

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

**Petition No.:** 45-001-06-1-5-00001  
**Petitioner:** Michael Opare-Addo  
**Respondent:** Lake County Assessor  
**Parcel No.:** 45-08-12-177-006.000-004/001-25-41-0260-0001  
**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated February 3, 2009.
2. The Petitioner received notice of the decision of the PTABOA on March 26, 2009.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the Board on April 22, 2009. The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 22, 2009.
5. Administrative Law Judge Ellen Yuhan held the Board's administrative hearing on November 9, 2009.
6. Persons present and sworn in at hearing:

For Petitioner: Michael Opare-Addo, Petitioner

No one appeared to represent the Respondent.

**Facts**

7. The subject property is a residential property located at 3525 Oakdale Drive, Gary, in Lake County.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$7,100 for the land and \$39,900 for the improvements, for a total assessed value of \$47,000.
10. The Petitioner requested a total assessed value of \$11,950.

### **Issues**

11. Summary of the Petitioner's contentions in support of an alleged error in his assessment:
  - a. The Petitioner contends that his property is over-assessed based on the condition of the property. *Opare-Addo testimony*. Mr. Opare-Addo argues that the assessing officials did not consider the structural damage to the building or that the house is unoccupied and uninhabitable. *Opare-Addo testimony*. In support of his contentions, the Petitioner presented photographs of the house. *Petitioner Exhibits 5-1 through 7-2*. The Petitioner also contends the basement floods during rainstorms. *Opare-Addo testimony*.
  - b. The Petitioner further argues that his property is assessed in excess of its market value. *Opare-Addo testimony*. According to Mr. Opare-Addo, his realtor prepared a market analysis that determined the average sale price for similar properties is \$10,000. *Opare-Addo testimony; Petitioner Exhibit 3*. Moreover, Mr. Opare-Addo testified, his realtor estimated the selling price for his property to be \$11,950. *Id; Petitioner Exhibit 4*. According to the Petitioner, he has had the house on the market "off and on" but he has not been able to sell it. *Id*.

### **Record**

12. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. Digital recording of the hearing,
  - c. Exhibits:

Petitioner Exhibit 1 – Notice of Hearing,  
Petitioner Exhibit 2 – Form 131,  
Petitioner Exhibit 3 – Market analysis,  
Petitioner Exhibit 4 – Seller's Estimated Net Expenses,  
Petitioner Exhibit 5 – Photographs of the structural damage to the house,  
Petitioner Exhibit 6 – Photographs of the structural damage to the house,

Petitioner Exhibit 7 – Photographs of structural damage to the foundation,<sup>1</sup>  
Petitioner Exhibit 11 – Interior photographs of various rooms,  
Petitioner Exhibit 12 – Photographs of the basement,  
Petitioner Exhibit 13 – Excerpt of the Form 115,  
Petitioner Exhibit 14 – Excerpt of the property record card,

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of Hearing dated September 22, 2009,  
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

### Analysis

13. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
  - b. 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 Township 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.
14. The Petitioner failed to provide sufficient evidence to establish an error in his assessment. The Board reached this determination for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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). Appraisers traditionally have used three methods to determine a property’s market value: the cost approach, the sales comparison approach

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<sup>1</sup>The Petitioner’s Exhibit Coversheet lists Exhibits 8, 9, and 10, but the Petitioner did not include those exhibits in his presentation to the Board.

and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. 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. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
- d. The Petitioner first contends that his assessment does not consider the uninhabitable condition of the property. The Board interprets this to be an argument that the condition of the house was improperly assessed. A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See* GUIDELINES, app. B, at 5. A condition rating is determined by relating the structure to comparable structures within the subject property's neighborhood. *Id.* While the Petitioner presented some evidence that the house has settled and caused cracks in the foundation there is no evidence that the condition of the subject property differs from other dwellings in the neighborhood. Further, the Petitioner only provided the Board with the front side of his property record card addressing the land valuation. There is no evidence in the record of the how the improvements were assessed. Thus, the Board cannot determine whether that assessment was in error.
- e. Even if the Petitioner had proven that the condition of his house was assessed in error, an assessor's failure to comply with the Guidelines alone does not show that the assessment is not a reasonable measure of a property's market value-in-use. 50 IAC 2.3-1-1(d); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) ("Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict

application of the regulations is not enough to rebut the presumption that the assessment is correct.”) Thus, the Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the property’s market value-in-use. The Petitioner’s evidence and arguments relating to the property’s condition therefore fail to overcome the presumption the assessment is correct.

- f. Mr. Opare-Addo also argues that his property is over-valued based on a market analysis of similar properties in the area. In support of this contention, the Petitioner presented a list of residential properties compiled by an agent of Mobile Realty, LLC. The report shows an average listing price of \$12,920 for five properties in the Miller/Aetna area of Gary as of January 28, 2009. The report also shows an average sale price of \$9,050 for five additional properties that sold in 2008.
- g. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of his property. *See* MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. 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. Instead, 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 value-in-use. *Id.*
- h. Here, neither the realtor nor the Petitioner attempted to compare the properties or the value differences between them. The analysis also states that the information used to generate the report “has not been verified and is not guaranteed.” Moreover all of the purportedly “comparable” sales occurred in late 2008 – more than three years after the January 1, 2005, valuation date for the 2006 assessment. The Board therefore finds the Petitioner’s market analysis is insufficient to be probative of the property’s market value-in-use for the 2006 assessment year.
- i. Finally, the Petitioner presented a document entitled “Seller’s Estimated Net Expenses” which purports to show the realtor’s estimated selling price for the subject property. According to Mr. Opare-Addo, Ms. Bartholomew advised him to list the property for \$11,950. This evidence, however, suffers from the same deficiencies as the sales information because the property’s value is estimated as of January 26, 2009, which is too far removed from the January

1, 2005, valuation date to be probative of the property's value for the 2006 assessment year.

- j. The Petitioner failed to raise a prima facie case. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 15. The Petitioner's evidence failed to raise a prima facie case that the Petitioner's property is over-valued. The Board therefore finds in favor of the Respondent. The Board, however, reaches this conclusion reluctantly in light of the Assessor's lack of regard for its process and the time and expense incurred by the Petitioner in pursuing his case.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

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

### 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>>