

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

**Petition No.:** 45-004-07-1-5-00001  
**Petitioner:** Elmer F. Shults  
**Respondent:** Lake County Assessor  
**Parcel No.:** 45-09-06-377-013.000-004  
**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 Petitioner initiated his assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 Petition with the PTABOA, seeking a review of his property's 2007 assessment on February 6, 2009.
2. The PTABOA issued a notice of its decision on May 25, 2011.
3. The Petitioner filed his Form 131 petition with the Board on June 13, 2011. The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 7, 2012.
5. The Board held an administrative hearing on August 27, 2012, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The following persons were present and sworn in at hearing:

For Petitioner: Elmer F. Shults, property owner,

For Respondent: Sherry Stone-Lucas, Director of Real Estate, Lake County.

**Facts**

7. The property under appeal is a single-family home located at 5500 East 8<sup>th</sup> Avenue, in Gary, Indiana.
8. The ALJ did not conduct an on-site inspection of the property under appeal.

9. For 2007, the PTABOA determined the assessed value of the Petitioner's property to be \$8,400 for the land and \$39,000 for the improvements, for a total assessed value of \$47,400.
10. The Petitioner requested a total assessed value of \$12,500.

### **Issues**

11. Summary of the Petitioner's contentions in support of the alleged errors in his property's assessment:
  - a. The Petitioner contends that his property was assessed too high in 2007 based on the property's purchase price. *Shults testimony*. Mr. Shults testified that he purchased the property in 1990 for \$8,225. *Id.* In support of this contention, Mr. Shults submitted a purchase agreement dated December 7, 1990. *Petitioner Exhibit A*. According to Mr. Shults, property values were higher in 1990 than in 2007. *Shults testimony*.
  - b. The Petitioner also contends that his property was over-assessed for the 2007 assessment year based on an opinion of value prepared by Edward L. Griffin, a real estate broker with Griffin Realty Company. *Shults testimony*. Mr. Griffin estimated the value of the property to be \$13,000, based on the sales of three properties in 2007. *Id.*; *Petitioner Exhibit C*. According to Mr. Shults, Mr. Griffin admitted that his estimate of value might be too high because he based his value on the subject property having a construction year of 1945, rather than its actual year of construction of 1925. *Shults testimony*. In addition, Mr. Shults argues that Mr. Griffin's analysis included sales in the Miller Beach area, which has higher property values than the Petitioner's property's neighborhood. *Id.*; *Petitioner Exhibit C*.
  - c. Further, the Petitioner contends that the assessed value of his property was excessive based on the sale of an adjacent property. *Shults testimony*. According to Mr. Shults, the house at 5434 E. 8<sup>th</sup> Avenue, which is identical to the subject property except that it does not have a garage, sold for \$6,000 in July 2012. *Id.* In support of this contention, Mr. Shults submitted a Statement of Material Fact signed by Albert Manns. *Petitioner Exhibit D*. Mr. Shults argues that, although the neighboring property did not sell in 2007, it is a gauge of values in the property's crime-infested area. *Shults testimony*.
  - d. Finally, the Petitioner argues that the assessor acted unreasonably in assessing his property. *Shults testimony*. According to Mr. Shults, the property was assessed for \$3,030 when he purchased the property, but it increased to \$9,100 after his purchase and, at one time, was as high as \$64,000. *Shults testimony*. Mr. Shults argues that the law requires that assessments be based on true tax value, which is the value the property has in exchange for money. *Id.*; *Petitioner Exhibit B*. Mr. Shults contends that the assessor has violated the assessment laws – which has caused great financial and emotional distress to him and his daughter-in-law. *Shults testimony*. As an example, Mr. Shults presented a letter from the PTABOA which purported to

schedule a hearing on April 7, 2011, but he argues, he did not receive the letter until May 14, 2011. *Id.*; *Petitioner Exhibit E*.

- e. In response to the Respondent's case, Mr. Shults argues that the Board should give little weight to the assessor's evidence. *Shults testimony*. According to Mr. Shults, the Respondent's appraisal is an estimate of value rather than an actual market transaction. *Shults testimony; Respondent Exhibit 6*. Moreover, he argues, the Respondent's appraisal is for a property at 4534 Georgia Street, which is located on the other side of the city. *Shults testimony*. According to Mr. Shults, the appraised house is forty years newer than his house and it also has three bedrooms and central air-conditioning. *Id.* In addition, none of the "comparable" sales supporting the appraised value of 4534 Georgia Street sold in 2007. *Id.* Mr. Shults contends he was told at his county hearing that sales that did not occur in the appealed tax year are not acceptable evidence of a property's value. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent's representative contends that the assessed value of the subject property was correct for 2007 based on the appraised value of a similar property. *Stone-Lucas testimony*. In support of its contention, the Respondent submitted an appraisal prepared by David A. Hasselbring, a licensed residential appraiser, for 4534 Georgia Street. *Respondent Exhibit 6*. The appraiser estimated the value of the property to be \$46,000 as of January 1, 2008. *Id.* According to Ms. Stone-Lucas, the appraiser used sales from 2006, 2007, and 2008 and the assessor trended the appraised value to arrive at a value of \$47,000 for 2007. *Stone-Lucas testimony*.
- b. The Respondent's representative further argues that the Petitioner failed to present any evidence relevant to a 2007 appeal. *Stone-Lucas testimony*. According to Ms. Stone-Lucas, only sales that occurred in 2005 and 2006 are evidence of a property's value for the March 1, 2007, assessment. *Stone-Lucas testimony*. The Petitioner's evidence, to the contrary, is from a remote time period and from a time when a different tax system was in effect. *Id.*
- c. Finally, Ms. Stone-Lucas contends that if the Petitioner felt he was not given due process at the county level he could have called and his hearing with the PTABOA would have been rescheduled. *Stone-Lucas testimony*.

### **Record**

13. The official record for this matter is made up of the following:

- a. The Form 131 petition,
- b. A digital recording of the hearing labeled 45-004-07-1-5-00001 Elmer F. Shults,

c. Exhibits:<sup>1</sup>

Petitioner's Statement of Issues,  
Petitioner Exhibit A – Purchase agreement,  
Petitioner Exhibit B – Indiana Code § 6-1.1-1-3,  
Petitioner Exhibit C – Value opinion of Edward L. Griffin, Broker,  
Petitioner Exhibit D – Statement of Albert Manns,  
Petitioner Exhibit E – Letter from the PTABOA to Mr. Shults,  
Petitioner Exhibit F – Indiana Code § 6-1.1-37-2,  
Petitioner's Final Statement,

Respondent Exhibit 1 – Form 130 appeal,  
Respondent Exhibit 2 – Form 134 from Calumet Township,  
Respondent Exhibit 3 – Hearing waiver form,  
Respondent Exhibit 4 – PTABOA hearing notice  
Respondent Exhibit 5 – Form 115 notice,  
Respondent Exhibit 6 – Appraisal report for 4534 Georgia Street, a list of  
comparable sales, and a calculation of the average price  
per square foot of the comparable sales,

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of hearing dated June 7, 2012,  
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

**ANALYSIS**

14. The Petitioner failed to establish a prima facie case that the assessed value of his property for the March 1, 2007, assessment date was incorrect. 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 have traditionally 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. In 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.

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<sup>1</sup> Ms. Stone-Lucas objected to the Petitioner's evidence because she believed he had not exchanged the evidence prior to the hearing as she had requested in her letter dated August 7, 2012. Mr. Shults, however, produced the certified mail receipt proving he had mailed the evidence to the County Assessor.

- 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); *PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). 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 (USPAP) 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 property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its 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 2007 assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. The Petitioner first contends that the assessed value of his property was too high in 2007 based on his purchase of the property for \$8,225 in 1990. *Shults testimony; Petitioner Exhibit A*. The sale of the subject property is often the best evidence of the property's value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). The Petitioner, however, bought the subject property sixteen years prior to the relevant January 1, 2006, valuation date. Thus, his purchase of the property is too remote from that valuation date for his purchase price to be probative of the property's true tax value. Mr. Shults attempts to relate his purchase price to the relevant valuation date by arguing that property values were higher in 1990 in his neighborhood than they were in 2007, but he offered no evidence to substantiate that opinion. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- e. The Petitioner also contends that the value of his property was over-stated based on a broker's opinion of value that estimated the property's value to be \$13,000. *Shults testimony; Petitioner Exhibit C*. Although the opinion of value was undated, the "comparable" sales were from November and December of 2008 and the attached MLS listings were printed on January 30, 2009, and February 2, 2009. Thus, the evidence suggests that Mr. Griffin valued the Petitioner's property as of February of 2009, which is three years after the valuation date. Also, his opinion of value did not state whether Mr. Griffin used generally accepted appraisal methods to arrive at his opinion of market value. Consequently, his estimate of the Petitioner's property's market value is not probative of the property's market value-in-use. *See Inland Steel*

*Co. v. State Board of Tax Commissioners*, 739 N.201,220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique). Likewise, the list of sales in 2007 attached to *Petitioner's Exhibit C* also has little probative value given the January 1, 2006, valuation date for the March 1, 2007, assessment.<sup>2</sup> Moreover, there is no indication of who compiled the report or how the sales were selected. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some proof of the accuracy and credibility of the evidence.

- f. Similarly, the Petitioner contends that his property was over-valued based on the sale of a neighboring property for \$6,000 in July 2012. But again, this sale took place more than six years after the relevant valuation date and is not probative of the value of the subject property on January 1, 2006.
- g. Finally, the Petitioner argues that his property's value increased from \$3,030 in 1989 to a high of \$64,000, even though market values of properties in the area have decreased. However, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) ("Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.") Consequently, what the assessment was for the Petitioner's property in prior years has little relevance or probative value in determining the property's 2007 assessment.
- h. To the extent that the Petitioner contends his due process rights were denied by the PTABOA, those contentions are largely irrelevant because the Board's proceedings are *de novo*. While the Board sympathizes with Mr. Shults' frustration, the Board does not review a county assessor's or PTABOA's determination for an abuse of discretion. Mr. Shults needed to offer probative evidence that his property's assessment did not accurately reflect its market value-in-use for the 2007 assessment year. This he failed to do.
- i. Where the Petitioner has not supported his 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).

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<sup>2</sup> The Petitioner contends that he was told he must use "sales that occurred in the appealed tax year." *Shults testimony*. However, the notice of the Petitioner's PTABOA hearing states: "While generally the 2007 assessment is to reflect the value of the property as of January 1, 2006, pursuant to 501 AC 21-3-3(a), [sic] local assessing officials shall use sales of properties occurring between January 1<sup>st</sup>, 2005, and December 31<sup>st</sup>, 2006 in performing sales ratio studies for the March 1, 2007 assessment date." *Respondent Exhibit 4*.

### **Conclusion**

15. The Petitioner failed to establish a prima facie case that the assessed value of his property was incorrect for the 2007 assessment year. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property should not be changed.

ISSUED: November 9, 2012

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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>>.