

REPRESENTATIVE FOR PETITIONER: John Major

REPRESENTATIVE FOR RESPONDENT: Brian McHenry

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

John Major,	)	Petition No. 83-002-07-1-5-00449
	)	Parcel No. 83-13-22-211-026-000-002
Petitioner,	)	
	)	
v.	)	
	)	Vermillion County
Vermillion County Assessor,	)	Clinton Township
	)	2007 Assessment
Respondent.	)	

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

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**April 25, 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**

Did the Petitioner prove that the current assessment of \$64,000 is not an accurate market value-in-use for the subject property and did the Petitioner prove the correct assessment should be \$34,000?

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

1. The subject property is a residential dwelling located at 957 South Main Street in Clinton.
2. The Petitioner initiated an assessment appeal by written document. The Property Tax Assessment Board of Appeals (PTABOA) mailed its decision on February 7, 2009. The Petitioner filed a Form 131 with the Board on April 1, 2009.
3. The PTABOA determined the total assessed value is \$64,000.
4. The Petitioner contends the total assessed value should be \$34,000.
5. Administrative Law Judge Paul Stultz held a hearing for this petition on January 25, 2011. There was no on-site inspection of the subject property by the Administrative Law Judge or the Board.
6. The following persons were sworn as witnesses at the hearing:
  - For the Petitioner – John Major,
  - For the Respondent – County Assessor Patricia Richey,  
Brian McHenry.
7. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Appraisal,
  - Petitioner Exhibit 2 – Closing statement for 2009 sale of the subject property.
8. The Respondent presented the following exhibit:
  - Respondent Exhibit 1 – Property record card.
9. The following items are recognized as part of the record:
  - Board Exhibit A – The 131 Petition,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing Sign in Sheet.

### SUMMARY OF THE PETITIONER'S CASE

10. The subject property did not generate any income for five years. *Major testimony.*
11. The subject property was listed for sale on the open market with realtors for five years. During that time the residential housing market was pretty good, but there were no offers for anything close to the assessed value. It finally sold for \$34,000 in May 2009. *Major testimony; Pet'r Ex. 2.*
12. The appraisal by John Malone values the subject property at \$39,000 as of tax year 2007. *Major testimony; Pet'r Ex. 1.*

### SUMMARY OF THE RESPONDENT'S CASE

13. The appraisal is not a valid appraisal because the appraiser did not use all three approaches to value as required by law. Even though the appraiser certified that the appraisal was performed in accordance with USPAP, the fact that the appraiser did not explain why only the sales approach to value was used invalidates the appraisal. *McHenry testimony.*
14. Of the three sales used as comparables in the appraisal, only Sale #2 is valid. Sale #1 is a "discounted sale" that was rejected by the assessor's office for use in the ratio study because the sale price was substantially lower than the assessed value. Sale #3 is not a valid comparable because it involved a 1,400 square foot, one-story cottage style home and the subject property is a two-story home with 500 more square feet of area. *McHenry testimony; Richey testimony; Resp't Ex. 1.*
15. The appraisal's effective date of "tax year 2007" does not make it clear if the estimated value applies to the valuation date of January 1, 2006, or January 1, 2007. *McHenry testimony.*

16. The May 2009 sale price should not be considered because it occurred more than three years after the January 1, 2006 valuation date. *McHenry testimony*.
17. Even though the appraisal states that the sale price of \$34,000 is indicative of the 2007 market, the Respondent disagrees. *McHenry argument*.
18. Indiana's assessment system is a mass appraisal system where a taxpayer is not entitled to an exact property value. *McHenry argument*.

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

19. 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).
20. 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”).
21. 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**

22. Real property is assessed on 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 or similar

user, from the property.” Ind. Code § 6-1.1-31-6(c); 2002 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. Assessing officials primarily use the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. 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 is permitted to 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.

23. A 2007 assessment must be based on value as of January 1, 2006. Any evidence relating to some other time must have an explanation about how it demonstrates or is relevant to value as of the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3.
24. Sales information regarding the subject property can be good evidence. Here the subject property sold for \$34,000 on May 1, 2009. That date is important. A sale occurring more than three years from the required valuation date typically has no probative value, but according to the certified appraisal “[t]he sales price in 2009 is considered indicative of market value in 2007 and is supported by comparable sales.” (Nothing relates this sale to January 1, 2006). Mr. McHenry merely testified that he disagreed, but such a conclusory statement does not constitute probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Because of the failure to relate the 2009 selling price to the required valuation date, the Petitioner did not prove that the assessment should be changed to \$34,000. If the selling price has any relevance, it may indicate the valuation of \$64,000 for the 2007 assessment is too high, as does the fact that it was listed for sale for five years and never got an offer close to \$64,000.

25. In this case other evidence is more significant than the selling price. 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). *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 n. 3 (Ind. Tax Ct. 2006), *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005).
26. A certified appraisal by John Malone<sup>1</sup> estimates the value of the subject property at \$39,000 as of "tax year 2007." The Respondent correctly observed that using this reference as the effective date of the appraisal is ambiguous. Such terminology is problematic and most definitely should be avoided.<sup>2</sup> Nevertheless, the appraisal's comparable sales indicate an approximate valuation date. Sale #1 was in April 2006. It occurred close enough to the required valuation date, January 1, 2006, to be relevant. The dates of Sale #2 (August 2007) and Sale #3 (February 2007) are more problematic. They took place more than a year after the valuation date (January 1, 2006), but the appraiser did not adjust for time. Apparently the appraiser found no change in the market place between 2006 and 2007. Therefore, even though the appraisal does not specify a date, the connection is sufficient to give it some relevance and probative value.
27. The Petitioner presented a prima facie case for changing the 2007 assessment to \$39,000.
28. The Respondent did not present any market based evidence to support \$64,000, but did raise some other purported faults regarding the appraisal. The Respondent claimed the appraisal was not valid because the appraiser failed to give an explanation for using only the sales comparison approach and failed to include the income approach and the cost approach. According to the Respondent, the law requires a valid appraisal to use the income approach and the cost approach. No authority was cited for that proposition.

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<sup>1</sup> Mr. Malone is an Indiana Licensed Residential Appraiser.

<sup>2</sup> Nobody offered substantial evidence or argument about whether such language actually complies with USPAP. Consequently, we will not determine that question in this case. But the appraisal's failure to specify value as of a certain date leaves the context for the value opinion in doubt.

29. Furthermore, there is no such requirement. Typically appraisals consider all three approaches to value, even if they do not develop all three. In this case, the appraiser did not develop all three approaches, but this fact does not invalidate the appraisal. The appraiser certified that both the cost approach and the income approach were considered, but he did not develop them. *See Page 3 of 3 of the appraisal item #8, Pet'r Ex.1.* This statement is a sufficient disclosure. While some type of detailed explanation might make the appraiser's methodology easier to understand, not developing a cost or income analysis in this appraisal does not invalidate it.
30. The Respondent also argued that the appraisal's comparable sales are not good comparables. According to the Respondent, Sale #1 was not valid because it was a "discounted sale" that was not used in the county's ratio study. The testimony from Assessor Richey, however, establishes that identifying Sale #1 as a "discounted sale" was simply based on the big difference between assessment and sale price, together with being unable to verify that Sale #1 was an arm's-length transaction.<sup>3</sup> The fact that this sale was excluded from the ratio study—perhaps without proper justification—does not necessarily make it an invalid comparable for an appraisal. The Respondent failed to prove that Sale #1 was not a market sale or not a valid comparable for the appraisal. The Respondent also argued Sale #3 was not a comparable property because it is not a two-story home and the subject property is. While differences exist, the Respondent offered nothing substantial to establish how they might result in differing market values. Simply establishing differences is not enough to show that the appraiser's use of the comparable is wrong or invalid. It does little to rebut or impeach the appraisal.
31. Finally, the Respondent argued that our mass appraisal system does not guarantee exactness. While that may be true, "the value established by use of the Guidelines ... is merely a starting point. A taxpayer is permitted to offer evidence relevant to market

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<sup>3</sup> Assessor Richey's attempt to explain why Sale #1 was not valid evidence of market value is revealing. She explained that people often reduce the price of a property "to move it, to get rid of it." Similarly, she testified that "we've had people who sold property for a lot more than the assessed value. I won't use those in the study either. If I have property assessed for \$40,000 and it sells for \$200,000 I will throw it out because there again it is not a true market value sale." Her conclusory opinion about whether a property actually sold for too much or too little, however, is not probative evidence. *See Whitley Products*, 704 N.E.2d at 119.

value-in-use to rebut that presumption.” MANUAL at 5. Therefore, the Respondent’s point does not preclude a change when the evidence proves a more accurate valuation.

32. The Petitioner presented market evidence that supports an assessment of \$39,000. The Respondent failed to rebut or impeach that evidence.

### **SUMMARY OF FINAL DETERMINATION**

33. The Board finds in favor of the Petitioner. The assessment will be changed to \$39,000.

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

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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>