

REPRESENTATIVE FOR PETITIONER: Douglas R. Denmure, Attorney

REPRESENTATIVE FOR RESPONDENT: Andrew D. Baudendistel, Attorney

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Elmer D. & Mary Sue Hurst,	)	Petition No. 15-026-06-1-5-00044
	)	Petition No. 15-026-06-1-5-00045
Petitioners,	)	Petition No. 15-026-06-1-5-00046
	)	
v.	)	Parcel No. 15-07-14-301-226.000-026
	)	Parcel No. 15-07-14-301-227.000-026
Dearborn County Assessor,	)	Parcel No. 15-07-14-301-228.000-026
	)	
Respondent.	)	Dearborn County
	)	Lawrenceburg Township
	)	2006 Assessment

---

Appeal from the Final Determination of the  
Dearborn County Property Tax Assessment Board of Appeals

---

June 15, 2011

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**ISSUE**

The Petitioners claim their assessed values are excessive because the subject properties were uninhabitable. Did the Petitioners prove that the current assessments are not accurate market values-in-use for the subject properties and did they prove what more accurate assessments would be?

## HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject properties are three row-type homes located at 215 Vine Street, 217 Vine Street, and 219 Vine Street in Lawrenceburg.
2. The Petitioners initiated assessment appeals by written document. The Property Tax Assessment Board of Appeals (PTABOA) mailed its decisions on April 9, 2008. The Petitioner filed a Form 131 with the Board on May 13, 2008.
3. The PTABOA determined the assessment of parcel 15-07-14-301-301.000-026 is \$20,000 for land and \$46,800 for improvements (\$66,800 total). It is 217 Vine Street.
4. The PTABOA determined the assessment of parcel 15-07-14-301-227.000-026 is \$13,700 for land and \$48,300 for improvements (\$62,000 total). It is 219 Vine Street.
5. The PTABOA determined the assessment of parcel 15-07-14-301-228.000-026 is \$11,400 for land and \$46,800 for improvements (\$58,200 total). It is 215 Vine Street.
6. The Petitioners claim the total assessed value for all three parcels should be \$20,000 for land and \$0 for improvements.
7. Administrative Law Judge Kay Schwade held a hearing for these petitions on March 17, 2011. There was no on-site inspection of the subject property by the Administrative Law Judge or the Board.
8. The following persons were sworn as witnesses at the hearing:
  - For the Petitioner – Elmer Hurst,  
Wayne Schroeder,  
Paul Shelton,
  - For the Respondent – Gary Hensley,  
Jeffrey Thomas.

9. The Petitioner presented the following exhibits:
- Petitioner Exhibit 1 – A Brief History Referencing Four Row Houses on Vine Street, Lawrenceburg, Indiana,
  - Petitioner Exhibit 2 – Improvement Location Permit No. 107-05,
  - Petitioner Exhibit 3 – Quote dated March 27, 2006, for installing a parking lot and storm drains at the subject properties,
  - Petitioner Exhibit 4 – Application No. 107-05 for an improvement permit dated December 14, 2005,
  - Petitioner Exhibit 5 – Permit fee receipt from the Dearborn County Building Department for \$350 dated December 16, 2005,
  - Petitioner Exhibit 6 – Building permit application dated December 16, 2005,
  - Petitioner Exhibit 7 – Proposal dated August 30, 2006 for cutting in basement windows at the Vine Street properties,
  - Petitioner Exhibit 8 – Seventy-one photographs of the subject properties.
10. The Respondent presented the following exhibits:
- Respondent Exhibit A – Appraisal for 215 Vine Street as of March 1, 2007,
  - Respondent Exhibit B – Offer of settlement letter dated May 15, 2010,
  - Respondent Exhibit C – Response to the offer of settlement.
11. The following items are recognized as part of the record:
- Board Exhibit A – Form 131 petitions with attachments,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing Sign-In Sheet.

#### **SUMMARY OF THE PETITIONER’S CASE**

12. The subject properties were originally buildings located on High Street. The City of Lawrenceburg (City) relocated them to the current location on Vine Street. The City placed the buildings on new foundations, but it did not do any repair work to the interiors.

The subject properties were completely open from building to building. They did not have access to the basement. The brick in the interior wall was falling in. *Hurst testimony; Pet'r Ex 1.*

13. In 2002, the county representative of the Historic Landmarks Foundation of Indiana (Foundation) asked the Petitioners to bid on renovating the building located at 219 Vine Street. The Petitioners made a bid of \$75,000. After several months with no response, the county Foundation representative suggested the Petitioners purchase the subject properties along with a fourth row-type home.<sup>1</sup> In December 2005, the Petitioners purchased the three subject properties and the fourth one for a total of \$160,000 or \$40,000 per building. The purchase agreement included the understanding that the Foundation's covenant would be followed and the renovation would only use historically appropriate trim, doors, and windows to preserve the historical façades. The Petitioners were promised by the county Foundation representative that the property taxes would be abated during renovation because the Foundation is a not for profit organization. *Hurst testimony; Pet'r Ex. 1.*
14. All discussions and agreements made between the Petitioners and the county Foundation representative were verbal. Shortly after the Petitioners obtained the financing to begin renovations, the county Foundation representative passed away. The new county Foundation representative and the state Foundation offices were not aware of the relationship or the agreements made between the Petitioners and the former county Foundation representative. Contrary to the verbal agreement, the Petitioners received property tax bills for the subject properties before the renovations were complete. The property tax assessment for 2006 erroneously reflected finished homes when actually the subject properties were not close to being finished. *Hurst testimony; Pet'r Ex. 1.*
15. The photographs show the interior condition of the subject properties was very poor. Renovation started after the Petitioners purchased the subject properties, but as of March 1, 2006, nothing much had been done to the three subject properties because efforts were focused on the fourth one where someone had already expressed interest in buying. The

---

<sup>1</sup> The fourth row-type house is located at 211 Vine Street. It was sold in 2006 and is not a part of this proceeding.

fourth home, 211 Vine Street, was renovated and sold by October 2006. In late 2008, the renovation of the other three properties was completed and they were rented. Because of unexpected work such as cutting in basement windows, stabilizing the interior, and installing storm drains and parking, the renovation took longer than anticipated. *Hurst testimony; Pet'r Ex. 1 through 8.*

16. Before the Petitioners purchased them, Wayne Schroeder looked at the subject properties. Mr. Schroeder has been a contractor in Dearborn County for 25 years. He decided renovating the subject properties would not be cost effective because so much work was necessary. Mr. Schroeder verified that the Petitioners' photographs accurately reflect the interior condition of the subject properties when he looked at them. *Schroeder testimony; Pet'r Ex. 8.*
17. Paul Sheldon, a Dearborn County general contractor and real estate developer, saw the subject properties and advised the Petitioners that the cost to renovate them would be high due to the condition of the infrastructure. According to Mr. Sheldon, the Petitioners paid more for the subject properties than they are worth. In his opinion, the buildings were worthless prior to being renovated. *Sheldon testimony.*
18. The improvements were virtually worthless in 2006. The total land value for the subject properties should be no more than \$20,000. The total assessment for all three parcels should be \$20,000 for 2006. *Hurst testimony; Schroeder testimony; Sheldon testimony.*

#### **SUMMARY OF THE RESPONDENT'S CASE**

19. Jeffrey Thomas is a Indiana General Certified Appraiser who has appraised property in southeastern Indiana for the last 27 years. He prepared an appraisal for 215 Vine Street with an effective date of March 1, 2007. The value for 215 Vine Street as of the appraisal's effective date is \$107,000. The appraisal value is based on comparable sales as well as the 2007 MLS listings for the subject properties. The 2007 MLS listing lists the subject properties for sale at \$154,900 each. The 2007 list price seems high, but it

could be based on the amount of investment the owner wishes to recoup. *Thomas testimony; Resp't Ex. A.*

20. The appraisal includes an “as if vacant” value indicating what the property would be worth without any improvements. Based on land sale activity during 2006, the market value for 215 Vine Street “as if vacant” is \$26,000. That value would be the same for 217 and 219 Vine Street. *Thomas testimony; Resp't Ex. A.*
21. Respondent offered to settle this dispute with assessed values that would be less than what the Petitioners paid for these properties. The offer proposed the total assessed value for 215 Vine Street would be \$34,500. It proposed the total assessed value for 217 Vine Street would be \$40,200. It proposed the total assessed value for 219 Vine Street would be \$34,600. *Hensley testimony; Resp't Ex. B.*
22. The Petitioners indicated those proposed 2006 assessed values were acceptable, but the response contained certain conditions that were beyond the authority of the county assessor. Mr. Denmure asked that his client have a year in which to pay the property taxes and asked that penalties and interest be waived. Those conditions could not be granted because the county assessor does not have any authority over property tax billing or collection matters. *Hensley testimony; Resp't Ex. C.*
23. The Petitioners bought the subject properties for \$40,000 per building in December 2005. The value did not drop to nothing three months later. *Baundendstil argument.*
24. The assessed values proposed in the settlement offer are appropriate. The Board should accept them and order assessment changes accordingly. *Baundendstil argument.*

#### **ADMINISTRATIVE REVIEW AND BURDEN**

25. 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).

26. 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”).
27. 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.

#### ANALYSIS

28. The first part of the Petitioners’ case focused on a purported agreement with a representative of the county Historic Landmarks Foundation that property taxes would be “abated” while the buildings were being renovated—apparently in conjunction with the Foundation’s not for profit status and with a requirement that the renovation would conform to the Foundations standards for preserving the historical façades. This agreement, however, was not put into writing and the Foundation representative subsequently passed away. More importantly, the Petitioners offered absolutely no substantial basis for the Foundation’s authority to make any kind of commitment about the property taxes after the properties were sold to the Petitioners and we are aware of none. Perhaps some of the representations that encouraged the Petitioners to buy the properties and rehabilitate them were misleading. Perhaps they caused the Petitioners to pay more than they otherwise would have paid. But ultimately whatever might have been said does not determine what an accurate assessed valuation is.
29. Real property is assessed on the basis of 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 of a similar user, from the property.” Ind. Code § 6-1.1-31-6(c); 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. The primary method for assessing officials to determine market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. Other evidence relevant to market value-in-use can 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.

30. Much of the evidence proves that the subject properties were uninhabitable when the Petitioners bought them in December 2005 and they were still uninhabitable on the assessment date, March 1, 2006. The buildings were not much more than shells and they were in bad shape at that time, but the evidence fails to convince us they had no value. The serious condition problems alone are not enough to make a case for lowering the existing assessment because the fundamental requirement for the Petitioners’ case is establishing what a more accurate value would be.
  
31. The Petitioners offered the testimony of Mr. Hurst, Mr. Schroeder, and Mr. Sheldon in an attempt to establish the correct market value-in-use. All three men testified that the total value of the subject properties was \$20,000 based on the land and the improvements had no value. They did not present any sales data or appraisals to support this conclusory testimony. They did not attempt to establish their value statements were based on any generally accepted appraisal principles. Furthermore, their testimony was contradicted by the testimony of Mr. Thomas, who is a certified appraiser. According to Mr. Thomas and his appraisal, just the land value on each of the properties is approximately \$26,000. We conclude that the testimony about a total value of only \$20,000 for all three properties does not help to prove what more accurate assessed valuations might be.



32. The Petitioners presented undisputed evidence about their purchase of the subject properties. They bought the three subject properties and a fourth property for \$160,000 in December 2005. And a timely sale of the subject property on the open market is often recognized as some of the best evidence of actual value. In these cases, that transaction is close enough to the required valuation date to be relevant and probative, even though it does not indicate an exact value for each individual building. The transaction is sufficient to make a prima facie case for reducing the assessments to \$40,000 for each property.
33. The Respondent presented an appraisal for one of the subject properties estimating a market value of \$107,000 as of March 1, 2007. That valuation, however, was clearly after the renovation of that property. It does little or nothing to help accurately value the property prior to renovation. And the Respondent made no attempt to argue for assessments that correspond to any such valuation.
34. The Respondent had proposed to reduce the assessed values of the subject properties to \$34,500 for 215 Vine Street, \$40,200 for 217 Vine Street, and \$34,600 for 219 Vine Street as a settlement prior to the hearing. While settlement offers and discussions should not be admissible evidence, nobody objected.<sup>2</sup> Therefore, the impropriety of bringing evidence about settlement into this record was waived. Despite that waiver, the proposal itself is not probative evidence of what more accurate valuations might be and there is no other substantial, probative evidence supporting those numbers. The settlement letters and testimony about them are irrelevant to our final determination.
35. During the hearing, the Respondent claimed those same reduced values (from the settlement offer) still are the appropriate assessed values for 2006. At that time the Respondent's testimony and argument for substantially reduced valuations was not in the context of settlement negotiations. They simply related to what the assessments really should be. Even though there is little or no evidence to establish how those numbers

---

<sup>2</sup> Under these circumstances we will avoid discussing the multitude of reasons that evidence related to settlement negotiations should not be in the record.

were determined, they are a concession that is favorable to the Petitioners and that should not be ignored. In fact, the Respondent's concession dictates our final determination.

**SUMMARY OF FINAL DETERMINATION**

36. The evidence would be sufficient to prove that each assessment should be reduced based on what the Petitioners paid. The Respondent, however, conceded that collectively the values should be lower. The specific values requested by the Respondent are listed below:

215 Vine Street—\$34,500

217 Vine Street—\$40,200

219 Vine Street—\$34,600.

Based on the Respondent's concession and specific request, the 2006 assessments will be reduced to those amounts.

This Final Determination for the above captioned matter is issued on the date first written above.

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

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>>