

REPRESENTATIVE FOR PETITIONER:

Tom Terry, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kelly Hisle, Delaware County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Tom Terry,	)	Petition No.:	18-003-06-1-5-00188A
)		
Petitioner,	)	Parcel No.:	1110113007000
)		
v.	)	County:	Delaware
)		
Delaware County Assessor,	)	Township:	Center
)		
Respondent.	)	Assessment Year:	2006

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

June 10 , 2014

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

ISSUE

1. The Respondent had the burden of proving that the subject property's March 1, 2006, assessment was correct. Did the Respondent prove the 2006 assessment was correct?

PROCEDURAL HISTORY

2. The Petitioner initiated his 2006 assessment appeal with the Delaware County Property Tax Assessment Board of Appeals (PTABOA) by timely filing a Form 130 Petition. On June 21, 2011, the PTABOA issued its Notification of Final Assessment Determination (Form 115) for nine of the Petitioner's parcels combined, including the subject property. The Form 115, however, does not show the assessed values specifically determined for the subject property.
3. The Petitioner then filed a Form 131 petition with the Board.¹
4. On March 13, 2014, the Board's administrative law judge, Patti Kindler (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Tom Terry and Deputy Assessor Kelly Hisle were sworn and testified.
6. The Petitioner submitted the following exhibits:
 - Petitioner Exhibit 1-A: E-mail correspondence between Ms. Hisle and Mr. Terry dated February 21, 2014,
 - Petitioner Exhibit 1-1: Photographs of a neighboring home and the entrance to 300 E. McCulloch,
 - Petitioner Exhibit 1-2: Two photographs of a neighboring home's porch,
 - Petitioner Exhibit 1-3: Photograph of a neighboring abandoned building,
 - Petitioner Exhibit 1-4: An aerial map of the subject property's neighborhood,
 - Petitioner Exhibit 1-5: Photographs of the property located at 17405 N SR 3,
 - Petitioner Exhibit 1-6: Photographs of the property located at 17405 N SR 3,
 - Petitioner Exhibit 1-7: Photographs of the property located at 17405 N SR 3,
 - Petitioner Exhibit 1-8: Photograph of the subject property's fencing and siding,
 - Petitioner Exhibit 1-9: Two photographs of holes in the subject property's siding,

¹ While the Form 131 Petition of record is date-stamped September 14, 2009, by the Delaware County Assessor, the Board can only assume that the date-stamp is wrong. Further, the record indicates that the Board received the Petitioner's 131 prior to September 14, 2011. The Notice of Defect in Completion of Assessment Appeal Form was sent on August 17, 2011. On its defect notice the Board requested the "most current version" of the petition, and requested that the Petitioner file a Form 131 petition for each parcel under appeal. Nevertheless, while the specific date that the appeal was originally filed is unknown, the Respondent did not argue that the Petitioner's 131 was untimely.

- Petitioner Exhibit 1-10: Two photographs of subject property's missing siding,
- Petitioner Exhibit 1-11: Photographs of the subject property's porch roof and an interior wall,
- Petitioner Exhibit 1-12: Two photographs of the interior walls in the subject property,
- Petitioner Exhibit 1-13: Photographs of the subject property's flooring and walls,
- Petitioner Exhibit 1-14: Photographs of the subject property's wall and fireplace,
- Petitioner Exhibit 1-15: Two photographs of the subject property's floor,
- Petitioner Exhibit 1-16: Photographs of an interior wall and furnace ductwork,
- Petitioner Exhibit 1-17: Two photographs of the detached garage walls,
- Petitioner Exhibit 1-18: Two photographs of missing exterior siding,
- Petitioner Exhibit 1-19: Photographs of the subject property's exterior siding and wood window,
- Petitioner Exhibit 1-20: Two photographs of missing exterior siding,
- Petitioner Exhibit 1-21: Two photographs of the detached garage entry door,
- Petitioner Exhibit 1-22: Two photographs of the subject property's wood fencing,
- Petitioner Exhibit 1-23: Photographs of the subject property's fencing and exterior siding,
- Petitioner Exhibit 1-24: Photographs of the subject property's ductwork and electrical wiring,
- Petitioner Exhibit 1-25: Photographs of the subject property's foundation and furnace,
- Petitioner Exhibit 1-26: Photographs of the subject property's furnace, water heater, and exterior electrical wiring,
- Petitioner Exhibit 1-27: Photographs of the subject property's wall and ductwork,
- Petitioner Exhibit 1-28: Photographs of the subject property's banister and a cistern,
- Petitioner Exhibit 1-29: Photographs of concrete, siding, and wood exterior door,
- Petitioner Exhibit 1-30: Photographs of the subject property's siding, wood door, and soffit,
- Petitioner Exhibit 1-31: Table B-1, Appendix B, from the Real Property Assessment Guideline,
- Petitioner Exhibit 1-32: Table B-4, Appendix B, from the Real Property Assessment Guideline.

7. The Respondent submitted the following exhibits:²

- Respondent Exhibit 1: Tax deed for the subject property,
- Respondent Exhibit 2: Property record card for the subject property,
- Respondent Exhibit 3: Property record card for 317 East Highland Avenue,
- Respondent Exhibit 5: Property record card for 1212 North Granville Avenue,
- Respondent Exhibit 6: Property record card for 1313 North Jefferson Street,
- Respondent Exhibit 7: Screenshot of the subject property's 2007 property taxes from Delaware County website.

² The Respondent initially submitted a document labeled Respondent Exhibit 4 but later withdrew the exhibit.

8. The Board recognizes the following additional items as part of the record:
 - Board Exhibit A: Form 131 petition with attachments,
 - Board Exhibit B: Hearing notice, dated January 28, 2014,
 - Board Exhibit C: Hearing sign-in sheet.

9. The subject property is assessed as a two-family residential dwelling, located at 1225 North Elm Street in Muncie.

10. The PTABOA determined the following assessment:³
Land: \$12,400 Improvements: \$73,600 Total: \$86,000

11. The Petitioner requested the following assessment on his Form 131:
Land: \$6,600 Improvements: \$5,000 Total: \$11,600

OBJECTIONS

12. The Respondent objected to the photographs presented by the Petitioner because they did not contain a date stamp to verify the testimony provided by the Petitioner. The Petitioner testified that he took the photographs in 2006 and ultimately submitted them to the PTABOA for his original appeal. The Respondent's objection goes to the weight of the exhibits rather than to their admissibility. Therefore, the Respondent's objection is overruled.

JURISDICTIONAL FRAMEWORK

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits, that are made from a determination by an

³ According to the PTABOA's final determination, the Petitioner's original petition was denied due to his failure to comply with a notice of defect. The PTABOA's final determination does not specifically indicate the subject parcel's 2006 assessed values. On the Petitioner's 131, Mr. Terry states the subject property's 2006 assessed value was \$6,600 for the land and \$73,800 for the improvements. However, at the hearing both parties agreed that the assessed value was \$12,400 for the land and \$73,600 for the improvements totaling \$86,000.

assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

RESPONDENT'S CONTENTIONS

14. The subject property's 2006 assessment is reasonable in light of the sale prices for the following three properties located in the same neighborhood:

- 317 East Highland Avenue sold for \$70,000 on December 11, 2006. It has 1,152 square feet and a lot size of 40 feet by 130 feet.
- 1212 North Granville Avenue, a one story home property with a finished attic sold for \$85,000 on August 18, 2004. It has 1,638 square feet and a 76-foot by 75-foot lot.
- 1313 North Jefferson Street, a one story home with a finished attic sold for \$63,000 on June 3, 2004. It has 1,224 square feet and a 40-foot by 150-foot lot.

The subject property consists of a 2,684 square foot home located on a 50-foot by 160-foot lot. All three comparable sales are located in the subject property's neighborhood. The three comparable properties sold for a range of \$34.31 to \$60.76 per square foot, and all exceed the subject property's assessment of \$32.04 per square foot. *Hisle testimony; Resp't Ex. 3, 5, 6.*

15. The subject property's assessment increased by more than 5% because neighborhood trending was implemented between the 2005 and 2006 assessment years. The trending factors are based on the difference between assessments and sale prices for properties sold within the prior two years of the assessment date. The two comparable sales located at 1212 North Granville and 1313 North Jefferson were used in determining the 2006 trending and assessment. *Hisle testimony.*

16. The Respondent pointed to the tax deed showing that the delinquent owner listed on the deed is CANA Investments, LLC, one of the Petitioner's investment companies. The

property was sold by tax sale on October 10, 2006. The petitioner did not redeem the property during the redemption period. *Hisle testimony; Resp't Ex. 1, 2.*

17. Finally, the Petitioner failed to present any proof to support his testimony that the area within 300 feet of the property is actually a brownfield. Further, the photographs submitted by the Petitioner are not date-stamped and there is no proof that they were taken in 2006. *Hisle argument.*

PETITIONER'S CONTENTIONS

18. The subject property is assessed too high in light of its poor condition. The house and garage are in poor condition and the neighborhood around the subject property is declining. Further, several improvements were erroneously assessed to the subject property that should have been assessed under the neighbor's parcel. Mr. Terry concedes that he did not pay the taxes resulting from the assessment, and therefore lost the property at tax sale. He argues that he declined to pay the taxes as a protest to the appeals process. *Terry argument; Pet'r Ex. 1-A.*
19. According to the property record card, the house is assessed as being in average condition when the photographs clearly show it is in poor condition. The Petitioner argues that the home fits the description of a structure in poor condition because it suffers from extensive deferred maintenance and inutility. Accordingly, if the Respondent would have used the proper condition rating of poor for a house over 70 years old, it would have resulted in 75% depreciation. *Terry argument; Pet'r Ex. 1-31, 1-32; Resp't Ex. 2.*
20. The Petitioner used interior and exterior photographs taken in 2006 to support his testimony that the subject property is in poor condition. The photographs show the home missing siding with numerous holes in the exterior walls, holes in the porch ceiling, holes in the wood soffit, and broken wood fencing. The pictures also indicate the broken concrete slab, holes and excessive wear to exterior doors, an old cistern, and holes in the

siding of the detached garage. *Terry testimony; Pet'r Ex. 1-8, 1-9, 1-10, 1-11, 1-17, 1-18, 1-19, 1-20, 1-21, 1-22, 1-23, 1-26, 1-28, 1-29, 1-30.*

21. The value is further reduced by its antiquated furnace, non-code wiring, holes in its interior walls, worn carpeting and flooring, old wallpaper, peeling interior paint, and paint spills. *Terry argument; Pet'r Ex. 1-12, 1-13, 1-14, 1-15, 1-16, 1-24, 1-25, 1-26, 1-27, 1-28.*
22. Mr. Terry presented photographs for three neighboring properties indicating the declining nature of the neighborhood. The photographs show a deteriorated house two doors away, an abandoned building across the street, and an 11-acre brownfield located 300 feet away. *Terry argument; Pet'r Ex. 1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 1-7.*
23. In calculating his request for a revised assessment, Mr. Terry came up with a value of \$48,577 for the 2006 assessment.⁴ To obtain this value, Mr. Terry deducted 75% depreciation, based on a dwelling in poor condition, rather than the 50% depreciation based on a dwelling in average condition. Mr. Terry revised the replacement cost and changed the value from \$58,510 to \$29,255. Next, he multiplied the house's revised remainder value by its neighborhood factor of 0.97 for an improvement value of \$28,377. Then he added the detached garage value of \$8,000 to the improvement value, and came to an amount of \$36,377. Finally, he added the improvement value to the land value from the property record card to arrive at a requested value of \$48,577 for the 2006 assessment year.⁵ *Terry argument; Resp't Ex. 2.*
24. According to Mr. Terry, the Respondent erroneously assessed him for an above ground pool, hot tub, and pool deck. These items belong to the neighboring parcel. An aerial map of the neighborhood shows that the items are not part of the subject parcel and should be removed from the assessment. *Terry testimony; Pet'r Ex. 1-4; Resp't Ex. 2.*

⁴ This value is different from the value of \$11,600 that Mr. Terry requested on his Form 131.

⁵ The Petitioner used \$12,200 for land for his requested total assessment, but the parties agreed that the 2006 land assessment was \$12,400.

25. Finally, the Petitioner contends that the comparables used by the Respondent to support the assessment are in much better condition than the subject property. Further, the comparable located at 317 East Highland Avenue that sold on December 11, 2006, is outside the allowable range of sales used to determine the 2006 assessment. *Terry argument; Resp't Ex. 3, 4, 5, 6.*

BURDEN OF PROOF

26. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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. *See Ind. Code § 6-1.1-15-17.2.*
27. Indiana Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, 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.” Ind. Code § 6-1.1-15-17.2(b).
28. Here, the parties agreed that the assessment increased from \$80,400 in 2005 to \$86,000 in 2006. Both parties also agree that the assessed value increased by more than five percent (5%). Thus the Respondent has the burden of proving that the 2006 assessment is correct.

STANDING TO APPEAL

29. While not specifically arguing that the Petitioner lacked standing to appeal, the Respondent noted that while the Petitioner owned the subject property on March 1, 2006, he did not pay taxes resulting from the 2005 and 2006 assessments and lost the property to tax sale. Consequently, even if the Board lowers the assessment as a result of this proceeding, the Respondent argues that the Petitioner is not eligible for a refund of a tax he did not pay. *Hisle testimony; Resp't Ex. 1, 7.*
30. The Petitioner contends that he has a right to appeal even though he lost the property in a tax sale. He acknowledged that he did not pay his property taxes because he was protesting the county's appeal system and the PTABOA's negligence in holding timely appeal hearings. The Petitioner argues he is bringing his appeal as a matter of principle, and agreed that he would not be eligible for a refund even if the assessment were lowered. *Terry argument.*
31. As the owner of the property on the assessment date in question, the Petitioner has standing to appeal the assessment. *See* Ind. Code 6-1.1-15-1; 52 IAC 2-2-13(1). Thus, Mr. Terry has standing to bring this appeal.
32. The Board notes that it lacks jurisdiction to review refunds or order the issuance of a refund to a taxpayer. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The relevant statute is Ind. Code § 6-1.5-4-1, provides as follows:
 - (a) The Indiana board shall conduct an impartial review of all appeals concerning:
 - (1) the assessed valuation of tangible property;
 - (2) property tax deductions;
 - (3) property tax exemptions;
 - (4) property tax credits;

that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.

(b) Appeals described in this section shall be conducted under IC 6-1.1-15.

Ind. Code § 6-1.5-4-1.

33. No statute authorizes the Board to determine the amount of refund a taxpayer should receive, or to grant any relief other than allowed by statute. In the matter at hand, the Petitioner has acknowledged that he paid no taxes for the year under appeal and therefore would not be entitled to a refund even if the assessment were reduced as a result of this appeal. *Terry testimony.*

ANALYSIS

34. In Indiana, real property is assessed based on its “true tax value,” which the 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.” 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment. *Id.* at 3.
35. 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 Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2006 assessment was January 1, 2005. 50 IAC 21-3-3 (2006). Any evidence of value relating to a different

date must also have an explanation about how it demonstrates, or is relevant to, that valuation date. *Long* at 471.

36. In this case, the Respondent had the burden of proving that the 2006 assessment was correct. At most, the Respondent tried to address the subject property's value by offering sales evidence for three other residential properties from the same neighborhood. However, for sales data to be probative, the properties that sold must be sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *See Long* at 470. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to those of the sold properties and how any relevant differences affect the properties' relative values.
37. The Respondent offered purportedly comparable property sales with no related analysis. Other than describing a few general details about the sold properties, the record lacks evidence indicating how the properties are similar to the subject property or how they differ. Moreover, the Respondent did not show how any differences between the properties affected their relative values. She primarily relied on the fact that the sales were in the same neighborhood and averaged out to be more than the assessed value of the subject property. Thus, her sales comparison evidence lacked the type of analysis required by *Long*. The Board therefore finds that the Respondent's evidence is insufficient to prove that the 2006 assessment is an accurate reflection of market value-in-use.
38. Because the Respondent did not offer probative evidence of the property's market value-in-use, the Respondent failed to meet the burden of proving that the assessment was correct. The assessment for 2006 must revert to the prior year's assessment of \$80,400. That, however, does not end the Board's inquiry. The Petitioner requested the assessment be lowered to \$48,577. Thus, the Petitioner has the burden of proving that it

is entitled to any additional reduction. The Board therefore turns to the Petitioner's evidence.

39. The bulk of the Petitioner's evidence consists of photographs and testimony regarding the condition of subject property and its surrounding neighborhood. Those photographs show significant deferred maintenance to the subject property and two neighboring properties. The property record card indicates the subject property was in average condition, but the evidence presented does not support that rating. But determining a condition rating for a property is a subjective exercise, and just one of the many steps outlined in the Guidelines for determining a correct assessment. Whether one step of the Guidelines was properly applied does not directly answer the essential question of the property's market value-in-use.
40. The Tax Court has held that one cannot make a case based on whether the Guidelines were applied properly. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). To successfully make his case, the Petitioner needed to show the assessment does not accurately reflect market value-in-use. *Id.*; see also *P/A Builders & Developers, LLC v. Jennings County Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining the proper focus is not on methodology, but rather, on what the correct value actually is). Here, the Petitioner failed to prove a lower value that would be more accurate.
41. The Petitioner also argues that an area 300 feet from the subject property is in a brownfield. The Petitioner failed to offer any probative evidence on how this fact affects the market value-in-use of the subject property.
42. That being said, the Petitioner offered testimony of objective errors in the assessment. Specifically, a swimming pool, pool deck, and hot tub belonging to a neighboring parcel were erroneously assessed to the subject parcel. These assertions were not contested by the Respondent. Thus, the Board orders those items be removed from the subject property's assessment and property record card.

SUMMARY OF FINAL DETERMINATION

43. The Respondent had the burden in this appeal, but failed to make a prima facie case supporting the current assessment. Therefore, the subject property’s assessment shall revert to prior year’s assessment of \$80,400. While the Petitioner did not offer sufficient evidence of market value-in-use, he offered undisputed evidence of objective errors in the assessment. Based on that evidence, the Board orders that the swimming pool, pool deck, and hot tub be removed from the subject property’s assessment and property record card for the year under appeal.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.