

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

**Petition Nos.:** 18-012-06-1-5-00022  
18-012-06-1-5-00023  
**Petitioners:** John W. & Norma J. Baker  
**Respondent:** Delaware County Assessor  
**Parcel Nos.:** 181524100004000  
181524100005000  
**Assessment Year:** 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Bakers appealed two parcels’ assessments to the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”). On August 5, 2008, the PTABOA issued its determinations lowering the parcels’ assessments, although not as much as the Bakers wanted.
2. The Bakers then timely filed Form 131 petitions with the Board. They elected to have these appeals heard under the Board’s small claims procedures.
3. On January 26, 2011, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:
  - a) For the Bakers: Norma Baker  
Jennifer French
  - b) For the Assessor: Kelly Hisle, Deputy County Assessor

**Facts**

5. These appeals address two parcels located at 3417 E. CR 700 S. in Muncie. Parcel # 181524100004000 contains 2.5 acres of vacant land. Parcel # 181524100005000 is a 4.5 acre tract that contains several improvements—an outbuilding, three uninhabitable dwellings,<sup>1</sup> and a manufactured home where Ms. Baker lives. *See Baker testimony; Pet’rs Ex. 1.* The Board refers to the parcels collectively as “the subject property.”

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<sup>1</sup> In the appraisal report that the Bakers offered, the appraiser described three uninhabitable dwellings and a manufactured home. *Pet’rs Ex. 1.* Ms. French, however, testified that the property never had more than three total dwellings at any given time. *Baker testimony.*

6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for the subject property:

<u>Parcel #</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
181524100004000	\$3,000	\$0	\$3,000
181524100005000	\$19,000	\$31,800	\$51,300

8. The Bakers asked that the subject property be assessed for \$0.

### **Parties' Contentions**

9. The Bakers offered the following evidence and arguments:

- a) The subject property is contaminated. *Baker testimony*. In 1973, Mr. Baker got oily rock wool insulation from Westinghouse Corporation, his former employer. *Pet'rs Ex. 8*. He used the material to insulate the west wall of a garage and his chicken coop. He also used it to insulate an underground water pipe. *Id.* In 1989, after Ms. Baker read an article in the *Muncie Star*, the Bakers became worried that the insulation might contain polychlorinated biphenyls ("PCBs"). *Id.* Those concerns ultimately led the United States Environmental Protection Agency ("EPA") to assess the site. That site assessment, in turn, led the EPA to conduct a removal action to mitigate threats to the public health and environment. *Id.*
- b) The removal action consisted of three work periods during which the EPA and its subcontractor did the following:
  - (1) November 29 - December 1, 1989. Removed the contaminated garage wall, the contaminated chicken coop and soil, and did clean-up confirmation sampling;
  - (2) January 23 - 25, 1990. Excavated additional contaminated soil and did clean-up confirmation sampling; and
  - (3) February 1, 2, and 13 1990. Excavated remaining contaminated soil, did clean-up confirmation sampling, and disposed of all hazardous material on the site.

*Pet'rs Ex. 8*. On February 2, 1990, after completing the final excavation, the EPA's subcontractor collected clean-up confirmation samples. The analytical results, which were below 10 parts per million, "indicated that no further excavation was necessary pursuant to the TSCA regulations (40 CFR Part 761)." *Id.*

- c) According to Ms. Baker, the EPA did not remove all of the contamination. *See Baker testimony*. When it became clear that the property was contaminated, Indiana Farmers Insurance cancelled the Bakers' insurance policy. *Baker testimony; see also Pet'rs Ex. 3*. The Bakers could not find anyone else to underwrite homeowners insurance on the property. *See Baker testimony; Pet'rs Exs. 4-5*. One insurer said that, if the contamination problem were completely cleared up and the property passed the most rigid inspection, the Bakers might be able to buy a policy. *Pet'rs*

*Ex. 4.* Even then, the policy would have a \$17,500 minimum premium for \$1 million of coverage and a \$50,000 deductible. *Id.* In a 1993 affidavit bearing the caption of an action filed by the Bakers against Westinghouse, Thomas Johns, an assistant vice president with Indiana Farmers Insurance Underwriting Group, said that the minimum annual premium for the only “pollution liability and remediation legal liability coverage” that he could locate was \$10,000. *Pet’rs Ex. 7.* And that quote assumed that the property had been cleaned up with no foreseeable future liability. *Id.*

- d) The inability to insure the property makes it unsellable because prospective buyers cannot get mortgage loans. *Baker testimony.* In a 1994 affidavit from the Bakers’ lawsuit against Westinghouse, Robert L. Hoogenboom, a senior vice president for American National Bank & Trust Company, explained that “[a] mortgage loan could not be made to a potential mortgagor if the mortgagor could not obtain liability insurance because of uninsurable hazards on the property. Likewise, if the insurance was cancelled because of uninsurable hazards on the property, an existing mortgage loan would be called for payment in full.” *Pet’rs Ex. 6.* Because Indiana now assesses property based on its market value, the fact that the property cannot be sold means that it should be assessed for \$0. *Id.*
- e) On August 11, 2005, Carmel Lewis, a certified residential real estate appraiser, appraised the subject property for Mutual Federal Savings Bank. *Pet’rs Ex. 1.* The appraisal was connected with Ms. Baker’s efforts to get a loan to help “fix up” the property, although Ms. Baker could not find anyone to do the work. *Baker testimony on cross examination.* In her appraisal report, Ms. Lewis estimated the property’s market value at \$65,000. *Pet’rs Ex. 1.* Ms. Lewis, however, did not consider the effects of any contamination on the subject property’s value, saying:

No obvious hazardous materials were observed at the time of inspection. The appraiser is not an expert on environmental hazards and specialized knowledge or advice in this area is not part of the scope of this appraisal. Other service companies can provide an independent study of possible hazards from the environment and the impact on livability of the subject. If a significant hazard or defect is detected by any of these testing procedures or inspections, a change in the value estimate may be necessary.

*Pet’rs Ex. 1.* Ms. Baker did not tell Ms. Lewis that the property was contaminated; she assumed Ms. Lewis could get that information from the county. *Baker testimony.*

10. The Assessor offered the following evidence and arguments:

- a) The subject property’s 2006 assessment of \$54,300 is correct. *Hisle argument.* It is actually less than the \$65,000 that Ms. Lewis estimated in her appraisal. And Ms. Lewis used comparable sales within the allowable timeframe for determining 2006 assessments. *Id.; Pet’rs Ex. 1.*

- b) The property had originally been assessed for more, but the PTABOA lowered the assessment in response to the Bakers' appeal. *Hisle testimony.*
- c) Even if the subject property cannot easily be sold, Indiana assesses property based on its market value-in-use. Ms. Baker uses the subject property because she lives on it. *Hisle testimony.*

### **Record**

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

- a) The Form 131 petitions,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners' Exhibit 1: Appraisal of subject property prepared by Carmel Lewis,

Petitioners' Exhibit 2: Copy of a Form 131 petition<sup>2</sup>,

Petitioner's Exhibit 3: Notice of Termination of Policy; October 3, 1989 letter to Norma J. Baker from Tom Johns; January 15, 1990 letter to Margaret E. McAllen from Tom Johns; "Notice of Cancellation Homeowner Application" from The Hartford,

Petitioner's Exhibit 4: October 27, 1993 correspondence from Indiana Basic Property Insurance Underwriting Association (Fair Plan) to Norma Jean Baker with portions highlighted and handwritten notes; June 13, 1994 letter to John & Norma Baker from Gloria Hannah; Copy of one page correspondence to "Jim" from Robert Grady with additional communication signed by Willard J. Greenfield,

Petitioner's Exhibit 5: August 23, 2000 letter to J.W. & Norma Jean Baker from Kathy Rudolph; Notice of Cancellation Homeowner Application from The Hartford,

Petitioner's Exhibit 6: Affidavit of Robert L. Hoogenboom,

Petitioner's Exhibit 7: Supplemental Affidavit of Thomas L. Johns,

Petitioner's Exhibit 8: U.S. Environmental Protection Agency Region 5 On Scene Coordinator's Report,

Petitioner's Exhibit 9: Notices of Assessment of Land and Structures.

The Respondent did not present any exhibits.

Board Exhibit A: Form 131 petitions,

Board Exhibit B: Hearing notices dated September 29, 2010,

Board Exhibit C: Request for continuance from the Assessor,

Board Exhibit D: Letter from the Board granting continuance,

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<sup>2</sup> This is not the original Form 131 petition filed for this appeal. Exhibit 2 has no file stamp and was signed January 10, 2011, just a few weeks before the Board's hearing. Ms. Baker did not explain the significance of Exhibit 2.

Board Exhibit E: Hearing notices dated November 30, 2010,  
Board Exhibit F: Hearing sign-in sheet.

d) These Findings and Conclusions.

## **Analysis**

### Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

### The Bakers' Case

15. The Bakers failed to make a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion for the following reasons:
  - a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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 traditionally have used three methods to determine a property’s value: the cost, sales comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - 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); *reh’g den. sub nom.; P/A 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 or comparable

properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) The Bakers premise their appeal on their claim that the subject property is contaminated. The Board finds that claim to be true, although the record is unclear about the extent of the contamination. After the EPA's mitigation efforts, samples showed contamination of less than 10 parts per million, and the EPA concluded that no further excavation was needed. Similarly, Ms. Baker apparently did not think that the contamination was significant enough to tell an appraiser about it when she sought a mortgage loan in 2005. On the other hand, the Bakers could not find anyone to insure the property even after the EPA finished its removal and mitigation efforts.
- d) Nonetheless, based on the Bakers' difficulty in insuring the subject property, the Board finds that the property had limited marketability. The Bakers, however, failed to show that the property lacked any market value whatsoever. Granted, a bank vice president indicated in a 1994 affidavit that a mortgage loan could not be made if the prospective mortgagor could not get liability insurance. That, however, does not exclude cash buyers. Plus, in 2005, Ms. Baker sought what the Board infers was a mortgage loan. The board bases that inference on the fact that Ms. Baker's prospective lender ordered an appraisal of the subject property. While Ms. Baker apparently did not ultimately get the loan, she did not claim that she failed to qualify for it. Instead, Ms. Baker testified that she had sought the loan so she could "fix-up" the subject property but that she could not find anyone to do the work.
- e) Also, a property's true tax value is measured by its market value-*in-use*, not simply by its market value. And the property had some use value—Ms. Baker lives there and was even willing to spend money to improve the property. Thus, the Board finds that the subject property's market value-*in-use* was something more than the \$0 that Ms. Baker claims.
- f) That being said, the property's market value-*in-use* may have been less than the \$54,300 for which the property was assessed in 2006. The Bakers, however, did not offer any evidence from which the Board can determine how much less. Nor did the Bakers offer any evidence to even show a likely range of values for the property.
- g) The Board sympathizes with the Bakers' plight. Valuing the effect of environmental contamination is a complex issue about which there is no clear consensus. *See Lake County Assessor v. U.S. Steel Corp.*, 901 N.E.2d 85, 95 n. 13 (Ind. Tax Ct. 2009) (citing cases from other jurisdictions to show various techniques used to quantify the effect of contamination on a property's value). Hiring an appraiser who is qualified to give such an opinion might be cost prohibitive when compared to the tax savings that could be realized from reducing the property's assessment. But there may be other ways to show the property's market value-*in-use*. For example, the Bakers did not offer any evidence that they had tried to sell the property. If the property had been marketed in a reasonable manner, the Bakers' inability to sell it for a given asking price might at least show the upper limit of the property's market value-*in-use*. Depending on the asking price, those unsuccessful efforts might even show that

the property has only nominal value. Of course, the Board does not issue advisory opinions. It therefore would need to analyze such evidence in the context of the case in which that evidence is presented.

- h) In any event, that is not the case before the Board in this appeal. Because the Bakers failed to offer any probative evidence to show the subject property's market value-in-use, they failed to make a prima facie case for reducing the property's assessment.

### **Conclusion**

16. The Bakers failed to make a prima facie case. The Board therefore finds in favor of the Assessor.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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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>>.