

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

**Petition:** 59-012-09-1-5-00003  
**Petitioner:** Shirley Bruner  
**Respondent:** Orange County Assessor  
**Parcel:** 59-06-36-332-115.001-012  
**Assessment Year:** 2009

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

**Procedural History**

1. The Petitioner appealed the subject property's 2009 assessment. She initiated assessment appeal with the Orange County Property Tax Assessment Board of Appeals (PTABOA) by written document dated April 27, 2010.
2. The PTABOA mailed a Form 115 decision on February 23, 2011. The PTABOA lowered the subject property's assessment from \$90,100 to \$89,300 due to a change in the condition of the dwelling from good to average.
3. The Petitioner filed a Form 131 petition with the Board on March 28, 2011. She elected to have the case heard according to the Board's small claims procedures.
4. Administrative Law Judge Rick Barter held the Board's administrative hearing on July 7, 2011. He did not inspect the property.
5. Petitioner Shirley Bruner, County Assessor Linda Reynolds and Kirk Reller, a technical advisor to the Orange County Assessor, were sworn as witnesses. Attorney Marilyn S. Meighen represented the Respondent.

**Facts**

6. The property at issue is an improved residential parcel located at 500 Helm Street in Paoli.
7. The PTABOA determined that the 2009 assessment is \$15,500 for land and \$73,800 for improvements (total \$89,300).
8. The Petitioner claimed the assessment value should be \$7,000 for land and \$61,208 for improvements (total \$68,208).

## Contentions

### 9. Summary of the Petitioner's case:

- a. The 2009 assessment of the subject property is overstated compared to the assessment of a property across the street that is larger and has more land. The property across the street at 501 Helm Street was assessed at \$71,100 while the subject property was assessed at \$89,300. The Petitioner presented copies of the property record cards (PRCs) and a series of photographs for both properties. The houses on both properties were built in 1947, but the subject property has an effective age based on 1980. The 501 Helm Street property has similar characteristics to the subject property, but it is larger, with more bedrooms and three acres compared to the subject property's eight-tenths of an acre. It also has a concrete driveway, a swimming pool, and a D+1 grade, compared to the C-1 grade of the subject property. *Bruner testimony; Petitioner Exhibits 3, 5, 6, 7.*
- b. An appraisal of the subject property was conducted after the county-level hearing. The appraisal reached a value of \$69,000 as of March 12, 2011. The Uniform Residential Appraisal Report was prepared by Rosemary Trinkle of Trinkle Group Appraisals in Paoli, Indiana. The Summary Appraisal Report certified it was prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). The Petitioner also presented copies of photographs and PRCs with hand-written notations for the three comparable property sales used in the appraisal. *Bruner testimony; Petitioner Exhibits 11 through 15.*
- c. The sales disclosure form for the subject property that shows a sale price of \$96,500 does not represent a sale on the open market. The subject property was owned by the Petitioner's husband's family since the house was built in 1948. The Petitioner purchased the property from her husband's brothers. When the Petitioner's daughter moved back to Indiana in 2002, Petitioner gave her daughter the subject property and some cash. Later, the daughter decided to build a new home and returned the subject property to Petitioner. Petitioner gave her daughter additional money to purchase land. Because Indiana law requires a sales disclosure form to be filed when property changes owners, Petitioner was required to sign the form. Petitioner stated on the form that the sale price was \$96,500 in order to establish a basis for depreciation on federal income tax records since the property was becoming an income-producing rental property. The sale price listed on the disclosure form did not reflect a sale. It was a gift and they merely transferred names. *Bruner testimony; Respondent Exhibit C.*

### 10. Summary of the Respondent's case:

- a. The 2009 assessment is supported by the Orange County 2009 ratio study for Paoli Township that examined 2007 and 2008 sales. The ratio study, approved by the Department of Local Government Finance, utilized actual sales data of homes

in a variety of similar, homogenous neighborhoods in Paoli to reach the value per square foot. The study included homes with a sale price between \$50,000 and \$125,000 and excluded newer homes and double-wide mobile homes to reach the median price of \$65.18 per square foot. That value per square foot is approximately four dollars higher than the assessed value of the subject property, which was \$61.88 per square foot. *Meighen argument; Reller testimony; Respondent Exhibit D.*

- b. The appraisal fails to make a case because its estimate of value is too far removed from the proper valuation date. The valuation date for a 2009 assessment is January 1, 2008. The appraisal as of March 12, 2011, is removed from the valuation date by more than thirty-eight months. *Meighen argument.*
- c. All three comparable sales in the appraisal occurred in late 2010, and one of them was a bank sale. The bank sale would not have to be removed from consideration in an appraisal, but could be. Additionally, there are size variations between the subject property and the comparables, but the appraiser failed to make adjustments based on the size differences. *Meighen argument; Reller testimony.*
- d. The Petitioner's argument that the 2009 assessment should be lowered due to an erroneous effective age change on the subject property is incorrect. Petitioner argues that the effective age of her property should not have been changed to 1980 after a remodel in 2007 because her neighbor's house was also remodeled, but its effective age was not changed. The renovation project almost doubled the living space in the subject improvement resulting in a higher value. Assessing officials may change an effective age if there is a substantial change in value due to remodeling, but a change may not be made in all cases. *Meighen argument; Reller testimony.*
- e. The claim that \$96,500 on the sales disclosure form does not represent market value-in-use sale is without merit. The Petitioner testified that she made a mistake in order to establish a basis for federal tax purposes and the sales disclosure form should not be considered as a valuation factor in determining her property assessment. But there are two places on an Indiana sales disclosure form where a party may indicate that the transfer was an in-family transaction. When these boxes are marked, the sales disclosure form will be invalidated because it was not the result of an arm's length transaction. The Petitioner failed to mark these boxes on the form. *Meighen argument; Reller testimony.*

### **Record**

13. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. The digital recording of the hearing,

- c. Petitioner Exhibit 1 – Spring 2010 tax statement,  
 Petitioner Exhibit 2 – Form 130 PTABOA appeal,  
 Petitioner Exhibit 3 – Property record card (PRC) for subject property,  
 Petitioner Exhibit 4 – Informational sheet detailing county hearing procedures,  
 Petitioner Exhibit 5 – Photographs of subject property,  
 Petitioner Exhibit 6 – Photographs of property at 501 Helm Street,  
 Petitioner Exhibit 7 – Multiple PRCs for subject property 2006 through 2010,  
 Petitioner Exhibit 8 – Form 115 Final Assessment Determination,  
 Petitioner Exhibit 9 – Copy of tax refund check,  
 Petitioner Exhibit 10 – Copy of Form 131 Petition to Board,  
 Petitioner Exhibit 11 – Residential appraisal dated March 12, 2011,  
 Petitioner Exhibit 12 – Copies of photographs of appraisal comparables,  
 Petitioner Exhibit 13 – PRC 527 Sibbit Street,  
 Petitioner Exhibit 14 – PRC for 1540 NE Main Street,  
 Petitioner Exhibit 15 – PRC for 1411 SE Main Street,  
 Petitioner Exhibit 16 – 2010 tax appeal notice,  
 Petitioner Exhibit 17 – 2010 property tax bill cap notice,
- d. Respondent Exhibit A – PRC for subject property,  
 Respondent Exhibit B – Photographs of subject property,  
 Respondent Exhibit C – Sales disclosure form for subject property,  
 Respondent Exhibit D – 2009 Orange County ratio study,  
 Respondent Exhibit E – Memo regarding burden of proof,
- e. Board Exhibit A – Form 131 Petition and attachments,  
 Board Exhibit B – Notice of Hearing,  
 Board Exhibit C – Hearing sign-in sheet,
- f. These Findings and Conclusions.

### Analysis

- 14. 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).
- 15. In making a 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”).

16. The Petitioner did not make a case for any assessment change.
- a. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
  - b. An appraisal performed in accordance with generally recognized appraisal principles is often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. But here the appraisal values the property as of March 12, 2011, while the required valuation date was January 1, 2008.<sup>1</sup> To be relevant, the record would need to establish how the evidence relates to market value-in-use as of the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 864 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 472 (Ind. Tax Ct. 2005). Nothing in the record ties the appraised value to the required valuation date. Therefore, the appraisal does not help prove a more accurate assessed valuation.
  - c. The Petitioner tried to rely on a comparison approach to establish the value of her property. In order to effectively use a comparison as evidence, 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 comparability. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a comparison must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. The proponent must explain how any differences between the properties affect their relative market value-in-use. The Petitioner offered some photographs, the PRC for the neighboring property, and testified about a few similarities and differences such as living area and the size of the lots. But her presentation falls short of what would be required for any meaningful comparative value analysis between the subject property and 501 Helm Street.
  - d. Furthermore, comparing the assessed value of the subject property with some other assessments does not prove that the assessed value of the subject property

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<sup>1</sup> At the time the required valuation date was established by 50 IAC 21-3-3.

must be changed. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). The Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. Instead, the taxpayer must present probative evidence to show that the assessed value does not accurately reflect market value-in-use. Here, the Petitioner offered no probative evidence that the current assessment did not accurately reflect the market value-in use of her property. Her comparison with other assessments does not support any conclusion about what a more accurate market value-in-use for the subject property might be.

- e. Arguments based on strict application of the Guidelines are not sufficient to rebut the assumption that the assessment is correct. *O'Donnell*, 854 N.E.2d at 95; *Eckerling v. Wayne Twp. Assessor*, 841 N. E. 2d764, 768 (Ind. Tax Ct. 2006). Grade and effective age are some of the factors used in the cost approach methodology in the Guidelines for assessors. The Petitioner attempted to show that the grade (C-1) and effective age (1980) used for assessing her home are wrong. On those points, however, she offered nothing but conclusory testimony and argument. The record contains no probative evidence that the grade or effective age for the Petitioner's home is actually wrong. More importantly, even if they are wrong and the assessment did not fully comply with the methodology in the Guidelines, the Petitioner still must show that the total assessment is not a reasonable measure of true tax value. The Petitioner failed to do so.
- f. Where a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- g. Nevertheless, the Respondent introduced a sales disclosure form reporting that the subject property sold for \$96,500 on January 31, 2007. The Respondent did not explain the purpose of offering this evidence, but apparently it was to establish that the assessment of \$89,300 is perhaps a little low. The Respondent did not claim that information had been considered in making the assessment and the Respondent did not claim that the assessment should be increased based on it. The Petitioner testified about the circumstances of that transaction and how it actually was a family transfer—that there had been mistakes in completing the form and there really had been no open market sale for \$96,500. The Respondent correctly noted that the form provides the opportunity to indicate a family relationship between buyer and seller, but no such relationship was indicated in this instance. The evidence and arguments from both sides go to the credibility of the information on the sales disclosure form, but not its relevance, which under these circumstances is not readily apparent. Ultimately, the accuracy of the sale price shown on the sales disclosure form does not change the outcome of this case, one way or the other—it is simply irrelevant to our determination.

**CONCLUSION**

17. The Petitioner failed to make a prima facie case for any change in assessed value. The Board finds in favor of the Respondent.

**Final Determination**

In accordance with these findings and conclusions, the assessment will not be changed.

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

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Commissioner, 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>.