

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

**Petition No.:** 56-013-08-1-5-00004  
**Petitioners:** James and Diane O'Hara  
**Respondent:** Newton County Assessor  
**Parcel No.:** 008-09450-00  
**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 Newton County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 25, 2009.
2. The Petitioners received notice of the decision of the PTABOA on August 27, 2009.
3. The Petitioners filed an appeal to the Board by filing a Form 131 on September 22, 2009. 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 November 13, 2009.
5. The Board held an administrative hearing on December 16, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners: James O'Hara, Petitioner

For Respondent: Brian Thomas, Local Government Representative  
Lester Terry Moore, Newton County Assessor  
Terri Pasierb, Chief Deputy Assessor.

## Facts

7. The subject property is a residential property located at 5317 E. Barker Court, Demotte, in Newton 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 \$23,800 for the land and \$252,900 for the improvements, for a total assessed value of \$276,700.
10. The Petitioners requested an assessment of \$230,000.

## Issues

11. Summary of the Petitioners' contentions in support of an error in their assessment:
  - a. The Petitioners contend that their assessment is too high based on their 2004 purchase price of \$225,000 and a 2009 appraisal. *O'Hara testimony*. In support of this contention, the Petitioners presented an appraisal prepared by Roy Gouwens, a certified Indiana appraiser, which estimated the value of the Petitioners' property to be \$230,000 as of January 21, 2009. *Petitioner Exhibit 1*. According to Mr. O'Hara, the appraiser took the best sales information available at the time of the appraisal. *Id.* He argues that the Respondent failed to submit any sales of more comparable properties from the relevant time period. *Id.* In addition, Mr. O'Hara argues that a buyer would not be able to purchase their house for its \$276,700 assessed value, because a lender would only provide financing based on the \$230,000 appraised value. *O'Hara testimony; Petitioner Exhibit 5*.
  - b. The Petitioners further contend that the assessed value of \$276,700 represents an increase of \$51,700, or 23%, from the Petitioners' 2004 purchase of the house. *O'Hara testimony; Petitioner Exhibit 5*. According to the Petitioners, a 23% increase in three years is not reasonable because the real estate market has been depressed across the nation. *Id.* The Petitioners further argue that the Respondent has presented no evidence to support the assessed value or the 23% increase. *Id.* According to Mr. O'Hara, trending is a relatively new system of assessing market values and has not been perfected.<sup>1</sup> *O'Hara testimony; Petitioner Exhibit 5*. Mr. O'Hara argues that the Petitioners' property is a good example of a trending anomaly and, thus, the trending formulas should be disregarded. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:

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<sup>1</sup> Under Indiana Code § 6-1.1-4-4.5, Assessors are required to adjust or "trend" property values every year to account for changes in the values of properties since the last general reassessment of property occurred.

- a. The Respondent's representative, Mr. Thomas, contends that an appraisal valuing the property as of January 21, 2009, is insufficient to show that the Petitioners' property is incorrectly assessed for the March 1, 2008, assessment date. *Thomas testimony; Respondent Exhibit 3*. Furthermore, Mr. Thomas objected to the appraisal as hearsay because the appraiser did not appear for cross-examination. *Id.* According to Mr. Thomas, such an examination is absolutely necessary to answer questions about the correlation of the appraised value to the valuation date, the effects of time on the real estate market, and the appraiser's choice of comparables. *Id.*
- b. The Respondent's representative further argues that the Board should give little weight to the Petitioners' appraisal because the comparable properties the appraiser used are not comparable to the Petitioners' house. *Thomas testimony; Respondent Exhibit 3*. According to Mr. Thomas, comparable properties should be suitable replacement properties for the subject property, but the appraiser's comparables varied in living area, architectural design, height, and style. *Id.*
- c. In addition, the Respondent's representative contends, the Petitioners' trending arguments have no evidentiary basis. *Thomas testimony; Respondent Exhibit 3*. According to Mr. Thomas, the Department of Local Government Finance (DLGF) certified and approved the sales ratio study and trending factors for Newton County. *Id.* Thus, Mr. Thomas argues, Newton County executed its trending to the satisfaction of the DLGF, which supersedes the Petitioners' suggestion that its trending formulas should be disregarded. *Id.*
- d. Finally, the Respondent's representative argues that the Petitioners must prove that their assessment is incorrect and present sufficient probative evidence to show what assessment is correct. *Thomas testimony; Respondent Exhibit 3*. The Respondent contends that the Petitioners failed to prove their assessment is incorrect and, therefore, the burden of proof did not shift to the Respondent. *Id.*

### **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 56-013-08-1-5-00004 James and Diane O'Hara,
  - c. Exhibits:

Petitioner Exhibit 1 – Appraisal prepared by Roy Gouwens,  
Petitioner Exhibit 2 – Form 131 petition to the Board,

Petitioner Exhibit 3 – Form 130 petition to the PTABOA,  
Petitioner Exhibit 4 – Form 115 Notification of Final Assessment  
Determination,  
Petitioner Exhibit 5 – Affidavit of James C. O’Hara,

Respondent Exhibit 1 – Exhibit list,  
Respondent Exhibit 2 – Original witness list and written summary,  
Respondent Exhibit 3 – Rebuttal evidence,

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of Hearing dated November 13, 2009,  
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 evidence. *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). But 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, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
- d. Here, the Petitioners offered an appraisal report prepared by an Indiana certified appraiser in which the appraiser valued the Petitioners' house at \$230,000 as of January 21, 2009.<sup>2</sup> The appraiser certified that his report conformed to the Uniform Standards of Professional Appraisal Practice (USPAP). Although an appraisal is the type of market-based evidence that could be relevant and probative to determining market value-in-use, in this case it fails to do so. The appraisal estimates the property's value more than two years after the relevant valuation date of January 1, 2007. Because Mr. O'Hara did not relate the property's January 21, 2009, appraised value to their property's value as of January 1, 2007, the appraisal lacks probative value.

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<sup>2</sup> The Respondent's representative objected to the Petitioners' appraisal on the basis that the appraisal is hearsay. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a "statement" can be either oral or written. The appraiser who prepared the appraisal did not appear at the hearing to testify and be cross-examined. Consequently, the appraisal is hearsay. *See Indiana Rules of Evidence*, Rule 801. Nevertheless, Mr. Thomas is a certified tax representative and not a lawyer. While the Board has allowed tax representatives to argue that evidence is untimely pursuant to the Board's procedural rules, Mr. Thomas has crossed this threshold and now attempts to refer to the Indiana Rules of Evidence. By making an evidentiary objection of the kind Mr. Thomas makes here, Mr. Thomas has once again improperly attempted to practice law before the Board. The Board, therefore, strikes this objection and admits the Petitioners' appraisal as if no objection had been made.

- e. Similarly, the Petitioners' purchase of the property fails to show there is an error in the property's assessment. Mr. O'Hara testified that the Petitioners purchased their property for \$225,000 in February 2004 – almost three years prior to the valuation date of January 1, 2007. Again, the Petitioners failed to relate the 2004 purchase to the statutory valuation date. Thus, Mr. O'Hara's testimony fails to raise a prima facie case that their property is over-valued. *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.)
- g. The Petitioners further argued that the 23% increase in the property's assessed value from their 2004 purchase to the 2007 valuation date is unreasonable because the real estate market has been depressed across the nation. The Petitioners, however, failed to provide any evidence to support their opinions. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment.<sup>3</sup> *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Even if the Board agreed that a 23% increase is, on its face, unreasonable – which it does not given the volatility of the market during the period of time in question – it is not sufficient for a taxpayer to show that an assessment is in error. The taxpayer must also prove the correct market value-in-use of the property. *See Meridian Towers*, 805 N.E.2d at 478. Thus, because the Petitioners failed to show how the market changed between their 2004 purchase and the 2007 valuation date, or between the 2007 valuation date and their 2009 appraisal, the Petitioners failed to raise a prima facie case for a change in the assessed value of their property.<sup>4</sup>
- h. The Petitioners failed to establish a prima facie case. Where the Petitioners have not supported their 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*, 709 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

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<sup>3</sup> The Petitioners also contend that the Respondent failed to present any evidence in support of the 23% increase in their assessed value. The Petitioners, however, misunderstand the burden in these proceedings. As the taxpayer seeking to appeal their property's assessment, the Petitioners must prove the assessment is wrong. The Assessor is not tasked with proving the assessment is correct. As stated above, a property's market value-in-use as determined using the Guidelines is presumed to be accurate. *See e.g. Kooshtard Property, VI, LLC*, 836 N.E.2d at 505. It is the taxpayer's burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See e.g. Meridian Towers*, 805 N.E.2d at 478.

<sup>4</sup> The Petitioners also contend the new trending system results in "trending anomalies" and therefore the trending formulas should be disregarded. Again, however, the Petitioners neither proved that a "trending anomaly" existed or what the correct factor might be.

**Conclusion**

16. The Petitioners failed to establish a prima facie case that their property is 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: \_\_\_\_\_

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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>>