

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

**Petition #:** 06-015-06-1-5-00122  
**Petitioners:** Robert E. & Rosemary Swisher  
**Respondent:** Boone County Assessor  
**Parcel #:** 0154555022  
**Assessment Year:** 2006

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

**Procedural History**

1. Robert and Rosemary Swisher asked the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) to reduce their property’s assessment. On November 30, 2007, the PTABOA issued a determination making no change to that assessment. Less than one month later, on December 26, 2007, the PTABOA issued an amended determination lowering the assessment, although not as much as the Swishers’ had requested.
2. The Swishers timely filed a Form 131 petition asking the Board to review their assessment. They elected to proceed under the Board’s small-claims rules.
3. On April 29, 2008, the Board held an administrative hearing through its Administrative Law Judge, Alyson Kunack (“ALJ”).
4. Persons present and sworn in at hearing:
  - a) For the Swishers: Robert Swisher
  - b) For the Boone County Assessor: Lisa Garoffolo, Boone County Assessor  
Jeffrey B. Wolfe, PTABOA member

**Facts**

5. The property is a residential condominium unit located at 1711 Lafayette Avenue, Lebanon. The property is also known as Eden Garden Homes Unit 22.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA’s amended determination lists the following values:

Land: \$19,400      Improvements: \$117,200      Total: \$136,600.

8. The Swishers request a total assessment of \$117,500.

### **Parties' Contentions**

9. The Swishers offered the following evidence and arguments:

- a) The Swishers bought their condominium unit for \$117,500 on October 30, 2006. It should not be assessed for any more than its sale price.
- b) About the same time that the Swishers bought their unit, another unit right around the corner sold for \$118,000. *Swisher testimony; Pet'rs Exs. 3-4.* A third unit sold for \$147,000 in August of 2007. Mr. Swisher, however, questioned that sale's validity, because the asking price had been only \$126,000 and the buyer was a realtor. He thought that the realtor was trying to drive up prices. *Swisher testimony.* A fourth unit was listed for \$105,000 but had not received any interest from buyers. *Id.*
- c) The Swishers' property taxes are too high. Their prior year's taxes were \$977. Their new taxes, before the PTABOA's amended determination, were \$3,102.86—a 219% increase. *Swisher testimony; Pet'rs Ex. 1.* The taxes for properties owned by the Assessor and PTABOA members didn't increase nearly as much. *Swisher testimony; Pet'rs Ex. 5.* Several of the units within the Swishers' complex have delinquent taxes and will end up being sold at a sheriff's sale. Mr. Swisher doesn't believe that he will be able to pay his real estate taxes next year either. *Swisher testimony; Pet'rs Ex. 1.*
- d) Mr. Swisher didn't receive notice of the PTABOA hearing scheduled for November 27, 2008, until after the hearing had already taken place. The envelope containing that notice was postmarked December 10, 2008. *Swisher testimony.*

10. The Boone County Assessor offered the following evidence and arguments:

- a) The Swishers bought their condominium unit in October 2006. That was too late to appeal their 2006 assessment. *Garoffolo testimony.* Mr. Wolfe, however, testified that the PTABOA exercised its option to hear appeals for "late purchases." *Wolfe testimony.* And he acknowledged that the Swishers received a pro-rated credit for taxes incurred through the purchase date. *Id.; Pet'rs Ex. 4.*
- b) March 1, 2006, assessments are based on sales from 2004 – 2005. During that period, sale prices for comparable condominium units ranged from a high of \$100 per square foot to a low of \$86 per square foot, with an average of \$92 per square foot. If the PTABOA had simply used those rates, the Swishers' unit would have been assessed at \$157,000. *Garoffolo testimony.*

- c) The Swishers' condominium complex began experiencing significant problems around the time that the Swishers bought their unit. Assessed values therefore will likely decrease in future years. *Garoffolo testimony.*
- d) Assessments throughout the complex increased, in part, because the previous assessor had not assessed individual units' garages. Ms. Garoffolo and her staff had to add the garages. *Garoffolo testimony.*
- e) Nonetheless, after hearing the Swishers' appeal, the PTABOA changed the quality grade for each unit in the complex to a "C," which in turn lowered the unit's value. The Assessor then sent a letter to the homeowners in the Swishers' complex informing them about the reductions. The PTABOA also mailed the Swishers' an amended determination reflecting that change. *Wolfe testimony; Resp't Exs. 9, 10, 11, 12.*
- f) The PTABOA sent the Swishers a hearing notice but they didn't receive it. The PTABOA offered to let the Swishers come back before the PTABOA or go ahead and file an appeal with the Board. *Wolfe testimony; Resp't Ex. 4.*

### **Record**

11. The official record for this matter is made up of the following:

- a) The Swishers' Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:
  - Petitioners Exhibit 1: Assessment, sales, and tax data for Eden Gardens Condominiums,
  - Petitioners Exhibit 2: Information on available units in Eden Gardens,
  - Petitioners Exhibit 3: MLS listing for the subject property,
  - Petitioners Exhibit 4: The Swishers' settlement statement,
  - Petitioners Exhibit 5: Tax information for local officials,
  
  - Respondent Exhibit 1: County appeal worksheet,
  - Respondent Exhibit 2: Property record cards ("PRC") from 2004 and 2005,
  - Respondent Exhibit 3: Original PRC from 2006,
  - Respondent Exhibit 4: PTABOA notice of hearing on petition,
  - Respondent Exhibit 5: Comparable properties in condo complex - MIBOR listings,
  - Respondent Exhibit 6: Subject property's MIBOR listing
  - Respondent Exhibit 7: Subject property's settlement statement,
  - Respondent Exhibit 8: Form 115 sent 11/30/07 after PTABOA hearing,
  - Respondent Exhibit 9: Letter to all property owners in Eden Gardens from the County Assessor on 12/21/07,

Respondent Exhibit 10: County appeal worksheet reflecting grade change,  
Respondent Exhibit 11: PRC after grade change,  
Respondent Exhibit 12: Amended Form 115 sent on 12/26/07,  
Respondent Exhibit 13: Form 131 petition,

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Notice of hearing,  
Board Exhibit C: Hearing sign-in sheet,

d) These Findings and Conclusions.

## **Analysis**

### The Swishers' Right to Appeal

12. The Assessor claimed that the Swishers bought their property too late to appeal its March 1, 2006, assessment. While the Assessor framed her claim in terms of timeliness, it appears that she really claimed that the Swishers had no interest in the property on the March 1, 2006, assessment date.
13. The Swishers, however, had a sufficient interest in the property's 2006 assessment to file an appeal. As the Assessor's own witness acknowledged, the property's sellers gave the Swishers' a pro-rated credit for unpaid estimated real estate taxes that had accrued from January 1, 2006, through the October 30, 2006, sale date. *See Wolfe testimony; Pet'rs Ex. 4*. Thus, the Swishers were responsible for paying all the taxes associated with the March 1, 2006 assessment.

### Burden of Proof

14. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and specifically 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).
15. In making its case, the petitioner must explain how each piece of evidence relates to its 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”).
16. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

## The Swishers' Case

17. The Swishers did not provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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, sales-comparison, and income approaches. *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 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) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 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 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c) Regardless of the method used to rebut the 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. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, that valuation date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.
  - d) The Swishers first argued that their property should be assessed for \$117,000—the amount they paid for it. That price tends to prove the property’s value at the time the Swishers bought it. Indeed, the price that two parties negotiate at arm’s length often provides the most compelling evidence of a property’s market value-in use.
  - e) But the Swishers bought their property on October 30, 2006—more than one-and-a-half years after the January 1, 2005, valuation date. Thus, the Swishers needed to explain how that sale price related to the property’s value as of January 1, 2005. Because they didn’t offer any such explanation, that 2006 sale price lacks probative value.
  - f) Next, Mr. Swisher pointed to sale prices, listing prices, assessments, and taxes for several other condominium units in the same complex. But he didn’t explain what conclusions he wanted the Board to draw from that information. It was the Swishers’

responsibility—not the Board’s—to explain how each piece of evidence related to their case. *Indianapolis Racquet Club, Inc.* 802 N.E.2d at 1022.

- g) As to the sales and listing information, at least, Mr. Swisher might have been trying to use the sales-comparison approach to show the market value of the Swishers’ property. Mr. Swisher, however, offered little of the detail necessary to successfully use that approach as evidence in an assessment appeal. He neither described how the other units compared to the Swishers’ unit nor explained how any relevant differences affected the units’ relative market values-in-use. *See Long* 821 N.E.2d at 470-71 (rejecting taxpayers’ sales-comparison evidence where taxpayers failed to explain how properties were comparable to each other or how any relevant differences affected their relative market values-in-use).
- h) Mr. Swisher also testified that the Swishers’ taxes increased 219% between 2005 and 2006. Once again, he did not explain how that information related to the Swishers’ claims. Regardless, each tax year stands on its own. *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). Thus, the mere fact that the Swishers’ taxes increased from 2005 to 2006 does nothing to show an error in their property’s assessment.
- i) In a related argument, Mr. Swisher noted that the Swishers’ taxes increased at a higher rate than did the taxes for the Assessor and various PTABOA members. But that fact doesn’t show that the Swishers’ property is assessed for more than its market value-in-use. It doesn’t even show that the Swishers’ assessment increased at a higher rate than the assessments of the Assessor and PTABOA members. Various factors such as deductions, exemptions, and credits may cause properties with similar assessments to have significantly different tax liabilities.
- j) Finally, Mr. Swisher testified that the Swishers didn’t receive advance notice of the PTABOA’s hearing. He didn’t explain what, if any remedy the Swishers sought for that omission. In any event, that lack of notice did not affect the Swishers’ appeal to the Board. Once a taxpayer has properly invoked the Board’s jurisdiction, its proceedings are *de novo*. The taxpayer is not limited to evidence offered at the PTABOA hearing. *See Ind. Code § 6-1.1-15-4(m)* (“A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.”) Thus, while the lack of notice may have deprived the Swishers of the ability to present evidence or arguments to the PTABOA, it did not hinder their ability to present their case to the Board. *Id.*

**Conclusion**

18. Because the Swishers offered no probative evidence to rebut the presumption that their property's assessment was accurate, they failed to make a prima facie case for changing that assessment. The Board finds in the Boone County Assessor's favor.

**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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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

## 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>