

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

**Petition No.:** 19-020-07-1-5-00036  
**Petitioner:** Mary Ellen Hoffman  
**Respondent:** Dubois County Assessor  
**Parcel No.:** 19-11-34-103-224.000-020  
**Assessment Year:** 2007

The Indiana Board of Tax Review (the 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 Dubois County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated August 22, 2008.
2. The PTABOA issued its Form 115 Notification of Final Assessment Determination dated November 7, 2008.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 dated December 24, 2008. The Petitioner elected to have her case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 13, 2009.
5. The Board held an administrative hearing on July 9, 2009, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioner: Mary Ellen Hoffman, Petitioner,
  - b. For Respondent:<sup>1</sup> Gail Gramelspacher, Dubois County Assessor,  
Fred Hollinden, Dubois County PTABOA,  
Larry Persohn, Dubois County PTABOA,  
Greg Abell, Dubois County PTABOA,  
Marvin M. Folkerts, Dubois County Assessor's contractor.

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<sup>1</sup> Marilyn Meighen appeared as the Attorney for the Dubois County Assessor.

## FACTS

7. The property under appeal is an improved residential parcel located at 710 E. Eighth Street, Patoka Township, Huntingburg, Dubois County, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$4,200 for the land and \$26,700 for the improvements, for a total assessed value of \$30,900.
10. The Petitioner requested a 2007 assessed value of \$3,000 for the land and \$19,000 for the improvements, for a total assessed value of \$22,000.

## PETITIONER'S CONTENTIONS

11. The Petitioner contends her property's 2007 assessed value is higher than the property's market value-in-use because the property is located in a low-income neighborhood where homes do not sell at that level. *M. Hoffman testimony*. In support of her contention, the Petitioner presented property record cards for twelve properties she identified as being within a half block of her property to show the values of homes in the neighborhood. *Petitioner Exhibit 9; M. Hoffman testimony*.
12. The Petitioner further contends the house is over-valued based on an appraisal. *M. Hoffman testimony*. Ms. Hoffman testified that she commissioned Indiana licensed real estate broker Daniel C. Hoffman, a principal in Hoffman & Mullen Real Estate Inc., to conduct an appraisal.<sup>2</sup> *Id.* In his opinion of value, Mr. Hoffman estimated the value of the house to be \$21,000 as of July 8, 2009. *Petitioner's Exhibit 1*. In addition to his two-page opinion of value on company letterhead dated July 8, 2009, Mr. Hoffman included copies of the Petitioner's property record card, a tax bill for the property, and multiple-listing service printouts for seven properties he identified as similar to the appealed property. *Id.*
13. Finally, Ms. Hoffman contends that the house on her property is in disrepair and that most major systems in the home would require extensive repairs and expenditures in order to be habitable. *M. Hoffman testimony*. According to Ms. Hoffman, the house has been vacant for several years and is only being used for storage. *Id.* Ms. Hoffman testified that the basement leaks, the hot water heater does not work as a result of the flooding and that leaks in the now-repaired roof damaged the ceiling finishes inside. *Id.* Further, she testified the furnace is over 30 years old, the plumbing fixtures are broken and sections of the porch floor are unsafe. *Id.* In support of her contention, Ms. Hoffman submitted 21 photographs of her house showing various areas of disrepair and deterioration. *Petitioner Exhibit 8*.

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<sup>2</sup> Mr. Hoffman is not related to the Petitioner. *M. Hoffman testimony*.

## RESPONDENT'S CONTENTIONS

14. The Respondent contends the 2007 assessed value is correct based on a comparison of the sales of several local properties. *Respondent Exhibit A through D; Gramelspacher testimony*. In support of this contention, the Respondent entered into evidence property record cards from the appealed property and three additional properties identified as comparable in age and size. *Id.* According to Ms. Gramelspacher, the subject property's 2007 assessed value is \$33.65 per square foot. *Id.* Sales of similar properties in 2006 show sales values per square foot of \$58.92 for Parcel No. 11-34-403-507.000-020, \$39.22 for Parcel No. 19-11-34-303-601.000-020, and \$32.99 for Parcel No. 19-11-34-204-110.000-020 at 32.99. *Id.*
15. Further, the Respondent argues, the opinion of value submitted by the Petitioner cannot be considered an appraisal because it lacks, among other things, a summary sheet, a grid sheet of the comparable properties and adjustments to those properties, and the credentials of the licensed appraiser. *Meighen argument; Gramelspacher testimony*. In addition, the Respondent argues, Mr. Hoffman values the property as of 2009. *Gramelspacher testimony*. The relevant valuation date for the March 1, 2007, assessment year is January 1, 2006. *Id.* Thus, the Respondent contends, the opinion of value is too far removed from the required valuation date to be relevant to this assessment. *Id.*
16. Finally, the Respondent contends that House Enrolled Act 1001, Section 111, which shifts the burden of proof from the Petitioner to the Respondent in appeals where the assessed value of the property has increased five-percent or more does not apply to the Petitioner's appeal. *Meighen argument; Respondent Exhibit E*. According to the Respondent's counsel, the act does not apply retroactively and the Petitioner's appeal was filed well before HEA 1001 was passed. *Id.*

## RECORD

17. The official record for this matter is made up of the following:
  - a. The Form 131 petition and related attachments.
  - b. The digital recording of the hearing.
  - c. Exhibits:

Petitioner Exhibit 1 – Appraisal by Daniel C. Hoffman dated July 8, 2009,  
Petitioner Exhibit 2 – Notice of Hearing from the Board,  
Petitioner Exhibit 3 – Copy of the Form 131 Petition,  
Petitioner Exhibit 4 – Copy of the Form 130 Petition,  
Petitioner Exhibit 5 – Copy of the Form 114 Notice of county hearing,  
Petitioner Exhibit 6 – Copy of the Form 115 Notice of Final PTABOA  
Assessment,

Petitioner Exhibit 7 – Copy of the Form 11 Notice of Township Assessment,  
Petitioner Exhibit 8 – Interior and exterior photographs of the property,  
Petitioner Exhibit 9 – PRCs for the subject property and twelve nearby properties,

Respondent Exhibit A – PRC for the subject property,  
Respondent Exhibit B – PRC for Parcel No. 19-11-34-403-507.000-020,  
Respondent Exhibit C – PRC for Parcel No. 19-11-34-303-601.000-020,  
Respondent Exhibit D – PRC for Parcel No. 19-11-34-204-110.000-020,  
Respondent Exhibit E – Legal brief regarding the applicability of HEA 1001,

Board Exhibit A – Form 131 petition and its related attachments,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

#### ANALYSIS

18. The most applicable governing cases are:
- a. 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).
  - b. 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”).
  - c. 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.
19. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in her assessed value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment 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 (MANUAL) (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 approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).

- 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); and *P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 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 actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
- c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party to an appeal must explain how his or her evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, that valuation date is January 1, 2006. 50 IAC 21-3-3.
- d. The Petitioner first argues that her property is over-assessed because it is located in a low-income neighborhood and would therefore not sell at its assessed value. *M. Hoffman testimony; Petitioner Exhibit 9*. In support of this contention, Ms. Hoffman submitted property record cards for twelve local properties. *Id.* The Petitioner, however, presented no evidence of the value of the neighboring properties and the Board is unable to discern any evidence that her property is over-valued compared to twelve properties of differing sizes and ages whose assessed values range from \$24,300 to \$60,300.<sup>3</sup>
- e. The Petitioner also presented an opinion of value prepared by David Hoffman that estimated the value of the property to be \$21,000 as of July 8, 2009. *Petitioner Exhibit 1*. Mr. Hoffman presented MLS sheets for seven properties and made the following finding: "This 832 sq. ft. home [is] located at 710 E. 8<sup>th</sup> St. in Huntingburg, IN. It has 2 bedrooms, 1 bath, and a partial basement. It is in very poor

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<sup>3</sup> To the extent that the Petitioner contends that her property is over-assessed compared to the assessed values of other properties in her neighborhood, this argument was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*

condition and needs much repair. The front porch is too rotten to walk on and needs to be replaced. The ceilings in the home have suffered damage from a leaky roof and the bathroom needs all new fixtures. Based on comparable sales, which I am enclosing several with this valuation, I would estimate fair market value, as of this date, to be \$21,000.00.” No further analysis was provided.

- f. In providing the opinion of value, the Petitioner’s broker essentially relies on a sales comparison approach to establish the market value in use of her property. *See* MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, 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 the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- g. Here, Mr. Hoffman only provided MLS sheets for area sales. He made no attempt to show the properties were comparable in his report. Further, he did not make adjustments for any differences between the subject property and his purportedly comparable properties. Most importantly, Mr. Hoffman valued the property as of July 8, 2009. This is far too removed from the January 1, 2006, valuation date to be probative of the property’s value for the March 1, 2007, assessment.<sup>4</sup>
- h. Finally, the Petitioner argued that her property is in poor condition. *M. Hoffman testimony*. According to Ms. Hoffman, the house has a leaky basement, a non-functioning hot water heater, a thirty-plus-year-old furnace, an unsafe porch floor and numerous other structural and system faults which make it uninhabitable and which will require considerable expenditures to correct. *Petitioner Exhibit 8; Hoffman testimony*. However, once again the Petitioner failed other than in very general terms to relate the condition issues to any actual loss in value of her property. Even when asked by the attorney representing the county how much certain repairs might cost or how their existence impacts the value of her property, Ms. Hoffman failed to provide market-based evidence to prove the value she sought in her appeal.<sup>5</sup>

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<sup>4</sup> The Board acknowledges that Ms. Hoffman believed she was fulfilling the PTABOA suggestion that she secure an appraisal to prove the value of her property and that the Petitioner worked diligently to prepare and gather evidence, and present it at the hearing. Nonetheless, her efforts to prove the 2007 assessed value is incorrect fall short of the probative evidence required to prove her property’s value.

<sup>5</sup> In spite of the testimony of the county assessor that the condition rating of average is appropriate for this property, the Board refuses to accept that premise, because to do so would acknowledge that the average 90-year-old residential improvement in Dubois County is uninhabitable because of its condition. However, an error by the assessor does not prove that the assessment does not accurately reflect the market value of the property. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. The Court found that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).

- i. Where the Petitioner has not supported her claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.1215, 1221-1222 (Ind. Tax Ct. 2003).

**CONCLUSION**

20. The Petitioner failed to raise a prima facie case that her property was over-valued in its 2007 assessment. 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 the assessments should not be changed.

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

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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>.**