

REPRESENTATIVE FOR THE PETITIONER:

Henry P. Rubin, *pro se*

REPRESENTATIVE FOR THE RESPONDENT:

Terri Boone, Huntington County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Henry P. Rubin,	)	Petition Nos.: 35-005-12-1-5-00035
	)	35-005-12-1-5-00036
Petitioner	)	
	)	Parcel Nos.: 35-05-10-300-458.100-005
v.	)	35-05-10-300-453.200-005
	)	
Huntington County Assessor,	)	County: Huntington
	)	Township: Huntington
Respondent.	)	
	)	Assessment Year: 2012

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

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**May 12, 2014**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

1. Although the petitioner, Henry Rubin, offered some data for sales of other properties, he did not apply generally accepted appraisal principles to show how that data supports a

lower assessment for his property. He therefore failed to make a prima facie case for changing his property's assessment.

### **Procedural History**

2. Mr. Rubin appealed the March 1, 2012 assessments for the above referenced parcels. On March 8, 2013, the Huntington County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations reducing the assessments, although not to the level that Mr. Rubin requested. Mr. Rubin then timely filed Form 131 petitions with the Board for both parcels. Except where otherwise indicated, the Board will refer to the parcels collectively as "the subject property."

### **Hearing Facts and Other Matters of Record**

3. On November 26, 2013, the Board's administrative law judge, Patti Kindler, held a single hearing on both petitions. Neither she nor the Board inspected the property.
4. The following people were sworn in: Henry P. Rubin; Terri Boone, Huntington County Assessor; and Julie Newsom, a deputy assessor.
5. Mr. Rubin submitted the following exhibits:
  - Petitioner Exhibit 1: Property Value Comparison,
  - Petitioner Exhibit 2: Plat map.
6. The Assessor submitted the following exhibits:
  - Respondent Exhibit 1: List of witnesses and exhibits,
  - Respondent Exhibit 2: Hearing notices for both parcels,
  - Respondent Exhibit 3: Form 131 petition for Lot 48,
  - Respondent Exhibit 4: Form 115 determination for Lot 48,
  - Respondent Exhibit 5: Form 130 petition for Lot 48,
  - Respondent Exhibit 6: Description and Analysis of Subject Property,
  - Respondent Exhibit 7: 2013 property record card ("PRC") with the parcels combined,
  - Respondent Exhibit 8: Photograph of the subject property,
  - Respondent Exhibit 9: Form 131 petition for Lot 47,
  - Respondent Exhibit 10: Form 115 determination for Lot 47,

- Respondent Exhibit 11: Form 130 petition for Lot 47,
- Respondent Exhibit 12: PRC for Lot 47,
- Respondent Exhibit 13: Beacon™ printouts with aerial photographs and information for the subject property,
- Respondent Exhibit 14: July 17, 2012 request to combine parcels together with affidavit,
- Respondent Exhibit 15: Approach to Value Analysis,
- Respondent Exhibit 16: Aerial photograph of subject property and comparable properties,
- Respondent Exhibit 17: Comparable Properties Price per Square Foot grid,
- Respondent Exhibit 18: Summary sheet, photograph, PRC, and sales disclosure form for 460 Rush Street,
- Respondent Exhibit 19: Summary sheet, photograph, PRC, and sales disclosure form for 370 Rush Street
- Respondent Exhibit 20: Summary sheet, photograph, PRC, and sales disclosure form for 451 Himes Street,
- Respondent Exhibit 21: Huntington City Sales (March 2, 2010, through February 29, 2012),
- Respondent Exhibit 22: Concluding Comments,
- Respondent Exhibit 23: Certificates showing that Terri Boone and Julie Newsome met the requirements for a Level II Certified Indiana Assessor-Appraiser.

7. The Board recognizes the following additional items as part of the record of proceedings:
- Board Exhibit A: The Form 131 petitions,
  - Board Exhibit B: Hearing notices,
  - Board Exhibit C: Hearing sign-in sheet.

8. The subject property consists of two parcels (Lot 47 & Lot 48) with a single-family home that sits across both parcels. For 2012, the home was assessed on Lot 48 and Lot 47 was assessed as vacant land. The parcels have since been combined.

9. The PTABOA determined the following assessments:

<u>Parcel #</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
35-05-10-300-458.100-005 (Lot 48)	\$7,900	\$46,600	\$54,500
35-05-10-300-453.200-005 (Lot 47)	\$4,200		<u>\$4,200</u>
Total both parcels			\$58,700

10. Mr. Rubin requested a combined assessment for both parcels of \$46,605.

### **Parties' Contentions**

#### **A. Summary of Mr. Rubin's Case**

11. Mr. Rubin bought the subject property for \$45,000 in 1989. Its assessment went through normal gradual appreciation. In 2012, however, the Assessor valued the property at \$80,500<sup>1</sup> which was well above its market value. That motivated Mr. Rubin to file his appeal petitions. The PTABOA lowered the assessment to \$58,700, which Mr. Rubin contends is still excessive. *Rubin testimony*.
12. Mr. Rubin first pointed to “minor errors” in the Assessor’s exhibits, including the fact that Lot 48 actually has only 45 feet of frontage rather than 50 feet, as indicated in the Assessor’s analysis. *Rubin testimony; Pet’r Ex. 2; Resp’t Ex. 15*.
13. To show that the subject property was over-assessed, Mr. Rubin offered sales data for ten other properties,<sup>2</sup> which sold for prices ranging from \$26.36 to \$73.94 per square foot. The average price was \$49.08 per square foot. When applied to the subject property’s 864 square-foot-house, that average price yields a value of \$42,405. Mr. Rubin assigned the \$42,405 value to the house and Lot 47. He then added \$4,200, which was the previous year’s land assessment for Lot 48, to reach a total value of \$46,605. Mr. Rubin believes that his analysis is better than the Assessor’s sales-comparison analysis because he used ten properties while the Assessor used only three. *See Rubin testimony; Pet’r Ex. 1*.
14. Mr. Rubin did not know whether his analysis included sales of foreclosed properties, tax sales, or estate sales—he got his numbers from a realtor. *Rubin testimony; Pet’r Ex. 1*.

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<sup>1</sup> Mr. Rubin actually testified that the Assessor had valued the property at \$75,000. *See Rubin testimony*. He was apparently referring to Lot 48 only. *See Pet’r Ex. 1*. It appears, however, that Lot 48 was originally assessed at \$72,100 for 2012. *See Resp’t Ex. 7*. Together, the parcels were originally assessed at \$80,500 (\$72,100 for Lot 48 and \$8,400 for Lot 47) for 2012. *See Resp’t Exs. 7, 12*.

<sup>2</sup> Mr. Rubin actually used 11 sales. One of the properties—471 Himes Street—sold twice. *See Pet’r Ex. 1*.

## **B. Summary of the Assessor's Case**

15. The Assessor's witness, Ms. Newsome, agreed that Lot 48's size and frontage should be reviewed and corrected if necessary. Even with the small correction that Mr. Rubin identified, however, the subject property's overall assessment still reflected its market value. *Newsome testimony.*
16. Ms. Newsome pointed to the sales of comparable properties to support the subject property's assessment. There were 204 sales in Huntington City between March 2, 2010, and February 29, 2012. She used the following three sales, which she believed were most similar to the subject property in terms of condition, function, and location:
- 460 Ruth Street. This property has an 825-square-foot frame house over a slab. It was built in 1955 and has two bedrooms, one full bath, and a 440-square-foot detached garage. It sold on January 8, 2010, for \$57,000 or \$69.09 per square foot.
  - 370 Ruth Street. This property has a 1,118-square-foot house over a crawl space. It was built in 1995 and has three bedrooms, 1.5 baths, central air, and an attached 312-square-foot garage. It also has two lots. It sold on February 17, 2011, for \$79,900 or \$71.47 per square foot.
  - 451 Himes Street. This property has a 1,112-square-foot house over a crawl space. It was built in 1955 and has three bedrooms, one full bath, central air, and an attached 300-square-foot garage. It sold on June 3, 2011, for \$70,000 or \$62.95 per square foot.

*Newsome testimony; Resp't Exs. 15-21.*

17. Although she did not make any adjustments to the sale prices for the three properties, Ms. Newsome believed that 460 Ruth Street, which sold for \$69.09 per square foot, was the most comparable to the subject property. The comparable sales therefore support the subject property's assessment of \$63.08 per square foot. *Newsome testimony.*

## Discussion

### A. Burden of Proof

18. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving both that the current assessment is incorrect and 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).
19. Indiana Code § 6-1.1-15-17.2, as amended,<sup>3</sup> creates an exception to that general rule and shifts the burden of proof from the taxpayer to the assessor in two circumstances. Thus, where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor also has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following assessment date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase . . . ." *See* I.C. § 6-1.1-15-17.2(d). If the assessor fails to meet her burden, the taxpayer may introduce evidence to prove the correct assessment. If neither party meets his burden, the assessment reverts to the assessment for the prior tax year. I.C. § 6-1.1-15-17.2(b).
20. Neither of the circumstances that trigger shifting the burden of proof to an assessor applies here. The assessment under review by the Board—the \$58,700 determined by the PTABOA for 2012—is actually lower than the property's assessment for the previous year (\$74,200).

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<sup>3</sup> The amendments to Ind. Code § 6-1.1-15-17.2 became effective with the Governor's signature on March 25, 2014. *See* P.L. 97-2014 (indicating that the Act containing the amendments is effective upon passage). The statute, as amended, applies to "all appeals or reviews pending on the effective date of the amendments . . . ." *Id.*; I.C. § 6-1.1-15-17.2(e) (2014).

21. Mr. Rubin nonetheless contends that the Assessor should have the burden because she originally assessed the property for \$80,500, which caused him to file his appeal. In Mr. Rubin's view, the fact that the PTABOA lowered the assessment to \$58,700 should not let the Assessor off the hook. But that is not how the statute reads. Indeed, if the Board was to place the burden of proof on the Assessor, her failure to meet that burden would at most entitle Mr. Rubin to have the assessment revert to its previous year's level, which is actually higher than the assessment at issue in this appeal. In either case, to get the assessment that he seeks, Mr. Rubin would need to prove that his requested assessment reflects true tax value.

### **B. Analysis**

22. Indiana assesses real property based 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 a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Three standard approaches are used to determine market value-in-use: the cost, sales-comparison, and income approaches. MANUAL at 2. Any evidence relevant to a property's true tax value as of the assessment date, including an appraisal prepared in accordance with generally recognized appraisal principles, may be offered in an assessment appeal. *Id.* at 3.

23. Mr. Rubin relied solely on data from the sales of ten other properties. A property's value may be estimated directly by comparing it with similar properties that have sold in the market. Indeed, that is what the sales comparison approach—one of the three generally accepted appraisal approaches—does. But to use that approach in an assessment appeal, one must show that the sold properties are comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the purportedly

comparable properties and how any relevant differences affect the relative market values-in-use. *See id.* at 471.

24. Mr. Rubin's spreadsheet shows the following information for each of his ten purportedly comparable properties: the property's address; the number of bedrooms, bathrooms, and total rooms; the total area; and the sale price both in absolute terms and per square foot. Although the spreadsheet data might allow a comparison of Mr. Rubin's purportedly comparable properties to the subject property in terms of at least some characteristics that likely affect value, he did not walk the Board through that comparison. *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"). And he offered no data regarding various other relevant characteristics, such as the relative ages of the houses.
25. More importantly, Mr. Rubin did not attempt to explain how relevant differences between the purportedly comparable properties and the subject property affected their market values-in-use. He simply took the average sale price and applied it to the subject property. Because Mr. Rubin did not show that his valuation analysis complied with generally accepted appraisal principles, his sales data lacks probative value.
26. Mr. Rubin, however, did show that Lot 48 has only 45 feet of frontage rather than 50 feet. The Board therefore orders the Assessor to change her records to reflect the correct dimensions.

#### **FINAL DETERMINATION**

27. Mr. Rubin failed to make a prima facie case for reducing the assessments, although he did show that the Assessor did not have the correct dimensions for Lot 48. The Board therefore orders no change to the assessments, but directs the Assessor to change her records to reflect the correct dimensions.



This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court Rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.