

REPRESENTATIVE FOR PETITIONER: Joe Shields, Pro Se

REPRESENTATIVE FOR RESPONDENT: County Assessor Teresa Rigsby

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Joe Shields,	)	Petition No.: 72-006-07-1-5-00003
	)	Parcel: 72-03-36-310-039.000-003
Petitioner,	)	
	)	
	)	
v.	)	
	)	Scott County
Scott County Assessor,	)	Jennings Township
	)	Assessment Year: 2007
Respondent.	)	

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

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**January 5, 2010**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the facts, evidence, and arguments presented in this case. The Board now finds and concludes the following:

**ISSUE**

This case challenges a 2007 assessment for three rental duplexes. Does the evidence prove that the assessment should be changed?

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

### **PROCEDURAL HISTORY**

1. The Petitioner initiated an appeal on September 30, 2008. The Scott County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for that appeal on October 8, 2008.
2. The Petitioner filed a Petition for Review of Assessment (Form 131) challenging the PTABOA's determination. The Petitioner elected to proceed under the Board's plenary rules (52 IAC 2) rather than under its rules for small claims (52 IAC 3).
3. The PTABOA determined the assessed value is \$18,700 for land and \$227,100 for improvements (total \$245,800).
4. The Petitioner contended the total assessed value should be between \$135,000 and \$165,000.

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

5. The subject property consists of three rental duplexes at 199 High Street in Austin.
6. Administrative Law Judge Paul Stultz held the hearing on October 7, 2009. He did not conduct an on-site inspection of the subject property.
7. The following persons were sworn as witnesses at the hearing:  
For the Petitioner – Joe Shields  
Albert Thormyer,  
For the Respondent – County Assessor Teresa Rigsby,  
Deputy Assessor Jennifer Binkley.

8. The following items are officially recognized as part of the record:
  - Board Exhibit A – Form 131 Petition with attachments,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing Sign In Sheet.
  
9. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Appraisal of the subject property,
  - Petitioner Exhibit 2 – Letter from Albert Thormyer with his opinion of value.
  
10. The Respondent presented the following exhibits:
  - Respondent Exhibit 1 – Property record card for the subject property,
  - Respondent Exhibit 2(a) – “Parcel Characteristics Report by Neighborhood”  
Neighborhood 7200311 sales from 01/01/2005 to  
12/31/2006,
  - Respondent Exhibit 2(b) – “Parcel Characteristics Report by Neighborhood”  
Neighborhood 7200311 sales from 01/01/2005 to  
12/31/2006,
  - Respondent Exhibit 3 – Sales disclosure forms and property record cards for the  
comparables used in the Sexton appraisal,
  - Respondent Exhibit 4 – Valuation date disclaimer,
  - Respondent Exhibit 5 – 50 IAC 21-3-3 (Valuation date and time adjustment),
  - Respondent Exhibit 6 – International Association of Assessing Officers standards  
on mass appraisal, page 9,
  - Respondent Exhibit 7 – Tax Court decision, *O’Donnell v. Dep’t of Local Gov’t  
Finance*.

## CONTENTIONS

11. Summary of the Petitioner’s case:
  - a. An appraiser determined that the value of the property was \$165,000 as of March 1, 2007. *Shields testimony; Pet’r Ex. 1.*
  
  - b. Albert Thormyer has over thirty years experience in the banking business. In a letter dated September 12, 2009, Albert Thormyer stated the value of the property as of March 1, 2007, was \$135,000. *Shields testimony; Pet’r Ex. 2.*

- c. The market value of the property is between \$135,000 and \$165,000. *Shields testimony.*
12. Summary of the Respondent's case:
- a. An appraisal must reflect the value as of the correct valuation date. If the appraisal is for a different date, the value has to be trended from the appraisal date to the valuation date. *Rigsby testimony.*
  - b. The first comparable sale used in the appraisal was for a bank sale. *Rigsby testimony; Pet'r Ex. 1; Resp't Ex. 3.*
  - c. The appraiser used a factor of 1% per year to trend comparable sales 1 and 2 to March 1, 2007, without explaining how the trending factor was determined. *Rigsby testimony; Pet'r Ex. 1.*
  - d. According to the sales disclosure form, the comparable property at 1177 North Highway 31 (comparable property 3) sold for \$133,000. The appraisal, however, shows it sold for \$135,000. *Rigsby testimony; Resp't Ex. 3.*
  - e. The current rents for the subject property do not reflect market rents. *Rigsby testimony.*

#### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

13. 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).

14. 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”).
15. 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

16. Real property is assessed based on its "true tax value," which does not mean fair market value. It 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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.
17. The Petitioner offered a letter from Albert Thormyer<sup>1</sup>, a local banker, stating his opinion that the subject property had a value of \$135,000 as of March 1, 2007. Nothing in the record explains how that purported valuation was determined and nothing establishes that it is based on generally accepted appraisal principles. Such conclusory statements do 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).

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<sup>1</sup> Although Mr. Thormyer was sworn as a witness, he did not testify.

18. The Sexton appraisal (Petitioner's Exhibit 1) is the heart of this case. The Tax Court has stated that a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) can be the most effective method to rebut the presumption that an assessment is correct. *See French Lick Twp. Assessor v. Kimball International*, 865 N.E.2d 732, 736 n.4 (Ind. Tax Ct. 2007) ;*Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The Petitioner provided such an appraisal. It values the subject property at \$165,000 as of March 1, 2007. The appraisal is by an Indiana Certified Residential Appraiser and appears to comply with USPAP standards. It considered all three approaches to valuation: cost, comparable sales and income. Its conclusion about value relied mostly on the comparable sales and the income approaches.
19. The Respondent "questioned" some of the appraiser's methodology and his choices for comparable sales, but the Respondent failed to effectively impeach or rebut the appraisal with substantial, probative evidence. Although the Respondent perhaps poked a few holes in the credibility of the appraisal, it was not destroyed. The appraisal remains substantial, credible evidence that a more accurate valuation for the subject property as of March 1, 2007, would be \$165,000.
20. The 2007 assessment, however, must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
21. In this case, the record provides no such explanation. The appraisal's conclusion about the value of the subject property indicates it relied on three comparable sales. Comparable 1 was a sale from September 2000. Comparable 2 was a sale from January 2001. Comparable 3 was a sale from May 2006. To reach a value as of March 1, 2007, it adjusted Comparable 1 and Comparable 2 upward 1% per year. (This adjustment was one of the points where the Respondent attempted to challenge the appraisal by merely

noting a lack of explanation for how it was determined. This challenge had little impact because the Respondent offered no evidence that the adjustment was wrong or what a more accurate time adjustment might have been.) Comparable 3 in the appraisal shows no such adjustment for time. The Respondent offered some trending data that indicates it is for neighborhood 7200311, but the property record card for the subject property shows it is in neighborhood 7200520. The Respondent failed to explain that difference or establish how that trending data might be relevant to this case. The property record card for the subject property shows that from the 2003 assessed value to the trended 2006 assessed value there was a modest increase. But starting with the 2007 assessed value, the trending resulted in progressively lower assessed valuations. If that trending is accurate, the appraisal estimates a value that is lower than it should be for the 2007 assessment.

22. After considering all of the evidence and arguments that both parties submitted, the Board is unable to determine how the value of the subject property as of March 1, 2007, relates to the required valuation date, January 1, 2006. And that would be essential to granting any relief on the Petitioner's claim.
23. When a taxpayer fails to provide probative evidence supporting his position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

### **CONCLUSION**

24. The Petitioner did not make a prima facie case for any assessment change.

## FINAL DETERMINATION

In accordance with the above findings and conclusions, there will be no change in the assessment.

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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>>