

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

**Petition No.:** 15-003-12-1-5-00157  
**Petitioner:** Thomas Christopher Houchens  
**Respondent:** Dearborn County Assessor  
**Parcel:** 15-07-32-203-047.000-003  
**Assessment Year:** 2012

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

**Procedural History**

1. The Petitioner initiated his 2012 assessment appeal with the Dearborn County Assessor on October 25, 2012.
2. The Dearborn County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on January 22, 2013, denying the Petitioner any relief.
3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on March 1, 2013.<sup>1</sup> He elected the Board's small claims procedures.
4. The Board issued a notice of hearing on February 7, 2014.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on April 9, 2014. She did not inspect the property.
6. Thomas Christopher Houchens appeared *pro se*. Attorney Andrew Baudendistel appeared for the Respondent. Mr. Houchens, County Assessor Gary Hensley, and Mark Neff were sworn as witnesses.

**Facts**

7. The property under appeal is a residential rental property located at 152 Conwell Street in Aurora.
8. The PTABOA determined the following assessment :  
Land: \$6,500                      Improvements: \$55,900                      Total: \$62,400
9. At the hearing, Mr. Houchens requested a total assessment of \$47,250.

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<sup>1</sup> The Board inadvertently file stamped the Form 131 February 29, 2013, however that date did not exist.

## **Record**

10. The official record for this matter is made up of the following:
- a) Petition for Review of Assessment (Form 131) with attachments,
  - b) A digital recording of the hearing,
  - c) Petitioner Exhibit 1: “Property Report” prepared by licensed real estate broker Andrew Lohmiller, dated March 2, 2013, retrospective to March 1, 2012.  
Respondent Exhibit 1: Appraisal completed by certified general appraiser Jeffrey Thomas, dated March 5, 2014, with an effective date of March 1, 2012.  
Board Exhibit A: Form 131 Petition with attachments,  
Board Exhibit B: Notice of hearing dated February 7, 2014,  
Board Exhibit C: Hearing sign-in sheet.
  - d) These Findings and Conclusions.

## **Contentions**

11. Summary of the Petitioner’s case:
- a) The 2012 assessment is too high. Mr. Houchens presented an opinion of value prepared by licensed real estate broker Andrew Lohmiller, indicating the value was no more than \$38,000 as of March 1, 2012. *Houchens argument; Pet’r Ex. 1.*
  - b) Mr. Lohmiller based his valuation estimate on an analysis of three comparable properties. He selected comparables in the same town and school district as the subject property. Similar to the subject property, the comparables have three bedrooms, one bathroom, and lack a garage. All of the properties have similar-sized lots. Further, the square footage of the comparable homes measures within 600 square feet of the subject property. Mr. Lohmiller also indicated in his report that he considered condition, location, style, age, and functionality. *Houchens testimony; Pet’r Ex. 1.*
  - c) All the comparables sold within six months of March 1, 2012. Mr. Lohmiller’s analysis indicates an average sale price of \$40,000 for these comparables. The average sale price per square foot was \$31. When that average is applied to the subject property, measuring 1,092 square feet, the value is \$33,852. Based on that computation and his exterior inspection of the subject property and its neighborhood, Mr. Lohmiller concluded that the value of the subject property “is no more than \$38,000.” *Houchens testimony; Pet’r Ex. 1.*

- d) Based on Mr. Lohmiller's opinion of value and the Respondent's appraisal, indicating a value of \$63,000 for the subject property, the Petitioner suggested a compromise of \$47,250. While the Petitioner believes that Mr. Lohmiller's opinion better reflects the "distressed neighborhood," the Respondent's appraisal supports the suggested compromise value. Specifically, the average square foot price used in the Respondent's appraisal is \$44. When you apply that to the subject property, it results in a value of \$48,400. This is very close to the requested value of \$47,250. Further, the Respondent's appraiser states in his report that his comparable properties are not in the subject property's immediate area, and concedes that properties in distressed areas sell for less. *Houchens testimony (referencing Resp't Ex. 1)*.
- e) Finally, the Petitioner purchased the property in an "extremely distressed" state for \$150. He has made repairs and is currently renting the property for \$650 per month. Other properties in the area are in terrible shape. They affect the value of the subject property. *Houchens testimony*.

12. Summary of the Respondent's case:

- a) The subject property is assessed correctly. In an effort to prove this, the Respondent presented an appraisal prepared by Indiana certified appraiser Jeffrey D. Thomas. He prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). He valued the subject property at \$63,000 as of March 1, 2012. *Hensley testimony; Resp't Ex. 1*.
- b) The appraisal considered all three approaches to value. The income approach applied a Gross Rent Multiplier (GRM) of 140 to a market rent of \$450 per month to develop a value. Mr. Houchens stated he charged \$650 for rent. If the actual rent of \$650 had been utilized, the value of the subject property would have been \$91,000. The subject property might be under-valued. *Hensley testimony; Baudendistel argument*.
- c) The Respondent based assessments on the cost approach and trending. Normally the income approach is not utilized because the required information is not available. Further, the 2012 assessments and ratio studies were approved by the state and were completed in compliance with regulations and guidelines. *Hensley testimony*.
- d) Finally, Mr. Thomas' appraisal should carry more weight than the report submitted by the Petitioner because Mr. Thomas is a certified appraiser and Mr. Lohmiller is not. *Baudendistel argument*.

### **Burden of Proof**

13. 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

14. First, Ind. Code section 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).
15. Second, Ind. 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 IC 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.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
16. The 2012 assessment was lower than the 2011 assessment. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

### **Analysis**

17. The Petitioner failed to make a case for reducing the 2012 assessment.
  - a) Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the market value-in-use. To show a property’s market value-in-use, a party may offer evidence that is consistent with the definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles.
  - b) Regardless of the valuation method, 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 Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012 assessments, the assessment date and valuation date were March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

- c) Here, the Petitioner offered a realtor's opinion of value. The realtor purports to rely on the sales comparison approach to estimate the value of the subject property. The realtor appears to have compared many aspects of the properties, including number of bedrooms, number of bathrooms, condition, location, style, age, and functionality. The realtor's opinion discussed how the properties are similar, but failed to discuss differences. Moreover, it failed to account for how differences affect the relative values. *See Long*, 821 N.E.2d at 470-71. The realtor merely used the average square-foot price of the comparables as his value estimate. But the Petitioner offered no substantial evidence that this method is a generally accepted appraisal practice. Therefore, it does not help to prove a more accurate valuation for the subject property. Furthermore, it provides no substantial support for the Petitioner's offer to compromise with a valuation that roughly would split the difference.
- d) The Respondent's appraisal might indicate a value slightly higher than the current 2012 assessment, but the Respondent did not request an increase. Therefore, addressing that appraisal any further is unnecessary.
- e) Where the Petitioner has not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

18. The Board finds for the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions of law, the 2012 assessment will not be changed.

ISSUED: October 2, 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 of 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>>.