

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

**Petition:** 18-003-06-1-5-01166  
**Petitioner:** Nelson Whitt  
**Respondent:** Delaware County Assessor  
**Parcel:** 11-10-436-012-000  
**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioner initiated an assessment appeal regarding the subject property by filing a Form 130 petition with the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) on July 11, 2007.
2. The PTABOA issued notice of its decision for the 2006 assessment on June 6, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on July 14, 2008. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 15, 2009.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on May 19, 2009. He did not inspect the property.
6. Petitioner Nelson Whitt, Kim Swoveland (his daughter), and Deputy Assessor Kelly Hisle were sworn as witnesses at the hearing.

**Facts**

7. The property is a single family residence located at 501 North Brady Street in Muncie.
8. The PTABOA determined the assessed value is \$7,300 for land and \$23,000 for improvements (total \$30,300).
9. The Petitioner did not specify a proposed assessed value on his Form 131, but at the hearing he claimed the land value should be \$3,000 and the improvement value should be \$8,000 (total \$11,000).

## **Record**

10. The official record for this matter is made up of the following:
  - a. Petition for Review of Assessment (Form 131) with attachments,
  - b. Notice of Hearing,
  - c. Digital recording of the hearing,
  - d. Petitioner Exhibit 1 – Offer to Purchase dated March 8, 2007,  
Petitioner Exhibit 2 – Commitment for title insurance,  
Respondent Exhibit 1 – None,  
Respondent Exhibit 2 – List of 2004 and 2005 sales used to calculate the 2006 assessment,  
Respondent Exhibit 3 – Property record card (“PRC”),  
Respondent Exhibit 4 – Sales disclosure form and power of attorney,  
Respondent Exhibit 5 – Warranty deed,  
Respondent Exhibit 6 – Telephone book page listing the Petitioner’s address,
  - e. These Findings and Conclusions.

## **Contentions**

11. Summary of the Petitioner’s case:
  - a. The assessed value of the subject property is more than its market value-in-use. It should be reduced to \$11,000. *Whitt testimony.*
  - b. The PTABOA wrongly concluded that the subject property was purchased as a distressed sale, but it was actually purchased for \$8,300 at a public auction. The assessed value is excessive compared to the purchase price. *Whitt testimony.*
  - c. The home is old and run down. It had been vacant for twenty years. It was in poor condition. There is water and mold in the basement. Part of the ceiling is falling down. The kitchen walls are deteriorated. This home is not worth the same as other homes in the area. *Whitt testimony; Resp’t Ex. 3, 4.*
  - d. The assessment for March 1, 2006 had not been determined when the property was purchased in 2007. At the closing, the seller gave the Petitioner money towards the 2006 property taxes. When the 2006 assessment was determined, the seller’s contribution did not cover the entire tax liability. The Petitioner paid the difference with his own funds. *Whitt testimony; Pet’r Ex. 1.*

12. Summary of the Respondent's case:
  - a. The Petitioner did not own the subject property on March 1, 2006. He purchased it on March 19, 2007. *Hisle testimony; Resp't Exs. 3, 4.*
  - b. Sales within the Petitioner's neighborhood ranged from \$14,000 to \$135,000 in 2004 and 2005. These thirty-three sales were used to determine the assessed value of the subject property for 2006. The home is currently assessed with an effective age of 99 years and a grade factor of D-1, to arrive at the total value of \$30,300. *Hisle testimony; Resp't Exs. 2, 3.*

### **The Petitioner's Standing**

13. The Respondent implied the Petitioner is not a proper party because he did not own the subject property on March 1, 2006. But either the owner or the taxpayer responsible for the property taxes payable on the subject property can be a proper party. *See 52 IAC 2-2-13.* The Petitioner testified that he got some money toward the 2006 property taxes at closing; however, ultimately the amount he got was less than the tax bill. The Petitioner was responsible for paying the taxes and contributed the rest from his own funds. The Respondent did not dispute that testimony. Under these circumstances, the Petitioner is the taxpayer and is a proper party to bring the case. *Whitt testimony; Hisle testimony; Resp't Exs. 3, 4.*

### **Analysis**

14. 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).
15. In making a 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”).
16. The Petitioner did not make a case for any assessment change because:
  - a. 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). Indiana promulgated Guidelines for assessing officials that are based on the cost approach. The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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.

- b. A 2006 assessment must have a value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Evidence relating to a different date must have an explanation about how it demonstrates or is relevant to the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c. The time of the Petitioner's purchase is problematic for using it to determine the 2006 assessment. The Petitioner did not establish how his purchase price of \$8,300 on March 19, 2007, might relate to the valuation as of January 1, 2005. The Petitioner's purchase price is more than two years from the required valuation date. The Petitioner failed to demonstrate how or why the 2007 sale price is relevant to the value of the subject property as of January 1, 2005. As a result, the Petitioner's purchase price does not prove what a more accurate market value-in-use would be for the 2006 assessment. *Long*, 821 N.E.2d at 471.
- d. As evidence of what the assessment should be, the Petitioner's purchase price suffers from another weakness. The Petitioner merely established that he bought the subject property at a "public auction," which the PTABOA characterized as a "distressed sale." He failed to offer any evidence about the circumstances of the auction, including what efforts might have been made to market the property. Without that kind of information, it is impossible to determine whether the auction price is a reliable indication of value or something just to get the property sold quickly. Furthermore, the Petitioner failed to offer any kind of explanation for how his purchase price supports his claim that the assessed value should be \$11,000. *See Indianapolis Racquet Club*, 802 N.E.2d 1018 (stating that the taxpayer has a duty to walk the Board through each step of his analysis in getting to a claimed valuation). Again, the Petitioner failed to establish that his purchase price proves what a more accurate assessment would be.
- e. The Petitioner identified several condition problems with the property, including water damage and mold in the basement as well as deterioration of the ceiling and walls. The PRC shows the assessment was based on average condition for the property. Even if the Respondent's determination about the condition of the property was wrong, the Petitioner failed to show that the assessment was not a reasonable measure of true tax value (market value-in-use). *See Ind. Admin. Code tit. 50, r.2.3-1-1(d)* (failure to comply with the Guidelines does not in itself show that the assessment is not a reasonable measure of true tax value). Condition arguments based on the Guidelines are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) ("[W]hen a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application

of the regulations is not enough to rebut the presumption that the assessment is correct.”) The Petitioner must show through market-based evidence that the assessed value does not accurately reflect the property’s market value-in-use. Here, the Petitioner did not. Therefore, he failed to make a prima facie case.

- f. 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*, 704 N.E.2d at 1119.

**Conclusion**

- 17. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

**Final Determination**

In accordance with the above findings and conclusions, the assessment will 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

**- 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>