS

### A. Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and 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). If the taxpayer meets that burden, the assessing official must offer evidence to impeach or rebut the taxpayer'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. But the burden of persuasion remains with the taxpayer. *See Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).

13. Of course, that begs the question of how a taxpayer may go about meeting its burden of proof. To answer that question, the Board turns to the 2002 Real Property Assessment Manual and the basic principles underlying Indiana's assessment system. Indiana assesses real property based on its true tax value, which Manual defines 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, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
14. 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). A taxpayer, however, 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 ("USPAP") often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
15. Whatever method a taxpayer uses in trying to rebut its property's assessment, the taxpayer must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *See Long v. Wayne Township 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). For March 1, 2006 assessments, that date was January 1, 2005. 50 IAC 21-3-3.

## **B. BFD's Case**

16. BFD failed to make a prima facie case for reducing the subject property's assessment. The Board reaches that conclusion for the following reasons:
  - a) BFD offered four main items to support its claim: (1) Mr. Vanette's analysis of 53 sales from 2004 and 2005, (2) Mr. Krebs's appraisal report, (3) BFD's purchase of the subject property; and (4) Mr. Vanette's testimony about the property's condition and its location along Highway 20. Each item, however, suffers from at least one shortcoming that deprives it of probative value.

### **Mr. Vanette's analysis of sale prices**

- b) The sales-comparison approach recognizes that one can estimate a given property's value by comparing it to comparable properties that have sold in the market. MANUAL at 3. To use a sales-comparison analysis as evidence in an assessment appeal, a party first must show that the properties upon which he based that analysis were actually comparable to the property being appealed. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice; instead, the party must compare the appealed property's characteristics to characteristics of the purportedly comparable properties. *Long* at 470-71. He must also explain how any differences between the properties affect their relative market values-in-use. *Id.*
- c) Mr. Vanette, however, failed to explain how the properties in his analysis compared to the subject property or how any differences affected their relative market values-in-use. In fact, the Tollitson Street and Abbot Street properties were the only properties for which he offered any specific information. Even then, he only cursorily compared those properties to the subject property.

#### **Mr. Krebs's appraisal report**

- d) Although Mr. Krebs's appraisal report contains a sales-comparison analysis that is more in keeping with the requirements described in *Long*, that report suffers from different evidentiary problems.
- e) First, BFD did not offer the entire appraisal report. Instead, it offered the following:
- a cover letter in which Mr. Krebs said that, in his opinion, the market value of the property was \$105,000 as of January 5, 2006,
  - three out of six pages from the appraisal report,
  - a photo addendum, and
  - a floor plan.

*Pet'r Ex. 4.* Notably, the portions of the report that BFD offered contain neither Mr. Krebs's signature nor any certification that he performed his report in accordance with USPAP. *See id.* For that reason, the Board gives little or no weight to Mr. Krebs's valuation opinion.

- f) Second, Mr. Krebs estimated the subject property's value as of January 5, 2006, rather than as of the relevant January 1, 2005, valuation date. Thus, BFD needed to explain how Mr. Krebs's valuation opinion related to the subject property's market value-in-use as of January 1, 2005. And BFD did not attempt to do that.

### **BFD's purchase of the subject property**

- g) Mr. Vanette's testimony that BFD bought the subject property for \$90,000 at least arguably related to the relevant January 1, 2005, valuation date. The Department of Local Government Finance's rules for annual adjustments instruct assessors to use sales from January 1, 2004 through December 31, 2005, in performing ratio studies for the March 1, 2006, assessment date. 50 IAC 21-3-3(a). Thus, evidence showing the subject property's value within that one-year period on either side of the valuation date bears at least some relationship to the property's true tax value. While Mr. Vanette did not give the date on which BFD bought the subject property, Mr. Krebs's appraisal report listed the date of the sale contract as December 7, 2005. *Pet'r Ex. 4*.
- h) Nonetheless, Mr. Vanette's own testimony casts substantial doubt on the reliability of that sale price as evidence of the subject property's market value. Granted, a property's sale price is often the best evidence of its market value. That general rule, however, presumes certain underlying facts, such as the buyer and seller being typically motivated and the price being unaffected by any undue stimulus. *See* MANUAL at 10 (defining market value). Mr. Vanette testified that the seller from whom BFD bought the subject property was "in trouble with the bank," that he owed \$80,000 on the property, and that he wanted \$10,000 in equity so that he could walk away from the property. *Vanette testimony*. Mr. Vanette also acknowledged that BFD thought that the seller had offered a good deal, and that, after installing a furnace and air-conditioning, it could turn around and sell the property. *Id.* Thus, Mr. Vanette's own testimony tends to show that the seller was not typically motivated and that an undue stimulus—the seller's trouble with the bank—affected the sale price.

### **The subject property's location and condition**

- i) Finally, Mr. Vanette claimed that the subject property's condition and its location on a busy highway limited its value. As support, he testified that BFD had been unable to sell the property for \$115,000. But Mr. Vanette did not say what steps BFD took to market the property. Even if he had, BFD's attempts to sell the property occurred well after the relevant January 1, 2005, valuation date, and Mr. Vanette did not explain how those attempts related to the subject property's value as of January 1, 2005.

### **CONCLUSION**

17. For the reasons explained above, BFD failed to offer probative evidence to rebut the presumption that the subject property's assessment was accurate. BFD therefore failed to make a prima facie case, and the Board finds for the Assessor.

## FINAL DETERMINATION

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the subject property's assessment.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
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>>