

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

**Petition No.:** 79-160-07-1-5-00001  
**Petitioners:** John and Margaret Martin  
**Respondent:** Tippecanoe County Assessor  
**Parcel No.:** 144033000529  
**Assessment Year:** 2007

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 Tippecanoe County Property Tax Assessment Board of Appeals (the PTABOA) by written document on October 14, 2008.
2. The PTABOA issued notice of its decision on December 9, 2008.
3. The Petitioners filed a Form 131 petition with the Board on January 7, 2009. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated October 6, 2009.
5. The Board held an administrative hearing on December 17, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioners: John R. Martin, Owner
  - b. For Respondent: Pamela J. Hruska, Tippecanoe County Deputy Assessor

**Facts**

7. The subject property is a 2,354 square foot single-family residence on 4.409 acres located at 509 West 625 South, Lafayette, Wea Township, in Tippecanoe County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.

9. The PTABOA determined the assessed value to be \$32,100 for land and \$214,500 for the improvements, for a total assessed value of \$246,600.
10. The Petitioners requested an assessed value of \$30,495 for the land and \$203,775 for the improvements, for a total assessed value of \$234,270.

### Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
  - a. The Petitioners contend the assessed value of their property is overstated based on the assessed values of similar properties.<sup>1</sup> *Martin testimony*. In support of this contention, Mr. Martin offered a comparable analysis of the 2005, 2006, and 2007 assessed values of three nearby properties. *Petitioner Exhibit 1*. According to Mr. Martin, the comparable properties' assessed values increased from 9.7% to 22.9% between 2005 and 2007. *Id.* The subject property's assessed value, however, rose 32.8%. *Id.* The Petitioners argue that this shows assessed values have been inconsistently applied in the area and that their current assessment is excessive. *Martin testimony*.
  - b. The Petitioners also contend that the 2007 assessed values of properties were higher than properties' sales prices. *Petitioner Exhibit 1; Martin testimony*. According to Mr. Martin, the Petitioners' comparable analysis shows that the property located at 6401 West 300 South was assessed for \$242,800 and sold for \$222,000 or 8.6% less. *Id.* Similarly, the property located at 1281 Voyager Way was assessed for \$269,900 and sold for \$243,000 or 10% less. *Id.* However, the property located at 7232 South 350 South was assessed for \$235,000 and sold for \$243,000 or 3.4% higher. *Id.* The Petitioners argue that, on average, homes sold for approximately 5% less than their 2007 assessed values. *Martin testimony*. Therefore, the Petitioners conclude, their 2007 assessed value should be reduced by at least 5%. *Id.*
  - c. Further, the Petitioners contend, their property is over-valued based on its appraised value. *Martin testimony*. According to Mr. Martin, in April of 2008, an appraisal determined the value of their property to be \$239,000. *Petitioner Exhibit 1; Martin testimony*. Mr. Martin contends that county officials have stated that values in Tippecanoe County increased over the past few years. *Martin testimony*. Thus, the Petitioners argue, the subject property should be assessed for no more than its 2008 appraised value of \$239,000. *Id.*

---

<sup>1</sup> Mr. Martin testified the 2007 comparable properties used in his analysis were provided by a licensed appraiser. *Martin testimony*.

- d. Finally, the Petitioners argue that the Respondent's comparable analysis should be given little weight. *Martin testimony*. According to Mr. Martin, the properties selected by the Respondent are better quality constructed homes. *Martin testimony*. For example the property located at 505 West 625 South is built with 2" x 6" walls, while the Petitioners' property has only 2" x 4" walls. *Martin testimony*.

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

- a. The Respondent contends the property under appeal is correctly assessed at \$246,600. *Hruska testimony*. According to the Respondent's representative, the average sales price of properties in the subject property's neighborhood in 2004, 2005 and 2007 was \$132.43 per square foot. *Respondent Exhibit 3; Hruska testimony*. Ms. Hruska testified the Petitioners' property is assessed for only \$104.76 per square foot for 2007. *Id.*
- b. Similarly, the Respondent contends the property's assessment is correct based on the sales of three comparable properties in the area. *Hruska testimony*. According Ms. Hruska, the first property, located at 505 West 625 South, has more living area, .60 acres more land and is slightly newer than the property under appeal and sold on July 15, 2005, for \$310,000. *Respondent Exhibits 4 and 5; Hruska testimony*. After adjustments, Ms. Hruska estimated the property's value to be \$305,800 or \$101.12 per square foot. *Respondent Exhibit 4; Hruska testimony*. The Respondent's second property is located at 802 West 625 South. *Respondent Exhibits 4 and 7; Hruska testimony*. It is a two-story home with 2,415 square feet of living area, built in 1994 that sold on July 30, 2007, for \$312,000. *Id.* According to Ms. Hruska, the second comparable property is very similar to the Petitioners' property in size, style and acreage. *Id.* After adjustments, Ms. Hruska estimated its value to be \$301,500 or \$124.84 per square foot. *Respondent Exhibit 4; Hruska testimony*. The third property, located at 274 Corwin Place, is a two-story home with 2,284 square feet of living area, built in 2000 that sold on October 8, 2006, for \$285,500. *Respondent Exhibits 4 and 8; Hruska testimony*. Ms. Hruska testified that she adjusted the sales price for the differences in the two properties and estimated the property's value to be \$289,800 or \$126.88 per square foot. *Respondent Exhibit 4; Hruska testimony*.
- c. Finally, the Respondent testified that the Petitioners' appraisal should be given no weight. *Respondent Exhibit 9; Hruska testimony*. According to Ms. Hruska, the appraisal estimated the market value of the subject property as of April 4, 2008, and the Petitioners failed to show how the appraisal establishes the 2007 market value-in-use of the subject property. *Id.*

**Record**

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, Petitioners’ 2007 comparable property tax appeal table, Notification of Final Assessment Determination – Form 115, dated December 9, 2008, and Petitioners’ Request to the PTABOA for Review of 2007 Assessment,

Respondent Exhibit 1 – Petitioners’ Request to the PTABOA for Review of 2007 Assessment,

Respondent Exhibit 2 – Property record card for Parcel No. 144033000529 located at 509 West 625 South, Lafayette,

Respondent Exhibit 3 – Neighborhood sales analysis of the subject property and comparable properties,

Respondent Exhibit 4 – Comparable sales analysis grid,

Respondent Exhibit 5 – Property record card for Parcel No. 144033000507 located at 505 West 625 South, Lafayette,

Respondent Exhibit 6 – Aerial photograph of the subject property,

Respondent Exhibit 7 – Property record card for Parcel No. 144033000474 located at 802 West 625 South, Lafayette,

Respondent Exhibit 8 – Property record card for Parcel No. 116011000402 located at 274 Corwin Place, Romney,

Respondent Exhibit 9 – The Petitioners’ Uniform Residential Appraisal Report prepared by Marla Milner, dated April 9, 2008,

Respondent Exhibit 10 – Property record card for Parcel No. 144032000409 located 6900 South 100 East, Lafayette,

Respondent Exhibit 11 – Property record card for Parcel No. 144029000654 located at 6849 South 350 East, Lafayette,

Respondent Exhibit 12 – Property record card for Parcel No. 128016000420 located 1411 West 500 South, Lafayette,

Respondent Exhibit 13 – Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134, dated October 14, 2008,

Respondent Exhibit 14 – Assessment and Exemption worksheet for Parcel No. 144033000529,

Board Exhibit A – Form 131 petition with attachments,

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 Township 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 Township 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 failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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 market value: the cost approach,

the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
- c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. Here, the Petitioners first contend their property is over-valued based on the assessment of neighboring properties. *Petitioner Exhibit 1; Martin testimony*. According to Mr. Martin, the value of the Petitioners' property increased 32.8% between 2005 and 2007, but neighboring properties only increased 9.7 to 22.9%. However, it is not enough for a taxpayer to show that its property is assessed higher or differently than other comparable properties. *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- e. Moreover, each assessment and each tax year stand 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)). Evidence of a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.* Therefore, regardless of how much the property's assessment increased or how much neighboring properties' assessments increased between tax years, the Petitioners needed to show that their property was assessed in excess of its market value-in-use for the tax year at issue.

- f. Further, the Petitioners failed to show the comparability of those neighboring parcels. By comparing their assessed value to the assessed value of other properties, the Petitioners essentially rely on a “sales comparison” method of establishing the market value of the property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, Mr. Martin merely contends that the neighboring properties were the properties used by their appraiser. However, while that may be some evidence of comparability, the Petitioners made no attempt to value the differences between the properties. Thus, the assessed values of the Petitioners’ “comparable” properties fail to prove the value of the Petitioners’ property.
- g. In a somewhat related argument, the Petitioners contend that the three properties’ sales prices, on average, were 5% below their assessed values. Therefore, the Petitioners argue, their assessment should be reduced by at least 5%. In support of this contention, the Petitioners presented a chart identifying a property that sold for 8.6% less than its assessed value; a property that sold for 10% less than its assessed value; and a property that sold for 3.4% above its assessed value.
- h. A taxpayer has the right to show that other properties are assessed below their market values and thus the taxpayer’s “property taxes were higher than they would have been had other properties been properly assessed.” *Indiana Dep’t of Local Gov. Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). The relief sought in that type of claim is often termed an “equalization adjustment.” But the Petitioners do not make that claim. Indeed, they appear to make the opposite claim – that properties are assessed for more than their market values. Thus, even if the Petitioners had proved their claim, they would not have been entitled to have their property’s assessment reduced.
- i. Even if the Petitioners had forthrightly sought an equalization adjustment, their evidence would not have been sufficient. First, the Petitioners contend that the Board should infer from their three comparable sales that *all* properties are over-assessed by 5%. However, the Board notes that the only inference it could draw from the Petitioners’ evidence is that some properties are assessed for slightly above their sales values and some properties are assessed for slightly below their sales values. Second, while the Petitioners offered some evidence to establish the assessed-value-to-market-value-in-use ratios for the other three properties, they did not show that ratio for their own property because they failed to establish its market value-in-use. Thus, the Petitioners’ evidence fails to prove whether its property is over-assessed or under-

assessed. Third, Mr. Martin used sales information from 2007 without adjusting those sale prices to January 1, 2006, values.

- j. In addition, the assessment/sale ratio that the Petitioners submitted is based on only three sales – all of which were outside the time for sales that are properly considered in determining 2007 assessments. 50 IAC 21-3-3. The Petitioners failed to establish that their data constituted a statistically reliable sample or that their assessment/sale ratio was prepared according to professionally acceptable standards. Therefore, the evidence is not sufficient to make any legitimate conclusion about uniformity and equality of assessments in this case. Assuming, *arguendo*, that some sort of adjustment would be appropriate to achieve uniformity and equality for the subject property, the Petitioners failed to establish that using a simple average of the percentages would be a statistically reliable, professionally acceptable basis for change. Furthermore, the very limited data that was submitted, its wide range, and apparently random variation make any conclusion about what an appropriate change might be impossible in this case. Thus, the Petitioners failed to prove that their property's assessment should be reduced at least 5%.
- k. Finally, Mr. Martin testified that the property under appeal was appraised for \$239,000 in April of 2008. *Petitioner Exhibit 1; Martin testimony*. However, the March 1, 2007, assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. The Petitioners' appraisal was approximately 27 months after the relevant valuation date. Mr. Martin testified that county officials told him "values have continually increased in the last few years." *Martin testimony*. But he presented no evidence in support of the vague statement that "the people up in the office" told him that values are increasing. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Thus, the Petitioners' appraisal is not sufficient to raise a prima facie case for the March 1, 2007, assessment year.
- l. Where a taxpayer fails to provide probative evidence that its assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

16. The Petitioners failed to raise a prima facie case that their property was over-valued. 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: \_\_\_\_\_

\_\_\_\_\_  
Chairman,  
Indiana Board of Tax Review

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review

\_\_\_\_\_  
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 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 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/bills/2007/SE0287.1.html>.