

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

**Petition #:** 49-701-02-1-5-05616  
**Petitioners:** Robert C. Updike / Sean M. Curran  
**Respondent:** Warren Township Assessor (Marion County)  
**Parcel #:** 7007423  
**Assessment Year:** 2002

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 Marion County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 22, 2003.
2. The Petitioners received notice of the decision of the PTABOA on April 23, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on May 19, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 3, 2005.
5. The Board held an administrative hearing on February 9, 2005, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
  - a) For Petitioners: Sean Updike, Taxpayer  
Robert Curran, Taxpayer
  - b) For Respondent: John Tilford, Warren Township Deputy Assessor  
Janis Wilson, Warren Township Deputy Assessor

Also present at the hearing as an observer was Charles McDonald for the Marion County PTABOA.

## Facts

7. The property is classified as residential row type with 2 units, as is shown on the property record card for parcel #7007423.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Marion County PTABOA:  
Land \$10,800            Improvements \$53,500
10. Assessed Value requested by Petitioners:  
Land \$6,000            Improvements \$24,000

## Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a) The assessment is not indicative of the true market value of the property. The Petitioners purchased the subject property in March 2003, for \$30,000. The Petitioners submitted the purchase agreement and closing statement. No appraisal was performed. *Curran testimony; Petitioner Exs. 9-10.*
  - b) The subject property previously was used as a rental property but had been vacant for some time because it was uninhabitable. One of the units had been empty for fourteen (14) months; the other unit had been empty for three (3) years. The utilities had been turned off for some time. Water service to the property was off from April 1999 until March 2003. One unit sat without gas or electric service for approximately one (1) year, the other unit was without those services for two (2) years. *Curran testimony; Petitioner Exs. 2, 11-12.*
  - c) The Petitioners insured the subject property when they purchased it. The insurer cancelled the policy, however, due to the property's condition. *Petitioner Exs. 4-5; Curran testimony.* The subject property was in extremely poor condition. It needed a new roof and gutters, structural work, new floors, foundation repair, and plumbing repairs. *Curran testimony; Petitioner Exs. 7, 13.*
  - d) The Petitioners provided real estate listings for other homes in the area that are similar to the subject property. The listings show sale prices ranging from \$38,000 to \$59,000. *Curran testimony; Petitioner Ex. 8.*
  - e) The purportedly comparable properties identified by the Respondent were occupied at the time of assessment. Those properties must have been in better condition than the subject property. *Curran testimony.*
12. Summary of Respondent's contentions in support of the assessment:

- a) The Petitioners were aware that the subject was a distressed property at the time of purchase. *Tilford testimony.*
- b) The Respondent was unaware of the true condition of the property. After a thorough inspection, the Respondent recommended a change in the condition rating applied to the subject property. The PTABOA changed the condition rating from “average” to “fair”. This resulted in a change in total assessed value from \$69,300 to \$64, 300. *Tilford testimony; Respondent Ex. 4-5.*
- c) The Petitioners presented a handwritten list of expenses at the PTABOA hearing, but they did not provide any receipts or other supporting documentation. *Wilson testimony.*
- d) The Respondent hired a professional appraiser to determine land values in the township. An eighteen percent (18%) residential land value ratio was determined to be fairly representative. For the subject area, a base price of \$170 per front foot was determined. *Tilford testimony; Respondent Exs. 1-3.*
- e) A neighborhood factor of .87 was determined for the neighborhood in which the subject property is situated. However, sales of distressed properties could not be used in the determination of the neighborhood factor. *Tilford testimony.*
- f) The assessment being appealed is for March 1, 2002. The Petitioners did not own the property, but did pay the taxes. *Wilson testimony.*
- g) At the PTABOA hearing, the Petitioners said the subject property was worth \$50,000. For the 2002 assessment, properties were required to be valued as of January 1, 1999. *Tilford testimony.*

### **Record**

13. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
  - b) The tape recording of the hearing labeled BTR #5552.
  - c) Exhibits:
    - Petitioner Exhibit 1: List of witnesses
    - Petitioner Exhibit 2: Utility History
    - Petitioner Exhibit 3: Title insurance
    - Petitioner Exhibit 4: Insurance application
    - Petitioner Exhibit 5: Insurance cancellation
    - Petitioner Exhibit 6: Copies of photographs of subject
    - Petitioner Exhibit 7: List of repair costs

Petitioner Exhibit 8: MLS (real estate) listings for comparable properties  
Petitioner Exhibit 9: Purchase agreement  
Petitioner Exhibit 10: Closing statement  
Petitioner Exhibit 11: Letter from previous owner regarding condition of property at time of sale  
Petitioner Exhibit 12: Letter from Indianapolis Water concerning utility status  
Petitioner Exhibit 13: Folder containing receipts from property repair  
Petitioner Exhibit 14: Notice of hearing

Respondent Exhibit 1: Summation from county hearing  
Respondent Exhibit 2: Letter from Warren Zinn concerning land value ratio  
Respondent Exhibit 3: Residential Valuation form  
Respondent Exhibit 4: Printout of assessment information for the subject property  
Respondent Exhibit 5: Subject Property Record Card (PRC)  
Respondent Exhibit 6: Comparable sales data for 2425 N. Bolton Ave.  
Respondent Exhibit 7: Comparable sales data for 2615 N. Ritter Ave.  
Respondent Exhibit 8: Comparable sales data for 2301 N. Lesley Ave.  
Respondent Exhibit 9: Comparable sales data for 5602 E. 24<sup>th</sup> St.  
Respondent Exhibit 10: Notes from PTABOA hearing  
Respondent Exhibit 11: Form 115

Board Exhibit A: Form 131 petition  
Board Exhibit B: Notice of Hearing

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 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).
- 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 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”).

- 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 did provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners' main contention hinges on the purchase price of the subject property. The Petitioners purchased the property for \$30,000 on March 21, 2003. *Curran testimony; Petitioner Exs. 9-10.*
- b) The sale of a subject property is often the most compelling evidence of its market value. In this case, the Petitioners bought the subject property for less than one-half the amount for which it is currently assessed. The sale price therefore demonstrates that the current assessment is excessive.
- c) It is true, as the Respondent asserts, that for the 2002 general reassessment, real estate is to be valued as of January 1, 1999. *See 2002 REAL PROPERTY ASSESSMENT MANUAL 4* (incorporated by reference at 50 IAC 2.3-1-2). Absent evidence to the contrary, however, the Board will not assume that the subject property depreciated substantially between January 1, 1999, and the date that the Petitioners bought the property. In any event, the subject property would have had to depreciate at an astronomical rate in order for the current assessment to be a more accurate measurement of its true tax value than the purchase price.
- d) Based on the foregoing, the Petitioners established a prima facie case that the current assessment is in error and that the correct assessment is \$30,000.
- e) The Respondent attempted to rebut the Petitioners' evidence both by asserting that it conducted its assessment in accordance with applicable rules governing mass appraisals, and that sales of comparable properties support the current assessment.
- f) With regard to the Respondent's first contention, even if it conducted the assessment in accordance with the Real Property Assessment Guidelines for 2002 – Version A, that fact would not outweigh the Petitioners' evidence concerning the sale price of the subject property. The sale of the subject property constitutes direct evidence of how two market participants valued the specific property being examined. By contrast, the mass appraisal system utilized by the Respondent estimates the market value of a group of properties indirectly "using common data, standardized methods, and statistical testing." *MANUAL*, at 13.
- f) The Respondent's second contention, that the sale prices of comparable properties support the current assessment, is similarly unavailing. In making this argument, the Respondent essentially relies on a sales comparison approach to establish the

market value in use of the subject property. *See* MANUAL, at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).

- g) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, 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 two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- h) Here, the Respondent simply provided property record cards for three properties that it asserted were comparable to the subject property. The Respondent did not provide any analysis regarding how the salient characteristics of those properties compared to the characteristics of the subject property. Similarly, the Respondent did not explain how any differences between the properties affected their relative market values. Consequently, the Respondent’s evidence concerning the sales of other properties lacks probative value.
- i) Based on the foregoing, the preponderance of the evidence demonstrates that the current assessment is in error, and that the correct assessment should be \$30,000.

### **Conclusion**

- 16. The preponderance of the evidence demonstrates that the current assessment is incorrect and that the correct assessment is \$30,000. The Board finds for the Petitioner.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to \$30,000.

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

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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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.** You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.