

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

**Petitions:** 28-001-11-1-5-00004  
28-001-12-1-5-00001  
**Petitioners:** Larry and Trudy Ellis  
**Respondent:** Greene County Assessor  
**Parcel:** 28-01-07-000-010.001-001  
**Assessment Years:** 2011 and 2012

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

**Procedural History**

1. The Petitioners initiated their 2011 assessment appeal on May 15, 2012. The Greene County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its assessment determination on September 18, 2012. It reduced the assessment, but not to the level the Petitioners requested.
2. The Petitioners initiated their 2012 assessment appeal on May 6, 2013. The PTABOA issued notice of its assessment determination on September 26, 2013. Again it reduced the assessment, but not to the level the Petitioners requested.
3. The Petitioners filed a Form 131 Petition for Review of Assessment on November 1, 2012, petitioning the Board to conduct an administrative hearing of the 2011 assessment. The Petitioners filed the Form 131 for the 2012 assessment on November 12, 2013. They elected to have both appeals heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on February 19, 2014. He did not inspect the property.
5. Larry and Trudy Ellis were sworn as witnesses. The Respondent's representative, Charles McDonald, also was sworn as a witness. Second Deputy Dawn Abrams was present at the hearing, but she did not testify.

**Facts**

6. The subject property is a single family residence located at 8638 Ingram Road in Solsberry. It has one attached garage and two detached garages.

7. For 2011, the PTABOA determined the assessed value was \$38,000 for land and \$23,200 for improvements (total \$61,200). For 2012, the PTABOA determined the assessed value was \$32,000 for land and \$22,500 for improvements (total \$54,500).
8. The Petitioners contend the total assessed value should be \$15,000 for land and \$13,000 for improvements (total \$28,000) for both 2011 and 2012.

### **Record**

9. The official record contains the following:
  - a. The 2011 and 2012 Form 131 Petitions,
  - b. A digital recording of the hearing,
  - c. Petitioner Exhibit A – Two page statement,  
Petitioner Exhibit 1 – List of repairs dated December 27, 2011,  
Petitioner Exhibit 2 – List of repairs dated April 9, 2012,  
Petitioner Exhibit 3 – Property record card (PRC) and list of errors on PRC,  
Petitioner Exhibit 4 – Two interior photographs of the dwelling,  
Petitioner Exhibit 5 – Three interior photographs of the dwelling,  
Petitioner Exhibit 6 – Two photographs of the dwelling and one of the garage (in the middle),  
Petitioner Exhibit 7 – Three interior photographs of the dwelling,  
Petitioner Exhibit 8 – Three exterior photographs of the dwelling,  
Petitioner Exhibit 9 – Three photographs of the dwelling,  
Petitioner Exhibit 10 – Two photographs of the dwelling (top is exterior and bottom is interior),  
  
Respondent Exhibit 1 – Sales disclosure form for the subject property dated February 3, 2012,  
Respondent Exhibit 2 – Sales validity codes for screening code 2, ProVal,  
Respondent Exhibit 3 – PRC for 2011 showing PTABOA changes,  
Respondent Exhibit 4 – PRC for 2012 showing PTABOA changes,  
Respondent Exhibit 5 – Real Property Assessment Guidelines, Chapter 3, pages 60 - 61,  
Respondent Exhibit 6 – Sales disclosure form for the subject property dated February 8, 2011,  
  
Board Exhibit A – Form 131 Petitions,  
Board Exhibit B – Notices of Hearing,  
Board Exhibit C – Hearing Sign-In Sheet,
  - d. These Findings and Conclusions.

## Contentions

10. Summary of the Petitioners' case:
- a. The Petitioners purchased the subject property for \$28,000 on February 3, 2012. Dzierba Realtors had listed it for \$39,000 since July 7, 2011. And it was listed with another realtor for approximately one year before being listed with Dzierba Realtors. *T. Ellis testimony; Pet'r Ex. A.*
  - b. The Petitioners paid the 2011 taxes. *T. Ellis testimony.*
  - c. Many people viewed the property during that time, but it was in such bad shape no one was interested in the work and money required to remodel the house. The land would be worth more without the structure. *T. Ellis testimony; Pet'r Ex. A.*
  - d. The house and one garage have pole frame construction. The house and one garage have extensive damage due to a recurring water leak from the roof and skylight. Most of the house is not on a foundation. The foundation that does exist is made of cinder block, mortar, and chicken wire. The house needs to have a foundation and crawl space built under it. Because there is no proper foundation, the floors are uneven and must be replaced. The second floor is not equal in height. Drainage around the house is needed. There is evidence of mold in various places in the house and one garage. Roofing and roofing structure on the house and one garage need to be replaced. Floor joists, wall covering, flooring, and other items are damaged by water and mold need to be replaced. Wiring and plumbing need to be redone. Heating and air conditioning duct work need to be replaced. Kitchen cabinets are of no value. Exterior siding, gutters, and soffit need to be replaced. Chimney repair is needed on the house and one garage. *L. Ellis testimony; Pet'r Exs. 1-10.*
  - e. There is no running water, electricity, or county services to this house. The Petitioners have not torn it down for evidentiary reasons in case someone wanted to look at the house. *L. Ellis testimony.*
  - f. There is a pond on part of the subject parcel, but some of the pond is on a contiguous parcel. Not having rights to the whole pond decreases the value of the subject property. *L. Ellis testimony.*
  - g. The length of time on the market, the number of prospective buyers who visited the property, and the deplorable condition all show the purchase price of \$28,000 accurately indicates the market value of this property. That figure should be the assessed value for 2011 and 2012. *T. Ellis testimony.*
11. Summary of the Respondent's case:
- a. The Petitioners purchased the subject property for \$28,000 on February 3, 2012. *Resp. Ex. 1.* The purchase price is not indicative of what the property would have

- brought on the open market. The property was owned by Federal Home Loan Mortgage Corp. when purchased by the Petitioners. It was a forced distressed sale. *McDonald testimony; Resp. Ex. 1.*
- b. Federal Home Loan Mortgage Corp. had purchased the property from Terry Pierce, the Greene County Sheriff. That purchase price was \$117,011. That figure was the balance of the mortgage owed by Bruce Smith, the previous owner. *McDonald testimony; Resp. Ex. 6.*
  - c. The Department of Local Government Finance (DLGF) does not allow assessors to include this type of sale in ratio studies for market comparisons. *McDonald testimony; Resp. Ex. 2.*
  - d. The Assessor agrees the dwelling is in very poor condition and re-classified it as such for 2011 and 2012. The Guidelines define very poor condition as where the “structure is unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it is approaching abandonment. The structure needs major reconstruction to have any effective economic value.” *McDonald testimony; Resp. Exs. 3- 5.*

### **Burden**

12. 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. 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). The burden-shifting statute as recently amended by P.L. 97-2014, however, creates two exceptions to that rule.
13. First, 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).
14. Second, Indiana Code section 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.”

15. The amended version of the burden-shifting statute was effective March 25, 2014, and it applies to all appeals since then.

### **Analysis for 2011**

16. Initially our analysis will consider the burden-shifting statute. The total 2010 assessment on the subject property was over \$200,000. The record contains no evidence that there was any appeal regarding the 2010 assessment. The total 2011 assessment on the subject property also started at over \$200,000. The Petitioners appealed for 2011 and as a consequence, the PTABOA reduced the total 2011 assessment to \$61,200. The Petitioners, however, claim the PTABOA's value is still too high. In this case, the 2011 assessment did not increase by more than 5% from 2010. In fact it went down with the PTABOA's determination. Therefore, neither part of the burden-shifting statute applies to the 2011 assessment.
17. The Petitioners made a case for reducing the 2011 assessment.
  - a. Real property is assessed based on its "true tax value," which 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). 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 of 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, including an appraisal prepared in accordance with generally recognized appraisal standards. "Whether an assessment is correct shall be determined on the basis of whether, in light of the relevant evidence, it reflects the property's true tax value as defined in this manual." *Id.* at 3.
  - b. A sale of the subject property is often the best evidence of its value. *See Hubler Realty, Inc. v. Hendricks Cty Ass'r*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010). And in this case there is no dispute that the Petitioners bought their property for \$28,000 on February 3, 2012.<sup>1</sup>
  - c. Regardless of the type of valuation evidence, the record must establish how that evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell*

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<sup>1</sup> Much of the Petitioners' evidence related to many things that are wrong with the house and garage such as water damage, mold, and poor drainage. Furthermore, the Respondent agreed that the condition was very poor. While these kinds of problems almost certainly lower the value of the property, the Petitioners offered nothing to quantify the loss of value except their purchase price. The multitude of problems is relevant only because they provide some support for the price the Petitioners paid. Therefore, the Board finds it unnecessary to discuss those individual problems in order to make a final determination.

*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 2011 assessment, the valuation date was March 1, 2011. 50 IAC 21-3-3 (2010). In this case the Petitioners' purchase is close enough to the required valuation/assessment date to have relevance.

- d. The crux of this particular dispute is whether the transaction where the Petitioners bought the subject property for \$28,000 is a reliable indication of its value. According to the Petitioners it is and according to the Respondent it is not. The determination of this question requires examination of the circumstances surrounding that transaction. To be sure, for a sale price to be a reliable indicator of market value or market value-in-use, the sale must have involved typically motivated and informed parties, the property must have been exposed to the open market for a reasonable time, the payment must have been made in terms of cash or comparable financial arrangements, and the price must have been unaffected by special financing or concessions.
- e. The Respondent attacked the Petitioners' evidence because they purchased the property from a bank that obtained the property after a foreclosure. According to Mr. McDonald, this type of sale cannot be used by assessors in ratio studies for market comparisons. He characterized it as a forced distressed sale. The Respondent's argument implies that a similar prohibition applies in this case, but cited no authority for that proposition. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (explaining that conclusory statements do not constitute probative evidence). Furthermore, the Respondent identified no other specific factors to show the Petitioners' purchase price is not a valid indicator of market value-in-use.
- f. While the Board will not apply an absolute rule against a foreclosure/bank sale, it is important to recognize that the circumstances relating to the transaction should be examined in order to determine whether the sale price is a reliable indication of market value or market value-in-use. Substantial evidence that the Petitioners bought the property in a forced sale or a distressed sale certainly could have been significant—if it were presented. But the record contains no such evidence. To the contrary, the record indicates that the subject property was listed with Dzierba Realtors from July 2011 until the Petitioners bought it in February 2012 and before that it was listed with another realtor for approximately one year. This kind of marketing effort appears to be quite reasonable. The Respondent offered no evidence to the contrary and failed to explain how these facts indicate an actual forced sale or distressed sale.
- g. Therefore, the Petitioners' purchase price is substantial evidence and supports the contention the 2011 assessed value should be only \$28,000. It is the most credible evidence in the record, regardless of who had the burden of proof.

### **Analysis for 2012**

18. Again, the analysis for 2012 starts with consideration of the burden-shifting statute. The determination for a reduction for the 2011 assessment means that for 2012 the Respondent has the burden to prove the PTABOA's valuation of \$54,500 is correct. Ind. Code § 6-1.1-15-17.2(d). Nevertheless, in this situation the burden-shifting statute does not make any difference to the final outcome for 2012.
19. The evidence from both parties for 2012 was the same as the evidence they submitted for 2011, but the date of purchase (February 3, 2012) is even closer to the required valuation date (March 1, 2013). Based upon the analysis already stated, the Board concludes that the purchase price of \$28,000 is the most credible evidence in the record and is enough to prove an accurate assessed value for 2012.

### **Conclusion**

20. In this particular case, for both assessments the most credible and persuasive evidence about the market value-in-use of the subject property is the Petitioners' purchase price. Therefore, the Board finds in favor of the Petitioners.

### **Final Determination**

In accordance with the above findings and conclusions, the 2011 assessment will be changed to \$28,000 and the 2012 assessment will be changed to \$28,000.

ISSUED: May 14, 2014

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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 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>>.