

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

**Petition No.:** 15-013-11-1-5-00161  
**Petitioners:** Charles T. Hyser & Charles T. Hyser III Life Estate  
**Respondent:** Dearborn County Assessor  
**Parcel No.:** 15-07-15-200-030.000-013  
**Assessment Year:** 2011

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

**Procedural History**

1. The Petitioners appealed the 2011 assessment for the subject property to the Dearborn County Property Tax Assessment Board of Appeals (“PTABOA”).
2. On December 7, 2011, the PTABOA issued a determination denying any change.
3. The Petitioners timely filed a Form 131 petition with the Board. They elected to have this appeal heard under the Board’s small claims procedures.
4. On September 6, 2012, the Board held a hearing on the petition through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”). Neither the Board nor the ALJ inspected the subject property.
5. Charles Hyser, County Assessor Gary Hensley, and Jim Davis of Tyler Technologies were sworn and testified at that hearing. Janet Hyser was sworn, but she did not testify. County Attorney Andrew Baudendistel represented the County Assessor.

**Facts**

6. The subject property is a condominium located at 401 Riviera Drive, Lawrenceburg. There is no land assessment.
7. The PTABOA determined the 2011 assessment is \$195,000.
8. The Petitioners requested a value of \$159,900.

## Contentions

### 9. Summary of the Petitioners' case:

- a) The Petitioners presented an appraisal prepared by Robert A. Collins, an Indiana certified appraiser. Mr. Collins valued the property using the sales comparison approach at \$162,000 as of January 9, 2012. *Hyser testimony; Pet'r Ex. 1.*
- b) Mr. Hyser testified that he purchased the condo for \$153,200 in October 2010. He added wall board to unfinished walls in the garage and installed an electric fireplace. Mr. Hyser rounded his total costs off to \$159,900. That cost is the assessed value he requested. *Hyser testimony; Pet'r Ex. 2.*
- c) Mr. Hyser had planned to purchase the condo in 2009, but he was unable to sell his home at that time. If he had purchased the condo in 2009, the cost would have been \$169,900. In 2010, Fischer Builders lowered the price of the condo to \$152,300. The price was reduced because none of the seven remaining units in the building could be sold at the original price. These units were more difficult to sell because the view is of the American Electric Power ("AEP") power plant in front of them. *Hyser testimony.*
- d) A letter from Fischer Homes explains that prices vary on the buildings due to the view. Prices for building 4 were more because they have a view of the river. Prices for units in building 15 were adjusted down due to the view of the power plant. The letter states that in 2009 Mr. Hyser's condo was valued at \$169,900. *Hyser testimony; Pet'r Ex. 3.*
- e) An employee of the assessor's office told Mr. Hyser that his condo value was based on the value of 401 Riverscape Drive, which is in building 4. But building 4 has a premium view of the river whereas the subject property has a view of the power plant. Those two condos are not comparable. *Hyser testimony; Pet'r Exs. 3, 4.*
- f) A neighboring condo at 402 Riviera Drive was assessed at \$155,000 and the subject condo was assessed at \$195,000. The square footage of the condos is the same, but 402 Riviera Drive has a one-car garage and the subject property has a two-car garage. An extra garage does not make a \$40,000 difference in value. *Hyser testimony; Pet'r Ex. 5.*
- g) Of the eight units in the building, two have had their assessments reduced on appeal. *Hyser testimony.*

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

- a) The Assessor submitted the subject property record card ("PRC") and explained that condo was not complete in 2010. The condo was first placed on the assessment roll

as complete as of March 1, 2011. At that time the assessed value was \$195,000. *Hensley testimony; Resp't Ex. 1.*

- b) The county contracts with Tyler Technologies to come up with values. The assessor uses neighborhood sales and does a ratio study when valuing neighborhoods. The Department of Local Government Finance (“DLGF”) certifies the values. *Hensley testimony.*
- c) Mr. Davis of Tyler Technologies testified that he was involved in the trending for 2011. He explained the process for trending using sales prior to the assessment date. The condos are identified and grouped together. Then the sales are analyzed to develop values. *Davis testimony.*
- d) Respondent Exhibit 2 is the PRC for the condo at 406 Riviera Drive. This condo is located on the same street as the subject property. It also was assessed at \$195,000 for March 1, 2011. *Hensley testimony; Resp't Ex. 2.*
- e) A page from the land order shows the various values for the condos in the Riviera neighborhood. The breakdown shows values by building, level/unit, and garages. The subject condo is in building 15, unit 304. It has a two car garage and a value of \$195,000. *Hensley testimony; Resp't Ex. 3.* Differences in the condos values are due to the configuration and the desirability of the units. The information came from completed sales. *Davis testimony.*
- f) The Neighborhood Ratio Report is from Tyler Technologies. It shows the sales from the Riviera condos that were used for trending. According to Mr. Hensley, those sales are from 2009 and 2010.<sup>1</sup> The condo sales closest to the subject property are circled on the report. *Hensley testimony; Resp't Ex. 4.*
- g) The market value of an extra garage is much different than the cost of constructing it. The market indicates the value. *Davis testimony.*
- h) The Petitioners have not met their burden. The appraisal is not relevant for the 2011 assessment. Furthermore, the appraisal is hearsay—the appraiser was not at the hearing. And the letter from Fischer Homes is also hearsay—no one from Fischer Homes was at the hearing to explain how they reached the value in the letter. *Baudendistel argument.*

### **Record**

11. The official record contains the following:

- a) Form 131,
- b) Digital recording of the hearing,

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<sup>1</sup> The document itself shows dates ranging from 1/9/07 to 7/6/11.

- c) Petitioner Exhibit 1: Appraisal,
- Petitioner Exhibit 2: Form 131,
- Petitioner Exhibit 3: Fischer Homes letter dated December 7, 2011,
- Petitioner Exhibit 4: Written explanation of Exhibit 3,
- Petitioner Exhibit 5: Summary of comments at board of review meeting on October 27, 2011,
  
- Respondent Exhibit 1: PRC for the subject property at 401 Rivera Drive,
- Respondent Exhibit 2: PRC for 406 Riviera Drive,
- Respondent Exhibit 3: Land order page for the subject neighborhood,
- Respondent Exhibit 4: Neighborhood Ratio Report,
  
- Board Exhibit A: Form 131,
- Board Exhibit B: Hearing Notice dated July 31, 2012,
- Board Exhibit C: Hearing Sign-In Sheet,
  
- d) These Findings and Conclusions.

### **Objections**

- 12. The Respondent objected to Petitioner’s Exhibit 1, the appraisal, because it values the subject property as of January 2012 and because it contains hearsay.
  
- 13. The Respondent also objected to Petitioner’s Exhibit 3, the letter from Fischer Homes, because it contains hearsay.
  
- 14. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid.801(c)). The Board’s procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

- 15. The appraiser was not present to testify or be cross-examined at the hearing. Similarly, nobody from Fischer Homes was at the hearing. The appraisal and letter are hearsay. Nonetheless, Petitioner’s Exhibits 1 and 3 are admitted, subject to the limitations in the Board’s procedural rules.

## Analysis

16. Generally, 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).
17. In making its case, the taxpayer 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”).
18. The Petitioners made a prima facie case for lowering this assessment.
  - a) Indiana assesses real property based on its true tax value, which is “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). Evidence offered in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may 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.
  - b) A party must explain how its 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). For this case the assessment date and the valuation date are both March 1, 2011.
  - c) The appraisal values the condo as of January 9, 2012, approximately nine months after the valuation date. Nothing in the record establishes how the appraisal relates to the valuation date. Furthermore, the appraisal alone cannot be the sole basis for lowering the assessment because the hearsay objection was made.
  - d) The sale of the subject property is often the best evidence of the property’s value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board’s determination assigning greater weight to the property’s purchase price than its appraised value was proper and supported by the evidence). Mr. Hyser purchased the condo for \$152,300 in October 2010. This transaction was only about four months before both the assessment date and the required valuation date. That price paid for the subject property is timely and probative.

- e) The Petitioners made a prima facie case. When he requested an assessed value of \$159,900 Mr. Hyser even included the cost of wall board and an electric fireplace he added after buying the condo. The Board will not reduce the assessment below the amount he requested.
- f) The burden shifted to the Assessor to impeach or rebut the Petitioners' case. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
- g) The Assessor did not dispute the purchase price of the subject property or offer any reason that it was not a valid indicator of the condo's market value-in-use. That evidence alone is enough to convince the Board that the assessment should be reduced to the amount requested by the Petitioners.

### **Conclusion**

19. The Board finds in favor of the Petitioners.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now orders that the subject property's assessed value should be changed to \$159,900.

ISSUED: December 17, 2012

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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

**- 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>>.