

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

**Petition No.:** 18-003-06-1-5-01041  
**Petitioner:** Esther Kwiatkowski  
**Respondent:** Delaware County Assessor  
**Parcel No.:** 18-11-04-306-019.000-003  
**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. On May 3, 2007, Esther Kwiatkowski filed a written notice with the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) contesting the subject property’s 2006 assessment. On March 5, 2008, the PTABOA issued its determination lowering the subject property’s assessment, but not to the level that Ms. Kwiatkowski had requested.
2. Ms. Kwiatkowski then timely filed a Form 131 petition with the Board. She elected to have her appeal heard under the Board’s small claims procedures.
3. Ms. Kwiatkowski did not appear at the hearing originally scheduled by the Board, causing the Board to issue an order for Ms. Kwiatkowski to show cause why the appeal should not be dismissed. Ms. Kwiatkowski responded with a letter asking the Board to set aside its order and schedule a new hearing, which the Board did. On June 24, 2010, the Board held that hearing through its Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
  - a) Esther Kwiatkowski
  - b) Kelly Hisle, Delaware County Appeals Clerk

**Facts**

5. The subject property contains a single-family rental home with a detached garage on a 50-foot-by-130-foot lot. It is located at 2205 North Ball Avenue, in Muncie, Indiana.
6. Neither the Board nor the ALJ inspected the property.

7. The PTABOA determined the following values for the subject property:

Land: \$8,200            Improvements: \$39,000            Total: \$47,200.

8. Ms. Kwiatkowski requested the following assessment:

Land: \$8,200            Improvements: \$29,500            Total: \$37,300.

### **Parties' Contentions**

9. Ms. Kwiatkowski offered the following evidence and arguments:

- a) The subject property's assessment and resulting taxes are excessive in light of two separate market analyses performed by local realtors. Dan MacDonald, of RE/MAX Real Estate Group, prepared the first analysis on December 10, 2007. *Pet'r Ex. 10 at 1, 15*. Mr. McDonald's analysis includes "comparable report[s]" for 39 properties. Those reports, in turn, contain the following information: the date each property was listed; its listing or sale price; its price per square foot; its closing date, if any; the lot's size, and, in some instances, the size of the home's basement. *Pet'r Ex. 10 at 1-14*. Mr. McDonald then computed high, low, and average numbers for price and price per square foot. The prices ranged from \$25,000 to \$69,900 with an average of \$48,198. The per-unit prices ranged from \$32.98/sq. ft. to \$79.87/sq. ft., with an average of \$59.87/sq. ft. *Id. at 15*. Without any explanation, Mr. McDonald chose a "Suggested List Price" of \$36,500. *Id.*
- b) The second analysis was prepared by an unidentified realtor in June 2007. *See Pet'r Exs. 9, 11; Kwiatkowski testimony*. Although the analysis does not contain a suggested list price for the subject property, Ms. Kwiatkowski testified that the realtor suggested listing the property for \$38,900. *Kwiatkowski testimony; Pet'r Ex. 9*.
- c) The analysis lists three groups of properties. Although there is some overlap between the three groups, they appear to be largely independent of each other. *See Pet'r Ex. 11 at 1-6*. The first group includes 23 properties, all but two of which sold in 2006 or 2007, together with some information about each property, such as the house's size and the number of bedrooms and baths. *Pet'r Ex. 11 at 6*. Those properties sold for prices ranging from \$24,000 to \$74,900 with an average sale price of \$52,900 and a median price of \$50,000. *Id.* The second group also includes 23 properties. *Id. at 4*. For that group, the analysis provides no information beyond each property's location and its "price." *Pet'r Ex. 11 at 4*. The third group includes 16 properties. The analysis offers "Comparable Property Statistics" for 10 properties from that last group. *Id. at 3, 5*. Those 10 properties were listed for prices ranging from \$34,900 to \$49,900, and they sold for prices ranging from \$25,000 to \$43,000. The average sale price was \$36,480, and the average price per square foot was \$46.91. *Id. at 5*.

- d) The subject property's condition also affects its value. *Kwiatkowski testimony*. It is a rental property, and the tenants have neither paid rent regularly nor taken care of the property. *Id.* Part of the house was converted from a car shed to living area, and it had a flat roof at one time. *Id.* Ms. Kwiatkowski offered recently taken interior photographs to show the house's unlevel kitchen floors, worn carpeting, holes in the ceiling, plumbing problems, and peeling windows and siding. *Id.*; *Pet'r Ex. 13*. While the property record card indicates that the house has central air conditioning, the air conditioning has not worked since 2005. The Assessor did not account for the property's condition because nobody inspected the property before assessing it. *Kwiatkowski testimony*. In addition, the neighborhood's streets have potholes and poor water drainage, and the city rarely plows them. *Id.*; *Pet'r Ex. 12*. *Kwiatkowski testimony*.
- e) Ms. Kwiatkowski is trying to sell the subject property. *Id.* She offered it to the next-door neighbor for \$30,000 and to another person for \$25,000, but neither was interested. *Id.* Given that she could not sell the property for \$25,000 in 2010, nobody would have paid \$47,200 for it in 2004 or 2005. *Kwiatkowski argument*. Also, each block in the neighborhood has at least two homes for sale, and three neighborhood properties have sold for \$15,000 or less. *Kwiatkowski testimony*.
- f) Property taxes for the subject property rose dramatically, from \$1,233.18 in 2006 to \$1,804.60 in 2007, even though the property did not change during that period. *Kwiatkowski testimony*; *Pet'r Exs. 5-6*.

10. The Assessor offered the following evidence and arguments:

- a) Ms. Kwiatkowski did not prove that the subject property's assessment was wrong. First, the two market analyses that Ms. Kwiatkowski offered were untimely under 50 IAC 21-3-3. *Hisle argument*; *Resp't Ex. 1*. That rule required assessing officials to use sales of properties occurring between January 1, 2004 and December 31, 2005, in determining 2006 assessments. *Id.* Both market analyses were prepared in 2007 and relied mostly on sales from outside 2004-2005. *Hisle argument*. Second, neither Ms. Kwiatkowski nor the realtors that prepared the market analyses showed how the subject property compared to the properties in those analyses. *Hisle argument*. Third, Ms. Kwiatkowski did not provide any evidence that the sales listed in either market analysis were arm's-length transactions. *Id.* According to 50 IAC 21-3-2, assessors must verify sales in accordance with standards set by the International Association of Assessing Officers ("IAAO"). *Id.*; *Resp't Ex. 1*. Those IAAO standards do not allow assessing officials to use foreclosure sales or distressed sales to determine property values. *Hisle testimony*; *Resp't Ex. 1*.
- b) In defense of the assessment, the Assessor's representative, Ms. Hisle, offered her own competing sales-comparison analysis. She compared the subject property to three other properties that sold in 2004 and 2005, and she adjusted the comparable properties' sale prices to account for various ways in which they differed from the

subject property. The adjusted sale prices ranged from \$48,650 to \$64,200.<sup>1</sup> *Hisle testimony; Resp't Ex. 2*. Ms. Hisle also offered sales information for a fourth property located at 2013 North Maplewood. *Hisle testimony; Resp't Ex. 13*. The average sale price for the four sold properties was \$62 per-square-foot, while the subject property's assessment equated to \$59.60 per-square-foot. *Id.*

### **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:

- Petitioner Exhibit 1: Form 131 petition,
- Petitioner Exhibit 2: November 2, 2007 letter from the Center Township Assessor acknowledging the appeal filing,
- Petitioner Exhibit 3: Notice of Defect in Completion of Assessment Appeal Form,
- Petitioner Exhibit 4: Form 115, Notice of Final Assessment Determination,
- Petitioner Exhibit 5: Tax inquiries for 2006 and 2007 tax years,
- Petitioner Exhibit 6: Handwritten comparison of 2006 and 2007 tax payments,
- Petitioner Exhibit 7: Form 11—Notice of Assessment of Land and Structures,
- Petitioner Exhibit 8: Ms. Kwiatkowski's appeal letter for the 2006 assessment,
- Petitioner Exhibit 9: Handwritten comparison of the subject property's assessed value to the values listed on two market analyses,
- Petitioner Exhibit 10: December 10, 2007 Comparative Market Analysis by Dan MacDonald of RE/MAX Real Estate Groups,
- Petitioner Exhibit 11: Six pages described by Ms. Kwiatkowski as "Market Analysis #2,"
- Petitioner Exhibit 12: Copies of portions of four photographs with handwritten explanation,
- Petitioner Exhibit 13: Seventeen photographs of the subject property's interior and exterior,
  
- Respondent Exhibit 1: Highlighted copy of 50 IAC 21-3-2 and part of 50 IAC 21-3-3,
- Respondent Exhibit 1A: Sales used in ratio studies (2 pages),
- Respondent Exhibit 2: Sales graph of comparable properties,
- Respondent Exhibit 3: Subject property record card,
- Respondent Exhibit 4: Property record card for 2212 North Janney,

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<sup>1</sup> Ms. Hisle explained that she made an error by adjusting the third property's sale price by \$2,200 for its lot size. *Hisle testimony; Resp't Ex. 2*. After removing the \$2,200 adjustment, that property's adjusted sale price was \$52,010 instead of \$49,810. *Id.*

Respondent Exhibit 5: Listing sheet for 2212 North Janney,  
Respondent Exhibit 6: Sales disclosure for 2212 North Janney,  
Respondent Exhibit 7: Property record card for 2008 North Ball,  
Respondent Exhibit 8: Listing sheet for 2008 North Ball,  
Respondent Exhibit 9: Sales disclosure for 2008 North Ball,  
Respondent Exhibit 10: Property record card for 2013 North New York,  
Respondent Exhibit 11: Listing sheet for 2013 North New York,  
Respondent Exhibit 12: Sales disclosure for 2013 North New York,  
Respondent Exhibit 13: Summary statistics for comparables,<sup>2</sup>  
Respondent Exhibit 15: Notes from the PTABOA hearing,

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Notice of hearing,  
Board Exhibit C: Hearing sign-in sheet,

d) These Findings and Conclusions.

## **Analysis**

### Burden of Proof

12. 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 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).
13. 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”).
14. Once the taxpayer makes a prima facie case, the burden shifts to the respondent to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

### Ms. Kwiatkowski’s Case

15. Ms. Kwiatkowski did not make a prima facie case for reducing the subject property’s assessment. 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by

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<sup>2</sup> Ms. Hisle removed Respondent Exhibit 14 from the record.

- reference at 50 IAC 2.3-1-2). Appraisers traditionally have 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 set forth in the Real Property Assessment Guidelines for 2002 – Version A.
- 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) *reh'g den. sub nom. PA 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 ("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 was January 1, 2005. 50 IAC 21-3-3.
- d) Ms. Kwiatkowski relies mainly on two market analyses prepared by different realtors. Both those analyses, however, were from 2007—more than two years after the January 1, 2005, valuation date for the assessment under appeal. The first analysis relies on sales and listings ranging from 2000 to 2007, and to the extent that the second analysis supplies sale or listing dates, those dates were mostly from 2006 and 2007. Neither the realtors nor Ms. Kwiatkowski offered any probative evidence to explain how the analyses' suggested listing prices related to the subject property's market value-in-use as of January 1, 2005. Those market analyses therefore lack probative value.
- e) The analyses also lack probative value for other reasons. Neither analysis explains how the realtor reached his suggested list price. Instead, the analyses simply contain raw data and some basic statistical calculations, such as average and median sale prices. In the first analysis, the average sale price is actually higher than the subject property's assessment and the average sale price per square foot is only slightly lower than the subject property's assessment would be if computed on the same basis. In neither case did the realtor explain how any of the properties in question compared to the subject property or how any differences affected their relative values. *See Long*, 821 N.E.2d at 471 (finding that comparative sales data lacked probative value where taxpayers did not explain how the characteristics of their property compared to purportedly comparable properties or how any differences affected the properties'

market values-in-use). Thus, Ms. Kwiatkowski did not show that the realtors based their suggested list prices on generally accepted appraisal principles. Also, neither realtor testified at the hearing or even signed his analysis. In fact, the second analysis did not even identify the realtor who prepared it. Those facts cast further doubt on the reliability of the two analyses.

- f) Ms. Kwiatkowski did testify that she tried to sell the subject property by offering it to two different people. But she offered no probative evidence to explain how those recent unsuccessful attempts to sell the property related to the property's value as of the relevant January 1, 2005 valuation date. In any case, simply making two unsolicited offers to sell a property does little to show the property's market value-in-use. *See* MANUAL at 10 (defining "market value," in part, as the consummation of a sale under conditions whereby "[a] reasonable time is allowed for exposure in the open market.").
- g) Ms. Kwiatkowski also argues that both the subject property's condition and its location on a street with potholes and without sidewalks limit its value. But she offered no probative evidence to quantify the extent to which those things affected the property's market value-in-use. Thus, while the condition of the house and neighborhood are relevant, they do not suffice to make a prima facie case that the property's assessment was wrong.
- h) Finally, Ms. Kwiatkowski complains that her taxes unjustifiably increased between 2006 and 2007. To the extent that Ms. Kwiatkowski contests her taxes—as opposed to the subject property's assessment—the Board lacks the authority to hear her claim. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001)(citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). The Board therefore must address appeals from determinations made by local assessing officials or county PTABOAs that concern property valuations, property tax deductions, or property tax exemptions. Ind. Code § 6-1.5-4-1. By contrast, no statute authorizes the Board to review the propriety of local tax rates.<sup>3</sup>

### **Conclusion**

16. For the reasons set forth above, Ms. Kwiatkowski did not make a prima facie case for reducing the subject property's 2006 assessment. The Board therefore finds for the Assessor.

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<sup>3</sup> That is not to say that the Board lacks jurisdiction simply because a taxpayer's claim implicates a local tax rate. In a budget-driven taxation system, the Board may have jurisdiction over claims that implicate or affect tax rates, provided the claims concern assessed value. *See U.S. Steel Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 785 N.E.2d 1209, 1212-13 (Ind. Tax Ct. 2003) *aff'd in part and rev'd in part on other grounds, Lake County Property Tax Assessment Bd. of Appeals v. U.S. Steel Corp.*, 820 N.E.2d 1237 (Ind. 2005). The Board, however, has separately dealt with Ms. Kwiatkowski's claims about the subject property's assessment.

## 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>>