

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

**Petition #:** 84-013-02-1-5-00149  
**Petitioners:** Ronald & Brenda James  
**Respondent:** Otter Creek Township Assessor (Vigo County)  
**Parcel #:** 109-02-24-103-002  
**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 Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated November 14, 2003.
2. Notice of the PTABOA decision was mailed to the Petitioners on August 23, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on September 14, 2004. Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 9, 2005.
5. The Board held an administrative hearing on June 21, 2005, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn as witnesses at the hearing:
  - a) For Petitioners: Brenda James, property owner,  
Warren Soules, Otter Creek Township Assessor,<sup>1</sup>
  - b) For Respondent: Gloria Donham, Vigo County PTABOA,  
Ann Akers, Vigo County PTABOA,  
Deana Chrisman, Vigo County Assessor’s office,  
Susan McCarty, Chief Deputy, Vigo County Assessor’s office.

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<sup>1</sup> Mr. Soules, the Otter Creek Township Assessor appeared and testified on behalf of the Petitioner.

## Facts

7. The property is a residential dwelling on a lot measuring 0.58 acres located at 7943 North Clinton Street in Terre Haute.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.
9. The assessed value of subject property as determined by the Vigo County PTABOA:  
Land \$10,800            Improvements \$82,100            Total \$92,900.
10. The assessed value requested by Petitioners:  
Land \$10,800            Improvements \$63,600            Total \$74,400.

## Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a) The current assessed value is over-stated. The correct value for the subject property should be \$69,000 based on an appraisal of the subject property as of January 30, 1999, that was prepared by a certified appraiser for the purpose of this appeal. *James testimony; Petitioner Exhibit 9.*
  - b) Additionally, the 129 percent “market adjustment” is inappropriate and results in an assessed value of the subject property that is over-stated by more than 30 percent. A comparison of four nearby similar properties demonstrates disparate treatment of similar properties because of the various market adjustment factors used. The four properties are around the subject, but they are assigned different neighborhood codes with different market adjustment factors. These factors are lower than the subject. They range from 68 percent to 96 percent. The entire area should be a single neighborhood. *James testimony; Petitioner Exhibit 5, 6, 7, 8.*
12. Summary of Respondent’s contentions in support of the assessment:
  - a) The market adjustment, or neighborhood factor, for the subject neighborhood is correct based on the sale prices of four comparable properties because the sale prices even out with the assessments for these properties. *Donham testimony; Respondent Exhibit 4.*
  - b) The adjustments used in the sales comparison portion of the appraisal are questionable. For instance, the appraisal used the same \$500 adjustment for two of the comparables to account for a difference in the subject property’s land size of 0.58 acres even though one of the comparables has 0.28 acres and the other has 1.09 acres. The appraiser also used a value of \$13,000 for the two-car detached garage in the cost approach portion of the appraisal, but used an adjustment value of \$5,000 for a difference in garage areas to adjust the sale price of the

comparables in the sales comparison approach. *Donham testimony; Respondent Exhibit 1, 2, 3.*

- c) Comparables #1 and #4 in the sales comparison approach are from an inappropriate time frame. They are from 2000, rather than 1998 or 1999. *Donham testimony; McCarty testimony; Respondent Exhibit 1, 2, 3.*

### **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 6201,
- c) Exhibits:
  - Petitioner Exhibit 1 – Copy of Form 131,
  - Petitioner Exhibit 2 – Copy of Form 130,
  - Petitioner Exhibit 3 – Copy of Form 115,
  - Petitioner Exhibit 4 – Copy of subject property record card (PRC),
  - Petitioner Exhibit 5 – Copy of PRC for 109-02-24-101-006,
  - Petitioner Exhibit 6 – Copy of PRC for 109-02-23-227-015,
  - Petitioner Exhibit 7 – Copy of PRC for 109-02-13-352-012,
  - Petitioner Exhibit 8 – Copy of PRC for 109-02-24-253-016,
  - Petitioner Exhibit 9 – Appraisal of the subject property,
  - Respondent Exhibit 1 – Two pages from the appraisal,
  - Respondent Exhibit 2 – Sales disclosure and PRC for comparable sale #1,
  - Respondent Exhibit 3 – Sales disclosure and PRC for comparable sale #4,
  - Respondent Exhibit 4 – Ratio study with sales disclosures and PRCs,
  - Respondent Exhibit 5 – Land order map,
  - Board Exhibit A – Form 131 petition,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing Sign In sheet,
- d) These Findings and Conclusions.

### **Analysis**

14. 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.
15. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It 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); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
  - b) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should Petitioners present any evidence of value relating to a different time, they must provide some explanation how those values demonstrate, or are relevant to, the subject property’s value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c) The appraisal establishes a market value of the subject property at \$69,000 as of January 30, 1999. *Petitioner Exhibit 9*. The appraisal was performed by an Indiana Certified Appraiser following the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal used both the cost approach and the sales comparison approach to arrive at the estimated market value.

- d) By introducing the appraisal establishing market value in accordance with generally recognized appraisal principles, Petitioners established a prima facie case that the current assessment is incorrect and that the correct value of the subject should be \$69,000. *See Meridian Towers*, 805 N.E.2d at 479. The burden shifted to the Respondent to present evidence to rebut or impeach the Petitioners' evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- e) The property record cards for the subject property and surrounding properties were also presented by the Petitioners for the purpose of establishing that the neighborhood factor applied to the subject property is in error. While the evidence clearly shows these properties all have different neighborhood factors, the evidence does nothing to establish that the neighborhood factor for the subject property is in error. Simply because the subject property's neighborhood factor is different than the neighborhood factors of surrounding property does not mean that the subject property's factor is incorrect. The record is void of any evidence explaining how or why the presentation of these property record cards demonstrates an error. The Petitioners merely made a conclusory statement that, because the neighborhood factors for surrounding properties are different than the neighborhood factor for the subject property, the neighborhood factor applied to the subject property is in error. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Furthermore, any question about the correct neighborhood factor is rendered moot by the overall valuation evidence presented in the appraisal.

16. The Respondent failed to rebut or impeach petitioners' evidence. This conclusion was arrived at because:

- a) The Respondent attempts to rebut the appraisal by pointing out alleged discrepancies in the adjustments made to the comparable properties used in the appraisal. The Respondent points to the use of the same \$500 site size adjustment for Comparable #1 and Comparable #2 as an example of an alleged discrepancy. *Donham testimony; Respondent Exhibit 1, 2, 3*. While each of these comparables was adjusted by \$500 for the difference in site size, one of the comparables is adjusted upward \$500 because it is smaller, and the other comparable is adjusted downward \$500 because it is larger. The Respondent did not contest the actual adjustment value of \$500. The Respondent merely questioned the propriety of using an adjustment of \$500 for each comparable. That form of questioning is not probative evidence or impeachment.
- b) Another example of an alleged discrepancy noted by the Respondent was the difference between the construction cost of the garage (\$13,000) in the cost approach portion of the appraisal and the adjustment of \$5,000 in the sales comparison portion to adjust the comparables for the lack of a detached garage. *Donham testimony; Respondent Exhibit 1, 2, 3*. The fact that the estimated

construction cost of the garage is different than the garage sale price adjustment does not mean the appraisal is flawed. The values used in the cost approach portion of the appraisal should reflect the cost to construct the garage as new. The adjustment in the sales comparison approach should represent the value of the garage according to the open market or, in other words, the added value to the comparable property if it had a 2-car detached garage like the subject property. Again, the Respondent's observations to not rebut or impeach the appraisal, nor do they provide substantial support for the current assessment.

- c) Additionally, the Respondent questioned the lack of a time adjustment to the sale price because the appraisal used 2000 sales in a 1999 appraisal. The Respondent merely pointed to two of the comparables used in the appraisal, noted that these sales did not have an adjustment to account for a change in the market over a year's time, and claimed the appraisal was flawed. The Respondent, however, offered no evidence or explanation establishing that the 2000 sales required a time adjustment. The sales price of the comparables fall within a range of \$61,000 to \$69,000. The Respondent offered no explanation of what the adjustment should be or offer an alternate comparable sales analysis.

### **Conclusion**

17. The Petitioners made a prima facie case. The Respondent did not rebut the Petitioners' appraisal for a value of \$69,000. The Board finds in favor of Petitioner.

### **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: January 25, 2006

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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/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html)>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. 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 days of the date of this notice.**