REPRESENTATIVE FOR PETITIONERS:
Melissa Tate, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Kelly Hisle, Deputy Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Dustin & Melissa Tate	)	Petition No.: 18-017-08-1-5-00002
	)	
Petitioners,	)	Parcel No.: 18-10-12-306-010-000-035
	)	
v.	)	County: Delaware
	)	
Delaware County Assessor,	)	Township: Mt. Pleasant
	)	
Respondent.	)	Assessment Year: 2008
	)	

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

February 10, 2012

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 Petitioners, Dustin and Melissa Tate, did not buy the subject property until May of 2008, they paid the taxes based on the property's March 1, 2008 assessment and therefore were proper parties to bring this appeal. Nonetheless, the Tates failed to offer

probative evidence to show that the subject property's assessment was inaccurate. While the property both sold and appraised for less than its assessment, the Tates did not explain how the sale price or appraisal related to the property's value as of the relevant January 1, 2007 valuation date upon which the assessment was based.

Procedural History

2. The Tates filed a Form 130 petition with the Delaware County Assessor contesting the subject property's March 1, 2008 assessment. On August 26, 2010, the Delaware County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the property's assessment, but not to the level that the Tates had requested. The Tates then timely filed a Form 131 petition with the Board. The Board has jurisdiction over the Tates' appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.

3. On October 13, 2011, the Board's administrative law judge, Patti Kindler ("ALJ"), held a hearing on the Tates' petition. Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

4. The following people were sworn in and testified:

   For the Tates: Melissa Tate

   For the Assessor: Kelly Hisle, Deputy Assessor

5. The Tates submitted the following exhibits:

   Petitioners Exhibit A: Settlement Statement (page 1 of 3)
   Petitioners Exhibit B: Century 21 listing for the subject property
   Petitioners Exhibit C: Appraisal report prepared by Carmel Lewis
   Petitioners Exhibit D: Form 115 determinations for 2008-2010
   Petitioners Exhibit E: Assessment and tax information for 513 N. Kettner

6. The Assessor submitted the following exhibits:

   Respondent Exhibit 1: Subject property record card
   Respondent Exhibit 2: Tax record for the subject property
   Respondent Exhibit 2A: 50 IAC 21-3-3

Respondent Exhibit 3:	Sales disclosure file from CAMA showing Mary Heineman and Timothy Worley as buyers
Respondent Exhibit 4:	Affidavit for the transfer of the subject property
Respondent Exhibit 5:	Sales disclosure file from CAMA showing Dustin & Melissa Tate as buyers
Respondent Exhibit 6:	Warranty Deed recorded December 2, 2008
Respondent Exhibit 7:	Settlement Statement for the subject property's 2008 sale
Respondent Exhibit 8:	MLS data sheet for 405 N. Kettner
Respondent Exhibit 9:	Tax Record for the subject property
Respondent Exhibit 10:	Search results for listings and sales on Kettner

7. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A: Form 131 petition
Board Exhibit B: Hearing notice
Board Exhibit C: Hearing sign-in sheet

8. The subject property consists of a single-family residential dwelling located at 517 N. Kettner Drive in Muncie, Indiana.

9. The PTABOA determined the following assessment:

Land: $20,900 Improvement: $54,400 Total: $75,300

10. The Tates requested the following assessment:

Land: $10,000 Improvement: $34,900 Total: $44,900

Objection

11. The Assessor objected to all of the Tates' exhibits because the Tates did not provide the Assessor with copies of those exhibits before the Board's hearing. *Hisle objection.* In a non-small-claims appeal, 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 and summaries of its witnesses' anticipated testimony 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 party's failure to comply with those deadlines. 52 IAC 2-7-1(f). But the Board may also

waive those deadlines for materials that were submitted at the PTABOA hearing. 52 IAC 2-7-1(d).

12. The Tates did not give the Assessor copies of their exhibits at least five business days before the Board's hearing. Ms. Tate, however, testified that when she received the Assessor's evidence, she called the Assessor's office and spoke to someone who she thought was named Tammy. According to Ms. Tate, Tammy told her to bring the Tates' evidence to the Board's hearing. Even if one assumes that everything happened exactly as Ms. Tate described—and Ms. Hisle disputes that, noting that there was nobody named Tammy working at the Assessor's office—that still would not excuse Ms. Tate's failure to comply with the Board's rules. By Ms. Tate's own admission, she did not call the Assessor's office until Friday, October 7, 2011, which was only four business days before the Board's hearing. Thus, the Tates had already missed the deadline for giving the Assessor copies of their documentary evidence

13. Nonetheless, Ms. Tate testified without contradiction that the Tates had offered Petitioners' Exhibits A-C (the settlement statement from when they bought the subject property, a realtor's listing of the property, and an appraisal) at the PTABOA's hearing. *Tate testimony.* The Board therefore overrules the Assessor's objection to Petitioners' Exhibits A-C.

14. It, however, does not appear that the Tates offered Exhibit D, Form 115 determinations for 2008-2010, or Exhibit E, assessment and tax information for a neighboring property, at the PTABOA hearing. Nonetheless, it is difficult to see how the Assessor could be prejudiced by the Tates failing to provide her with those documents. Those documents are public records that the Assessor either maintains or at least can easily access. The Board therefore overrules the Assessor's objection to Petitioner's Exhibits D-E.

15. The Board might have a different view of Exhibit E's admissibility if the Assessor had claimed that the Tates failed to include that exhibit in their exhibit list. Under those circumstances, the Assessor might fairly be able to claim that she did not know that the

Tates would be comparing the subject property to their neighbor's property until the Tates offered the neighboring property's assessment information at the Board's hearing. But the Assessor simply objected to the Tates' failure to provide their exhibits "five days beforehand," which the Board understands as an objection to the Tates failing to provide copies of their exhibits, not to the Tates failing to provide an exhibit list.

Administrative Review and the Parties' Burdens

16. A taxpayer seeking review of an assessing official's determination must make a prima facie case 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).

17. The taxpayer 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").

18. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer'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.

Summary of Parties' Contentions

A. The Tates' Contentions

19. The Tates contend that the subject property was assessed too high in light of its sale price and a certified appraisal prepared in connection with that sale. *Tate argument.* The Tates bought the property for its listed price of $44,900. Although the deed transferring the property to the Tates apparently was not recorded until December 2, 2008, the Tates' settlement statement shows that they actually bought the property on May 21, 2008. *Tate testimony; Pet'rs Ex. 7.* The Assessor argued that the sale did not appear to be an arm's-

length transaction because it had been a part of Martha Worley's estate. But the Tates bought the property from Ms. Worley's children and grandchildren—not from the estate. And the property had been listed with Century 21 before the Tates bought it. *Tate testimony; Pet'rs Exs. A-B.*

20. The Tates also offered an appraisal prepared by Carmel Lewis, who estimated the subject property's market value at $58,000 as of April 28, 2008. Ms. Lewis's appraisal report includes photographs showing peeling paint on the home's wood siding, a deteriorated roof, outdated bath fixtures, and holes in a bedroom wall. Although the Tates have tried to make the home livable by, among other things, putting on a new roof, there is still work to be done. *Tate testimony, Pet'rs Ex. C.* Based on Ms. Lewis's appraisal, the PTABOA lowered the property's 2009 and 2010 assessments to $58,000. *Tate testimony; Pet'rs Ex. D.*

21. To further support her claim that the subject property was assessed too high, Ms. Tate pointed to a home next door to the subject property at 513 N. Kettner. According to Ms. Tate, that home is the most comparable home in the neighborhood to the subject home. The homes are similar in age and both have wood siding and older windows. Yet the neighbor's property was assessed for only $54,100 in 2011. *Tate testimony.*

22. Ms. Tate also pointed to what she viewed as several problems with the Assessor's case. First, the Assessor offered an Affidavit for Transfer of Real Property showing that Ms. Worely's gross probate estate did not exceed $50,000. That is incompatible with subject property's assessment of more than $74,000. *Tate testimony; Resp't Ex. 4.*

23. Similarly, the property at 405 Kettner, which the Assessor tried to compare to the subject property, is actually superior to the subject property in many ways. 405 Kettner has two outbuildings, a storage shed, and a little barn. Its home is also larger than the subject home, and the 405 Kettner home has superior amenities, including central air, vinyl

siding, storm windows, an asphalt driveway, a chain-link fence, and a dishwasher. *Tate testimony; Resp't Ex. 8.*

24. Finally, the Tates disagree with the Assessor's claims that the Tates have no right to appeal the subject property's March 1, 2008 assessment. Although the Tates did not own the property on March 1, 2008, they paid the taxes that were based on that assessment. And contrary to the Assessor's claims, the Tates did not receive a credit from the sellers for the 2008 pay 2009 taxes. The credit reflected on the settlement statement was for taxes based on the 2007 assessment that were payable in 2008. *Tate testimony; Pet'rs Ex. A.* In any case, the PTABOA would not have responded to the Tates appeal by lowering the subject property's 2008 assessment in the first place if Tates had not shown they were liable for the taxes based on that assessment. *Tate testimony; Pet'rs Ex. D.*

B. The Assessor's Contentions

25. The Tates did not own the subject property on March 1, 2008, nor were they responsible for the taxes based on that assessment. *Hisle argument.* According to the transfer history listed on the property record card, the Delaware County CAMA online tax database and the Delaware County online sales disclosure database, the property did not transfer to the Tates until December 2, 2008. *Hisle testimony; Resp't Exs. 1-3.* The Tates' settlement statement shows that they were credited $1,265.25 for taxes from January 1, 2007 to May 21, 2008. The subject property's 2007 pay 2008 taxes were $767.37 and its 2008 pay 2009 taxes were $428.28 for a total of $1,195.65. Because the Tates were credited for more than the taxes that were actually due in 2008 and 2009, they have no right to appeal the property's 2008 assessment. *Hisle testimony and argument; Resp't Exs. 7, 9.*

26. Ms. Hisle also contends that the Tates did not buy the subject property in an arm's-length transaction and that the sale price therefore does not reflect the property's market value-in-use. According to the Affidavit for Transfer of Real Property, Martha Worley's children and grandchildren inherited the subject property. They in turn sold the property to the Tates on December 2, 2008. *Hisle testimony; Resp't Ex. 4-6.* Although the Tates

offered a copy of a listing, Ms. Hisle did not know who that listing was with and she could not find a listing for the property on the multiple listing service used by realtors in the county. *Hisle testimony; Resp't Ex. 10.* Thus, Ms. Hisle concluded that the sale to the Tates may have been a "duress sale." *Hisle testimony.*

27. Finally, Ms. Hisle looked to see if there were other sales from the subject property's neighborhood. For March 1, 2008, assessments, assessors were directed to use sales occurring in the two calendar years preceding the assessment date. So Ms. Hisle searched for sales that occurred between January 1, 2006, and December 31, 2007. She found one property, 405 N. Kettner, which sold for $89,500 on September 5, 2007. After subtracting $500 for concessions, that price equates to $58.70 per square foot. By comparison, the subject property is assessed at $75,300 or $58.10 per square foot. *Hisle testimony; Resp't Exs. 2A, 8.*

Discussion

A. The Tates are proper parties to this appeal.

28. Ms. Tate testified without rebuttal that the Tates paid the taxes that were based on the subject property's March 1, 2008, assessment. The Tates therefore have sufficient interest in the subject property's March 1, 2008, assessment to appeal that assessment. Ms. Hisle's claim that the Tates received a credit for those taxes from the sellers is beside the point.

B. The Tates did not make a prima facie case for reducing the subject property's assessment.

29. 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). Appraisers traditionally have 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 use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

30. 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 ("USPAP") often will suffice. *Kooshtard Property VI,* 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

31. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the appealed property's market value-in-use as of 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). Otherwise, the evidence lacks probative value. *See id.* ("[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value."). For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3(b) (2009).

32. The Tates rely most heavily on the fact that they paid only $44,900 for the subject property and on Ms. Lewis's appraisal valuing the property at $58,000. A property's sale price and a USPAP-certified market-value-in-use appraisal both can be powerful evidence of the property's true tax value. But the Tates bought the subject property on May 21, 2008, and Ms. Lewis appraised the property as of April 28, 2008, both of which were more than a year after the January 1, 2007 valuation date that applies to the

assessment under appeal. Because the Tates did not explain how either the sale price or Ms. Lewis's appraisal related to the property's market value-in-use as of that earlier valuation date, that evidence lacks probative value.

33. Ms. Tate also attempted to compare the subject property's assessment to the assessment of a home located at 513 N. Kettner Drive. To effectively use any kind of comparison approach to value a property, one must show that the properties at issue are truly comparable. Conclusory statements that properties are "similar" or "comparable" to each other do not suffice. *See Long*, 821 N.E.2d at 470. Instead, one must identify the subject property's characteristics, explain how those characteristics compare to the purportedly comparable properties, and explain how any differences affect the properties' relative market values-in-use. *Id.* at 471. Although Ms. Tate testified that the subject home and the neighboring home at 513 N. Kettner are roughly the same age and have similar wood siding and older windows, she did little else to compare the two properties. And she did nothing to address how any relevant differences between the properties affected their relative values. Thus, the neighboring property's assessment has no probative value.

34. Finally, Ms. Tate claimed that the subject property was assessed too high in light of the home's deteriorated condition. While that deterioration might affect the property's value, the Tates offered no probative evidence to quantify that effect or to otherwise show how the deterioration supports any particular value range for the property. Ms. Tate's testimony about the subject home's condition therefore does not suffice to make a prima facie case for reducing the subject property's assessment.

SUMMARY OF FINAL DETERMINATION

35. The Tates failed to make a prima facie case for reducing the subject property's assessment. The Board therefore affirms the property's March 1, 2008 assessment.

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

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
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>.