

REPRESENTATIVE FOR PETITIONER:  
Kelly Scanlan, Bose, McKinney and Evans

REPRESENTATIVE FOR RESPONDENT:  
Marilyn Meighen, Meighen and Associates

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Anil R. Megha,	)	Petition No.:	33-015-05-1-5-00001
	)	Parcel:	007-84412-00
Petitioner,	)		
	)		
v.	)		
	)	County:	Henry
Judith Bummer,	)	Township:	Henry
Henry Township Assessor	)		
Respondent.	)	Assessment Year:	2005

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

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**March 12, 2007**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

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

### **ISSUE**

1. The issue presented for consideration by the Board is whether the assessed value of the subject property exceeds its market value-in-use.

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, Kelly Scanlan of Bose, McKinney & Evans, LLP, filed a Form 131 Petition for Review of Assessment on July 26, 2006, petitioning the Board to conduct an administrative review of the above petition. The Henry County Property Tax Assessment Board of Appeals issued its determination on June 26, 2006.

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

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Debra Eads, held a hearing on December 12, 2006, in New Castle, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Anil Megha, Property Owner  
Brent Murphy, Appraiser

For the Respondent:

Jeff Wuensch, Nexus Group<sup>1</sup>

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Subject property appraisal dated January 3, 2006,  
Petitioner Exhibit 2 – Addendum to Petitioner Exhibit 1.

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<sup>1</sup> Penny York and Tabatha Thompson, Henry Township Deputy Assessors; Catherine Marquis and Judy Taylor, PTABOA members; and Jodie Brown, Henry County Assessor, observed the hearing.

6. The Respondent presented the following exhibits:
  - Respondent Exhibit A – Photographs of a comparable property identified in the Petitioner’s appraisal,
  - Respondent Exhibit B – 2002 Real Property Assessment Manual,
  - Respondent Exhibit C – Construction cost of subject property.
  
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – The 131 Petition,
  - Board Exhibit B – Notice of Hearing dated October 12, 2006,
  - Board Exhibit C – Notice of Appearance for Marilyn Meighen,
  - Board Exhibit D – Notice of County Assessor Representation,
  - Board Exhibit E – Hearing Sign-in Sheet,
  - Board Exhibit F – Determinations submitted for judicial notice.
  
8. The subject property is a single-family residence located at 3502 South Memorial Drive in New Castle, Indiana.
  
9. The ALJ did not conduct an on-site inspection of the subject property.
  
10. For 2005, the PTABOA determined the assessed value of the property to be \$18,900 for the land and \$731,100 for the improvements, for a total assessed value of \$750,000.
  
11. For 2005, the Petitioner contends the value of the property is \$574,000 based on the Petitioner’s appraisal.

### **JURISDICTIONAL FRAMEWORK**

12. 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

13. 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).
14. 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. Wash. 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”).
15. 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

16. The issue presented for consideration by the Board is whether the assessed value of the subject property exceeds its market value-in-use for the property's March 1, 2005, assessment.
17. The Petitioner contends the market value-in-use of the property should be \$574,000 as determined in the Petitioner's appraisal of the property. *Petitioner Exhibit 1*. In support of this value, the Petitioner presented the following testimony and other evidence:
  - A. The Petitioner argues that the Indiana Tax Court has indicated in several cases that an appraisal conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) is the best indicator of the value of a property. *Scanlan*

*argument.* According to the Petitioner, an appraisal performed under the supervision of an appraiser licensed in the State of Indiana determined the value of the property to be \$574,000 as of January 3, 2006. *Petitioner Exhibit 1.* Further, the Petitioner admitted that the property should be valued as of January 1, 1999, for the March 1, 2005, assessment date. *Scanlon argument.* The Petitioner's appraiser, however, contends that there were insufficient sales of high-end, custom built homes in Henry County from 1999 to 2005 to form an opinion regarding any change in value during that time period. *Murphy testimony.*

- B. According to Mr. Murphy, he used properties in the appraisal that were the most comparable to the subject property. *Murphy testimony; Petitioner Exhibits 1 and 2.* Mr. Murphy also testified that he subsequently supplemented the appraisal by an additional comparable sale in the addendum. *Id.* The Petitioner contends that the comparable properties would be considered alternatives, or substitutes, if those properties were on the market at the same time as the subject property. *Murphy testimony.* In response to cross examination, the Petitioner's appraiser testified that homes with more comparable square footage to the subject property located in other counties were not used as comparables in the appraisal because a property's location is an overriding factor when valuing a property. *Id.* According to Mr. Murphy, a buyer would not consider a home located in another county to be a substitute for a home in Henry Township. *Id.* Further, when asked how he determined the amount of adjustments, the Petitioner's appraiser testified that he extrapolated the adjustments from sales in the Henry County market. *Murphy response to Meighen cross-examination.* Mr. Murphy testified that he determined the amount of adjustment for the difference in square footage between the subject property and the comparables through market sales and that he did not base the adjustments on the construction cost of the additional square footage. *Id.*
- C. In developing the cost approach to value, the Petitioner's appraiser testified that he made an adjustment to the construction cost of the improvements on the property for functional obsolescence due to super-adequacy based on the square footage of the

dwelling. *Murphy testimony; Petitioner Exhibit 1, page 3 of 6.* The Petitioner contends that a buyer would buy a property based on its functional usefulness, not based solely on the square footage of the property. *Murphy testimony.* Regardless of the square footage of the house, the Petitioner's appraiser contends, the subject property is used as a single-family residence. *Id.*

- D. In addition, Mr. Murphy testified, he made an external obsolescence adjustment due to the location of the property in a largely commercial neighborhood. *Murphy testimony.* The Petitioner contends that the location of a property is paramount in determining the value of the property. *Id.* The Petitioner's appraiser testified that the subject property is located on a state highway among both commercial and residential properties. *Id.* The properties adjoining the subject property are a church to the south and a funeral home to the north. *Id.* Further, according to Mr. Murphy, residential properties in the vicinity of the subject property are older, ranch style houses with much less square footage than the appealed property. *Id.* Thus, the Petitioner concludes, the non-conforming location of the subject property adversely affects its value. *Id.*
- E. The Petitioner also argues that non-conforming characteristics of the property negatively affect the value of the subject property. *Murphy testimony.* According to the Petitioner's appraiser, the house has only three bedrooms. *Id.* A buyer in the market for a house of the subject property's size would expect more bedrooms than three. *Id.* In addition, Mr. Murphy testified, the house has a large room resembling a banquet hall that has limited function in a residential property. *Id.* Further, some rooms in the house have wall heater type heating similar to hotel room heating which would not be expected by buyers of a high-end residential home. *Id.* Finally, rather than having landscaping that would be typical of a custom residential property, the subject property has a large concrete area in front of the house and a concrete path around the house. *Id.*

F. The Petitioner contends that, after depreciation adjustments for super-adequacy, non-conformity in the neighborhood, and minimal physical depreciation, the cost approach estimate in the appraisal supports the final appraisal value. *Murphy testimony; Petitioner Exhibit 1 (p.3)*.

G. Finally, the Petitioner contends that construction costs of an improvement are not necessarily reflected in the market value of a property. *Murphy testimony*. According to Mr. Murphy, the Petitioner demolished an older home that was located on the subject property after the Petitioner purchased the property and part of the old foundation was used in the construction of the new dwelling. *Id.* In addition, the Petitioner contends, at approximately 10,500 square feet, the house on the subject property is much larger than other residential homes in the vicinity. *Id.* The Petitioner argues that a loss of functionality is present in the Henry County market for dwellings larger than 5,000-6,000 square foot. *Id.* In response to cross examination questions, the Petitioner admitted that the subject property is the largest dwelling located in Henry Township. *Murphy response to Meighen cross-examination*. The Petitioner contends, however, that the house likely did not have the highest cost to construct. *Murphy testimony*. The Petitioner argues that the dwelling lacks the “highest quality” workmanship and the amenities are inferior to comparable properties. *Id.*

18. The Respondent contends that the current assessed value of \$750,000 is the appropriate market value-in-use for the property. The Respondent presented the following testimony and other evidence in regard to this issue:

A. The Respondent contends that the 2002 Real Property Assessment Manual states that “where there are regular exchanges, so that ask and offer prices converge, true tax value will equal value in exchange.” *Meighen argument*. According to the Respondent’s witness, this suggests that when there are not regular exchanges, value in use and value in exchange would not converge. *Wuensch testimony*.

- B. The Respondent further contends that, while an appraisal may be a valuable assessment tool, if an appraisal estimates a value-in-exchange that is not reflective of value-in-use, the appraisal value would not be applicable. *Wuensch testimony*. The Respondent claims that the subject property is an example of the rare instances when market value and market value-in-use do not converge. *Meighen argument; Wuensch testimony*.
- C. The Respondent argues that the Petitioner's cost of construction is a better estimate of the property's value due to the property's unique character. *Wuensch testimony*. According to the Respondent, the Petitioner submitted information to the Assessor showing that the house was constructed in 2005 for approximately \$700,000. *Id.*; *Respondent Exhibit C*. The Respondent argues that this cost, however, includes only direct costs. *Id.* The Respondent, therefore, estimated the indirect costs to be approximately 30% of direct costs and, with the addition of the estimated indirect costs, determined the total construction cost of the house to be approximately \$910,000. *Id.* The Respondent argues that the Board has held on several occasions that construction cost information is sufficient to establish an error in assessment. *Meighen argument and Board Exhibit F (submitted for judicial notice)*. Thus, the Respondent concludes, evidence of the property's construction cost should also be sufficient to support an assessed value.
- D. The Respondent contends that the difference between the cost approach valuation of a property and an appraised estimate of value-in-exchange represents the use value to the current user of the property. *Wuensch testimony*. According to the Respondent, the value-in-exchange appraisal for the subject property does not value the property for the current owner, but rather for a future potential buyer. *Id.* The Respondent further argues that an obsolescence adjustment to the property's construction cost is inappropriate. *Id.* According to the Respondent, the Petitioner must have felt that a 10,500 square foot residence would be useful to him or he would not have built a house that large. *Id.*



E. Finally, the Respondent contends that the appraisal should be given little weight. *Meighen argument.* According to the Respondent's witness, the comparable properties used in the appraisal are not truly comparable to the subject property due to the disparity in square footage of the houses and the location of the properties. *Wuensch testimony.* Further, the Respondent argues, the adjustments lack credibility. *Id.* According to Mr. Wuensch, the Petitioner's appraiser values excess living area almost equal to the additional garage space on a 'per square foot' basis when comparing the subject property to the smaller properties the Petitioner's appraiser claims are comparable. *Id.*

19. The 2002 Real Property Assessment Manual (the MANUAL) defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." 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 methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479.
20. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*

21. Here, the Petitioner presented an appraisal prepared by a certified appraiser that valued the subject property at \$574,000 as of January 3, 2006. *Petitioner Exhibit 1*. An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. The appraiser, however, testified that market data is insufficient to establish that the property would have appreciated or depreciated between the date of January 1, 1999, and January 3, 2006. *Murphy testimony*. Thus, the Petitioner failed to relate its 2006 appraisal to the January 1, 1999, valuation date and, therefore, failed to raise a prima facie case.
  
22. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Despite the fact that the Respondent had no duty to present rebuttal evidence, we note that even if we were to accept a 2005 or 2006 valuation as presented in the Petitioner's appraisal, the appraised value is rebutted by the construction cost evidence submitted by the Respondent.
  
23. According to the Manual, evidence such as "construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal guidelines" are relevant to market value. MANUAL at 5. Thus, the value of a property can be shown by its construction cost. "Construction cost" includes direct labor and material cost plus indirect expenses required to construct an improvement. REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A at 1. According to the Guidelines, direct costs include, but are not limited to, labor, materials, supervision, utilities used during construction and equipment rental and indirect costs includes building permits, fees, insurance, taxes, construction interest, overhead, profit and professional fees. *Id.* Construction costs must "represent all costs (direct and indirect), regardless of whether or not they were realized, as in the case of do-it-yourself construction." *Id.*

24. Here, the Respondent submitted a list of construction costs totaling \$691,019.66. *Respondent Exhibit C*. This list, however, includes only direct costs. *Id.* Even without estimating the value of the indirect costs, the Petitioner's actual construction costs exceed the estimated value determined by its appraisal. Thus, even if we were to find the Petitioner's 2006 appraised value sufficient to raise a prima facie case, we would conclude that the actual construction costs of the property rebutted the estimated value determined by the Petitioner's appraiser.

#### **SUMMARY OF FINAL DETERMINATION**

25. The Petitioner failed to raise a prima facie case that the subject property is over-valued on the basis of its appraisal. The Board finds in favor of the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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. 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>.