

REPRESENTATIVE FOR PETITIONER:

Steven M. Hay, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:

Laurie Renier, Kosciusko County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Steven M. Hay,	)	Petition No.: 43-025-07-1-5-00158
	)	
	)	
Petitioner,	)	
	)	
v.	)	Parcel No.: 07-702020-50
	)	
	)	County: Kosciusko
Kosciusko County Assessor,	)	
	)	Township: Turkey Creek
	)	
Respondent.	)	Assessment Year: 2007

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

**August 3, 2009**

**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. On July 19, 2007, the Petitioner, Steven M. Hay, bought the subject property for \$1,100,000 after it had been listed for sale for two years with an asking price of \$1,300,000. Viewed together, the listing price and sale show that the property was worth no more than \$1,300,000 as of the relevant January 1, 2006, valuation date. The Board therefore finds for Mr. Hay.

### Procedural History

2. On June 10, 2008, Mr. Hay filed notice with the Kosciusko County Assessor contesting his property's 2007 assessment. On October 27, 2008, the Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Mr. Hay relief. As a result, on December 1, 2008, Mr. Hay filed a Form 131 petition with the Board. The Board has jurisdiction over Mr. Hay's appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

### Hearing Facts and Other Matters of Record

3. On May 7, 2009, the Board's Administrative Law Judge, Jennifer Bippus ("ALJ"), held a hearing on Mr. Hay's appeal. Neither the Board nor the ALJ inspected the subject property.
4. The following people were sworn in as witnesses:

Steven M. Hay, *Pro Se*

For the Kosciusko County Assessor:

Laurie Renier, Kosciusko County Assessor  
John Beer, employee of the Kosciusko County Assessor

5. Mr. Hay submitted the following exhibits:
  - Petitioner Exhibit A – March 24, 2009, letter from Jack Stump,
  - Petitioner Exhibit B – Listing contract, amendment to listing contract, and two pages with information about the subject property’s listing,
  - Petitioner Exhibit C – Settlement statement dated July 19, 2007.
  
6. The Assessor submitted the following exhibits:
  - Respondent Exhibit 1A – Form 130 petition,
  - Respondent Exhibit 1B – Settlement statement,
  - Respondent Exhibit 1C – Form 115 Notification of Final Assessment Determination,
  - Respondent Exhibit 1D – Form 131 petition,
  - Respondent Exhibit 2A – Plat map,
  - Respondent Exhibit 2B – Property record card for the subject property,
  - Respondent Exhibit 3A – Lake Wawasee land sales,
  - Respondent Exhibit 3B – Wawasee improved lakefront sales – 2005-2008,
  - Respondent Exhibit 3C – Trending sheets,
  - Respondent Exhibit 3D – Wawasee lakefront neighborhoods,
  - Respondent Exhibit 3E – Sales disclosure for July 2007 sale,
  - Respondent Exhibit 3F – Sales disclosure for August 2008 unimproved sale.
  
7. The Board recognizes the following additional items as part of the record of proceedings:
  - Board Exhibit A – The Form 131 petition and attachments,
  - Board Exhibit B – Hearing notice dated April 6, 2009,
  - Board Exhibit C – Hearing notice dated March 3, 2009,
  - Board Exhibit D – Hearing notice dated March 19, 2009,
  - Board Exhibit E – Letter to the Board from Mr. Hay dated March 24, 2009,
  - Board Exhibit F – Hearing sign-in sheet
  
8. The subject property is a residential property located at 6506 East Waco Drive, Syracuse, Indiana.
  
9. The PTABOA determined that the property’s assessed value was \$1,130,500 for the land and \$141,000 for the improvements, for a total assessment of \$1,451,500.
  
10. Mr. Hay requested values of \$1,014,000 for the land and \$86,000 for the improvements, for a total assessment of \$1,100,000.

## **Administrative Review and the Parties' Burdens**

11. A taxpayer seeking review of an assessing official's determination must establish 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).
12. In making its case, 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).
13. If the taxpayer establishes a prima facie case, the burden shifts to the respondent 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. 2003); *Meridian Towers*, 805 N.E.2d at 479.

### **Analysis**

#### **Parties' Contentions**

##### **A. Mr. Hay's Contentions**

14. Mr. Hay contends that the subject property was only worth \$1,100,000—the amount that he bought it for on July 19, 2007. Prickett's Properties, Inc. listed the property for sale continuously from September 10, 2005 until Mr. Hay bought it. *Hay testimony; Pet'r Exs. A-B*. The asking price was \$1,300,000. *Id.* Mr. Hay bought the property in an arm's-length transaction, so the sale price reflects the property's market value. *Hay testimony*.
15. According to Mr. Hay, property values in the area have been declining. He sold three lakefront properties, and they were all "short sales." *Hay testimony*. Two were lakefront

properties on Lake Syracuse that came out to about \$5,000 per front foot. *Id.* The Friday before the hearing, he sold 85 feet of property on the north shore of Lake Wawasee, which came out to about \$10,000 per front foot. *Id.* He had an offer of \$1,700,000 last October, but the buyer died. He was finally able to sell the property for \$1,450,000. *Id.* After Mr. Hay bought the subject property, he improved it by tearing down the house and seeding, grading, and landscaping the lot. He then sold the property for \$1,287,500, on August 26, 2008. *Id.* But that 2008 sale was not an arm's-length transaction because the buyer was a wealthy neighbor. *Id.*

16. While the vacant properties that the Assessor identified have sewer and water hook-ups, the subject property does not. *Hay testimony.* Thus, Mr. Hay contends that the Assessor's comparisons are invalid. *Id.*

#### **B. The Assessor's Contentions**

17. The Assessor offered sales evidence to show how she priced land around Lake Wawasee. *Beer testimony; Resp't Ex. 3A.* Many of the sold properties had old houses that were torn down. *Beer testimony.* After trending, the average price per front foot for the area was \$16,971, which is more than the subject property's assessment of \$14,103 per front foot. *Id; Resp't Ex. 3A, 3C.* The Assessor's ratio studies show that the assessments were accurate. *Beer testimony.* A property located close to the subject property sold for \$20,000 per front foot. *Beer testimony; Resp't Ex. 3A.*
18. Mr. Beer alternately testified that property values were increasing at a minimum and that they were remaining steady. *Beer testimony.* If one includes private sales, values have remained steady over the last two years, although the number of sales has decreased. *Id.* In any event, the Assessor disagreed with Mr. Hay's contention that values were declining. *Beer testimony; Renier testimony.*

## Discussion

19. 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, as set forth in the Real Property Assessment Guidelines for 2002 - Version A.
20. 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 often will suffice. *Id.*; *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.
21. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how his evidence relates to the subject 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, 461 (Ind. Tax Ct. 2005). For the March 1, 2007 assessment, that valuation date was January 1, 2006.

**A. Mr. Hay made a prima facie case**

22. Mr. Hay contends that the subject property should be assessed for \$1,100,000—the amount he bought it for in an arm’s-length transaction. Where two parties negotiate at arm’s length and other prerequisites to a market-value transaction are present, a property’s actual sale price is often the most compelling evidence of its market value-in-use. Rather than approximating how buyers and sellers would act, as the various valuation approaches used by appraisers do, a property’s sale price shows how a buyer and seller actually acted.
23. Mr. Hay, however, bought the subject property more than 18 months after the relevant January 1, 2006, valuation date. Thus, by itself, the price from that transaction is not probative of the property’s true tax value; Mr. Hay needed to explain how the sale price related to the property’s value as of January 1, 2006. Mr. Hay testified that property values had been declining, but he did not offer any probative evidence to support that claim. Although Mr. Hay said that he sold properties “short,” he did not explain what he meant by that term or how those sales related to the changes in the market between the dates in question—the January 1, 2006, valuation date and his July 19, 2007, purchase of the subject property.
24. The subject property’s listing history leading up to the July 19, 2007, sale, however, does say something about its value as of January 1, 2006. By themselves, listings typically do little to show a property’s market value-in-use. But a two-year listing that ultimately results in a sale at or below the list price is much more persuasive, particularly where, as here, the property was actively listed on the relevant valuation date. Thus, the subject property’s listing history, combined with its later sale below its list price, tends to show the upper limit of the property’s true tax value. Mr. Hay therefore made a prima facie case that the subject property’s true tax value was no more than \$1,300,000.

**B. The Assessor did not impeach or rebut Mr. Hay's evidence**

25. The burden therefore shifted to the Assessor to impeach or rebut the Mr. Hay's sale and listing evidence. *Meridian Towers*, 805 N.E.2d at 479. The Assessor, however, did not succeed at doing either.
26. The Assessor attempted to rebut Mr. Hay's evidence by arguing that the subject property's assessment was comparable to the sale prices of other properties. In a broad sense, the Assessor correctly recognized that one can estimate a property's market value-in-use by comparing it to similar properties that have sold in the marketplace. *See* MANUAL at 13. Indeed, that is precisely the theory behind the sales-comparison approach. *Id.* But to apply that approach, a party must show that the purportedly comparable properties sufficiently resemble the appealed property. *See Long*, 821 N.E.2d 470. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *See Id.* at 470-71. Equally important, a party applying the sales-comparison approach must explain how any relevant differences between the properties affect their relative market values-in-use. *See Id.*
27. The Assessor did not offer that type of analysis. While the sales that the Assessor relied on may have been from Mr. Hay's neighborhood, she failed to explore other ways in which the sold properties compared to Mr. Hay's property. She likewise failed to adjust the purportedly comparable properties' sales prices to reflect relevant ways in which those properties differed from the subject property. The Assessor's sales evidence therefore lacks probative value. In any event, it does not outweigh Mr. Hay's evidence about subject property's actual sale and listing prices.

**Conclusion**

28. Mr. Hay made a prima facie case that his property's assessment should be lowered to \$1,300,000. The Assessor failed to impeach or rebut Mr. Hay's evidence.

## Summary of Final Determination

29. In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that the appealed property's assessment be changed to \$1,300,000.

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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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 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>>