

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

**Petition No.:** 91-015-06-1-5-00031  
**Petitioners:** Joseph A. and Karen K. Winters  
**Respondent:** White County Assessor  
**Parcel No.:** 011-38720-00  
**Assessment Year:** 2006

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 White County Property Tax Assessment Board of Appeals (the PTABOA) by written document on December 7, 2007.
2. The PTABOA issued notice of its decision on March 18, 2008.
3. The Petitioners filed a Form 131 petition with the Board on April 7, 2008. The Petitioners elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated September 10, 2008.
5. The Board held an administrative hearing on October 15, 2008, 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: Joseph A. Winters, owner  
Karen K. Winters, owner
  - b. For Respondent: Scott Potts, County Representative

## Facts

7. The property consist of a 1,700 square foot single-family residence with a beauty shop and attached garage on .46 acre located at 187 West State Road 18, Brookston, in Prairie Township, White 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 \$15,000 for land and \$118,300 for the improvements, for a total assessed value of \$133,300.
10. The Petitioners requested the assessed value to be \$15,000 for the land and \$93,000 for the improvements, for a total assessed value of \$108,000.

## Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a. The Petitioners contend the assessed value of their property exceeds its appraised value. *J. Winters testimony*. In support of this position, the Petitioners submitted an appraisal report prepared by Lawrence Wayne Culp of White County Appraisal Service. *Petitioner Exhibits 1 – 7*. Mr. Culp is an Indiana Certified Appraiser. *Petitioner Exhibits 2 – 3*. In his February 19, 2008, appraisal report, Mr. Culp estimated the property's value was \$108,000 as of January 1, 2005. *Petitioner Exhibit 2*.
  - b. Further, the Petitioners contend the assessed value of their property exceeds the property's market value. *J. Winters testimony*. In support of this position, the Petitioners submitted a letter from Bev Tatlock of Help-U-Buy Real Estate. *Petitioner Exhibit 10*. Pursuant to that December 4, 2007, letter, Ms. Tatlock stated she would list the property for sale at \$85,000, and hoped the property would sell for approximately \$80,000. *Id.* According to Ms. Tatlock's letter, she believes the market in the area is low due to foreclosures. *Id.*
  - c. The Petitioners also contend that surrounding properties in the neighborhood adversely impact the value of their property. *J. Winters testimony*. According to the Petitioners, their property is located across the street from a cemetery and surrounded by a city park. *Id.* Mr. Winters testified that golf balls and baseballs from the park have damaged the roof and siding of the house. *Id.* The property also experiences flooding in the yard due to poor drainage from the French ditch. *Id.* The Petitioners argue the character of the neighborhood adversely impacts its value. *Id.*

- d. Finally, the Petitioners argue, their property could not sell for its assessed value because of the condition of the house. *J. Winters testimony*. In support of this contention, the Petitioners submitted a photograph to show that water leaks around the windows. *Petitioner Exhibit 7*. Mr. Winters testified that the leaking windows have damaged the home's porch, ceiling and flooring. *J. Winters testimony*. According to the Petitioners, this is further indication that the property's assessment is overstated. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends the Petitioners' appraisal, Help-U-Buy Real Estates' opinion of value letter and the property's current assessment are all valid opinions of values of the subject property. *Potts testimony*. However, the Respondent argues, they are just a few values in a range of values that would be valid. *Id.*
  - b. The Respondent argues that, because Indiana uses a mass-appraisal system for assessing properties, a property's assessed value only needs to fall within an acceptable statistical range to be accurate. *Potts testimony*. In support of its position, the Respondent submitted a copy of Indiana Administrative Code, title 50, rule 21-11-1 (2006) and the 1999 International Association of Assessing Officers (IAAO) 1999 Standard on Ratio Studies. *Respondent Exhibits 1 – 2*. According to the Respondent, 50 IAC 21-11-1 identifies the Coefficient of Dispersion (COD) as 15% for improved residential property. *Respondent Exhibit 1 at 9*. The COD is the average deviation of a group of numbers from the median, expressed as a percentage. *Respondent Exhibit 2 at 59*. The Respondent contends the appraisal supports the validity of current assessment because the assessment is only 23.4% higher than the appraised value, or only 8.4% more than the allowable COD. *Potts testimony*.
  - c. The Respondent further argues that lowering the Petitioners' assessment to the property's appraised value would create an invalid uniformity. *Potts testimony*. According to the Respondent, the appraisal is an indirect indicator of value because it is only someone's opinion of value. *Id.* The IAAO Standard prohibits "sales chasing" which it defines as the practice of assessing properties on their sales prices. *Respondent Exhibit 2 at 62; Potts testimony*. Mr. Potts argues that "since sales chasing is an invalid method to set assessments on properties where a sale price is a direct indicator of value, then setting assessments to an appraisal, which is an indirect indicator of value, would at least be equally invalid." *Potts testimony*.

### **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 – Letter and invoice from White County Appraisal Service, dated January 20, 2008,

Petitioner Exhibit 2 – Uniform Residential Appraisal Report, dated February 19, 2008,

Petitioner Exhibit 3 – Two pages containing definition of market value, statement of limiting condition and appraiser’s certification, signed by Lawrence Wayne Culp, dated February 19, 2008,

Petitioner Exhibit 4 – Sketch addendum of the subject property,

Petitioner Exhibit 5 – Two copies of Joseph and Karen Winters’ property record card,

Petitioner Exhibit 6 – White County highway map showing location of the subject property and the comparable properties contained in the appraisal,

Petitioner Exhibit 7 – One interior and three exterior photographs of the property under appeal,

Petitioner Exhibit 8 – Refund check issued by the White County Treasurer to Joseph and Karen Winters, dated March 3, 2008,

Petitioner Exhibit 9 – Tax refund account sheet for Joseph and Karen Winter, dated January 29, 2008,

Petitioner Exhibit 10 – Letter from Bev Tatlock, Help-U-Buy Real Estate, dated December 4, 2007,

Respondent Exhibit 1 – Copy of Indiana Administrative Code 50 IAC 21,

Respondent Exhibit 2 – International Association of Assessing Officers’ 1999 Standard on Ratio Studies, approved July, 1999,

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 provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
  - a. Real property is assessed based 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, for the property.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual's definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
  - b. In addition, the 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c. Here the Petitioners contend their property is over-valued based on its market value-in-use. *J. Winters testimony*. In support of this contention, the Petitioners offered two estimates of their property's value: an appraisal report prepared by Lawrence Culp and an opinion of value letter prepared by Bev Tatlock of Help-U-Buy Real Estate. *Petitioner Exhibits 1 and 10*.
- d. First the Petitioners presented an appraisal that estimated the value of the property to be \$108,000 as of January 1, 2005. *Petitioner Exhibits 2 – 3*. The appraiser is an Indiana Certified Appraiser that prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* The appraisal conforms to the correct valuation date and otherwise provides probative evidence of the estimated value. An appraisal performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the Petitioners raised a prima facie case that the property is over-assessed.
- a. The Petitioners also submitted a letter dated December 4, 2007, from Help-U-Buy Real Estate that concluded the property should list for sale at \$85,000. *Petitioner Exhibit 10*. Ms. Tatlock indicated in the letter that she hoped the property would sell for approximately \$80,000. *Id.* The letter, however, does not comply with the statutory valuation date. Nor did the Petitioners present any evidence to establish that Ms. Tatlock's opinion of value was based on generally accepted appraisal principles. Therefore, the Board finds that the letter is not probative evidence that the property's appraised value should be further reduced.<sup>1</sup>
- b. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case.
- c. Here, the Respondent did not offer evidence to rebut or impeach the Petitioners' appraisal. In fact, the Respondent's representative testified that the Petitioners' 2005 appraised value of \$108,000 and Help-U-Buy Real Estate's letter of value were valid estimates of the property's value. *Potts testimony*. The Respondent argued, however, that the property's current assessment is also a valid estimate of the property's value. *Id.* Because the property's appraised value and the

---

<sup>1</sup> The Petitioners also contend that the value of the subject property is diminished by the condition and inadequacies of properties in the surrounding area. *J. Winters testimony*. External obsolescence is caused by an influence outside the property's boundaries that has a negative influence on its value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. F at 4, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES), intro. at 1. To receive an adjustment for obsolescence, the Petitioners must first identify the causes of obsolescence the Petitioners believe are present and then quantify the amount of obsolescence they believe should be applied to their property. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, Petitioners must present probative evidence that the causes of obsolescence identified are resulting in an actual loss in value to the property. *See Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). In the case at bar, the Board need not consider whether the property is affected by influences outside of the property's boundaries that have a negative influence on its value. These negative factors would have been considered and valued in the Petitioners' appraisal, which has already been addressed in the findings.

property's assessed value are close to the accepted statistical deviation range, the Respondent contends, no adjustment to the assessed value of the property is necessary. *Id.* According to the Respondent, no statute mandates that a property's assessed value precisely equal its appraised value. *Id.*

- d. A "Coefficient of dispersion" is defined as "[t]he average deviation of a group of numbers from the median expressed as a percentage of the median. In ratio studies, the average percentage deviation from the median ratio." MANUAL at 9. The Respondent apparently relied upon the statement that "the coefficient of dispersion about the median [assessment ratio] should be at 0.15 (15%) or less for single-family residences ..." MANUAL at 21. This clearly refers to standards for evaluating the overall accuracy and uniformity of mass appraisal methods during the equalization process. It does not authorize a 15% range for an individual assessment where the taxpayer presents credible, probative evidence of a value that is more precise for that particular property. *See generally* Indiana Administrative Code, title 50 r. 14 (regarding the equalization process).
- e. The Respondent admits that the assessed value deviates from the appraised value by a larger margin than the statutory coefficient of dispersion allows, but seems to argue that the assessed value is "close enough." *Potts testimony*. The Board reminds the Respondent that it has repeatedly rejected attempts to rebut probative market-based evidence with claims that a property's assessment falls within statistical measures of uniformity. However, even if the Board were to accept a 15% deviation as acceptable on an individual assessment, which it does not, there is no support for the acceptability of a 23% deviation. Unsupported statements are conclusory and do not qualify as probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Thus, even under the Respondent's own argument, the assessed value of the property is over-stated.
- f. Finally, the Respondent argues that to change the assessed value to the Petitioners' appraised value would equate to improper sales chasing. *Potts testimony*. As the Tax Court has recognized, market value-in-use appraisals performed in conformance with Uniform Standards of Professional Appraisal Practice are compelling evidence of a property's market value-in-use. Indeed, the Tax Court has described such appraisals, when prepared in conformity with USPAP, as "the most effective method to rebut the presumption that an assessment is correct." *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. Nowhere in its decision does the Tax Court equate relying on such evidence to "sales chasing" or prohibit reducing a property's assessment to its actual market value-in-use out of fear of creating an "invalid uniformity." This argument is without merit. The Board finds that the Respondent failed to rebut the Petitioners' prima facie case.

## Conclusion

16. The Petitioners raised a prima facie case that property was over-valued. The Respondent failed to rebut or impeach the Petitioners' evidence. Thus, the Board finds in favor of the Petitioners and holds that the market value-in-use of the subject property is \$108,000.

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should 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>.**