

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

**Petition No.:** 79-160-08-1-5-00002  
**Petitioners:** Marvin and Karen McBride  
**Respondent:** Tippecanoe County Assessor  
**Parcel No.:** 144039000260  
**Assessment Year:** 2008

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 dated February 3, 2009.
2. The PTABOA issued a notice of its decision on February 5, 2010.
3. The Petitioners filed a Form 131 petition with the Board on February 25, 2010. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 28, 2010.
5. The Board held an administrative hearing on November 30, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Marvin McBride, Property owner,  
Karen McBride, Property owner,

For Respondent: Eric Grossman, Senior Deputy Assessor,

**Facts**

7. The subject property is a house located at 7834 Lydia Lane, Lafayette, in Tippecanoe County.
8. The ALJ did not conduct an on-site visit of the property.

9. For 2008, the PTABOA determined the assessed value of the subject property to be \$53,700 for the land and \$515,900 for the improvements, for a total assessed value of \$569,600.
10. The Petitioners requested an assessment of \$53,700 for the land and \$356,300 for the improvements, for a total assessed value of \$410,000.

### **Issues**

11. Summary of the Petitioners' contentions in support of an error in their assessment:
  - a. The Petitioners argue that their property is over-assessed based on an appraisal. *McBride testimony*. In support of this argument, the Petitioners submitted an appraisal performed by an Indiana certified appraiser in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) valuing the property as of January 15, 2009. *Petitioner Exhibit 3*. According to Mr. McBride, the appraisal values the property using two approaches to value. *McBride testimony*. Under the sales comparison approach to value, the appraiser estimated the market value at \$410,000. *Id.*; *Petitioner Exhibit 3*. The cost approach yielded a value of \$413,500. *Id.*
  - b. The Petitioners further contend their property is over-assessed based on the selling price per square foot of comparable homes within the Petitioners' school district. *McBride testimony*. In support of this contention, the Petitioners presented sales information from the Multiple Listing Service (MLS) for their property, which they purchased in 2006 for \$600,000, and three properties that sold in 2008 and 2009 for \$480,000, \$500,000, and \$530,000, respectively. *Petitioner Exhibits 5-7*. According to Mr. McBride, there were no sales of comparable properties in 2007 and, he argues, sales from 2006 would not be relevant to the 2008 tax year. *McBride testimony*.
12. Summary of the Respondent's contentions in support of the assessment:
  - a. The Respondent's witness contends the property is correctly assessed. *Grossman testimony*. According to Mr. Grossman, the assessor analyzed two sales that occurred in 2006 and 2007, one of which was the Petitioners' home, and determined the annual adjustment for the Petitioners' neighborhood for 2008 was 26%. *Id.* In support of this contention, the Respondent presented the sales and assessment information for the subject property and another comparable property in the Petitioners' neighborhood. *Respondent Exhibits 1-3*.
  - b. In response to the Petitioners' case, Mr. Grossman admitted that the Petitioners' sales comparable data from 2009 indicates the market may have declined since the assessment date but, he argues, there is insufficient market

data available to make that determination. *Grossman testimony; Respondent Exhibit 1*. Further, Mr. Grossman argues, an appraisal from 2009 does not make a prima facie case that the property is over-assessed for 2008. *Grossman testimony*.

### **Record**

13. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. The compact disk recording of the hearing labeled 79-160-08-1-5-00002, Marvin and Karen McBride,
  - c. Exhibits:
    - Petitioner Exhibit 1 – Exhibit coversheet,
    - Petitioner Exhibit 2 – Form 131,
    - Petitioner Exhibit 3 – Appraisal of the Petitioners’ property,
    - Petitioner Exhibit 4 – Form 11, Form 114, and Form 115,
    - Petitioner Exhibit 5 – Multiple Listing Service (MLS) information for the Petitioners’ property,
    - Petitioner Exhibit 6 – MLS information for the property located at 3848 Old Romney Road that sold in 2009,
    - Petitioner Exhibit 7 – MLS information for the properties located at 6096 Sandwood Drive and 1821 Connemara Court that sold in 2008,
  
    - Respondent Exhibit 1 – County Trending Valuation Summary,
    - Respondent Exhibit 2 – Property record card for 7714 Lydia Lane,
    - Respondent Exhibit 3 – Property record card for the Petitioners’ property,
  
    - Board Exhibit A – Form 131 petition,
    - Board Exhibit B – Notice of Hearing, dated September 28, 2010,
    - 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 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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to establish an error in their assessment. 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. 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 actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal practices. 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 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, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.

- d. The Petitioners first contend their property's assessed value is over-stated based on the property's appraised value. *McBride testimony*. In support of their contention, the Petitioners offered an appraisal report prepared by an Indiana certified appraiser in which the appraiser valued their property at \$410,000 as of January 15, 2009. *Petitioner Exhibit 3*. The appraiser certified that his report conformed to USPAP standards and the appraiser valued the property using both the cost and the sales comparison methods of valuation. *Id.* An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the Petitioners' appraiser estimated the property's value more than two years after the relevant valuation date of January 1, 2007. Because the Petitioners did not relate their property's January 15, 2009, appraised value to the property's value as of the January 1, 2007, valuation date, the appraisal lacks probative value. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date.)
- e. The Petitioners also contend their property is over-valued based on comparable sales in the neighborhood. *McBride testimony*. In support of this contention, the Petitioners presented sales information for three properties that sold in 2008 and 2009. *Petitioners Exhibits 6 and 7*. 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 being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the 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, the Petitioners merely argued that, based on the sales price and the size of the comparable properties, their property was over-assessed. This falls far short of the burden to prove the properties are comparable in order to be evidence of the subject property's market value-in-use.
- f. To the extent that the Board could find that either the appraised value of the Petitioners' property or their comparable sales provided some evidence that their property was over-valued for the March 1, 2008, assessment year, the

Board finds that the Petitioners' purchase of the property rebuts that evidence. *See Petitioner Exhibit 5*. According to the Petitioners' own exhibits, they purchased the subject property for \$600,000 on March 3, 2006. *Id.* This purchase was only seven months prior to the January 1, 2007, valuation date for the March 1, 2008, assessment. *See Hubler Realty Co. v. Hendricks Cty. Ass'r.*, 938 N.E.2d 311 (Ind. Tax Ct. 2010) (The Indiana Tax Court affirmed the Board's finding that the property's actual sales price was better evidence of the property's market value-in-use than the property's value estimated by an appraiser). Thus, while the property may have lost value after the Petitioners' purchase of the property, the purchase price supports the property's assessed value for the 2008 assessment year.

- g. The Petitioners failed to raise a prima facie case that their property was over-valued for the 2008 assessment year. Where a 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. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 16. The Petitioners failed to establish a prima facie case that their property was over-assessed for the March 1, 2008, assessment date. The Board therefore finds in favor of the Respondent.

### **Final Determination**

In accordance with the findings of fact and conclusions of law above, the Indiana Board of Tax Review determines that the Petitioners' property's assessment should not be changed.

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

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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

#### 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>.