

TOM TERRY, PRO SE, FOR PETITIONERS

KELLY HISLE, DEPUTY ASSESSOR, FOR RESPONDENT

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Tom Terry and	)	Petition No. 18-012-06-1-5-00080
M. Doed LLC,	)	
	)	
Petitioners,	)	Parcel No. 1510100009000
	)	
v.	)	
	)	Delaware County
Delaware County Assessor,	)	Monroe Township
	)	2010 Assessment
Respondent.	)	

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

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**November 9, 2012**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**ISSUE**

Is the current assessment an accurate market value-in-use for the subject property and does the evidence show what a more accurate assessed valuation would be?

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

1. The property is a single family residence on 2.46 acres of land located at 8770 Center Road in or near Muncie.
2. The Petitioners initiated an assessment appeal for 2006 with the County Property Tax Assessment Board of Appeals (PTABOA) by timely filing a Form 130 Petition.
3. On February 27, 2009, the PTABOA mailed its Notification of Final Assessment Determination (Form 115). Most of the Form 115 is blank and it does not state a determination of any specific assessed values. An attached, unsigned letter ambiguously states the “request” is “denied.” It appears that the PTABOA left the assessed values at \$18,400 for land and \$92,000 for improvements (total \$110,400).
4. On April 14, 2009, the Petitioners filed a Form 131 Petition seeking the Board’s review of that determination. The Form 131 stated the assessed value should be \$18,400 for land and \$40,000 for improvements (total \$58,400).
5. Administrative Law Judge Ted Holaday held the Board’s administrative hearing on October 25, 2012. There was no on-site inspection of the property in connection with this appeal.
6. Petitioner Tom Terry and Deputy Assessor Kelly Hisle were sworn as witnesses.
7. The following exhibits were offered by the Petitioner and admitted:
  - Petitioner Exhibit 1 – Various invoices from September 2007 to May 2008 for repairs and cleaning,
  - Petitioner Exhibit 2 – Tax Deed for the subject property,
  - Petitioner Exhibit 3 – Settlement Statement dated May 16, 2008, for sale of the subject property.

8. The Respondent offered the following exhibits:
  - Respondent Exhibit 1 – Property Record Card for the subject property,
  - Respondent Exhibit 2 – (withdrawn),
  - Respondent Exhibit 3 – Screen shot,
  - Respondent Exhibit 4 – Screen shot,
  - Respondent Exhibit 5 – Comparison grid,
  - Respondent Exhibit 6 – Property Record Card for 9690 S. Center,
  - Respondent Exhibit 7 – Realtor listing for 9690 S. Center,
  - Respondent Exhibit 8 – Comparable #1 adjustments,
  - Respondent Exhibit 9 – Property Record Card for 8217 Center Rd.,
  - Respondent Exhibit 10 – Realtor listing for 8217 S. Center,
  - Respondent Exhibit 11 – Comparable # 3 adjustments,
  - Respondent Exhibit 12 – Property Record Card for 401 W CR 500S,
  - Respondent Exhibit 13 – Realtor listing for 401 W County Road 500S,
  - Respondent Exhibit 14 – Comparable #2 adjustments.
  
9. At the hearing, the Petitioner objected to all the Respondent’s exhibits because copies were not provided to the Petitioner before the hearing, a fact that the Respondent did not dispute. After some discussion, the Petitioner withdrew the objection to Respondent Exhibit 1 and the Property Record Card was admitted. The Respondent agreed the document marked Respondent Exhibit 2 (the tax deed) was already in the record and withdrew the offer of that item. The objection to Respondent Exhibits 3-14 was sustained because of the Respondent’s failure to comply with 52 IAC 2-7-1(b)(1).
  
10. The following additional items are part of the record:
  - a. Form 131 Petition,
  - b. Appearance of Counsel for Respondent,
  - c. Respondent’s Notice Of Opting Out Of Small Claims Docket,
  - d. Letter with notice regarding removal from the small claims docket,
  - e. Order On Motion To Dismiss And Motions For Summary Judgment,
  - f. Notice of Hearing,
  - g. Hearing sign-in sheet.

### SUMMARY OF THE PETITIONERS' CASE

11. The Petitioners bought the subject property at the October 2002 tax sale and paid \$1,248 for it. Although the Petitioners promptly attempted to get the tax deed, the prior owner objected. It took a long time to go through the court proceedings. The Tax Deed for the subject property finally was issued to the Petitioners on January 24, 2006, and recorded on January 4, 2007. *Terry testimony; Pet'r. Ex. 2.*
12. In 2005 and 2006 this property was "unlivable" and in "very poor" condition. It could not be rented in that condition. It had no heat or water. It stunk. There was water in the basement. The basement steps were gone. The roof was bad and the soffit was rotted. *Terry testimony.*
13. Although these problems had to be fixed before the property could be sold, the Petitioners did not start doing so until late 2007 and early 2008. During that time they spent more than \$21,000 on repairs. The Petitioners provided copies of various invoices to substantiate those costs. *Terry testimony; Pet'r Ex. 1.*
14. After fixing it up, the Petitioners sold the subject property in May 2008 for \$95,900. *Terry testimony; Pet'r Ex. 3.*

### SUMMARY OF THE RESPONDENT'S CASE

15. The Property Record Card indicates M. Doed LLC did not become the owner of the subject property until January 4, 2007. *Hisle testimony; Resp't Ex. 1.*
16. The Petitioners' expenses to repair the subject property are not relevant because they are not from a time that is required for a 2006 assessment. *Hisle testimony.*

17. The fact that the Petitioners sold the subject property for \$95,900 in May 2008 is not relevant because that sale is not from a time this is required for a 2006 assessment. *Hisle testimony.*

#### **STANDING TO APPEAL**

18. During this hearing the Respondent brought up the fact that the property record card shows M. Doed LLC was not the owner of the property until January 4, 2007, which appears to be the date the Tax Deed was recorded. The Respondent failed to explain the significance of this point, but implied that the Petitioners could not appeal the 2006 assessment because they were not the owners of record as of March 1, 2006. The Tax Deed, however, shows it was signed by the Delaware County Auditor on January 24, 2006. The Respondent previously raised this issue here and in several other cases, but at a combined hearing for all those cases the Respondent withdrew the lack of standing argument in regard to this case. Accordingly, the Board's Order On Motion To Dismiss And Motions For Summary Judgment that was issued on September 4, 2012, did not cover this case, but it did grant summary judgment for the Respondent in eleven other cases where the evidence showed the tax deeds were issued after the Petitioners initiated tax appeals for those properties.
19. Here the evidence shows just the opposite. As of January 24, 2006, the Tax Deed granted M. Doed LLC an interest in the real property. That date is before the relevant assessment date. Furthermore, the Tax Deed was recorded on January 4, 2007. The Petitioners started this appeal by filing a Form 130 in August 2007. They clearly had standing to do so.

#### **ANALYSIS**

20. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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 to the Indiana tax court.

I.C. § 6-1.1-15-17.2.

21. In this case, the Petitioners agreed that they had that burden.
22. Real property is assessed based on its "true tax value," which 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); MANUAL at 2. The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Relevant 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.
23. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2006 assessment was January 1, 2005. IC 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, that required valuation date. *Long*, 821 N.E.2d at 471.

24. Therefore, the sale price of \$95,900 in May 2008 is not probative evidence for this case because nothing in the record relates it back to the required valuation date, which was more than three years earlier. The record does not establish what kind of movement there might have been with general market conditions during that time. Furthermore, the Petitioners spent over \$21,000 on repairs prior to that sale. The record lacks substantial evidence or explanation to form any legitimate conclusion about a more accurate value for the subject property three years earlier and before the repairs.
25. Much of the Petitioners' case merely focused on the condition of the property. Mr. Terry's testimony credibly established that the subject property was in very poor condition until the Petitioners started fixing it up. We conclude that on the assessment date the property was in an unrentable and unlivable condition. The Property Record Card indicates the subject property was in average condition, but the evidence indicates it really was not that good. The Assessment Guidelines have six condition ratings from excellent to very poor. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, app. B at 7 (incorporated by reference at 50 IAC 2.3-01-2). Determining a condition rating for the subject property, however, is just one of the many steps in the Guidelines. It does not directly answer the essential question, which is value.
26. The Petitioners failed to make their case based on the evidence and arguments related to condition. Even if the condition of the subject property really was "very poor" on March 1, 2006, that point does not prove what a more accurate value is. One cannot make a case based on whether the Guidelines were applied properly. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). Again, to successfully make their case they needed to show the assessment does not accurately reflect market value-in-use. *Id.*; see also *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that proper focus is not on methodology, but rather, on what the correct value actually is). They did not do so.

**SUMMARY OF FINAL DETERMINATION**

27. The 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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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>.