

REPRESENTATIVE FOR PETITIONERS:

Darrell Auxier, Attorney at Law

REPRESENTATIVES FOR RESPONDENT:

Will Sims, Hanover Township Assessor  
Margaret Hoffman, Jefferson County Assessor  
Elbert Hinds, President of the Jefferson County  
Property Tax Assessment Board of Appeals

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                           |   |                  |                     |
|---------------------------|---|------------------|---------------------|
| William & Anne Jenner,    | ) | Petition No.:    | 39-009-02-1-5-00093 |
|                           | ) | Parcel:          | 0090052100          |
| Petitioners,              | ) |                  |                     |
|                           | ) |                  |                     |
| v.                        | ) |                  |                     |
|                           | ) | County:          | Jefferson           |
| Hanover Township Assessor | ) | Township:        | Hanover             |
| (Jefferson County),       | ) | Assessment Year: | 2002                |
|                           | ) |                  |                     |
| Respondent.               | ) |                  |                     |

Appeal from the Final Determination of the  
Jefferson County Property Tax Assessment Board of Appeals

**February 10, 2005**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) has reviewed the facts and the evidence in this matter. The Board now enters the following findings and conclusions on the issues that were presented.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE**

1. *Is the subject property assessed at its market value-in-use?*

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, Petitioners filed a Form 131, Petition for Review of Assessment, petitioning the Board for an administrative review of the above petition. The Form 131 was filed with the Jefferson County Assessor on February 13, 2004. The determination of the Jefferson County Property Tax Assessment Board of Appeals (PTABOA) is dated January 13, 2004.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on August 12, 2004, in Madison, Indiana, before Paul Stultz, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn as witnesses at the hearing:
  - a. For Petitioners:  
Darrell Auxier, Attorney at Law;  
Andrew Lynch, Realtor;
  - b. For Respondent:  
Will Sims, Hanover Township Trustee Assessor;  
Lucy Anderson, Secretary to the Hanover Township Trustee Assessor;  
Margaret Hoffman, Jefferson County Assessor;  
George Thomas, PTABOA member;  
Elbert Hinds, PTABOA President.

5. The following exhibits were received from the Petitioners:

Petitioners' Exhibit 1 – Two page statement listing witness and exhibits;

Petitioners' Exhibit 2 – Package of documents containing the following:

Ex. 2/1 – Petition to the Indiana Board of Tax Review of Assessment, Form 131;

Ex. 2/2 – Purchaser's Closing Statement from Scott Lynch Realty;

Ex. 2/3 – Property Record Card (PRC) for William and Anna Jenner, 1241 S.Riverview Drive - Parcel #0090052100;

Ex. 2/4 – PRC for Claude and Rebecca Routon, 4118 W. S.R. 56 – Parcel #009009600;

Ex. 2/5 – PRC for Ted and Margaret Lynn Todd, 2225 S. Logans Point Drive - Parcel #0120110700;

Ex. 2/6 – PRC for Noel and Rosalee Graves, 1221 S. Riverview Drive - Parcel #0090051800;

Ex. 2/7 – PRC for Constance F. Rhoten, 1321 S. Riverview Drive - Parcel #0090052900;

Ex. 2/8 – PRC for James R. and Robin W. Singer, Jr., 1271 S. Riverview Drive - Parcel #0090052400;

Ex. 2/9 – PRC for John and Dorothy Jean Collier, 1000+ S. Riverview Drive - Parcel #0090022999 and Parcel #0090022998;

Ex. 2/10 – PRC for John and Dorothy Jean Collier, 1371+ S. Riverview Drive - Parcel #0090053400;

Ex. 2/11 – PRC for William and Jane P. Huber Trust, 2205 S. Logans Points Drive - Parcel #0120110500.

6. The following exhibits were presented for the Respondent:

Respondent's Exhibit 1 – Statement listing witness and exhibits;

Respondent's Exhibit 2 – Five page statement of Respondent's position;

Respondent's Exhibit 3 – Package of documents containing the following:

Ex. 3/a – Copy of two pages of Indiana Assessment Academy definition of Bad Sales;

- Ex. 3/b – Copy of comparable assessment data for Jefferson County;  
Copy of Market Value and Market Rent Definitions;
- Ex. 3/c – Copy of Market Value and Market Rent Definitions;
- Ex. 3/d – Copy of Real Property Assessment Guideline- Version A,  
Chapter 2, page 8;
- Ex. 3/e– Copy of purchaser’s closing statement;
- Ex. 3/f – Copy of Listing Contract dated December 9, 2002, four pages,  
for subject property;
- Ex. 3/g – Copy of real estate listing for subject property;
- Ex. 3/h – Copy of Form 11 for property located at 2225 S. Logans Point  
Drive, Hanover, Indiana;
- Ex. 3/i – Copy of RPC for property located at 2225 S. Logans Point Drive,  
Hanover, Indiana;
- Ex. 3/j – Copy of RPC for property located at 2205 S. Logans Point Drive,  
Hanover, Indiana;
- Ex. 3/k – Copy of list of eight properties with opinion of comparability  
and appraisal or assessed values;
- Ex. 3/l – Copy of page of published telephone numbers;

Respondent’s Exhibit 4 – Package of documents containing the following:

- Ex. 4/a – Cover sheet;
- Ex. 4/b – Five page statement of opinion;
- Ex. 4/c – Respondent Summary, one page;
- Ex. 4/d – Copy of certified mail receipt;
- Ex. 4/e – Copy of Form 131 page 2;
- Ex. 4/f – Copy of PRC –subject property;
- Ex. 4/g – Copy of PRC –subject property;
- Ex. 4/h – Copy of Version A-Real Property Assessment Guideline Chapter  
3 page 12;
- Ex. 4/i – Copy of Notice of Public Hearing;
- Ex. 4/j – Copy of Jefferson County land base rates adoption;

- Ex. 4/k – Letter dated June 30, 2003, to Ms. Sims from B. Henkel with copy of envelope attached;
- Ex. 4/l – Copy of first three pages of Form 133, approval date November 13, 2003;
- Ex. 4/m – Sketch of subject improvements;
- Ex. 4/n – Copy of Version A-Real Property Assessment Guidelines Appendix C, pages 2 and 3;
- Ex. 4/o – Copy of Final Determination and Findings and Conclusions for Petition # 39-009-02-1-5-00078;
- Ex. 4/p – Copy of 2002 Real Property Assessment Manual, page 10;
- Ex. 4/q – Copy of power point presentation, including cover sheet dated August 28, 2001, presented by the Indiana Assessment Academy;
- Ex. 4/r – August 28, 2001, presented by the Indiana Assessment Academy;
- Ex. 4/s – Copy of page of published telephone numbers;

Respondent's Exhibit 5 – Package of documents containing the following:

- Ex. 5/a – Facsimile copy of one page statement dated August 9, 2004;
- Ex. 5/b – Copy of Notice of Hearing on Petition for subject appeal;
- Ex. 5/c – Copy of Royal Spa invoice #2127;
- Ex. 5/d – Handwritten note from Lisa, with Royal Spa, to Mr. Huber dated October 7;
- Ex. 5/e – Two copies of Installation Instructions for American Swim Spa;
- Ex. 5/f – PRC for William and Anna Jenner, 1241 S. Riverview Drive – Parcel #0090052100;
- Ex. 5/g – PRC for Claude and Rebecca Routon, 4118 W. S.R. 56 - Parcel #009009600;
- Ex. 5/h – PRC for Ted and Margaret Lynn Todd, 2225 S. Logans Point Drive - Parcel #012010700;
- Ex. 5/i – PRC for Noel and Rosalee Graves, 1221 S. Riverview Drive - Parcel #0090051800;
- Ex. 5/j – PRC for Constance F. Rhoten, 1321 S. Riverview Drive - Parcel #0090052900;

Ex. 5/k – PRC for James R. and Robin W. Singer, Jr., 1271 S. Riverview Drive - Parcel #0090052400;

Ex. 5/l – PRC for John and Dorothy Jean Collier, 1000+ S. Riverview Drive - Parcel #0090022900;

Ex. 5/m – PRC for John and Dorothy Jean Collier, 1000+ S. Riverview Drive - Parcel #0090022995;

Ex. 5/n – PRC for John and Dorothy Jean Collier, 1000+ S. Riverview Drive - Parcel #0090022996;

Ex. 5/o – PRC for John and Dorothy Jean Collier, 1000+ S. Riverview Drive - Parcel #0090022997;

Ex. 5/p – PRC for John and Dorothy Jean Collier, 1371 S. Riverview Drive - Parcel #0090053400;

Ex. 5/q – PRC for William and Jane P. Huber Trust, 2205 S. Logans Points Drive - Parcel #0120110500;

Respondent's Exhibit 6 – Written response and testimony by Will Sims;

Respondent's Exhibit 7 – Land and Dwelling comparison;

Respondent's Exhibit 8 – One page statement with copy of Jefferson County multiple listings (received August 16, 2004).<sup>1</sup>

7. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A – The Form 131 Petition;

Board Exhibit B – Notice of Hearing dated June 23, 2004.

8. The ALJ did not conduct an on-site inspection of the subject property.

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<sup>1</sup> Respondent submitted Exhibit 8 subsequent to the hearing. There is no indication that Petitioner was served with a copy of it. Thus, such a submission is improper. 52 IAC 2-3-4; 52 IAC 2-8-8(c). Furthermore, this evidence was not requested by the ALJ. For these reasons, Respondent's Exhibit 8 will not be given any consideration in making this determination. 52 IAC 2-8-8.

9. The PTABOA determined the assessed value of the property for 2002 to be:  
Land: \$42,000            Improvements: \$265,300            Total: \$307,300.
10. Petitioners contend the total assessed value of their residence in Hanover, Indiana, should be reduced to \$270,000, which is what they paid for it in September 2001.

### **JURISDICTIONAL FRAMEWORK**

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

12. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).
13. 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”).
14. 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.

#### ANALYSIS

Issue: *Is the subject property assessed at its market value-in-use?*

15. Petitioners contend that the correct value for the subject property is best indicated by the sale of that property on September 10, 2001, for \$270,000. *Board Exhibit A; Lynch testimony.*
16. Respondent contends that the land was valued using values based on ratio studies and the improvement was valued based on state guidelines. Respondent contends that the subject sale was not an arm's-length transaction. *Respondent's Exhibit 2; Sims testimony.*
17. Petitioner argued that Mr. Lynch's involvement in the transaction does not prevent the sale from being a bona fide arm's-length transition.
18. Petitioners presented the following testimony from Mr. Lynch.
  - a. He is the son of Anne Jenner and stepson to William Jenner.
  - b. He is a licensed realtor employed by Scott Lynch Realty.
  - c. He represented the Jenners in their purchase of the subject property.
  - d. The subject property was listed with Century 21 and it was on the multi-listing system.
  - e. Petitioners purchased the subject property from Dr. Richard and Shirley Nero for a sale price of \$270,00 and the closing was on September 10, 2001.
  - f. He did not advise seller concerning the reasonableness of the purchase price of the subject sale.
  - g. The sale price agreed upon by the parties reflected the market value of the subject property.
  - h. The sale was an arms-length transaction.

- i. No circumstances were present that would cause the seller to agree to a below market value price.
  - j. Petitioners subsequently attempted to sell the property, but although it was on the market for over 400 days there were no offers.
  
19. Respondent presented the following evidence and testimony:
  - a. The State of Indiana is really not a fair market state. *Hoffman testimony*.
  - b. The subject property was valued using ratio studies for land value and state guidelines for improvement value. *Hoffman testimony*.
  - c. The subject sale would have been omitted while doing the subject neighborhood land ratio study. *Hoffman testimony*.
  - d. Respondent does not claim the subject sale is a bad sale, however, it would have been set aside due to family involvement. *Sims testimony; Respondent's Exhibit 3, item a. But see Respondent's Exhibit 2* ("I call your attention to the emphasis that has been made about "bad" sales (sales that are not arms length).")
  - e. The sale price of \$270,000 is near the assessed value of \$307,300 and is near the range of ten percent that is acceptable. *Hinds testimony*.
  - f. Subject property was put on the market with an asking price of \$349,000. *Sims testimony; Respondent's Exhibit 3, items f, g.*
  
20. For the 2002 general reassessment, the true tax value of a property is determined based on a valuation date of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL, at 12. In this appeal, the parties agreed there was no substantial change in the market for the subject neighborhood from the valuation date of January 1, 1999, to September 10, 2001, the date the property sold for \$270,000. *Lynch and Hoffman testimony*.
  
21. A bona fide sale of the subject property is typically the best evidence of the market value of a particular property. Thus, the Petitioners made a prima facie case on the value issue based on the undisputed fact that they bought the property for \$270,000 in September 2001.

22. Consequently, the burden shifted to the Respondent to rebut that evidence or present evidence that outweighs the Petitioners' evidence. *Waterfurnace Int'l, Inc. v. Dep't of Local Gov't Fin.*, 806 N.E.2d 891, 893 (Ind. Tax Ct. 2004); *LDI Mfg. Co. v. State Bd. of Tax Comm'rs*, 759 N.E.2d 685, 687 (Ind. Tax Ct. 2001).
23. The Respondent attempted to rebut the Petitioners' evidence by contending the sale was not an arm's-length transaction because a relative served as the Petitioners' realtor. *Respondent's Exhibit 2*.
24. As the Respondent's evidence indicated, a sale may not be an arm's length transaction if there was a relationship (such as parent/child) between the buyer and seller. *Respondent's Exhibits 2, 3*.
25. In this case, there was no evidence that any family relationship existed between the buyers and sellers. The evidence established that relationship existed only between the buyers and their realtor. There was no basis for Respondent's argument that such a relationship between the buyer and their realtor made this a suspect transaction. Respondent failed to offer any probative evidence that the sale of the property was not an arm's-length transaction.
26. Respondent might have offered an appraisal as one method of rebuttal, but Respondent erroneously took the position that providing an appraisal was Petitioners' responsibility. "I asked the petitioner, shortly after he filed the 130 Petition, if he would submit a current market appraisal. He did not submit the appraisal. \*\*\* I will not present a current appraisal as it is the responsibility of the Petitioner to do so." *Respondent's Exhibit 2 at 3, 5*. Once Petitioners presented a prima facie case, however, the burden of going forward with probative evidence to establish the market value of this property shifted to Respondent. *Waterfurnace*, 806 N.E.2d at 893. Respondent failed to do so in any meaningful way.

27. The Respondent contended that because the land was valued using a ratio study that was approved by the Department of Local Government Finance and because the sale price of \$270,000 is near ten percent of the assessed value, the property is correctly assessed. *Hoffman testimony; Hinds testimony.*
28. In support of this argument, the Respondent relied upon the statement that “the overall level of assessment, as determined by the median assessment ratio, should be within ten percent (10%) of the legal level.” 2002 REAL PROPERTY ASSESSMENT MANUAL, at 25.
29. Respondent is mistaken. That statement clearly refers to standards for evaluating the accuracy of the median assessment ratio in the equalization process. It does not grant a ten percent range for individual assessments. *Id.*
30. The subject property was put on the market again on December 9, 2002, with an asking price of \$349,000. The Respondent asserted this fact supports the current assessed value of \$307,300. Respondent provided no authority or explanation for that position. *Sims testimony; Respondent’s Exhibit 3, items f, g.*
31. Despite being on the market for more than a year, there were no offers and no sale. An asking price that was never accepted by the market is not an indication of market value. This point provides no evidentiary support for Respondent’s position on value.
32. Respondent further asserted that land assessments in the subject neighborhood are too low. *Sims testimony; Respondent’s Exhibit 2 at 5.* No probative evidence was introduced to support this opinion. Such conclusory statements do not constitute probative evidence, and consequently, they carry no weight. *Whitley Prods., Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
33. The Respondent also contended the improvement was valued using the Version A-Real Property Assessment Guideline (Guideline). *Hoffman testimony.*

34. The purpose of the 2002 reassessment is to accurately determine true tax value. Departure from the guidelines does not in itself show that value arrived at based on the departure is not a reasonable measure of true tax value. 50 IAC 2.3-1-1(d).
35. The cost approach to value contained in the Guideline is not the only acceptable means of determining a property's true tax value for the 2002 reassessment:  
Indiana's assessment regulations further explain that a property's market value-in-use may be calculated through the use of several approaches, all of which have been used in the appraisal profession. More specifically: ... the cost approach ... the sales comparison approach ... [and] the income approach.  
*Long v. Wayne Twp. Assessor*, slip op. at 4 (Ind. Tax Ct. January 28, 2005).
36. The actual market price of the property is sufficient to establish this Petitioners' prima facie case regarding the market value of their home. Respondent failed to rebut that evidence.
37. Accordingly, the Board determines the total value of the subject property should be \$270,000.

### **Other Findings**

38. Prior to the hearing, Respondent objected to the timeliness of the list of witnesses and evidence submitted by Petitioners. *Respondent's Exhibit 2*. Nevertheless, Respondent did not object to the submission of any evidence or testimony at the hearing.
39. As the Respondent correctly asserts, the parties are required to timely exchange both witness and exhibit lists (fifteen days before the hearing) and copies of documentary evidence and summaries of testimonial evidence (five days before the hearing). 52 IAC 2-7-1(b).
40. As indicated, the parties agreed to the dispositive facts in this appeal. It is clear from the record that Petitioners had relied upon the actual price they paid for this property as

strong evidence of its market value. It is equally clear that the Respondent was aware of that fact long before the Board's hearing. There is no indication that Respondent was surprised by anything Petitioners offered, but rather, Respondent simply maintained his argument that the evidence Petitioners were relying on was bad or insufficient.

Accordingly, the Board cannot find harm to either party by the failure to timely exchange evidence. Parties are reminded, however, that failure to comply with these exchange rules in the future may result in the exclusion of the testimony or documentary evidence at issue. 52 IAC 2-7-1(f).

### **SUMMARY OF FINAL DETERMINATION**

41. The Petitioners presented a prima facie case showing that the assessment should be changed to \$270,000. The Respondent failed to rebut the Petitioners' case. There is a change in the assessment as a result of this issue.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

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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.**