

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

**Petition Nos.:** 84-002-06-1-5-00744  
84-002-06-1-5-00745  
**Petitioner:** Larry J. Smith  
**Respondent:** Vigo County Assessor  
**Parcel Nos.:** 840613151003000002  
840613151004000002  
**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 Vigo County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 23, 2007.
2. The PTABOA issued its decision on November 1, 2007.
3. The Petitioner filed an appeal to the Board by filing two Form 131 petitions dated December 9, 2007. The Petitioner elected to have his cases heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 26, 2008.
5. The Board held an administrative hearing on December 4, 2008, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Larry Smith, Petitioner  
Rachel Smith, witness
  - b) For Respondent: Susan McCarty, Vigo County Assessor

**Facts**

7. The properties are vacant lots located at 1010 North 36<sup>th</sup> Street and 930 North 36<sup>th</sup> Street, respectively, in the city of Terre Haute, Harrison Township in Vigo County.

8. The Administrative Law Judge (ALJ) did not inspect the property.
9. The PTABOA determined the assessed value of subject properties to be \$7,800 for the land for the parcel located at 1010 N. 36<sup>th</sup> St. and \$7,400 for the land for the parcel located at 930 N. 36<sup>th</sup> St. There are no improvements on either parcel.
10. The Petitioner requests an assessed value of \$3,000 for the parcel located at 1010 N. 36<sup>th</sup> St. and \$2,500 for the parcel located at 930 N. 36<sup>th</sup> St.

### **Issues**

11. Summary of the Petitioner's contentions in support of an alleged error in the assessments:
  - a) The Petitioner contends that the assessed values of the properties are excessive, based on prior appeals for other nearby properties the Petitioner owns. *L. Smith testimony*. According to Mr. Smith, he appealed the assessed values of other properties to the Board for 2002, and won reductions in value on those properties. *Id.*
  - b) Mr. Smith testified that he bought both the parcels at tax sales in 2006. *L. Smith testimony*. The parcel located at 1010 N. 36<sup>th</sup> St. has a 50 foot easement on the south end of it. *Id.*; *Pet. Ex. 2*. The parcel located at 930 N. 36<sup>th</sup> St. is a triangular lot, and when the setbacks are accounted for, there is not much useable land left. *Id.* Both parcels are wooded lots. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
  - a) The Respondent testified that for the 2006 assessment year, the county created a new land order, largely because of the appeals that were filed for 2002. *McCarty testimony; Resp. Ex. 1*. According to Ms. McCarty, the land order was based on sales data from 1998 and 1999, and then trended to the March 1, 2005, valuation date.<sup>1</sup> *Id.*; *Resp. Exs. 1 and 2*. The county used this land order to assign a value to the Petitioner's properties. *Id.*
  - b) The PTABOA reviewed the assessments of the Petitioner's properties and assigned additional negative influence factors to the parcel located at 1010 N. 36<sup>th</sup> St. *McCarty testimony; Resp. Ex. 4*. The other parcel already had significant negative influence factors assigned to it, so no additional changes were made. *Id.*
  - c) Finally, the Respondent argues, the PTABOA did not consider the tax sale purchases of the properties for two reasons. *McCarty testimony*. First, the Petitioner purchased the properties in 2006, which is beyond the valuation date of March 1, 2005, and second, the Respondent argues, tax sales are typically not

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<sup>1</sup> The Board notes that the statutory valuation date for the March 1, 2006, assessment is January 1, 2005, and not March 1, 2005, as the Respondent suggests.

considered when determining a property's value because tax sales are not arms' length transactions. *Id.*

### **Record**

13. The official record for these matters is made up of the following:
- a. The Petitions, and all subsequent pre-hearing, and post-hearing submissions by either party.
  - b. The digital recording of the hearing.
  - c. Exhibits:

Petitioner Exhibit 1: Form 131 petitions  
Petitioner Exhibit 2: Aerial photograph of the properties  
Petitioner Exhibit 3: Form 130 Petition to the PTABOA<sup>2</sup>

Respondent Exhibit 1: Neighborhood land order  
Respondent Exhibit 2: Plat maps of the subject properties  
Respondent Exhibit 3: Sales used for the 2006 land order  
Respondent Exhibit 4: Form 115s  
Respondent Exhibit 5: Property record cards for the subject properties

Board Exhibit A: Form 131 Petitions  
Board Exhibit B: Notices of Hearing

- d. These Findings and Conclusions.

### **Analysis**

14. 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 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).
  - 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 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”).

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<sup>2</sup> This exhibit applies only to Petition no. 84-002-06-1-5-00744.

- 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.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision 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). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales-comparison approach and the income approach to value. *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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 2006). But a taxpayer may rebut that presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c) In addition, the 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code §6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject’s property value as of that January 1, 2005, valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466,471 (Ind. Tax Ct. 2005).
  - d) Here the Petitioner first contends that the parcel located at 1010 N. 36<sup>th</sup> St. should be valued at \$3,000 and the parcel located at 930 N. 36<sup>th</sup> St. should be valued at \$2,500. *L. Smith testimony*. The Petitioner, however, failed to offer any evidence related to the market value of the properties. Instead, he merely states his opinion of the properties’ value, which he purports to base on what he believes to be the correct value of other properties he owns. *L. Smith testimony*. Unsupported and conclusory statements are not probative evidence. *Whitley*

*Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- e) The Petitioner next argues that both lots are unimproved, wooded lots. *L. Smith testimony*. The Petitioner further testified that the excess frontage on parcel located at 1010 N. 36<sup>th</sup> St. and the triangular shape of the parcel located at 930 N. 36<sup>th</sup> St. negatively affects the value of the parcels. *Id.* While these factors may affect the properties' value, the Petitioner failed to relate those factors in any way to the market value-in-use of the properties. *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001) (The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor"). Moreover, these factors were already taken into consideration in determining the properties' 2006 assessed values. According to the Respondent, the excess frontage and the unimproved condition of parcel 1010 N. 36<sup>th</sup> St. resulted in negative influence factors of 30% and 35%, respectively, and the shape and size and unimproved condition of parcel 930 N. 36<sup>th</sup> St. resulted in negative influence factors of 30% and 35%, respectively. The Petitioner failed to demonstrate why the Board should award any further reduction of the properties' assessed value. To the extent that the Petitioner can be seen as arguing that the properties' purchase at a tax sale should warrant an additional negative influence factor, the argument fails. Purchase at a tax sale is not listed as an influence factor to be applied in calculating the assessment value for platted lots. MANUAL at 2, 61 (Table 2-10).
- f) Even if the Board were to find that the assessor erred in its application of or its failure to apply certain influence factors, the Petitioner's allegations would not rebut the presumption that the assessment accurately reflects the property's market value-in-use. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*").
- g) Finally, to the extent that Petitioner raised his 2006 purchase of the properties at a tax sale to support lower assessed values of the properties, the argument fails for three reasons. First, the tax sales took place in 2006 and the Petitioner provided no evidence as to how a 2006 sale relates to the January 1, 2005, valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466,471 (Ind. Tax Ct. 2005). Second, the Petitioner presented no evidence that the tax sale purchase represented the market value of the properties. While an actual sale of a property

may be a good indicator of its actual market value, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. “Fair market value’ is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell.” *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). A tax sale purchase of property does not satisfy the conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell. Thus, the purchase price of property obtained in a tax sale is not, by itself, probative evidence of the market value of a property. Finally, the Petitioner failed to provide any evidence of that tax sale. There is no evidence of the date of the purchase, other than “2006”. Nor did the Petitioner present evidence as to the actual purchase price. Without such evidence, testimony that the properties were purchased at tax sale is of no probative value.

- h) The Petitioner failed to raise a prima facie case that his properties were assessed in excess of their market values-in-use. When a taxpayer fails to provide probative evidence 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).

### **Conclusion**

14. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

### **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.

uISSUED: \_\_\_\_\_

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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

## 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>.**