

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

**Petition No.:** 37-024-07-1-5-00002  
**Petitioners:** Roy and Deborah Gouwens  
**Respondent:** Jasper County Assessor  
**Parcel No.:** 007-00054-00  
**Assessment Year:** 2007

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 Petitioners initiated an assessment appeal with the Jasper County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 29, 2008.
2. The Petitioners received notice of the decision of the PTABOA on December 15, 2008.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on January 31, 2009. The Petitioners elected to have their case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 16, 2009. The parties elected to waive the thirty-day advance notice established by Ind. Code § 6-1.1-15-4.
5. The Board held an administrative hearing on June 25, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Roy Gouwens, One of the property owners

For Respondent: Richard Potts, Jasper County Assessor  
Earl Walton, PTABOA Chairman.<sup>1</sup>

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<sup>1</sup> Sandra Lackey and Donna Wiseman from the assessor's office were also present.

## **Facts**

7. The subject property is a two-unit residential property located at 6981 W 1000 N Demotte, in Jasper County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$19,100 for the land and \$100,900 for the improvements, for a total assessed value of \$120,000.
10. The Petitioners requested an assessment of \$95,000.

## **Issues**

11. Summary of the Petitioners' contentions in support of an error in their assessment:
  - a. The Petitioners contend the assessment is excessive because they purchased the property in December 2005 for \$95,000. *Gouwens testimony*. According to Mr. Gouwens, a realtor listed the property in October 2005 and sold it to an investor for \$95,000. *Id.* The Petitioners purchased the property from the investor in December 2005 for \$95,000 and recorded the sale on December 29, 2005. *Id.* In support of this contention, the Petitioners submitted Multiple Listing Service (MLS) information, one page of a sales disclosure form, a page from their purchase agreement and the warranty deed. *Petitioner Exhibits 3-6*. Mr. Gouwens argues that they purchased the property for \$95,000 and therefore the assessed value should be \$95,000. *Gouwens testimony*.
  - b. The Petitioners further contend the property was vacant and uninhabitable at the time of purchase. *Gouwens testimony*. According to Mr. Gouwens, the floor joists, floor boards and cabinets were rotted and the sewer was backed up. *Id.*
12. The Respondent argues that the property was sold in foreclosure and there is a stigma attached to a foreclosed property that drives the price down. *Potts testimony*. Thus, Mr. Potts argues, the value of the property is more than the price for which the Petitioners purchased the property. *Id.*

## **Record**

13. The official record for this matter is made up of the following:
  - a. The Petition,

b. The compact disk recording of the hearing labeled 37-024-07-1-5-00002 Roy & Deborah Gouwens,

c. Exhibits:

Petitioner Exhibit 1 – Photograph of the subject property,  
Petitioner Exhibit 2 – Letter to Mr. Potts requesting the Respondent’s  
evidence,

Petitioner Exhibit 3 – Agent Detail Report,  
Petitioner Exhibit 4 – Sales disclosure form,  
Petitioner Exhibit 5 – Offer to Purchase Real Estate,  
Petitioner Exhibit 6 – Warranty Deed,

The Respondent submitted no evidence,

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of Hearing dated June 16, 2009,  
Board Exhibit C – Waiver of thirty-day advance notice for hearing,  
Board Exhibit D – 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 Board of Tax Commissioners*, 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners provided sufficient evidence to establish an error in their assessment. 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.” 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 approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess 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 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 id.*; *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. MANUAL at 5.
  - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his evidence relates to the 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, 2007, assessment, that valuation date is January 1, 2006. 50 IAC 21-3-3.
  - d. Here, the Petitioners purchased the property in December of 2005 for \$95,000. While there was some evidence that the investor from whom the Petitioners purchased the property may have bought the property in foreclosure, there was no evidence that the Petitioners’ purchase was anything other than an arms’ length, market sale. Further, the sale was within weeks of the January 1, 2006, valuation date. The Board therefore finds that the Petitioners raised a prima facie case that their property was over-valued based on their purchase of the property.
  - e. Once the Petitioners raised a prima facie case, the burden shifts to the Respondent to impeach or rebut the Petitioners’ case. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the

Respondent argues that, because the sale was once a foreclosure, there is a stigma attached to the property which drives the price down. The Respondent believes the property's market value-in-use is more than its purchase price and proposed a value of \$100,000. The Respondent, however, offered no evidence to support his argument that the property's value was stigmatized by the previous foreclosure or that the market value of the property was actually \$100,000 rather than the \$95,000 for which the Petitioners purchased the property. The Respondent's claims are merely conclusory statements and do not constitute probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Thus, the Respondent failed to rebut the Petitioners' case.

**Conclusion**

- 16. The Petitioners raised a prima facie case that the subject property is over-valued on the basis of their purchase price. The Respondent failed to rebut or impeach the Petitioners' case. The Board finds in favor of the Petitioners and holds the true tax value of the property is \$95,000.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$95,000.

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

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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

### 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>.