

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

**Petition:** 20-015-06-1-5-00468  
**Petitioners:** Brian Ketcham, et al.<sup>1</sup>  
**Respondent:** Elkhart County Assessor  
**Parcel:** 20-11-09-482-003-000-015  
**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. The Petitioners filed an appeal asking the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) to reduce the subject property’s assessment.<sup>2</sup> On February 22, 2008, the PTABOA issued its determination denying the Petitioners’ appeal.
2. The Petitioners disagreed with the PTABOA’s determination and timely filed a Form 131 petition with the Board. They elected to have the case heard under the Board’s small claims procedures.
3. On March 17, 2009, the Board held an administrative hearing through its Administrative Law Judges David Pardo and Patti Kindler (“ALJ”).
4. People present and sworn in at hearing:
  - a) For the Petitioners: Brian Ketcham
  - b) For the Respondent: Cathy Searcy, Elkhart County Assessor

**Facts**

5. The subject property is a two-story house on a 45-foot-by-65-foot lot located at 210 East Monroe Street in Goshen.

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<sup>1</sup> The Form 131 petition lists Brian Ketcham, Donna Kubal, Craig Ketcham, and Vena Fredericks as the subject property’s owners. Although the Board attempted to send a hearing notice to each owner, all but Brian Ketcham’s were returned as undeliverable. *Bd. Ex. E.*

<sup>2</sup> The record does not contain a copy of the written notice that the Petitioners filed to begin the appeal process at the local level.

6. Neither the Board nor the ALJs inspected the property.
7. The PTABOA determined the following assessment for the subject property:

Land: \$9100                      Improvements: \$85,300                      Total of \$94,400.

8. On their Form 131 petition, the Petitioners asked for the following values:

Land: \$9100                      Improvements: \$65,900                      Total \$75,000

At hearing, Mr. Ketcham asked for a total assessment of \$70,000.

9. The Petitioners offered the following evidence and arguments:

- a) The PTABOA found, in part, that it had no authority to act based on the power of attorney that the Petitioners submitted. *Board Ex. A*. The PTABOA apparently based that holding on the Elkhart Township Assessor's argument that that the Petitioners did not buy the subject property from Violet Blocker until March 30, 2007. *See Id.* Because Ms. Blocker had died, the PTABOA instructed Mr. Ketcham to get a power of attorney from Ms. Blocker's estate. *Ketcham testimony; Pet'rs Ex. 1*. But the township assessor argued that the power of attorney was invalid because Ms. Blocker, not her estate, owned the property on the March 1, 2006, assessment date. *See Board Ex. A*.
- b) The Petitioners, however, disagree with the PTABOA and contend that they are authorized to bring this appeal. According to the closing statement that was prepared when the Petitioners bought the property, the Petitioners were responsible for any property taxes billed after the closing date. *Ketcham testimony; Pet'rs Ex. 2*. Tax bills for the March 1, 2006, assessment were not yet available at closing. *Ketcham testimony; see also Searcy testimony*. Mr. Ketcham therefore paid those tax bills. *Ketcham testimony*.
- c) As to the merits of their appeal, the Petitioners contend that the subject property is assessed for more than it is worth. Mr. Ketcham thought that a fair assessment would be \$70,000. *Ketcham testimony*.
- d) In support of the Petitioners' position, Mr. Ketcham offered Multiple Listing Service ("MLS") sheets for five homes in Elkhart Township. *Pet'rs Ex. 4*. The homes sold between March 1, 2005, and March 1, 2006, for prices ranging from \$35 to \$47 per square foot. *Id.*
- e) Mr. Ketcham, who is a realtor, also testified that an income-producing property's value can be estimated using a gross rent multiplier. *Ketcham testimony*. That is a good method, as long as one compares similar incomes. *Id.* For the past calendar year, the subject property had gross rents of \$12,212 and expenses of \$6,532. *Id.* The subject property's income, however, may differ from other rental properties.

The subject house has only one furnace and one water meter. And unlike some other rental properties, the Petitioners pay all utilities. *Ketcham testimony*.

- f) The Petitioners bought the subject property on March 30, 2007, for \$61,500. *Ketcham testimony; Pet'rs Ex. 2*. The property had originally been listed for \$79,900 on September 29, 2006. *Id.* The house required extensive remodeling and repair, which cost roughly \$14,000. *Ketcham testimony; Pet'rs Ex. 7*. Photographs taken in March and July of 2007 show the house's interior condition before and after that remodeling. *Pet'rs Exs. 5-6*.

10. The Respondent offered the following evidence and arguments:

- a) The Respondent agreed that if the Petitioners paid the taxes that were based on the March 1, 2006, assessment, they had the right to bring an appeal. *Searcy testimony*. The Respondent also agreed that the tax bills for the March 1, 2006, assessment did not go out until after the date that the Petitioners bought the subject property. *Id.* But to get a refund from the auditor's office, the Petitioners must provide a cancelled check or other evidence to show that they paid those taxes. *Id.*
- b) Elkhart Township's ratio study includes sales from the subject property's neighborhood for 2004 and 2005. *Searcy testimony; Resp't Ex. 2*. According to that study, the average price per square foot for properties on Monroe Street was \$62.53. By contrast, the subject property was assessed for only \$54.37 per square foot. *Resp't Ex. 2*.

### **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:

Petitioners' Exhibit 1 – Power of attorney form signed by Nancy Immel and dated October 1, 2007,

Petitioners' Exhibit 2 – U.S. Department of Housing and Urban Development Estimated Settlement Statement,

Petitioners' Exhibit 3 – “Property History Detail” for the subject property (3 pages),

Petitioners' Exhibit 4 – MLS data sheets for five properties,

Petitioners' Exhibit 5 – 17 photographs dated March 6, 2007, and April 26, 2007, showing the subject house before repairs,

Petitioners' Exhibit 6 – 14 photographs dated July 15, 2007, showing the subject house after repairs,  
Petitioners' Exhibit 7 – Invoices for repairs (9 pages),

Respondent's Exhibit 1 – Photograph of the front of the subject house, dated September 12, 2007,

Respondent's Exhibit 2 – “Selected Sales Ratio Study” for neighborhood 0940,

Respondent's Exhibit 3 – 2006 subject property record card,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of hearing,

Board Exhibit C – Hearing sign-in sheet,

Board Exhibit D – Pre-Hearing Order,

Board Exhibit E – Returned hearing notices.

d) These Findings and Conclusions.

## **Analysis**

### **A. The Petitioners' Standing**

12. Although the Elkhart Township Assessor and the PTABOA both questioned the Petitioners' standing to appeal the subject property's March 1, 2006, assessment, the Petitioners had a sufficient interest in that assessment to bring an appeal. One of the Petitioners, Mr. Ketcham, testified that he paid all property taxes that were billed after March 30, 2007. *Ketcham testimony*. And the parties agreed that the taxes based on the subject property's March, 2006, assessment were billed after that date.

### **B. The Merits of the Petitioners' Appeal**

13. The most applicable governing cases are:
- a) A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically 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).
  - b) In making its case, the petitioner 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).
  - c) Once the petitioner makes a prima facie case, the burden shifts to the assessing official to impeach or rebut the petitioner's evidence. *See American United Life*

*Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also Meridian Towers*, 805 N.E.2d at 479.

14. The Petitioners failed to make a prima facie case of error. The Board reaches this conclusion 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.” 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 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, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property’s assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax 2005) *reh’g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 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 (“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.
  - c) Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the appealed 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 March 1, 2006, assessments, that valuation date is January 1, 2005. 50 IAC 21-3-3.
  - d) The Petitioners relied on four things to show that the subject property was over-assessed—(1) MLS data from other rental properties, (2) the subject property’s rental income and expenses, (3) the subject property’s listing and sale prices from September 2006 and March 2007, and (4) the subject house’s condition when the Petitioners bought it. For the reasons explained below, none of those things show the subject property’s true tax value for the March 1, 2006, assessment date.
  - e) First, Mr. Ketcham offered MLS sales data for five two-unit rental properties in Elkhart Township, all which sold for less per square foot than the amount for which the subject property is assessed. By doing so, he at least attempted to use the sales-comparison approach—a generally accepted appraisal technique. But

because Mr. Ketcham ignored several of the approach's key requirements, his comparative sales information lacks probative value.

- f) The sales-comparison approach assumes that potential buyers value a property based on what it would cost them to buy an equally desirable existing property. MANUAL at 13. Thus, a person applying the sale-comparison approach must first identify comparable improved properties that have sold. *Id.* Using objectively verifiable market data, the person should determine whether any differences between the sold properties and the subject property affect value. *Id.* He should then use the contributory values of those items to adjust the comparable properties' sale prices. *Id.*
- g) Thus, in order to use the sales-comparison approach as evidence in a property assessment appeal, a party must show that the properties being examined are comparable to each other. Conclusory statements that two properties are "similar" or "comparable" to each other are not probative. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party must identify the subject property's relevant characteristics and explain how those characteristics compare to each purportedly comparable property's characteristics. *Id.* at 471. Similarly, the party must explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-471.
- h) Here, Mr. Ketcham did little to compare the subject property to the five properties referenced in his MLS sheets. At most, Mr. Ketcham explained that all of the properties were two-unit rental properties. While the Board arguably could use the MLS data and the subject property's record card to make a more detailed comparison, it was Ms. Ketcham's duty to walk the Board through his sales-comparison analysis. *See Long*, 821 N.E.2d 471 (finding that the Board was not required to review the taxpayer's documents to determine if properties were comparable). More importantly, Mr. Ketcham made no attempt to adjust the purportedly comparable properties' sale prices to reflect relevant ways in which they differed from the subject property.
- i) Second, Mr. Ketcham testified about the subject property's rental income and expenses in the context of explaining that a gross rent multiplier can be a good way to estimate a rental property's value. *See Ketcham testimony*. But Mr. Ketcham did not identify an appropriate gross rent multiplier or even attempt to estimate the property's value using that method. So, by themselves, the property's rental income and expenses do little to show its market value-in-use.
- j) Third, the Petitioners offered evidence that they paid \$61,900 for the subject property on March 30, 2007. Often, a property's actual sale price is the best evidence of its true tax value. But that general rule presumes that the person offering the sale price as evidence has explained how that price relates to the property's value as of the relevant valuation date. In this case, the relevant

valuation date was January 1, 2005. *See* 50 IAC 21-3-3. And Mr. Ketcham could not explain how the subject property's March 30, 2007, sale price related to its value as of that earlier valuation date. The sale price therefore lacks probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)(finding that a December 2003 appraisal lacked probative value in an appeal from an assessment that was based on a January 1, 1999, valuation date).

- k) Finally, the Petitioners offered photographs showing the subject house both before and after it was remodeled and repaired together with invoices reflecting those remodeling and repair costs. The photographs and invoices do show that the property needed repair. But they do nothing to quantify the property's market value-in-use as of January 1, 2005.
  
- l) Thus, because the Petitioners did not offer probative evidence to rebut the presumption that the subject property's current assessment is correct, they failed to make a prima facie case.

**Conclusion**

- 15. The Petitioners failed to make a prima facie case. 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 affirms the assessment.

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>