

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

**Petition No.:** 06-019-08-1-5-00215  
**Petitioner:** Mary A. Hamerin  
**Respondent:** Boone County Assessor  
**Parcel No.:** 019-06940-00  
**Assessment Year:** 2008

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 Boone County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 13, 2009.
2. The PTABOA issued notice of its decision on July 23, 2009.
3. The Petitioner filed a Form 131 petition with the Board on August 27, 2009. The Petitioner elected to have her case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated May 7, 2010.
5. The Board held an administrative hearing on July 28, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioner: Mary A. Hamerin, Property owner  
Charles Hamerin, Petitioner's husband
  - b. For Respondent:<sup>1</sup> Lisa C. Garoffolo, Boone County Assessor  
Peggy J. Lewis, Member of the PTABOA

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<sup>1</sup> Lawrence D. Giddings, Giddings, Whitsitt & Williams, P.C. appeared as counsel for the Respondent.

## Facts

7. The subject property is a single-family residence located at 250 North Maple Street, Zionsville, Eagle Township, in Boone County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2008, the PTABOA determined the assessed value of the property to be \$89,800 for the land and \$110,200 for the improvements, for a total assessed value of \$200,000.
10. The Petitioner requested an assessed value of \$24,000 for the land and \$56,200 for the improvements, for a total assessed value of \$80,200.

## Issue

11. Summary of the Petitioner's contentions in support of an alleged error in her property's assessment:
  - a. The Petitioner contends the assessed value of her property is too high compared to the sales prices of properties in her area. *M. Hamerin testimony*. In support of this position, the Petitioner submitted a 2010 comparative analysis, dated July 27, 2010, prepared by her son, who is a local realtor. *Petitioner Exhibits 6, 9 and 10*. According to the comparative analysis, the Petitioner's property should be valued at \$125,300. *Petitioner Exhibits 9 and 10*. Similarly, the Petitioner submitted a 2008 comparative market analysis, dated July 20, 2010. *M. Hamerin testimony; Petitioner Exhibit 5*. The 2008 comparative analysis showed nineteen properties that sold in the Zionsville area for between \$88,051 to \$172,850, with an average sales price of \$126,161. *M. Hamerin testimony; Petitioner Exhibit 5*. The Petitioner's husband, Charles Hamerin, contends the Petitioner listed the property for sale in 2010 for \$189,900, but reduced the listing price to \$164,900 after three months because she failed to receive any offers on the property. *C. Hamerin testimony*.
  - b. Similarly, the Petitioner contends the subject property is not worth its assessed value because the house is in below average condition, has no garage and is cosmetically outdated. *M. and C. Hamerin testimony*. In support of this contention, the Petitioner submitted three exterior and eight interior photographs. *Petitioner Exhibit 7*. Mrs. and Mr. Hamerin argue that the property's lack of a garage, and the house's deteriorated condition and outdated cosmetics adversely impacts the property's value. *M. and C. Hamerin testimony*.
  - c. The Petitioner's husband also argued that the PTABOA improperly made the tax increase on the Petitioner's property retroactive. *C. Hamerin testimony*. According to Mr. Hamerin the PTABOA increased the property's 2008 assessed value from \$132,800 to \$200,000, after the Petitioner appealed. *Id.* Then, even

though the Petitioner had already paid the \$2,786.94 for the property's 2008 taxes, the Petitioner received a tax statement showing that she owed an additional \$1,410.26 on the property for 2008. *Id.; Petitioner 4*. Mr. Hamerin argues that, because the Petitioner paid the 2008 taxes on the property in full, the PTABOA should not have made its adjustment retroactive. *C. Hamerin testimony*. Furthermore, Mrs. Hamerin argues, she should not be responsible for a penalty on the additional taxes because the property was still under appeal.<sup>2</sup> *M. Hamerin testimony*.

- d. Finally, Mrs. Hamerin argues that the taxes on the subject property are too high based on the taxes paid by the owners of other properties in her area. *M. Hamerin testimony*. In support of this contention, Mrs. Hamerin presented tax and assessment information showing that nine homes located in the same neighborhood were assessed from \$151,000 to \$264,500, but they paid only \$1,300.88 to \$2,645.98 in property taxes; whereas she was assessed \$200,000 and taxed \$4,197.20 for the property under appeal. *M. Hamerin testimony; Petitioner Exhibits 4 and 8*.
12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends the property under appeal is correctly assessed at \$200,000. *Garoffolo testimony*. According to Ms. Garoffolo, the property's assessment was increased by the PTABOA, based on a comparative analysis dated July 9, 2009. *Id.; Respondent Exhibit 1*. The comparative analysis showed seven sales and one listing, from October 1, 2006, to February 7, 2009, ranging in price from \$171,850 to \$249,000. *Id.* According to Ms. Garoffolo, Mr. Hamerin calculated the average sales price to be \$160.12 per square foot and estimated the Petitioner's property's value to be \$203,000. *Id.* Thus, the Respondent argues, the property's assessment for 2008 was correct. *Garoffolo testimony*.
- b. The Respondent's witness, Peggy Lewis, argues that the Petitioner's 2008 and 2010 comparative market analyses are flawed and should be given little weight. *Lewis testimony*. According to Ms. Lewis, the subject property is located in an area of Zionsville referred to as the "Village"; whereas the Petitioner's 2008 and 2010 comparable analyses use sales from Royal Run and Russell Lake which are both inferior neighborhoods to the "Village" area.<sup>3</sup> *Id.* In addition, Ms. Garoffolo argues, the Petitioner failed to show how the 2008, 2009 and 2010 sales in the

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<sup>2</sup> Mrs. Hamerin also argued that she was denied the opportunity to present her appeal before the PTABOA. *M. Hamerin testimony*. Once a taxpayer has properly invoked the Board's jurisdiction, however, its proceedings are *de novo*. 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.) And the Board owes the PTABOA determination no deference. Thus, while the Petitioner may feel she was deprived of the opportunity of presenting her case before the PTABOA, it does not hinder the Petitioner's ability to present her case to the Board.

<sup>3</sup> Ms. Lewis testified she is a licensed appraiser.

comparable analyses relate to the January 1, 2007, valuation date. *Garoffolo testimony.*

### **Record**

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

- Petitioner Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated August 28, 2009,
- Petitioner Exhibit 2 – Special Message to Property Owner “How your Property Tax Bill is Calculated” from 2007 through 2010,
- Petitioner Exhibit 3 – Boone County Tax Report, dated April 26, 2010,
- Petitioner Exhibit 4 – 2009 – Boone County Tax Statement for the Petitioner’s property,
- Petitioner Exhibit 5 – Comparative Market Analysis prepared by Richard Hamerin, Carpenter Realtors, dated July 20, 2010,
- Petitioner Exhibit 6 – Graph and internet article on Zionsville real estate market from funcityfinder.com, dated June 7, 2010,
- Petitioner Exhibit 7 – Interior and exterior photographs of 250 North Maple Street, Zionsville,
- Petitioner Exhibit 8 – Boone County Tax Reports, dated April 26, 2010, Boone County Tax Statements for 2009 payable 2010 and Special Message to Property Owner “How your Property Tax Bill is Calculated for 230 North Maple Street, Zionsville, 240 North Maple Street, Zionsville, 245 North Maple Street, Zionsville, 260 North Maple Street, Zionsville, 265 North Maple Street, 270 North Maple Street, Zionsville, 275 North Maple Street, Zionsville, 280 North Maple Street, Zionsville, and 285 North Maple Street, Zionsville,
- Petitioner Exhibit 9 – Comparative Market Analysis for the Petitioner’s property prepared by Richard Hamerin, Carpenter Realtors, dated July 27, 2010,
- Petitioner Exhibit 10 – Letter from Rick Hamerin, Carpenter Realtors, dated July 26, 2010,

Respondent Exhibit 1 – Boone County Appeal Worksheet, dated July 13, 2009, sketch, property record card and Petitioner’s Comparative Market Analysis prepared by Richard Hamerin, Carpenter Realtors, dated July 9, 2009,

Respondent Exhibit 2 – Exterior photograph of the Petitioner’s property,

Respondent Exhibit 3 – Property record card for the Petitioner’s property,

Respondent Exhibit 4 – Notification of Final Assessment Determination – Form 115, dated July 23, 2009,

Respondent Exhibit 5 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Respondent Exhibit 6 – Indiana Board of Tax Review Notice of Hearing on Petition, dated May 7, 2010,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

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 Township 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 Township 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”).
- 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner failed to provide sufficient evidence to raise a prima facie case that her property is over-valued. 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.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL (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. In 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 (the GUIDELINES).
  - 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c. Regardless of the method used to rebut an 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. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
  - d. The Petitioner first argues that her property is over-assessed based on the sales of comparable properties. *M. Hamerin testimony*. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *Id.* at 470-71. They must

explain how any differences between the properties affect their relative market value-in-use.

- e. Here, the Petitioner submitted a 2008 comparable analysis prepared by her son showing the sales prices of nineteen properties in the Zionsville area from February 8, 2008, to December 17, 2008. *Petitioner Exhibit 5*. Here, neither Mr. Hamerin nor the Petitioner attempted to compare the properties or the value differences between them. *Id.* Mr. Hamerin merely shows the average sales price of property in Zionsville was \$126,161. *Id.* Conclusory statements regarding an “average sales price”, however, are not sufficient to establish an error in an assessment because all properties are different. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Further, Mr. Hamerin’s average value was based on 2008 sales, which are too far removed from the January 1, 2007, valuation date at issue in this appeal. Thus, Mr. Hamerin’s 2008 analysis is not probative of the property’s market value-in-use for the March 1, 2008, assessment year.
- f. The Petitioner also submitted a 2010 comparable analysis wherein her son adjusted the sales prices of the comparable properties for features such as the number of bathrooms in the house, the size of the lot and the garage and whether the house was of vinyl or brick construction. *Petitioner Exhibit 9*. While Mr. Hamerin’s adjustments may not differ significantly from those made by a certified appraiser in an appraisal report, an appraiser’s assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Mr. Hamerin, however, did not certify he is a licensed appraiser in Indiana. Further, he did not certify that the analysis he prepared for the Petitioner complied with USPAP. In addition, Mr. Hamerin is the Petitioner’s son and that familial relationship makes any analysis less reliable than an appraisal prepared by a disinterested professional.<sup>4</sup> More importantly, the analysis purports to value the property as of July 26, 2010 – more than three and a half years after the relevant valuation date. The Board therefore gives no weight to Mr. Hamerin’s 2010 analysis.<sup>5</sup>

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<sup>4</sup> In fact, the Petitioner’s own evidence suggests that her son prepared his sales analysis to result in the value that she sought. In response to the Respondent’s counsels question “is it fair for me to say that you were unhappy with [an earlier analysis prepared by her son that valued the property at \$200,000], because you thought it was too high ... so you asked him to do another one?”, Mrs. Hamerin answered “Yes, part of it was when I told him ... I said I need one that will cover a \$200,000 house because that is what they said ... the tax people were telling me ... well so that is what he ran.”

<sup>5</sup> The Petitioner’s husband also argued that the subject property is over-valued because it has been on the market for several months and has not sold for a price less than the assessed value. *C. Hamerin testimony*. While a taxpayer’s unsuccessful attempts to sell a property may be some indication of a property’s value, the Petitioner’s attempts to sell the property in 2010 are, again, much too far removed from the January 1, 2007, valuation date to be probative of her property’s March 1, 2008, market value-in-use.

- g. The Petitioner also contends that her house is in below average condition and is cosmetically outdated. In support of this contention, the Petitioner presented photographs of the interior and exterior of the house. *Petitioner Exhibit 7*. The Board interprets this to be an argument that the condition of the house was improperly assessed. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See* GUIDELINES, app. B, at 5. A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* While the Petitioner testified that the house’s condition was not average and it is cosmetically outdated, the Petitioner presented no evidence which would justify a determination that the structure’s condition rating is incorrect.<sup>6</sup> *See Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999) (stating that references to photographs or State Board regulations, without further explanation, do not qualify as probative evidence for purposes of grading issues).
- h. Even if the Petitioner had proven that the condition of her house was assessed in error, an assessor’s failure to comply with the Guidelines alone does not show that the assessment is not a reasonable measure of a property’s market value-in-use. 50 IAC 2.3-1-1 (d); *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) (“Therefore, when 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.”) Thus, the Petitioner must show through the use of market-based evidence that the assessed value of her house does not accurately reflect the property’s market value-in-use. The Petitioner’s evidence and arguments relating to the property’s condition therefore fail to overcome the presumption that her property’s assessment is correct.
- i. Finally, the Petitioner’s husband argued that the Petitioner’s tax liability was higher than the tax liability of other property owners in her neighborhood. *C. Hamerin testimony; Petitioner Exhibits 2, 4 and 8*. In support of this contention, the Petitioner presented tax and assessment information for nine properties in her area. *Petitioner Exhibit 8*. Those properties were assessed from \$151,000 to \$264,500 and had tax liabilities that ranged from \$1,298.34 to \$2,750. *Id.* The Petitioner’s property, on the other hand, was assessed for \$200,000 and was taxed \$4,197.20 for 2008. The Petitioner made no showing that her assessment was incorrect based on the assessment of neighboring properties. In fact, from her evidence, it appears that her property was assessed comparably to other properties in the area. She merely argues that her tax liability is too high compared to those

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<sup>6</sup> A property of “average” condition has “normal wear and tear” for the neighborhood. *Id.* at Chap. 3, pg. 60. In an “average” house, “there are typically minor repairs that are needed along with some refinishing.” *Id.* However, “most of the major components are still viable and are contributing to the overall utility and value of the property.” *Id.*

neighboring properties. The Board, however, lacks jurisdiction to hear this claim. The Board is a creation of the legislature and has only those powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). The Board therefore must address appeals from determinations made by local assessing officials or county PTABOs that concern property valuations, property tax deductions, or property tax exemptions. Ind. Code § 6-1.5-4-1. By contrast, no statute authorizes the Board to review the propriety of local tax rates or delinquent penalties.<sup>7</sup>

- j. Where 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 16. The Petitioner failed to provide sufficient evidence to support a change in the assessment. 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.

ISSUED: \_\_\_\_\_

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<sup>7</sup> The Board notes, however, that each of the neighboring properties had a homestead exemption and many properties also had a mortgage exemption. The Petitioner's property had neither a homestead exemption, nor a mortgage exemption. Accordingly, her property taxes were higher.

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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 pursuant to 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 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/bills/2007/SE0287.1.html>.**