

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

**Petition:** 84-002-06-1-5-00234  
**Petitioner:** Dorothea Lewis  
**Respondent:** Vigo County Assessor  
**Parcel:** 84-06-28-209-014.000-002  
**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The PTABOA issued notice of its decision on January 8, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on February 5, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 1, 2008.
5. Administrative Law Judge Paul Stultz held the administrative hearing on June 5, 2008.
6. Dorothea Lewis Hamann appeared pro se at the hearing.<sup>1</sup> Vigo County Assessor Deborah Lewis and Chief Deputy Assessor Susan McCarty represented the Respondent.

**Facts**

7. The subject property is residential property located at 616 South 4<sup>th</sup> Street in Terre Haute.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The parties agreed the Notification of Final Assessment Determination attached to the appeal petition lists the incorrect parcel number and incorrect assessed values on page 1; however, the correct values are stated on page 2. The parties further agreed that the correct parcel number is 84-06-28-209-014.000-002. The PTABOA determined the assessment is \$5,500 for land and \$73,000 for improvements (total \$78,500).

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<sup>1</sup> The Petitioner explained that her name had changed because she got married. It is now Dorothea Lewis Hamann.

10. The Petitioner contends the assessed value should be \$5,500 for land and \$54,500 for improvements (total \$60,000).

### **Objection**

11. The Petitioner objected to the admission of Respondent's exhibits because the Respondent did not provide copies prior to the hearing. The Board's small claims rules state that copies of documentary evidence shall be provided by the opposing party "[i]f requested by any party." 52 IAC 3-1-5(d). The Petitioner admitted she did not request copies of the exhibits from the Respondent. Consequently, the objection to the admission of the Respondent's exhibits is overruled.

### **Contentions**

12. The Petitioner presented the following evidence:
  - a. An appraiser valued the property at \$62,000 as of August 31, 2007. He then trended this figure to the January 1, 2005, valuation date and concluded the 2006 assessed value should be \$60,000. *Hamann testimony; Pet'r Ex. 1.*
  - b. Photographs show the subject property is in poor condition and located in a poor neighborhood with numerous rental units, apartments, and fraternity houses that reduce its market value. *Hamann testimony; Pet'r Ex. 2.*
  - c. The Petitioner's property is assessed higher than comparable properties in the surrounding area. *Hamann testimony; Pet'r Exs. 9-19.*
13. The Respondent presented the following evidence:
  - a. The Petitioner's appraisal is not credible because there are contradictions and errors in it. The appraisal states the cost approach was not used. But at the bottom of the same page, the appraisal states the cost approach supports the value indicated. Further, the living space adjustments for comparable properties two and three are \$10.00 per square foot. The square foot values for comparable properties two and three, however, are identified in the appraisal as \$33.89 and \$27.13. *McCarty testimony; Resp't Ex. 2; Pet'r Ex. 1.*
  - b. The appraisal valued the property as of August 31, 2007. The appraiser states the 2007 market was stagnant or experiencing a small decline. The trending adjustment he made, however, is contradictory because the appraiser concluded the 2005 value is less than the 2007 value. *McCarty testimony; Resp't Ex. 1.*
  - c. The sales ratio study for the subject neighborhood shows the assessed values are within the range of the sale prices. *McCarty testimony; Resp't Ex. 10.*

- d. Several of the properties identified by the Petitioner are not comparable to her property. They are rental properties, rather than owner occupied homes, and they were assessed using the income approach to value. *McCarty testimony*.

**Record**

- 14. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. A digital recording of the hearing,
  - c. Petitioner Exhibit 1 – Appraisal of the subject property,  
Petitioner Exhibit 2 – Twenty-four photographs of the subject property and surrounding properties,  
Petitioner Exhibit 3 – Notice of assessment dated February 28, 2007,  
Petitioner Exhibit 4 – Two pages of Form 130,  
Petitioner Exhibit 5 – Notice of Final Assessment Determination,  
Petitioner Exhibit 6 – Memorandum to the Vigo County Assessor requesting a meeting with local officials to discuss the PTABOA Notification of Final Assessment Determination,  
Petitioner Exhibit 7 – Notice of intent to appeal to the Indiana Board of Tax Review dated January 31, 2008,  
Petitioner Exhibit 8 – Form 131,  
Petitioner Exhibit 9 – “Sales Disclosures and Assessments of Comparable Properties,”  
Petitioner Exhibit 10 – “Trending 2006 Assessments of Comparable Properties,”  
Petitioner Exhibit 11 – Printed sheet from internet (beacon.schneidercorp.com) with information taken from property record card (PRC) of the subject property,  
Petitioner Exhibit 12 – Printed sheet from internet (beacon.schneidercorp.com) with information taken from PRC for the property at 619 South 4<sup>th</sup> Street,  
Petitioner Exhibit 13 – Printed sheet from internet (beacon.schneidercorp.com) with information taken from PRC for the property at 401 South 5<sup>h</sup> Street,  
Petitioner Exhibit 14 – Printed sheet from internet (beacon.schneidercorp.com) with information taken from PRC for the property at 619 South 5<sup>th</sup> Street,  
Petitioner Exhibit 15 – Printed sheet from internet (beacon.schneidercorp.com) with information taken from PRC for the property at 1235 South 5<sup>th</sup> Street,  
Petitioner Exhibit 16 – Printed sheet from internet (beacon.schneidercorp.com) with information taken from PRC for the property at 1633 South 5<sup>th</sup> Street,

Petitioner Exhibit 17 – Printed sheet from internet (beacon.schneidercorp.com) with information taken from PRC for the property at 636 South 7<sup>th</sup> Street,

Petitioner Exhibit 18 – Sales disclosure form for property at 531 South 5<sup>th</sup> Street,

Petitioner Exhibit 19 – Sales disclosure form for property at 508 South 4<sup>th</sup> Street,

Petitioner Exhibit 20 – Printed sheets from internet (beacon.schneidercorp.com) with parcel numbers and addresses highlighted for three properties, 620 South 4<sup>th</sup> Street, the subject property, and 612 South 4<sup>th</sup> Street,

Respondent Exhibit 1 – Appraisal letters dated September 10 and 11, 2007,

Respondent Exhibit 2 – Pages 1 and 2 of the subject appraisal,

Respondent Exhibit 3 – PRC for 612 South 4<sup>th</sup> Street,

Respondent Exhibit 4 – PRC for 619 South 4<sup>th</sup> Street,

Respondent Exhibit 5 – PRC for 401 South 5<sup>th</sup> Street,

Respondent Exhibit 6 – PRC for 619 South 5<sup>th</sup> Street,

Respondent Exhibit 7 – PRC for 1235 South 5<sup>th</sup> Street,

Respondent Exhibit 8 – PRC for 1633 South 5<sup>th</sup> Street,

Respondent Exhibit 9 – PRC for 508 South 4<sup>th</sup> Street,

Respondent Exhibit 10 – 2006 “Vigo County Trending Reports” for the subject neighborhood and a PRC for each of the highlighted properties,

Respondent Exhibit 11 – Subject PRC,

Board Exhibit A – Form 131 Petition for Review of Assessment,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing Sign In Sheet,

d. These Findings and Conclusions.

### Analysis

15. 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 a 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.
16. The weight of the evidence supports the Petitioner's claim because:
- a. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); MANUAL at 2. There 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. *Id.* at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A* (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-in-use to 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.
  - b. A 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c. The Petitioner attempted to prove that comparable properties have a lower assessed value than her property. 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. 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.* The Petitioner did not do so. Merely presenting the assessed values of other properties is not probative.
  - d. The Petitioner also presented photographs and testimony to establish the condition of the home and features of the neighborhood. Standing alone, the photographs and testimony that establish the home and the neighborhood suffer from some problems would not be enough to prove that the assessment should be changed because a taxpayer does not rebut the presumption that an assessment is correct

simply by challenging the assessor's methodology in computing the assessment. See *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The taxpayer must use market-based evidence to show that the assessor's methodology yielded an assessment that does not accurately reflect the assessed property's market value in-use. *Id.*

- e. The most effective method to show the value assigned by the assessor is incorrect is often through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The Petitioner presented such an appraisal prepared by a certified appraiser valuing the property at \$62,000 as of August 31, 2007, and a letter from the appraiser that explained why the value would have been \$60,000 as of January 1, 2005. This evidence is the heart of the matter. It is sufficient to make a prima facie case.
- f. The Respondent challenged the credibility of the appraisal by pointing out that the cost approach to value was not used (because of the age of the property), but the appraisal also states that “[t]he cost approach supports the value indicated.” This point demonstrates an inconsistency and detracts a little from the credibility of the appraisal. The Respondent also attempted to demonstrate that the appraiser's adjustments to comparables two and three worked out to be \$10.00 per square foot of living area. Assuming, without deciding, that the Respondent's calculation and characterization of the adjustments is accurate, the Respondent failed to establish how the point is significant to the credibility of the appraisal. Overall, the Respondent perhaps poked a couple of holes in the appraisal that might make it a little less persuasive, but the Respondent did not entirely destroy the appraisal's credibility or its probative value—probative evidence can be persuasive even if it is not perfect.
- g. The Respondent argued that the appraiser's statement the local market was stagnant in 2007 contradicted his conclusion that the property was worth less in 2005 than it was in 2007. The appraiser, however, also stated that the local market had experienced some growth in values from January 1, 2005, through 2006. To conclude the local market experienced growth after January 1, 2005, but was stagnant in 2007 is not contradictory and would account for the lower 2005 value. The Respondent's argument against how the appraiser related his appraisal to the required valuation date is not persuasive.
- h. The Respondent established the current assessment of \$78,500 is within the range of neighborhood sales. These sales, however, range from \$58,700 to \$230,000. The appraised value of \$60,000 also falls within this range. Therefore, this point does not help to prove that either value is more credible.
- i. The Respondent offered evidence that the assessments and the sale prices for several other properties in the same neighborhood are “very close for a mass

appraisal.” A summary of the six assessments and sale prices that the Respondent highlighted in Exhibit 10 is as follows:

| <u>Assessment</u> | <u>Sale Price</u> |
|-------------------|-------------------|
| \$189,200         | \$230,000         |
| \$ 51,000         | \$ 58,700         |
| \$137,700         | \$150,000         |
| \$121,700         | \$126,000         |
| \$ 76,900         | \$ 75,000         |
| \$107,600         | \$ 98,500         |

While this evidence arguably establishes that the Respondent’s mass appraisal of properties according to the Guidelines provided a good starting point for valuing the subject property, it does little to rebut the appraisal of the subject property in this case. Furthermore, the Respondent failed to offer any substantial additional evidence to support the current assessment or demonstrate what a more accurate market value-in-use might be.

**Conclusion**

- 17. The Petitioner presented a more persuasive case for what the value of the subject property should be. Consequently, the Board finds in her favor.

**Final Determination**

The total assessment should be changed to \$60,000.

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

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Commissioner, 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>