

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

**Petition #:** 06-022-06-1-5-00543  
**Petitioners:** James J. and Kimberly K. Olson  
**Respondent:** Boone County Assessor  
**Parcel #:** 0020584301  
**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. James and Kimberly Olson initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (“PTABOA”). On January 9, 2008, the PTABOA issued its determination lowering the assessment of the Olsons’ property, although not as far as the Olsons had requested.
2. On January 25, 2008, the Olsons filed a Form 131 petition with the Board. They elected to proceed under the Board’s small-claims rules.
3. On April 29, 2008, the Board held an administrative hearing through its duly appointed Administrative Law Judge, Alyson Kunack.
4. Persons present and sworn in at the hearing:
  - a) For the Olsons: Kimberly K. Olson  
William Price, witness<sup>1</sup>
  - b) For the Assessor: Lisa Garoffolo, Boone County Assessor  
Jeffrey B. Wolfe, witness

**Facts**

5. The Olsons’ property is a single-family residence located at 6411 N. Caldwell Road, Lebanon, Indiana.

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<sup>1</sup> Joseph Geeslin appeared as counsel for the Olsons.

6. Neither the Board nor its Administrative Law Judge inspected the Olsons' property.
7. The PTABOA determined the following values for the property:  
Land \$30, 500            Improvements \$433,300            Total: \$463,800.
8. The Olsons request a total assessment between \$363,500 and \$365,000.

### **Issue**

9. The Olsons offered the following evidence and argument:
  - a) The Olsons bought their property on February 18, 2006, for \$363,500. *Pet'rs Ex. 10*. The property had been on the market for six months with various real estate agencies. *Price testimony; Resp't Ex. 7*. Although the property had been foreclosed upon, the Olsons didn't know that when they bought it. *Olson testimony*.
  - b) The Olsons offered an appraisal report prepared by Anthony K. Atkins, an appraiser employed by KRG Appraisals. *Pet'rs Ex. 1*. Mr. Atkins held a trainee appraiser's license. *Pet'rs Ex. 1*. Brian Lee, a licensed certified appraiser employed by KRG, signed the appraisal report as a supervisory appraiser. *Id.*
  - c) Mr. Atkins estimated the subject property's value at \$365,000 as of January 3, 2006. *Pet'rs Ex. 1*. He formed that opinion after applying two valuation methods—the cost and sales-comparison approaches. He estimated the property's value at \$371,128 using the cost approach and at \$365,000 using the sales-comparison approach. *Id.* He gave more weight to his sales-comparison estimate because it reflected actual market transactions, but he felt that his cost-approach estimate supported his ultimate opinion. *Id.*
  - d) In performing his sales-comparison analysis, Mr. Atkins initially looked at three comparable properties that had sold between July 25, 2005, and September 30, 2005. *Pet'rs Ex. 1*. Two of the properties were located in Lebanon, within six miles of the Olsons' property, and one was located in Zionsville, 7.4 miles away from the Olsons' property. *Id.* Mr. Atkins also looked at two properties that were actively being listed but that had not yet been sold. *Id.* Mr. Atkins adjusted the sale and listing prices for the five comparable properties to account for various differences between those properties and the Olsons' property. *Id.* But he did not adjust the sale prices to account for the difference between the properties' sale dates and his appraisal's valuation date. *Id.*
  - e) The Olsons also offered what they termed a "desk review" appraisal prepared by Bryan M. Waters. *Pet'rs Ex. 2*. Mr. Waters reviewed Mr. Atkins's appraisal and found it lacking in essentially two respects.

- f) First, Mr. Waters felt that Mr. Atkins did not adequately describe the interior of the Olsons' house. He was mainly concerned that Mr. Atkins did not convey the superior quality of the Olsons' basement, which had multiple windows and which was finished in the same manner as the house's above-grade area. *Id.*
- g) Second, Mr. Waters took issue with the comparable properties that Mr. Atkins relied on in his sales-comparison analysis. In Mr. Waters's view, the first two comparable properties were "weak at best." He also considered the last two comparable properties irrelevant because, although they had been listed for sale, they had not actually sold. *Id.*
- h) Mr. Waters concluded that Mr. Atkins should travel to Zionsville to look for houses with designs that were more similar to the design of the Olsons' house. Specifically, he felt that Mr. Atkins should look for houses with one bedroom on the main level and a lower level finished in a manner similar to the lower level of the Olsons' house. *Id.* In response to Mr. Waters's desk review, Mr. Atkins identified two more sales of comparable properties. Both properties were located in Eagle Township in Zionsville, which Mr. Atkins described as a vastly superior location. *Pet'rs Ex. 1.* Once again, he adjusted the sale prices of those properties to reflect relevant ways in which they differed from the Olsons' property, although he did not adjust either sale price to reflect differences between the sale dates (March 28, 2005, and December 28, 2005) and his appraisal's valuation date. *Id.*
- i) Together, the property's sale price and Mr. Atkins's appraisal show that the Olsons' property was worth between \$363,500 and \$365,000. Both express values from early 2006. But they also reflect the property's value as of January 1, 2005—the valuation date for March 1, 2006 assessments. Mr. Atkins recognized that relationship when he used sales from 2005 in his sales-comparison analysis. *Geeslin argument; Pet'rs Ex. 2.*

10. The Assessor offered the following evidence and argument:

- a) The property's February 2006 sale price did not reflect its true value. A MIBOR<sup>2</sup> information sheet for the property described the property as a "foreclosure," and foreclosed properties sell for less. *Garoffolo testimony.* Also, the property wasn't marketed properly. The sellers originally asked for \$600,000, driving away potential buyers. The price dropped to \$550,000, and again to \$429,900 before finally settling at \$359,900. *Garoffolo testimony; Resp't Ex. 7.*
- b) Mr. Atkins's appraisal was "very low." *Garoffolo testimony.*

### **Record**

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<sup>2</sup> Ms. Garoffolo did not explain what the acronym "MIBOR" represented. The Board assumes she was referring to the Indianapolis Metropolitan Board of Realtors.

11. The official record for this matter is made up of the following:

a) Form 131 petition.

b) A digital recording of the hearing.

c) Exhibits:

Petitioners Exhibit 1A: Letter/ statement of issues

Petitioners Exhibit 1: Appraisal of subject property as of January 3, 2006

Petitioners Exhibit 2: Desk review of appraisal

Petitioners Exhibit 3: Property record card (PRC) for appraisal comparable  
No. 1

Petitioners Exhibit 4: PRC for appraisal comparable No. 2

Petitioners Exhibit 5: PRC for appraisal comparable No. 3

Petitioners Exhibit 6: PRC for appraisal comparable No. 4

Petitioners Exhibit 7: PRC for appraisal comparable No. 5

Petitioners Exhibit 8: PRC for appraisal comparable No. 7

Petitioners Exhibit 9: PRC for appraisal comparable No. 8

Petitioners Exhibit 10: Settlement statement for subject property

Respondent Exhibit 1: County appeal worksheet

Respondent Exhibit 2: Settlement statement for the subject property

Respondent Exhibit 3: Appraisal of subject property

Respondent Exhibit 4: Subject property's PRCs for 2001, 2003 & 2006

Respondent Exhibit 5: Evidence from PTABOA hearing

Respondent Exhibit 6: PTABOA hearing notice

Respondent Exhibit 7: MIBOR listing and interior pictures for subject  
property

Respondent Exhibit 8: Form 115 determination

Respondent Exhibit 9: Form 131 petition

Board Exhibit A: Form 131 petition

Board Exhibit B: Notice of hearing

Board Exhibit C: Hearing sign-in sheet

Board Exhibit D: Notices of appearance for the Olsons

d) These Findings and Conclusions.

### **Analysis**

#### **Burden of Proof**

12. 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).

13. 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) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
14. Once the petitioner establishes a prima facie case, the burden shifts to the respondent 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); *Meridian Towers*, 805 N.E.2d at 479.

#### The Olsons’ Case

15. The Olsons demonstrated that their property’s assessment should be reduced. The Board reaches that 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 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 market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using 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 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. P/A 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 how the Manual defines true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and 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 subject 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 the March 1, 2006 assessment, that valuation date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.

- d) The Olsons made a prima facie case rebutting the assessment's presumption of accuracy and showing that their property's market value-in-use was no more than \$365,000. In fact, the Olsons offered two different types of market-based evidence to show their property's market value-in-use. First, they offered an appraisal report estimating the property's value at \$365,000. *Pet'rs Ex. 2*. The appraiser used two generally accepted methodologies to estimate the property's value and certified that he complied with Uniform Standards of Professional Appraisal Practice. *Id.* The Olsons also offered evidence showing that they bought the property for \$363,500 in an arm's-length transaction after it had been listed on the open market. *Olson testimony; Pet'rs Ex. 10; see also Resp't Ex. 7*.
- e) The Olsons also generally explained how that sale price and Mr. Atkins's valuation estimate related to their property's value as of the relevant January 1, 2005, valuation date. In his appraisal report, Mr. Atkins examined potential reasons for adjusting the sale prices of comparable properties so that those prices would reflect the value of the Olsons' property. One of those reasons was a difference between a given comparable property's sale date and January 3, 2006—the effective date upon which he was estimating the value of the Olsons' property. But Mr. Atkins didn't adjust any sale price to reflect a time-related value difference despite the fact that the sale dates ranged from March 28, 2005 to December 28, 2005. He explained his decision not to adjust those prices by saying that “property values in the market area appear[ed] to be stable” and that there was insufficient sales data to support any time adjustments. *Pet'rs Ex. 2*. While not definitive, Mr. Atkins's expert opinion at least supports a finding that the Olsons' property did not appreciate between early 2005 and early 2006.
- f) Thus, between Mr. Atkins's appraisal and the property's actual sale price, the Olsons made a prima facie case that their property was worth no more than \$365,000.

#### The Assessor's case

- g) The burden therefore shifted to the Assessor to impeach or rebut the Olsons' evidence.
- h) The Assessor attacked the property's sale price on grounds that it was not marketed properly and that it was “a foreclosure.” *Garoffolo testimony*. Neither of those conclusory assertions suffice to rebut or impeach that sale price as evidence of the property's market value-in-use.
- i) The Assessor grounded her assertion that the property was marketed improperly on the notion that its original listing at \$600,000 drove away potential buyers. Even if that were true, she did not explain why the property did not sell once its list price was reduced to \$429,000 or why its ultimate listing at \$359,900 was problematic.
- j) As to her claim that the property was “a foreclosure,” the Assessor did not allege that the Olsons bought the property at a forced sale. While the property's seller, JP

- Mortgage Chase Bank, NA, apparently acquired the property after foreclosure proceedings had been instituted, it retained a real estate agent to list the property for sale with an asking price of \$359,900. And the property was listed at that price for more than two months before the Olsons bought it. *See Resp't Ex. 7*(indicating that the property was listed for \$359,900 on November 14, 2005).
- k) Instead, the Assessor apparently wants the Board to find that banks necessarily sell properties for less than typically motivated sellers do. But she offered only her bare assertion to support that proposition. She didn't even attempt to show that her position reflected generally accepted appraisal principles. The Board therefore will not automatically assume that a bank-owned property's sale price reflects something less than the property's market value-in-use. And it certainly won't do so where, as here, the property was sold in an arm's-length transaction after being offered for sale on the open market for a reasonable time.
  - l) Plus, Mr. Atkins's appraisal negates the Assessor's assumption that the Olsons paid less than market value because they bought the property from a bank. Mr. Atkins estimated the subject property's value at \$365,000—only \$1,500 more than the property's sale price. But his estimate was unaffected by the fact that a bank owned the property. Indeed, his appraisal report does not indicate that any of the properties he relied upon in his sales-comparison analysis was owned by a bank or had been the subject of a foreclosure action. *See Pet'rs Ex. 2*.
  - m) Of course, the Assessor disputed the evidentiary value of Mr. Atkins's appraisal, claiming that his valuation opinion was "very low." *Garoffolo testimony*. Again, the Assessor did not point to anything to support her conclusory opinion. That does not mean that Mr. Atkins's valuation opinion was beyond dispute. Indeed, the review appraiser, Mr. Waters, questioned key aspects of Mr. Atkins's analysis. Mr. Atkins, however, addressed those concerns by finding two additional comparable-property sales. *Pet'rs Ex. 2*. Granted, one of those two adjusted sale prices was substantially higher (\$452,000) than Mr. Atkins's estimate for the Olsons' property. But the other adjusted sale price (\$350,500) was actually less than that estimate. *Id.* And it does not appear that either sale caused Mr. Atkins to change his valuation opinion. *See id.*
  - n) Ultimately, whatever evidentiary weaknesses the property's sale price and Mr. Atkins's valuation opinion may have individually, they collectively support the Olsons' claim that their property is worth no more than \$365,000. They certainly show that the property isn't worth anything near the \$463,800 for which it is currently assessed. And the Assessor offered no market-based evidence of her own to counter the Olsons claims.
  - o) The Board therefore finds that the Olsons proved by a preponderance of the evidence that their property's true tax value is no more than \$365,000.

**Conclusion**

16. The Olsons made a prima facie case that their property's true tax value is no more than \$365,000. The Assessor failed to impeach or rebut the Olsons' evidence. The Board therefore finds in the Olsons' favor.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be reduced to \$365,000.

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

## 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>