

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

**Petition #:** 53-009-02-1-5-00399  
**Petitioner:** Donald Coller  
**Respondent:** Perry Township Assessor (Monroe County)  
**Parcel #:** 0154237000  
**Assessment Year:** 2002

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 an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 9, 2003.
2. The PTABOA's Notification of Final Assessment Determination was mailed to the Petitioner on August 1, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on August 28, 2003. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 30, 2005.
5. The Board held an administrative hearing on September 15, 2005, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Milo Smith, Taxpayer Representative
  - b) For Respondent: Judith Sharp, Monroe County Assessor  
Ken Surface, Nexus Group

Marilyn Meighen was also present and acted as legal counsel for the Perry Township Assessor and the Monroe County Assessor.

## Facts

7. The property is classified as residential, as is shown on the property record card (the PRC) for parcel # 0154237000.
8. The ALJ did not conduct an inspection of the property.
9. The Monroe County PTABOA determined the assessed value of the subject property to be \$50,600 for the land and \$1,492,600 for the improvements for a total assessed value of \$1,543,200.
10. The Petitioner requested an assessed value of \$50,600 for the land and \$990,000 for the improvements for a total assessed value of \$1,040,600.

## Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a) The assessed value of the subject residence exceeds the replacement cost due to 1.60 neighborhood factor and/or the "AA" grade factor being applied. *Smith testimony & Board Exhibit A.*
  - b) While the Petitioner did not dispute the application of the grade factor, the Petitioner alleged that the subject property should not be subject to the neighborhood factor that is applied to other homes in the neighborhood because his home is not like the other homes in the neighborhood. In support of this argument, the Petitioner submitted the definitions of "neighborhood," "homogeneity" and "homogeneous". *Smith testimony & Petitioner Exhibits 2 – 4.* The Petitioner also referenced the Characteristics of Neighborhoods and Districts found in *The Appraisal of Real Estate (Eleventh Edition)* published by the Appraisal Institute. *Smith testimony & Petitioner Exhibit 5.*
  - c) The Petitioner argued that the subject property is not comparable to the others in the subject neighborhood particularly the five sold properties used in determining the neighborhood factor therefore it should not be adjusted by the 1.60 neighborhood factor. The subject property is an exception to the neighborhood. *Smith testimony.* According to the Petitioner, the grade factors of the sold properties used to determine the subject's neighborhood factor were all significantly lower than the grade factor applied to the subject property. The sold properties were all older and therefore received more physical depreciation than the subject property. *Smith testimony & Petitioner Exhibit 11.*
  - d) The Petitioner also alleged that the property is over-valued based on its construction cost. In support of this, the Petitioner submitted an affidavit wherein he testified that the "subject residence was built for a construction cost of \$956,000" in 1995. *Petitioner Exhibits 12 - 14.* The Petitioner also submitted

Marshall & Swift tables to convert the reported construction cost of the subject property to a construction cost on the assessment date. *Smith testimony & Petitioner Exhibits 6 and 8 – 10.*

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

- a) Respondent’s counsel objected to Petitioner’s affidavit as hearsay evidence.<sup>1</sup> *Petitioner Exhibit 14.* Counsel characterized the affidavit as one line that says ‘I built this home in 1995’ and argued that it does not demonstrate for the Board various items that make up that construction cost figure. *Meighen argument.*
- b) Respondent’s counsel also offered the 2002 Real Property Assessment Guidelines in support of her argument that the affidavit is not probative. According to the Guidelines, “The cost to be estimated by the assessor is made up of all the direct labor and material costs plus the indirect expenses required to construct an improvement. Examples of direct costs include labor, materials, supervision, utilities used during construction, and equipment rental. Indirect cost examples are building permits, fees, insurance, taxes, construction interest, overhead, profit, and professional fees such as those charged by architects, engineers, consultants, and attorneys. The cost tables contain both direct and indirect costs. When comparing the costs in the guideline to actual costs it is critical that the actual construction costs represent all costs (direct and indirect) regardless of whether or not they were realized, as in the case of do-it-yourself construction.” 2002 REAL PROPERTY ASSESSMENT GUIDELINE (GUIDELINES), Intro. at 1.
- c) According to the Respondent, a \$300,000 home stood on the subject site prior to the Petitioner purchasing the property. *Sharp testimony.* The Respondent alleges that when the Petitioner purchased the property the Petitioner tore the existing house down and built a new home. *Id.* The Respondent argued that the cost of the demolition of a fairly new, very lovely home had to be taken into account if Petitioner’s construction costs were considered. *Id.*
- d) The Respondent also contends that the subject property is properly assessed. *Sharp testimony.* According to the Respondent, the subject property’s legal description is Bittner Woods. This is an upscale subdivision on the eastside of Bloomington. It is a very desirable, very stable area where homes range from \$200,000 to \$400,000. *Id.* The Petitioner’s home is a castle type looking structure with nothing but the best in the home. There are architectural details everywhere. This is an elegant home. *Id.* The subject home “stands above the

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<sup>1</sup> According to Respondent’s counsel, the absence of Mr. Collier from the hearing results in the inability of the Respondent to question him relative to specifics of the affidavit. *Meighen argument.* Ms. Meighen did not request exclusion of the evidence but stated for the record that determinations cannot be based solely on hearsay evidence.

rest of the homes” in the neighborhood. It was the Petitioner’s desire to do that.  
*Id.*

- e) Respondent’s counsel noted that the Petitioner submitted no evidence of the market value of the home and questioned the Petitioner’s “construction costs” since it has not been determined what the actual costs of construction were. *Petitioner Exhibit 15*. The Respondent testified that there was no need to submit additional evidence due to their belief that the Petitioner had not made a prima facie case. *Meighen argument*.

### **Record**

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR # 6187.
- c) Exhibits:

Petitioner Exhibit 1: 2002 Real Property Assessment Manual (MANUAL)  
at 2

Petitioner Exhibit 2: Merriam-Webster definition of “homogeneous”

Petitioner Exhibit 3: Merriam-Webster definition of “homogeneity”

Petitioner Exhibit 4: GUIDELINES app. B, at 8

Petitioner Exhibit 5: The Appraisal of Real Estate – Neighborhoods, page  
190

Petitioner Exhibit 6: Marshall & Swift – January 1999 – Bloomington  
multiplier

*Petitioner Exhibit 7: Does not exist – duplicate of another exhibit*

Petitioner Exhibit 8: Marshall & Swift – January 1999 – Comparative Cost  
Multipliers

Petitioner Exhibit 9: Marshall & Swift – January 1999 – Comparative Cost  
Multipliers formula

Petitioner Exhibit 10: Marshall & Swift – Class D – Single Family  
residences

Petitioner Exhibit 11: Summary of “Neighborhood Worksheets” obtained  
from the Assessor

Petitioner Exhibit 12: LSA Document # 03-179 (F)

Petitioner Exhibit 13: “Property Tax Appeals and the Appeal Procedure”  
brochure

Petitioner Exhibit 14: Affidavit from Donald Coller

Petitioner Exhibit 15: Subject PRC with the correct assessed value  
requested by petitioner

Respondent Exhibits: None were submitted

Board Exhibit A: Form 131 Petition  
Board Exhibit B: Notice of Hearing on Petition  
Board Exhibit C: Notice of Appearance

- d) These Findings and Conclusions.

### Analysis

14. The most applicable governing cases are:

- a) The petitioner has the burden to establish a prima facie case, proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc., v. Washington Township Assessor*, 802 N.E. 2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
- c) Once the petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E. 2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E. 2d at 479

15. The Petitioner failed to provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the assessment on the subject property is excessive. In support of this claim, the Petitioner argued that (1) the neighborhood factor should not apply to its property and (2) actual construction costs evidence that the house is over-valued.

#### *Neighborhood Factor*

- b) The Petitioner alleges that his home should not be subject to the neighborhood factor. According to the Petitioner, the subject property is not comparable to the others in the subject neighborhood particularly the five sold properties used in determining the 1.60 neighborhood factor.
- c) A neighborhood is defined as “[a] geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and

housing characteristics.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A (GUIDELINES), glossary at 14 (incorporated by reference at 50 IAC 2.3-1-2). A “neighborhood factor” accounts for the “economic characteristics” of a neighborhood, “such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size.” GUIDELINES, app. B at 8. The neighborhood factor is determined “based upon an analysis of residential properties that have sold within the neighborhood.” *Id.* The factor is computed by dividing the actual sales price of a property’s improvements (determined by subtracting the land value) by the assessment improvement value. *Id.* at 9. The resulting number is an adjustment factor to further refine the assessments in a neighborhood so that they better reflect the market value-in-use.

- d) Neighborhoods share common development characteristics, average ages of the improvements, size of lots, subdivision plats and zoning maps, school and other taxing district boundaries, among other characteristics. GUIDELINES, Chap. 2 at 8. However, Petitioner’s own evidence observes that “no group of inhabitants, buildings, or business enterprises can possess identical features or attributes.” *Petitioner Exhibit 5.*
- e) Here the Petitioner merely points to the value of the homes used to determine the neighborhood factor and alleges that the subject property is not comparable to the others in the subject neighborhood particularly the five sold properties used in determining the neighborhood factor therefore it should not be adjusted by the 1.60 neighborhood factor. According to the Petitioner, the subject property is an exception to the neighborhood.
- f) While the Petitioner’s home may be overbuilt for the neighborhood, the Petitioner did not present any evidence to demonstrate that the Respondent improperly applied the factors identified in the applicable administrative rules drawing the neighborhood boundaries. See GUIDELINES, ch. 2 at 8. Nor did the Petitioner show that a different neighborhood factor was applied to the subject property than to other properties in the same neighborhood or that an error was made in calculating the neighborhood factor that is applied to the subject property. The Petitioner presented no alternative calculation or any additional sales disclosures to suggest that the neighborhood factor is incorrect. Instead, the Petitioner merely alleged that his home should not be subject to the neighborhood factor. Petitioner has alleged no error in the assessment. This falls far short of the burden imposed upon a Petitioner. To prevail in an appeal, a Petitioner must demonstrate both that an assessment is incorrect and, specifically, what the correct assessment would 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).<sup>2</sup>

### *Construction Costs*

- g) The Petitioner also alleged that the subject dwelling was over-valued based on the construction cost of the home. According to Petitioner's affidavit, the cost of construction for the subject structure was \$956,000 in 1995. *Petitioner Exhibit 14*. The Petitioner's witness used Marshall & Swift cost multipliers to trend that cost to January 1, 1999, valuation date. *Petitioner Exhibits 6, and 8 – 10*. According to the Petitioner, this resulted in a value of \$1,044,900. *Petitioner Exhibit 15*.
- h) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. "Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles." *Id.*
- i) According to the Guidelines, "The cost to be estimated by the assessor is made up of all the direct labor and material costs plus the indirect expenses required to construct an improvement. Examples of direct costs include labor, materials, supervision, utilities used during construction, and equipment rental. Indirect cost examples are building permits, fees, insurance, taxes, construction interest, overhead, profit, and professional fees such as those charged by architects, engineers, consultants, and attorneys. The cost tables contain both direct and indirect costs." GUIDELINES, Intro. at 1. We believe these same direct and indirect costs must be accounted for in "construction costs" presented by a taxpayer in an assessment appeal as well as by assessing officials assessing property.
- j) Thus, while a taxpayer may establish a prima facie case based upon construction cost information, that information must include all costs. For example, the cost of purchasing the property and demolishing the existing house would be considered part of the costs of constructing the subject property. Further, if the Petitioner

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<sup>2</sup> Had Petitioner submitted evidence of the market value of the subject property, the evidence might have in fact shown that the property is over-assessed. However, that is not the evidence the Petitioner chose to present.

acted as his own contractor, a “contractor’s fee” would need to be added to the construction costs to accurately reflect market value in use. According to the Guidelines, “the actual construction costs [must] represent all costs (direct and indirect) regardless of whether or not they were realized, as in the case of do-it-yourself construction.” GUIDELINES, Intro. at 1.

- k) Here, the Petitioner’s affidavit is insufficiently detailed to determine what costs have been included. There is no information regarding the purchase of the property or the costs of tearing down the existing structure. Nor is there any information regarding the administrative and permitting costs of the construction. Further, no evidence is offered as to contractor costs, mark up or other costs that would reflect the market value of the property. Further, the lack of receipts or documentation of the Petitioner’s costs and the unavailability of the Petitioner to respond to questions make Petitioner’s affidavit nothing more than a conclusory statement with no probative value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
- l) 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)

**Conclusion**

16. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review



## IMPORTANT NOTICE

### - Appeal Rights -

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**