

# INDIANA BOARD OF TAX REVIEW

## Small Claims Final Determination Findings and Conclusions

**Petition #:** 64-004-02-1-5-00027  
**Petitioner:** Patricia A. Anderson  
**Respondent:** Center Township Assessor (Porter County)  
**Parcel #:** 64-09-26-200-042.000-004  
**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. Pursuant to Ind. Code § 6-1.1-15-3, Patricia A. Anderson (the Petitioner) filed a Form 131, Petition for Review of Assessment, petitioning the Board to conduct an administrative hearing of the above petition. The Form 131 petition was filed on December 1, 2004. The determination of the Porter County Property Tax Assessment Board of Appeals (PTABOA) was issued on November 3, 2004.

### Hearing Facts and Other Matters of Record

2. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was scheduled for January 10, 2006, in Valparaiso, Indiana. The Notice of Hearing on the Petition was mailed to the Petitioner on November 7, 2005, at the address listed on the Form 131 petition.
3. On January 10, 2006, Hearing Officer Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3, conducted the administrative hearing on the Form 131 petition. Neither the Petitioner nor a representative for the Petitioner appeared at the hearing. Debra L. Walker, Center Township Chief Deputy, Mary Dambek, Center Township Deputy Assessor, Shirley LaFever, Porter County Assessor, Janine Chrisman and Lindy Wilson, members of the Porter County PTABOA were present to represent Porter County and Center Township respectively.
4. The Petitioner contacted the Board on January 10, 2006, prior to the scheduled hearing and requested a continuance on the hearing by voice mail. In response, the Board left a message at the phone number provided by the Petitioner on January 10, 2006, with

instructions on the procedure for requesting a continuance on the hearing as set forth in 52 IAC 3-1-7. The Petitioner failed to request a continuance in writing, or specify the reason for continuance of the hearing. Therefore, the hearing was conducted as scheduled. Subsequently, the Petitioner sent a letter to the Board, dated January 21, 2006, requesting that the Board review her case based on the information submitted.

### **Facts**

5. The subject property is located at 868 West Street, Valparaiso, Center Township in Porter County.
6. The ALJ did not conduct an on-site visit of the property.
7. The PTABOA determined that the assessed value of the subject property is \$37,800 for the land and \$77,000 for the improvements for a total assessed value of \$114,800.
8. The Petitioner, on the Form 131 petition, requests a value of \$22,500 for the land and \$51,000 for the improvements for a total value of \$73,500.

### **Issue**

9. The Petitioner failed to appear at hearing and support her appeal.
  - a. In her Petition,<sup>1</sup> the Petitioner alleged that approximately a third of the property is wetlands. In support of this contention, the Petitioner submitted a letter from the Department of the Army, Army Corps of Engineers, dated March 23, 2004, confirming that 3/10 to 1/3 of the subject property is wetlands within Army Corps of Engineers' jurisdiction. *Board Exhibit A.*
  - b. Further, in her Petition, the Petitioner alleged that the subject property was over-valued on the basis of an appraisal. As an attachment to her Petition, the Petitioner submitted a "Uniform Residential Appraisal Report" dated January 9, 2001, that valued the property for \$90,000 as of December 20, 2000. *Board Exhibit A.*
10. Summary of Respondent's contentions in support of the assessment:
  - a. Despite Petitioner's failure to appear at the hearing and prosecute her appeal, the Respondent testified that the assessed land value should be adjusted to account for the wetlands on the subject property. To this end, the Respondent submitted a proposed

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<sup>1</sup> The Board notes for the record that Petitioner's request that the Board consider the information submitted in lieu of a hearing came eleven days after the Petitioner failed to appear for the hearing. The Board further notes that the Form 131 Petition filed by the Petitioner is not a "verified" Petition and, therefore, does not constitute "evidence" to support a claim of error in an assessment.

property record card changing a third of the property, or .328 acres, to wetlands and applying a 95% influence factor for the wetlands designation. *Respondent Exhibit 2.*

- b. The Respondent further conceded that the structure was not uniformly assessed with other modular homes. According to the Respondent, modular homes are typically assessed as stick built homes with a D grade. Here, the Respondent testified, the Petitioner had been assigned a C grade on the structure. *Dambek testimony.* Accordingly, the Respondent submitted a proposed property record card changing the grade of the structure to D. *Respondent Exhibit 2.*
- c. According to the Respondent, changing the land assessment to account for a third of the property being wetlands and changing the structure to a D grade lowers the assessment to \$34,800 for the land and \$61,600 for the improvements, for a total assessed value of \$96,400. *Respondent Exhibit 2.* The Respondent testified that the township recommended the reduction in assessment from \$114,800 to \$96,400. *Dambek and Walker testimony.*

### **Record**

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

- a. The Petition,
- b. The tape recording of the hearing labeled STB 5176,
- c. Exhibits:

Respondent Exhibit 1 – Notice of Hearing on Petition and Form 131 petition,  
Respondent Exhibit 2 – Two photographs of the subject property and a proposed property record card prepared by Center Township,  
Respondent Exhibit 3 – A summary tax statement dated January 10, 2006,  
Respondent Exhibit 4 – Notice of Hearing on Petition by the County PTABOA – Form 114,  
Respondent Exhibit 5 – Form 130 petition, dated December 9, 2003,  
Respondent Exhibit 6 – Letter from the Department of the Army to Patricia Anderson, dated March 23, 2004, plat map of the area, Petition for Correction of Error – Form 133, and the subject property record card,  
Respondent Exhibit 7 – Residential appraisal, dated December 20, 2002,  
Respondent Exhibit 8 – Advertisement for the Lincoln modular Home at America.com,  
Respondent Exhibit 9 – Advertisement for Fairmont Homes Inc.,  
Respondent Exhibit 10 – Construction cost on the subject property from Baughman Housing Inc., dated July 13, 2001,

Respondent Exhibit 11 – Property record card, photograph and tax statement for Diana Elbaor,  
Respondent Exhibit 12 – Property record card, two photographs and tax statement for Carl Kerely,

Board Exhibit A – Form 131 petition, dated December 3, 2004,  
Board Exhibit B – Notice of Hearing on Petition,  
Board Exhibit C – Hearing sign-in sheet,  
Board Exhibit D – Proof of mailing, dated November 7, 2005.

### Analysis

12. The most applicable governing cases are:
  - a. A Petitioner seeking review of a determination of an assessing official 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 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).
  - 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 Twp. 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.
13. The Petitioner failed to raise a prima facie case that the subject property was over-valued. However, the Respondent admitted to errors in the assessment. The Board reached this decision for the following reasons:
  - a. The Petitioner contends, on the Form 131 petition, that the land and improvements are overvalued in their assessments. In support of this contention, the Petitioner submitted an appraisal dated January 9, 2001, which valued the subject property at \$90,000 as of December 20, 2000.
  - b. Real property in Indiana is assessed on the basis of its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 2

- (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.*
- c. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
  - d. Here, the Petitioner submitted an appraisal with her Petition dated January 9, 2001, which valued the property as of December 20, 2000. *Board Exhibit A*. This is almost two years after the valuation date of January 1, 1999. *See Long*, at 471. Further, the Petitioner failed to appear at hearing to provide any evidence to relate the December 20, 2000, appraisal value to the January 1, 1999, valuation date. Thus, the Petitioner failed to raise a prima facie case based upon her Petition and the appraisal attached thereto.
  - e. Where the Petitioner has not supported its 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). Despite having no duty to support the assessment, however, the Respondent testified that the Township Assessor’s office, upon review of the property record card, discovered that the land assessment did not reflect that the subject property contains wetlands. Therefore, according to the Respondent, the land assessment should be reduced from \$37,800 to \$34,800. Further, the Respondent testified that the grade factor assigned to the improvements should be changed to a D grade, which reduces the improvement assessment from \$77,000 to \$61,600. These changes result in a total assessed value of \$96,400. The Board accepts the Respondent’s recommendation and commends the Respondent for correcting errors in the Petitioner’s assessment despite Petitioner’s failure to appear and present evidence in support of such a reduction.

### **Conclusion**

14. The Petitioner failed to appear at the administrative hearing and present evidence in support of the alleged errors in the assessment. However, the Respondent presented evidence to demonstrate that errors exist in the current assessment. The Respondent

testified that the assessment of the subject property should be changed to \$34,800 for the land and \$61,600 for the improvements for a total assessed value of \$96,400. The Board accepts the Respondent's valuation and applauds the Respondent for its candor in correcting this assessment despite the Petitioner's failure to prosecute its appeal.

### Summary of Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

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

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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 Court 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/trial\\_proc/inde.html](http://www.in.gov/judiciary/rules/trial_proc/inde.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>