

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

**Petition #:** 01-007-06-1-1-00001  
**Petitioners:** David W. & Julia R. Soldner  
**Respondents:** Kirkland Township Assessor, Adams County Assessor<sup>1</sup>  
**Parcel #:** 01-04-25-100-003.000-007  
**Assessment Year:** 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. On November 20, 2006, the Petitioners filed a written request with the Adams County Property Tax Assessment Board of Appeals (“PTABOA”) asking the PTABOA to reduce their property’s assessment.
2. The PTABOA denied the Petitioners’ request and actually increased the property’s assessment. On March 5, 2007, the Petitioners timely filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment. They elected to proceed under the Board’s rules for small claims.
3. On December 3, 2007, the Board held an administrative hearing through its administrative Law Judge, Jennifer Bippus “(ALJ)”.
4. Persons present and sworn in at hearing:
  - a) For Petitioners: David Soldner, Taxpayer
  - b) For Respondents: Michele Guise, Kirkland Township Assessor  
Jeffrey Kiess, District Supervisor, Appraisal Research Co.  
Judith Affolder, Adams County Assessor  
Larry Hill, PTABOA President<sup>2</sup>

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<sup>1</sup> The Adams County Assessor, Judith Affolder, appeared as an additional party under Ind. Code § 6-1.1-15-4(p) (2006). For ease of reference, the Board captions the County Assessor as a Respondent.

<sup>2</sup> As indicated in the Board’s October 12, 2007, Pre-Hearing Order (*See* Board Ex. E), neither Mr. Hill nor the PTABOA are parties to this appeal. As also indicated in the Board’s pre-hearing order, the Board permitted Mr. Hill to offer evidence and argument in support of the PTABOA’s determination. Mr. Hill, however, did not offer anything beyond his comment that the PTABOA is not his board, but the county’s.

## Facts

5. The Petitioners use the subject property as their residence. It is located at 3720 West – 200 North, Decatur, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the assessed value of the subject property at \$23,600 for the land and \$346,300 for the improvements for a total of \$369,900.
8. The Petitioners requested an assessment of \$23,600 for the land and \$274,600 for the improvements for a total of \$298,200.

## Parties' Contentions

9. The Petitioners offered the following evidence and arguments:
  - a) The Petitioners claim that their property is not worth anything close to its assessed value. The purportedly comparable properties that the township assessor used to value their property are not truly comparable. Homes in the area do not sell for over \$300,000. Indeed, none sold for over \$295,000 from 2003 to 2005. *Soldner testimony*.
  - b) Mr. Soldner identified two properties that he contends more closely compare to the subject property than do any of the properties that the Respondents used. The first property is located at 1501 West – 100 North, Decatur. *See Pet'rs Ex. 1*. It sold for \$291,500.<sup>3</sup> *Soldner testimony*. While that house is smaller than the Petitioners' house, buyers value properties on "setting" and "eye appeal." And the two properties are located in similar settings. Plus, the 1501 West – 100 North property has a much nicer shop building than the subject property's shop building. *Id.*
  - c) The other property is located about one-and-a-half miles from the subject property at 2644 North – 200 West, Decatur. It sold for \$295,000. The house on that property is about the same size as the Petitioners' house. But unlike the Petitioners' house, the 2644 North – 200 West house is surrounded by woods. And it has a better oak finish and floor finish than the Petitioners' house. The Petitioners' property, however, has an outbuilding while the 2644 North – 200 West property does not. *Id.; Pet'rs Ex. 2*.
  - e) Finally, according to the PTABOA's determination notice, only "some" PTABOA members agreed with the PTABOA's decision to raise the subject property's assessment to \$369,900.

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<sup>3</sup> Mr. Soldner testified that this property sold for \$291,500. A hand-written note on Pet'rs Ex. 1 indicates that the property sold for \$292,500.

10. The Respondents offered the following evidence and arguments:
- a) The fact that no properties sold for over \$295,000 from 2003 to 2005 does not mean that the subject property's assessment is incorrect. *Kiess argument*. There are properties worth more than \$295,000; they just did not sell during that period. *Kiess testimony*.
  - b) Mr. Kiess offered a sales-comparison analysis. *Keiss testimony; Resp'ts Ex. 11*. In that analysis, he described differences between the subject property and the seven properties to which he compared it. He then adjusted each property's sale price accordingly. *Id.* He also pointed to differences between the Petitioners' property and the two properties to which Mr. Soldner sought to compare it. And he noted that Mr. Soldner did not adjust the two properties' sale prices to account for those differences. *Kiess testimony*.
  - c) Based on his sales-comparison analysis, Mr. Kiess determined that the subject property was worth \$350,700. *Kiess testimony; Resp'ts Exs. 11-12*. He recommended that the PTABOA lower the property's \$408,200-assessment accordingly. The PTABOA, however, only lowered the assessment to \$369,900. *Kiess testimony*. Nonetheless, Mr. Kiess reiterated his belief that the subject property's market value-in-use was \$350,700. *Id.*

### **Record**

11. The official record for this matter is made up of the following:
- a) The Form 131 petition.
  - b) The digital recording of the hearing.
  - c) Exhibits:
    - Petitioners Exhibit 1: MLS listing and property record card, 1501 West – 100 North
    - Petitioners Exhibit 2: MLS listing and property record card, 2644 North – 200 West
  
    - Respondents Exhibit 1: Subject property record card
    - Respondents Exhibit 2: Record of Appeal Hearing,
    - Respondents Exhibit 3: Photographs of subject dwelling and outbuildings
    - Respondents Exhibits 4-10: Photographs of comparable properties
    - Respondents Exhibit 11: Appraisal grid
    - Respondents Exhibit 12: Summary of hearing comments
  
    - Board Exhibit A: Form 131 Petition
    - Board Exhibit B: Notice of Hearing

Board Exhibit C: Notice of Appearance for County Assessor  
Board Exhibit D: Notice of Filing  
Board Exhibit E: Pre-Hearing Order  
Board Exhibit F: Hearing Sign In Sheet.

d) These Findings and Conclusions.

## Analysis

### Burden of Proof

12. A petitioner seeking review of an assessing official's determination 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 relates to its 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.

### Petitioners' Case

15. The Respondents essentially conceded that the subject property's assessment should be reduced to \$350,700. The Petitioners failed to support any further reduction. The Board reaches this conclusion for the following reasons:
  - a) Real property is assessed based on its "true tax value," which the 2002 Real Property Assessment Manual defines 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, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use 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) *reh'g den. sub nom. P/A Builders*

- & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) The Board turns first to the Petitioners’ claim that the PTABOA’s members did not unanimously agree to the subject property’s assessment. Mr. Soldner did not explain why that lack of unanimity is relevant. Indeed, the governing statutes did not require the PTABOA to act unanimously. To rebut the assessment’s presumption of accuracy, the Petitioners needed to offer market-based evidence to show that it does not reflect their property’s actual market value-in-use.
- d) The Petitioners’ final two claims do look to the market, although they are ultimately unpersuasive. Thus, the Petitioners contend that the subject property’s assessment is wrong because no other properties in the area sold for more than \$295,000 from 2003 to 2005. As the Respondents correctly noted, however, the mere fact that no properties sold for more than \$295,000 does not equate to a lack of properties in that value range. More-valuable properties simply may not have sold during that period.
- e) The Petitioners’ final claim—that comparable properties’ sale prices show that the subject property is worth less than \$300,000—is more colorable. In analyzing those sale prices, Mr. Soldner at least attempted to use the one of the three traditional valuation methods—the sales-comparison approach. But in the end, his analysis lacks probative value because it did not comply with generally accepted appraisal principles.
- f) The sales-comparison approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute property that already exists in the market place. MANUAL at 13-14. A person applying the sales-comparison approach must first identify comparable improved properties that have sold. *Id.* He or she must then adjust those properties’ sale prices to reflect the subject property’s total value. *Id.* The adjustments reflect differences between the subject and comparable properties that affect value. And those adjustments must be quantified using objectively verifiable market evidence. *Id.*
- g) Thus, in order to use the sales-comparison approach as evidence in a property assessment appeal, a party must show that the properties being examined are comparable to each other. Conclusory statements that two properties are “similar” or “comparable” to each other are not probative. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party must identify the subject property’s relevant characteristics and explain how those characteristics compare to each purportedly comparable property’s characteristics. *Id.* at 471. Similarly, the

party must explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71.

- h) Mr. Soldner failed to comply with the sales-comparison approach's basic requirements. He did little to show that the two properties in question were actually comparable to the subject property. In fact, he highlighted more differences than similarities in describing the properties. And he did not adjust the purportedly comparable properties' sale prices to account for those differences.
- i) Nonetheless, each Respondent elected to have Mr. Kiess present its position. And Mr. Kiess's own sales-comparison analysis valued the subject property at only \$350,700. The Board need not decide whether Mr. Kiess's analysis sufficiently complied with generally accepted appraisal principles, because it views his testimony and argument essentially as a concession by the Respondents that the property's assessment should not exceed \$350,700. And Mr. Hill, who appeared on behalf of the PTABOA, offered no evidence or argument to support a higher assessment.
- j) Given those unique facts, the Board finds that the subject property's assessment should be reduced \$350,700.

### **Conclusion**

16. The Respondents essentially conceded that the subject property's true tax value was \$350,700, which is less than its current assessment of \$369,900. The Petitioners did not make a prima facie case for any further reduction. The Board finds that the assessment should be changed to \$350,700.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

**ISSUED: February 28, 2008**

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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>>