

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

**Petition #:** 88-021-02-1-5-00008  
**Petitioners:** David & Jamie Bower  
**Respondent:** Washington Township Assessor (Washington County)  
**Parcel:** 0131126229  
**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 Washington County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 27, 2004.
2. The Petitioners received notice of the decision on August 5, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on September 1, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 10, 2005.
5. The Board held an administrative hearing on October 4, 2005, before the duly appointed Administrative Law Judge (the ALJ) Jennifer Bippus. At this hearing, there was some question as to whether the PTABOA had addressed all the issues on the Form 130. The Petitioners contend that Petitioners' issue regarding the neighborhood factor was not addressed by the PTABOA. The PTABOA alleged that the neighborhood factor was not an issue on the Form 130. The Board on its own motion held an additional administrative hearing on November 29, 2005, before Board Commissioner Terry G Duga and the ALJ Jennifer Bippus. The purpose of the additional hearing was to explain the discrepancies on the original Form 130.<sup>1</sup> Mr. Eugene Trueblood, Washington County Assessor did not appear at the November 29, 2005, additional hearing but did submit the original Form 130 from the PTABOA hearing. The original Form 130 was entered into the record and labeled as Respondent Exhibit 4. After the November 29, 2005, hearing with the Petitioners, the Board determined that both grade and neighborhood factor could be addressed.

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<sup>1</sup> The Form 130 sent to the Board by the Petitioners listed neighborhood factor as an issue, however on the original Form 130 before the PTABOA, this issue was not listed for review and consequently the PTABOA did not address this issue on the Form 115.

6. Persons present and sworn in at the October 4, 2005, hearing:

a) For Petitioner: David Bower, Taxpayer<sup>2</sup>  
Jamie Bower, Taxpayer

b) For Respondent: Eugene Trueblood, Washington County Assessor  
Jim Davis, Washington County PTABOA, President

7. Persons present and sworn in at the November 29, 2005, hearing:

a) For Petitioner: David Bower, Taxpayer  
Jamie Bower, Taxpayer

b) No one appeared for the Respondent

### **Facts**

8. The subject property is a single family residence on 7.963 acres located at 1731 Lake Salinda Road, Salem, in Washington Township.

9. The ALJ did not conduct an on-site visit of the property.

10. The PTABOA determined the assessed value of the subject property to be \$25,300 for the land and \$257,400 for the improvements, for a total assessed value of \$282,700.

11. The Petitioners requested an assessment of \$15,000 for the land and \$165,000 for the improvements, for a total assessed value of \$180,000.

12. Summary of Petitioner's contentions in support of an error in the grade:

a) The Petitioners contend that the subject property's grade is overstated. *D. Bower testimony*. According to the Petitioners, they previously owned a home on Rudder Road which was graded lower. *Id.* The Petitioners argue that the subject dwelling should be graded the same as their previous home. *Id.* In addition, the Petitioners testified that several houses built by the Petitioners had the same design, same brick, same roof pitch, and same overhang but were graded differently. *Id.*

b) The Petitioners alleged that at the PTABOA hearing they presented four or five comparables that were all graded lower than the subject property. *D. Bower testimony*. Thus, the Petitioners allege, the grading system leaves doors open for inconsistencies. *Id.* While the Petitioners presented no evidence of those "comparable" properties here, the Petitioners testified that the subject was similar

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<sup>2</sup> Mr. Bower is the current Washington Township Trustee Assessor but was not in that capacity at the time the reassessment took place.

to another property (Trent Fisher's house) except for a couple of gables. *Id.* According to the Petitioners, the Fisher house is graded lower. *Id.* The Petitioners argue that the grade should be based on the pitch of the house, the size of the overhang, and other physical features such as corners, overhangs, porches and porticos. *Id.* According to the Petitioners, if these characteristics are taken into consideration, the subject dwelling would be almost identical to the Fisher property, and yet the two properties are not assessed the same. *Id.*

- d) The Petitioners also contend that the neighborhood factor applied to the subject property is excessive. *D. Bower testimony.* In support of this contention, the Petitioners testified that there are four houses less than ½ mile from the subject that have a neighborhood factor of 100%, while the subject's neighborhood factor is 134%. *Id.* The Petitioners argued that, according to the Manual, when two neighborhoods meet the neighborhood factors should not vary more than fifteen to twenty percent. *Id.* According to the Petitioners, the neighborhood factor next to the subject is thirty-four percent lower than the subject property's neighborhood factor which is too much of a variation pursuant to the Manual. *Id.*
- e) Finally, the Petitioners contend that the subject property is over-assessed on the basis of an appraisal and evidence of the cost of construction. In support of this contention, the Petitioners presented an appraisal for the subject property estimating the subject property's market value to be \$185,000 as of June 3, 2004. *Petitioner Exhibit 2.* The Petitioners also presented an agreement between the Petitioners and Hollowell Construction Inc., dated May 16, 2001, for the construction of a dwelling for \$169,800. *Petitioner Exhibit 1.* The Petitioners testified that they have the subject property insured for \$227,954. *D. Bower testimony.*

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

- a) The Respondent contends that the grade applied to the subject dwelling is correct. *Davis testimony.* In support of the grade assignment, the Respondent submitted a computer print-out of all houses graded "B-1." *Respondent Exhibit 2.* According to the Respondent, the grade of the subject dwelling is in line with other similar properties. *Trueblood testimony.*
- b) The Respondent further contends that the neighborhood factor is accurate. *Trueblood testimony.* According to the Respondent, sales in the area of the subject property were thirty-four percent higher than the assessed values. *Id.* The Respondent argued that the differences in the Manual refer to land values and not the improvement values. *Id.* According to the Respondent, land values cannot be more than a certain percentage from one another, not neighborhood factors. *Id.* The Respondent also claimed that the land values were approved by the State. *Id.*
- c) Finally, the Respondent argues that the appraisal submitted by the Petitioners is just an opinion of value. *Trueblood testimony.*

## Record

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

- a) The Petition.
- b) The CD recording of the hearing on October 4, 2005 labeled BTR #6176, and the tape recorded hearing on November 29, 2005, labeled BTR #6175.
- c) Exhibits:

Petitioner Exhibit 1: Copy of the Agreement between Contractor and Owner, dated May 16, 2001 for building the subject dwelling

Petitioner Exhibit 2: Copy of appraisal of subject property dated June 3, 2004

Respondent Exhibit 1: Copy of subject property record card (PRC)

Respondent Exhibit 2: List of "B-1" graded homes in comparison to the subject property

Respondent Exhibit 3: Map of the neighborhood

Respondent Exhibit 4: Copy of the original Form 130 filed with the PTABOA

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing for October 4, 2005

Board Exhibit C: Sign-in Sheet for hearing held October 4, 2005

Board Exhibit D: Notice for Additional Hearing for November 29, 2005

Board Exhibit E: Sign-in Sheet for hearing held November 29, 2005

- d) These Findings and Conclusions.

## Analysis

15. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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 276 (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.
16. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a) The Petitioners contend that the assessment on the subject property is excessive. In support of this claim, the Petitioners alleged the dwelling was improperly graded, the neighborhood factor was excessive, and an appraisal and construction cost evidence show the property is over-valued.

#### *Grade*

- b) The Petitioners contend that the current grade of "B-1" for the subject dwelling is overstated. *D. Bower testimony*. In support of this contention, the Petitioners alleged that other properties like the subject dwelling were graded lower. *Id.*
- c) Under Indiana's true tax value system, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. *Sollers Pointe Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185, 190 (Ind. Tax Ct. 2003). Construction quality and the resultant quality grade assigned is a composite characteristic, which describes the cumulative effects of workmanship, the costliness of materials, and the individuality of design used in constructing an improvement. 2002 REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A (GUIDELINES) app. A at 3 (incorporated by reference at 50 IAC 2.3-1-2). The Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. The descriptions in those tables are intentionally general and emphasize the most prominent elements dwelling units within a particular grade. *Id.* Although the construction quality of individual components of an improvement may vary, the overall construction quality tends to be consistent for the entire residence. *Id.*
- d) The Guidelines presume that neighborhoods tend to have improvements of the same or similar quality of construction, which narrows the range of grades assigned to a particular neighborhood. *Id.* at 6. Consequently, assessors are directed to begin from an assumption that the particular improvement being valued has the same quality grade as the base quality grade established for the neighborhood. *Id.* However, the Guidelines also recognize that some improvements in a neighborhood may have construction characteristics that deviate from the base quality grade specifications. In order to assign a quality

grade to those properties, the Guidelines call for the assessor to weigh the components that deviate from the base quality grade selected for the neighborhood to determine whether an intermediate quality grade, or an entirely higher or lower full quality grade, is appropriate. GUIDELINES, app. A at 6.

- e) The Petitioners argue that the grade of “B-1” applied to the subject dwelling is incorrect. *D. Bower testimony; Respondent Exhibit 1*. The Petitioners contend that another property on Rutter Road once owned by the Petitioners and similar to the subject property was not graded the same. *Id.* In addition, the Petitioners allege that the Trent Fisher home is identical to the subject home except for a couple of gables, yet it too was graded differently. *Id.* The Petitioners further contend that several houses that the Petitioners have built have the same design, same brick, same roof pitch, same overhang, yet they are all graded differently from the subject structure. *Id.*
- f) Here, the Petitioners failed to submit or even refer to the grade specification tables developed under the Guidelines. Thus, the Petitioners failed to show that the grade assignment of B-1 was in error under the Guidelines. Further, while identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show an error in the assessment, the Petitioners failed to establish how the properties are comparable. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Although the Petitioners testified that they submitted evidence of four or five comparables at the PTABOA hearing, no evidence was presented at the hearing before the Board. The Petitioner merely made conclusory statements that the subject house was just like other houses but with a higher grade. *D. Bower testimony*. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).<sup>3</sup>

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<sup>3</sup> The Petitioners repeatedly argued that, due to their appeal, they should be given “the benefit of the doubt.” However, Petitioners misunderstand their burden. The Petitioners must establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers* 805 N.E.2d at 478. Further, to establish a prima facie case, the Petitioners, must present “probative evidence” which is “evidence sufficient to establish a given fact that, if not contradicted, will remain sufficient.” *Clark v. Dept of LocalGov’t Fin.*, 779 N.E.2d 1277, 1281 (Ind. Tax Ct. 2002). Here, the Petitioners simply submitted no evidence whatsoever as to the issue of the grade on the subject structure and, therefore, failed to establish a prima facie case that the grade assignment was in error.

### *Neighborhood Factor*

- g) The Petitioners further contend that the neighborhood factor is excessive in comparison to other properties located in close proximity to the subject property. *D. Bower testimony.*
- h) 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.” GUIDELINES, glossary at 14. 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.
- i) 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, ch. 2 at 8. Mere proximity of properties is insufficient to prove similarity of neighborhoods. Instead, a party must explain the characteristics of the subject neighborhood and how those characteristics compare to those of purportedly comparable properties, as well as how any differences between the properties’ neighborhoods affect the relative market values-in-use. *Long*, 821 N.E.2d 466.
- j) Here, the subject property is located in Neighborhood #81315 which has a neighborhood factor of 1.34 (134%). According to the Petitioners, an adjacent neighborhood has a neighborhood factor of 1 (100%). While it may be unusual for properties situated across from one another or properties just down the street from one another to be assigned to different neighborhoods, the Petitioners did not present any evidence to demonstrate that the Respondent improperly applied the factors in drawing the neighborhood boundaries or that a different neighborhood factor was applied to the subject property than to other properties in the same neighborhood. Nor did Petitioners show that an error was made in calculating the neighborhood factor that is applied to the subject property. The Petitioners presented no alternative calculation or any additional sales disclosures to suggest that the neighborhood factor is incorrect. Instead, the Petitioners merely alleged that the subject property’s neighborhood factor was 34% higher. This falls far short of the burden imposed upon a Petitioner.<sup>4</sup> To prevail in an

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<sup>4</sup> The percentage difference of not more than 20% in the neighborhood factors when two neighborhoods meet that the Petitioners allude to in their testimony, can be found in the GUIDELINES, ch. 2 at 9, under Maximum Allowable Percentage Variance. It states in part, “The township shall establish a maximum allowance percentage variance

appeal, a Petitioner must demonstrate both that an assessment is incorrect and, specifically, what the correct assessment would be. See *Meridian Towers*, 805 N.E.2d at 478. The only showing the Petitioners make is that different neighborhoods have different neighborhood factors. Thus, the Petitioners failed to raise a prima facie case that an error was made in the current assessment of the subject property based on its neighborhood factor.

#### *Market Value*

- k) Finally, the Petitioners contend that the assessment of the subject property is overstated based on a contract agreement (Petitioner Exhibit 1) and an appraisal (Petitioner Exhibit 2).
- l) Real property in Indiana is assessed on the basis of its “true tax value”. See I.C. § 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) (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*, 821 N.E.2d at 469. Regardless of the approach used to prove the market value-in-use of a property, however, 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.*
- m) Here, the Petitioners first presented evidence of the cost of the subject structure and alleged that it shows the assessment is too high. In support of this contention, the Petitioners submitted a contract, between the Petitioners and Hollowell Construction, Inc., dated May 16, 2001, which indicates that an agreement was made between the parties to have a house built for the sum of \$169,000.<sup>5</sup> However, the contract was not signed by the Petitioners. Further, the contract failed to include any specifications for the construction of the house or a list of materials to be used in the subject dwelling’s construction. Nor did the Petitioners relate the value of the construction costs in May of 2001 to the January 1, 1999, valuation date. Finally, the contract does not provide any evidence of the cost of the land upon which the structure was allegedly constructed. Thus, even if we were to find that the document was sufficient proof of the cost of construction

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between the base lot value for neighborhoods having the same classification and substantially similar characteristics. The maximum allowable percentage variance should not exceed twenty percent (20%)”. Thus, as Respondent contends, this issue is not a neighborhood factor issue as expressed by the Petitioners, but a land issue.

<sup>5</sup> The “contract” submitted by the Petitioners is a single page numbered “10.” Petitioners offered no other evidence that indicated this is the lone page of the contract or whether other pages to this contract exist that were not submitted at this hearing.

of the subject dwelling, we hold that it is not sufficient evidence of the market value of the subject property.

- n) The Petitioners also submitted an appraisal in support of their contention that the subject property is overvalued. The appraisal, dated June 3, 2004, estimated the market value of the subject property to be \$185,000.<sup>6</sup> See *Petitioner Exhibit 2*. However, the Petitioners failed to show the relevance of the appraisal dated June 3, 2004, to the January 1, 1999, valuation date. Further, the comparable sales in the appraisal were from 2003 and 2004. The Petitioners did not trend the appraisal back to the January 1, 1999, valuation date per *Long*, nor were the sales comparables used in the appraisal trended back to 1999.<sup>7</sup> Thus, the Petitioners failed to raise a prima facie case that their assessment was in excess of the market value of the subject property.
- o) 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

17. The Petitioners failed to provide sufficient evidence to establish a prima facie case that the assessment on the subject property is in error. 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: \_\_\_\_\_

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Commissioner,  
Indiana Board of Tax Review

<sup>6</sup> We note that the appraiser determined a cost approach value of \$245,361 for the subject property and a sales approach value of \$230,000, yet the appraiser contends that the reconciled "market value" of the subject property is \$185,000 despite stating that "the cost approach and market approach analysis indicate similar values that are mutually supportive with equal reliability."

<sup>7</sup> As the Washington Township Assessor, Mr. Bower is uniquely in a position to know and understand the valuation date of January 1, 1999.

## 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>.