

REPRESENTATIVE FOR PETITIONER:

Lester M. Schaefer, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kathleen L. Rhodes, Fayette County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Lester M. Schaefer,	)	Petition No.:	21-008-14-1-5-20358-15
	)		
Petitioner,	)	Parcel No.:	21-05-13-301-062.000-008
	)		
v.	)	County:	Fayette
	)		
Fayette County Assessor,	)	Township:	Harrison
	)		
Respondent.	)	Assessment Year:	2014

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

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**October 20, 2016**

**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. Did the Petitioner prove the subject property's 2014 assessment was incorrect?

## **PROCEDURAL HISTORY**

2. The Petitioner initiated his 2014 appeal with the Fayette County Assessor on February 21, 2014. On July 24, 2015, the Fayette County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. On August 6, 2015, the Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On June 9, 2016, the Board's administrative law judge (ALJ), Patti Kindler, held a hearing on the petition. Neither the Board nor the ALJ inspected the property.

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

4. Lester M. Schaefer and Fayette County Assessor Kathleen L. Rhodes were sworn and testified.
5. The Petitioner submitted the following exhibits:
  - Petitioner Exhibit 1: Notification of Final Assessment Determination (Form 115),
  - Petitioner Exhibit 2: Form 131,
  - Petitioner Exhibit 3: Subject property record card (PRC),
  - Petitioner Exhibit 4A: Multiple Listing Service (MLS) sheet for 2159 Indiana Avenue,
  - Petitioner Exhibit 4B: MLS sheet for 208 West 29<sup>th</sup> Street,
  - Petitioner Exhibit 5: MLS sheet for 603 West 34<sup>th</sup> Street,
  - Petitioner Exhibit 6: Text of: 50 IAC 2.4, 52 IAC 1, 52 IAC 2, 52 IAC 3, and "Voluntary Dispute Resolution."
6. The Respondent submitted the following exhibits:
  - Respondent Exhibit 1: Sales-comparison analysis regarding the subject property's sale price,
  - Respondent Exhibit 2: Sales-comparison analysis regarding the subject property's assessment,
  - Respondent Exhibit 3: Respondent's narrative regarding comparable properties used in her analysis,
  - Respondent Exhibit 4: MLS data for the comparable properties utilized in the analysis,
  - Respondent Exhibit 5: Subject PRC,
  - Respondent Exhibit 6: PRC and MLS sheet for 827 Earl Drive,

Respondent Exhibit 7: PRC and MLS sheet for 900 Earl Drive,  
Respondent Exhibit 8: PRC for 817 Earl Drive,  
Respondent Exhibit 9: PRC for 900 West 24<sup>th</sup> Street.

7. The following additional items are recognized as part of the record:

Board Exhibit A: Form 131 with attachments,  
Board Exhibit B: Hearing notice dated May 2, 2016,  
Board Exhibit C: Hearing sign-in sheet.

8. The property under appeal is a single-family residence located at 819 West 23<sup>rd</sup> Street in Connersville.

9. The PTABOA determined the total assessment is \$44,100 (land \$10,100 and improvements \$34,000).

10. The Petitioner requested a total assessment of \$16,400 (land \$5,000 and improvements \$11,400).

#### **JURISDICTIONAL FRAMEWORK**

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

#### **OBJECTIONS**

12. The Petitioner objected to Respondent's Exhibits 6, 7, 8, and 9, on the grounds of "not having them in hand" and "[he had] no idea where these properties are or the condition of them." While he did not specifically state so, the Board infers his objection to be on the grounds that the Respondent failed to provide him with copies of the exhibits prior to the hearing, as provided by 52 IAC 2-7-1(b).

13. In response, the Respondent argued the properties utilized in the exhibits were “all located in the same neighborhood as the subject property.” She did, however, admit the exhibits were not submitted at the PTABOA hearing. The ALJ took the objection under advisement.
14. Here, the Petitioner elected to opt out of the Board’s small claims process, thus the Board’s procedural rules require each party to give all other parties: (1) a list of the witnesses and exhibits it intends to offer at the Board’s hearing at least 15 business days before that hearing, and (2) copies of documentary evidence at least five business days before the hearing. 52 IAC 2-7-1(b)(1) and (2). The Board may exclude evidence based on a failure to comply with those deadlines. 52 IAC 2-7-2(f).
15. The Respondent did not dispute the claim regarding her failure to comply with the pre-hearing evidence exchange requirements as it relates to Exhibits 6, 7, 8, and 9. Therefore, the objection is sustained. These exhibits are excluded from the record. The Board notes, however, the exclusion of these exhibits has no effect on the final determination.

#### **PETITIONER’S CONTENTIONS**

16. The property’s assessment is too high. The property was purchased from the Secretary of Housing and Urban Development (HUD) for \$16,400 on February 6, 2014. Prior to the purchase, the property “had been on the market for over two years without any offers.” As HUD is an “arm of the federal government [and] does not sell property for less than market value.” At the time of purchase, the home “was in bad shape.” Additionally, as “no bank would have loaned anyone the money for it,” the purchase of the property was “at market value.” *Schaefer argument; Pet’r Ex. 3.*
17. After purchasing the property, it was “rehabbed,” rented for a year, and sold on August 28, 2015, for \$40,500.<sup>1</sup> *Schaefer testimony.*

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<sup>1</sup> The Petitioner testified the 2015 sale price was \$40,500, however according to the property record card that price was \$45,000.

18. Property values in Fayette County “dropped” from 2012 to 2014 as this time “was extremely negative.” A local newspaper listed Connersville as “the seventh least livable city in Indiana.” *Schaefer argument*.
19. Several sales indicate the property is over-assessed. These were not “bank sales” because they were listed with a real estate company. The first property, located at 2159 Indiana Avenue sold on June 4, 2013, for \$15,000. *Schaefer argument; Pet’r Ex. 4A, 4B, 5*.
20. A second property, located at 208 West 29<sup>th</sup> Street sold on August 13, 2013, for \$21,900. This property should be classified as a two-family residence with a garage, but according to the MLS sheet, it is a single-family residence without a garage. *Schaefer testimony; Pet’r Ex. 4B*.
21. Finally, the property located at 603 West 34<sup>th</sup> Street sold for \$18,500, on September 4, 2013. *Schaefer testimony; Pet’r Ex. 5*.
22. As a final point, the Petitioner argues “the board of review is trying to make it tougher and tougher for an individual like myself to appeal.” *Schaefer testimony; Pet’r Ex 6*.

#### **RESPONDENT’S CONTENTIONS**

23. The subject property is correctly assessed. The Petitioner is incorrect in his assumption that property assessments should equal purchase prices because “in Indiana that is not the way the property is valued.” Values are determined through trending. Additionally, bank sales are not considered because “a bank is not a motivated seller.” *Rhodes argument*.
24. To support the current assessment, the Respondent offered two separate analyses. One analysis compares the subject property’s 2014 sale price to the sale prices of four other properties. The second analysis compares the property’s 2014 assessment to those same four properties’ sale prices. The Respondent conceded that she “is not an appraiser and did not do their (sic) plusses and minuses.” *Rhodes testimony; Resp’t Ex. 1, 2*.

25. The Petitioner's home was built in 1955, is approximately 816 square feet and is listed in average condition. The comparable properties selected by the Respondent are "almost like cookie-cutter homes." The first property, located at 827 Earl Drive, sold in an arm's-length transaction for \$74,000 on June 25, 2012. *Rhodes testimony; Resp't Ex. 1.*
26. The second property, located at 900 Earl Drive, sold for \$51,500 on September 13, 2012. This property was sold by a bank to an individual. At the time of the sale, this property was assessed at \$57,200. *Rhodes testimony; Resp't Ex. 1.*
27. The third property, located at 817 Earl Drive, was purchased by an investor for \$37,500, on October 10, 2013. The investor "flipped" the property and resold it on November 25, 2013, for \$48,000. This property was previously assessed at \$68,300, but "sometimes bank sales are lower." *Rhodes testimony; Resp't Ex. 1.*
28. The fourth property, located at 900 West 24<sup>th</sup> Street, sold for \$72,000 on August 22, 2012. This property is larger than the subject property: it measures 1,024 square feet. Prior to this sale the property was assessed at \$54,700. *Rhodes testimony; Resp't Ex. 1.*
29. In her second analysis, the Respondent compared the sales prices of her comparable properties to the subject property's current assessment. The subject property is currently assessed at \$54.04 per square foot. The subject property's current assessment is "less than the sale prices of all four of the other properties."<sup>2</sup> *Rhodes testimony; Resp't Ex. 1, 2.*
30. Further, the properties located at 827 Earl Drive and 900 West 24<sup>th</sup> Street sold for substantially more than their prior assessments. These sales indicate "why the subject property's assessed value would have increased through sales trending in 2013." *Rhodes testimony; Resp't Ex. 5.*

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<sup>2</sup> According to the evidence submitted, two of the four purportedly comparable properties sold for slightly less than \$54.04. The property located at 900 Earl Drive sold for \$53.65 per square foot, and the property located at 817 Earl Drive sold for \$50 per square foot. *Resp't Ex. 2.*

31. Finally, the Petitioner rented the subject property for a year before he sold it in 2015. But, the Respondent could not establish a valuation method utilizing the income approach because the Petitioner failed to provide any income information. *Rhodes testimony*.

### **BURDEN OF PROOF**

32. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
33. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
34. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.

35. Here, there was no dispute the assessment decreased from \$46,200 in 2013 to \$44,100 in 2014. Additionally, the Petitioner failed to offer any argument that the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with the Petitioner.

#### ANALYSIS

36. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). 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, but other evidence is permitted to prove an accurate valuation. 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.
37. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See 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. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2014 assessment, the valuation date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).
38. Here, the Petitioner relies mainly on the fact he purchased the subject property for \$16,400 on February 6, 2014. True, a property's sale price can be compelling evidence of its market value-in-use. But here, the Petitioner admits he purchased the property from HUD, out of foreclosure.
39. The Manual provides the following definition of "market value":
- The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither in under undue duress.



2011 REAL PROPERTY ASSESSMENT MANUAL at 5-6.

40. It seems apparent from the Manual's definition that a property purchased out of foreclosure may not reflect its market value for reasons such as a lack of exposure to the open market or the seller (i.e. the bank) not being typically motivated. Therefore, it is incumbent upon the party relying upon that sale to offer specific evidence to allay these concerns. *See Lake Co. Ass'r v. U.S. Steel Corp.*, 901 N.E.2d 85, 91-92 (Ind. Tax Ct. 2009) review denied (approving of the use of bankruptcy sales when a taxpayer established that such sales were a market norm).
41. Here, the Petitioner offered little to dispel the Board's concerns. In support of his contention that his \$16,400 purchase price represented the property's market value, the Petitioner testified that the property had been listed on the open market for over two years, and claimed "HUD cannot sell a property below its market value." However, he failed to offer any evidence to support either contention.
42. HUD acquires properties through the foreclosures of Federal Housing Administration (FHA)-insured mortgages. While it is true that HUD homes are listed in the local MLS, the process of buying a HUD home is different than with a standard purchase. One major difference is that there is no price negotiation. Bids, or offers, for a property are submitted electronically, and HUD accepts the highest acceptable net bid. HUD's primary goal is to maximize the return to the FHA insurance fund.<sup>3</sup> Thus, it is not "impossible" for this type of sale to qualify as a "market sale."
43. The Board is not aware of any absolute requirement that HUD cannot accept a bid for a property that is below market value. And the Petitioner did not point to any such prohibition. In fact, it seems that such an absolute requirement would frustrate HUD's primary mission of maximizing the return to the FHA insurance fund. Thus, it is difficult to view HUD as a typically motivated seller in every transaction, and therefore it was

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<sup>3</sup> See generally <http://portal.hud.gov/hudportal/HUD>.

incumbent on the Petitioner to provide at least some documentary evidence that his purchase was indicative of the property's market value.

44. If anything, the evidence before the Board appears to show the opposite. In examining the subject property record card, including a listing of the property's recent transactions, it is clear the property sold for \$56,500 in 2007, and then again in 2013 for \$61,663. *Resp't Ex. 5.* According to the Petitioner's own testimony, he then sold the property in 2015 for \$40,500. As such, the Petitioner's HUD purchase price is but a small fraction of the property's recent sales. And if it was his contention that the entire difference was because of the property's poor condition, the Petitioner should have provided evidence of how his rehabilitation of the property affected its value as of March 1, 2014. However, he failed to do so.
45. As for the Petitioner's sale of the property in 2015, this sale occurred almost 18 months after the relevant valuation date. The Petitioner failed to trend this sale back to the relevant valuation date, so the sale is not probative evidence of the property's value as of March 1, 2014.
46. The Petitioner also offered MLS sheets for three neighborhood properties. In making this argument, the Petitioner essentially relied on a sales-comparison approach to establish the market value-in-use of the property. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also Long*, 821 N.E.2d 466, 469.
47. To effectively use the sales-comparison approach as evidence in a property tax 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 are not sufficient. *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 values-in-use. *Id.* Here, the type of analysis required and the related adjustments are lacking from the Petitioner's evidence. Granted the Petitioner offered a limited description of his purportedly comparable properties, but he failed to make adjustments to account for the differences between the purportedly comparable properties and the subject property. Further, his analysis failed to yield an indicated value. Thus, his sales evidence lacks probative value.

48. Lastly, the Petitioner made the argument that property values in Fayette County dropped drastically between 2012 and 2014 as that particular time "was extremely negative." However, he failed to present any evidence to support his contentions. As such, his statements are merely conclusory. If the Petitioner had statistics regarding the decline in market values, he failed to point the Board to any such evidence. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 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").
49. Consequently, the Petitioner failed to make a prima facie case that the 2014 assessment is incorrect. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).<sup>4</sup>

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<sup>4</sup> The Board will not address the Petitioner's accusation that "the board of review is trying to make it tougher and tougher for an individual like myself to appeal."

**SUMMARY OF FINAL DETERMINATION**

50. In accordance with these findings and conclusions, the 2014 assessment will not be changed.

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 of 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’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.