

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

**Petition:** 36-010-07-1-5-00001  
**Petitioners:** James R. & Beverly M. Hanner  
**Respondent:** Jackson County Assessor  
**Parcel:** 36-63-29-400-012.001-010  
**Assessment Year:** 2007

The Indiana Board of Tax Review (Board) issues its determination in the above matter. The Board finds and concludes as follows:

**Procedural History**

1. The Petitioners initiated an assessment appeal with the Jackson County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition on December 2, 2008.
2. The PTABOA failed to hold a timely hearing on that petition.
3. The Petitioners exercised the option provided by Ind. Code § 6-1.1-15-1(o) and appealed to the Board. They filed a Form 131 petition on July 7, 2009.<sup>1</sup> They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 1, 2010.
5. Administrative Law Judge Kay Schwade held the Board's administrative hearing on May 12, 2010.
6. Neither the Board nor the Administrative Law Judge inspected the property.
7. Petitioner James Hanner and County Assessor Beverly Gaiter were sworn as witnesses.

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<sup>1</sup> In this case, the assessment year is ambiguous. Although the Form 131 indicates that the assessment under appeal is March 1, 2008, Mr. Hanner stated that he was confused about the terminology and intended to appeal the 2007 assessment for taxes payable in 2008. The printout of the 2007 assessment record for the subject property attached to the Form 131 has numbers that support his statement about intending to appeal the 2007 assessment. Most significantly, at the hearing both parties agreed this appeal is for the 2007 assessment. The Board will accept that agreement, even though the filing date for the Form 130 (December 2, 2008) seems to make it unlikely that this appeal was filed within the time allowed by Ind. Code § 6-1.1-15-1. Further confusing matters, Mr. Hanner also stated that he intends to file a Form 131 petition for the 2008 assessment, which he asked the Board to address at this time. Doing so would be inconsistent with the Petitioners' representations and the agreement that the Form 131 in this case really applies to the 2007 assessment. Therefore, Board will not address the 2008 assessment as part of this proceeding.

### **Facts**

8. This subject property has 39.99 acres and is located at 9248 West County Road 300 North in Norman.
9. As it now stands, the 2007 assessment for the subject property is \$21,600 for land and \$179,500 for improvements (total assessment is \$201,100).
10. On the Form 131, the Petitioners requested the assessment be changed to \$14,239 for land and \$148,700 for improvements. During the hearing, the Petitioners requested no change to the land assessment and an assessed value of \$153,900 for the improvements.

### **Record**

11. The official record for this matter is made up of the following:
  - a) Form 131 with attachments,
  - b) Notice of Hearing,
  - c) Hearing Sign-In Sheet,
  - d) Digital recording of the hearing,
  - e) Petitioner Exhibit 1 – Grounds for Appeal,  
Petitioner Exhibit 2 – Limited appraisal as of October 18, 2002, (cover page and page 1 of 3 only),  
Petitioner Exhibit 3 – Real Property Tax Statement from 2006,  
Petitioner Exhibit 4 – Percent change of residential improvements assessed values from 2006 to 2007 (neighborhood 3600710),  
Petitioner Exhibit 5 – Parcel Detail for parcel 36-64-29-300-031.000-001,  
Respondent Exhibits – None,
  - f) These Findings and Conclusions.

### **Contentions**

12. Summary of the Petitioner's case:
  - a) The property consists of a house and 39.99 acres of land. It is assessed as residential improvements, residential land, and non-residential land. Only the improvement value is being appealed. *Hanner testimony; Pet'r Ex. 1.*
  - b) Relying on a 2002 appraisal, the 2006 assessment was \$159,600 with \$145,800 of that amount attributed to improvements and \$13,800 attributed to land. *Hanner testimony; Pet'r Ex. 1, 2, 3.*

- c) No improvements were made to the property between 2006 and 2007, but the 2007 assessment increased to \$179,500. That increase is more than 23% from 2006 to 2007. The increase is excessive, particularly in the current depressed housing market. *Hanner testimony; Pet'r Ex. 1.*
- d) According to the Department of Local Government Finance website, in the subject property's neighborhood the average increase of assessments for residential improvements was 5.59%. Applying the 5.59% factor to the 2006 assessed value of the subject improvements would result in a 2007 improvement assessed value of \$153,900. That is the value requested. It would be an increase of \$8,100. *Hanner testimony; Pet'r Ex. 4.*
- e) The property located at 3058 North 360 West in Freetown is identified in the limited appraisal as most comparable to the subject property. The improvement assessment for that comparable is \$145,600. *Hanner testimony; Pet'r Ex. 5.*

13. Summary of the Respondent's case:

- a) Comparing the 2006 assessment to the 2007 assessment is not a fair comparison because the 2007 assessment reflects the merging of three parcels owned by the Petitioners. Before 2007 the land was considered as three separate parcels for tax purposes. *Gaiter testimony.*
- b) The parties agreed to a 2006 assessment amount. The Petitioners appear to believe that once a value is set it will never change. But with trending assessed values can vary from year to year. The same trending factor was applied to the Petitioners' property and other properties in the neighborhood for the 2007 assessment. *Gaiter testimony.*

### Analysis

- 14. A petitioner who seeks review of an assessing official's determination 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). In making its case, a petitioner 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”).
- 15. Real property is assessed on its “true tax value,” which 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); REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Assessing

officials primarily use the cost approach to determine market value-in-use. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. 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.

16. The Petitioners offered part of an appraisal as evidence, but the fact that they failed to offer the entire document (pages that probably included a certification and signature were not provided) seriously reduces its credibility. More importantly, the appraisal concludes that as of October 18, 2002, the market value was \$150,000. The valuation date for a 2007 assessment, however, is January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Applying the correct evaluation date is vital. An appraisal or any other evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, the value of the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioners failed to establish how the appraisal might relate to a value as of January 1, 2006. The failure to relate the appraisal to the required valuation date means its opinion about the value of the subject property does not help to prove what the 2007 assessment should be.
17. Much of the Petitioners' case focused on the increase in the assessment from 2006 to 2007, but the real question is whether the 2007 assessment is accurately set at the actual market value-in-use of this property. The Petitioners conclusion that the increase in assessment was too much because it was greater than other properties in the neighborhood is not probative evidence that helps to prove what the correct market value-in-use really is. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements do not qualify as probative evidence).
18. Furthermore, that conclusion disregards the fact that the 2006 and the 2007 assessments are based on different valuation dates. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3; *Long*, 821 N.E.2d at 471. The 2006 assessment was based on a valuation date of January 1, 2005. The 2007 assessment was based on a valuation date of January 1, 2006. In Indiana each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). *Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 (Ind. Tax Ct. 1998) (where taxpayer challenges an assessment the resolution does not depend on how the property was previously assessed).
19. The Petitioners also relied on the valuation of a purportedly comparable property. When presenting that kind of evidence, the Petitioners were "responsible for explaining the characteristics of their own property, how those characteristics compared to those of the

purportedly comparable properties and how any differences affected the relevant market value-in-use of the properties.” *Long*, 821 N.E.2d at 471. Merely stating that a property is similar or comparable to another property does not suffice. *Id.* at 470. Here, the Petitioners simply identified the general location and noted the residential improvement value. Consequently, the purported comparable did not help the Petitioners make their case.

20. When taxpayers fail to provide probative evidence that an assessment should be changed, an assessor’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d at 1221-1222; *Whitley Products*, 704 N.E.2d at 1119.

### **Conclusion**

21. The Petitioners 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 assessment will not be changed.

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

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Commissioner, 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

- 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>>