

REPRESENTATIVES FOR PETITIONERS:  
William M. & Carol L. Byrd, Taxpayers

REPRESENTATIVES FOR RESPONDENT:  
Terri Boone, Huntington County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

William M. & Carol L. Byrd,	)	Petition No.:	35-001-02-1-5-00010
	)	Parcel:	0010033707
Petitioners,	)		
	)		
v.	)		
	)	County:	Huntington
Clear Creek Township Assessor,	)	Township:	Clear Creek
	)	Assessment Year:	2002
Respondent.	)		

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

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**April 4, 2006**

**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**

**ISSUES**

1. The issue presented for consideration by the Board was whether the assessed value of the subject property exceeds its market value.

## **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, William M. and Carol L. Byrd filed a Form 131 Petition for Review of Assessment, on October 21, 2004, petitioning the Board to conduct an administrative review of the above petition. The Huntington County PTABOA issued its determination on September 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, the duly designated Administrative Law Judge (the ALJ) Jennifer Bippus, held a hearing on August 24, 2005, in Huntington, Indiana.

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

For the Petitioner:

William M. Byrd, Petitioner

Carol L. Byrd, Petitioner

For the Respondent:

Terri Boone, Huntington County Assessor

5. The following exhibits were presented for the Petitioner:

Petitioners' Exhibit 1 - Copy of Appraisal Report dated October 14, 2004

Petitioners' Exhibit 2 - Copy of property record card (PRC) for James and Katherine Cotton

Petitioners' Exhibit 3 - Copy of subject PRC

Petitioners' Exhibit 4 - Copy of PRC for Rick and Sylvia Reed

Petitioners' Exhibit 5 - Listing of property showing listing price at \$399,500

6. The following exhibits were presented for the Respondent:

Respondent Exhibit 1 - Copy of Form 130 with PRC

Respondent Exhibit 2 - Copy of Form 115 with PRC and attachments

Respondent Exhibit 3 - Copy of Form 131 with PRC and attachments

Respondent Exhibit 4 - Comparable PRCs

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 131 Petition and attachments
  - Board Exhibit B – Notice of Hearing on Petition
  - Board Exhibit C – Notice of County Representation
  - Board Exhibit D – Sign In Sheet
8. The subject property is a residential property on 1.697 acres, located at 4131 W 724 N, Huntington, in Clear Creek Township.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2002, the PTABOA determined the assessed value of the property to be \$21,900 for the land and \$380,600 for the improvements, for a total assessed value of \$402,500.
11. For 2002, the Petitioners contend the assessed value of the property should be \$17,500 for the land and \$327,500 for the improvements, for a total assessed value of \$345,000.

#### **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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also*, *Clark v. State Board of Tax Commissioners*, 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. 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”).
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 Petitioners contend that the assessed value of the subject property is overstated based on its purchase price and appraised value. *W. Byrd testimony*.
17. The Petitioners presented the following evidence and testimony in regard to this issue:
  - a) The Petitioners testified that the subject property had been on the market for over a year with different realtors at \$399,500. *W. Byrd testimony*. According to the Petitioners, when the last realtor reduced the price to \$379,000 there were two offers made on the property for \$325,000 that were rejected by the owner. *Id.* After the listing expired, the Petitioners made an offer on the subject property at \$345,000 and this offer was accepted in April of 2002. *Id.* The Petitioners contend that this is the market value of the subject property. *Id.*
  - b) Further, the Petitioners hired an appraiser to appraise the subject property. *W. Byrd testimony*. The appraiser valued the subject property at \$345,000 as of November 14, 2004. *Id.*; *Petitioners’ Exhibit 1*. According to the Petitioner, the appraiser told the Petitioners that the “rule of thumb” in most counties for the

assessed value of a property is 80% of market value or the sale price. *Id.* The appraiser also determined that the square footage in the dwelling is different than what is shown on the subject property's PRC.<sup>1</sup> *W. Byrd testimony.* According to the Petitioners, the appraiser determined that there are 829 square feet of finished area in the basement and 2,076 square feet of unfinished area, and 2,905 square feet on the main floor. *Id.; Petitioners Exhibit 1.*

- c) In rebuttal, the Petitioners disputed the comparability of the properties presented by the Respondent. According to the Petitioners, the Cotton property is across the street from the subject, built by the same contractor and made with the same materials, but the house is 400 square feet larger than the subject dwelling and the lot is larger with more frontage than the subject property. *W. Byrd testimony; Petitioners' Exhibit 2; Respondent Exhibit 4.* In addition, the Petitioners testified, the Reed property is a two-story residence with a walk-out basement, whereas the subject dwelling is a ranch type home with no walk out basement. *W. Byrd testimony; Respondent Exhibit 4; Petitioners' Exhibit 4.* The Petitioners contend that the homes are not comparable in nature. *W. Byrd testimony.*

18. The Respondent contends that the subject property is correctly assessed based on the comparables in the same neighborhood. *Boone testimony.*

19. The Respondent presented the following evidence and testimony in regard to this issue:

- a) In support of the assessment, the Respondent submitted the assessed values of properties in the same neighborhood that the Respondent contends are “comparable” to the subject property. *Respondent Exhibit 4.* According to the Respondent, the Cotton property has a total finished area of 2,501 square feet with an unfinished basement and assessed for \$251,800. *Id.; Boone testimony.* The Kennedy property has a finished area of 3,927 square feet and assessed for

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<sup>1</sup> Because of differences in the square footages shown on the subject PRC (*Respondent Exhibit 3*) and those indicated in the Petitioners' appraisal (*Petitioners' Exhibit 1*), the Respondent and the Petitioners agreed to meet after the Board's administrative hearing and resolve this issue on a Form 133, if necessary.

\$329,400. *Id.* The Jerabeck property has a finished area of 4,058 square feet and assessed for \$357,900 and the Foster property has a finished area of 3,990 square feet and assessed for \$301,800. *Id.* Further, according to the Respondent, the Bonifas property is 2,743 square feet and assessed for \$335,000 and the Wingo property, with a finished area of 3,859 square feet, assessed for \$330,600. *Id.* In addition, the Fisher property has a finished area of 3,201 square feet and an assessed value of \$328,900 and the Fleck property has a finished area of 3,847 square feet and an assessed value of \$343,200. *Id.*

- b) The Respondent also presented evidence of the sale prices of purportedly “comparable” properties in support of the assessment. According to the Respondent, the Reed property has a finished area of 4,234 square feet and sold for \$332,800. *Boone testimony.* Similarly, the Frandson property in the Lake Forest addition has a finished area of 2,884 square feet and sold for \$365,000 and the Dennis property has a finished area of 5,352 square feet and sold for \$345,000 in June 2005. *Id.* According to the Respondent, the Dennis property has an assessed value of \$367,800. *Id.*
  - c) The Respondent further argues that the appraisal value was the same as the purchase price and did not change from the time of the sale to the time of the appraisal two years later. *Boone testimony.*
20. The Petitioners provided sufficient evidence to support the Petitioners’ contentions that the assessed value of the subject property is over-stated. The Petitioners testified that they bought the subject property in April of 2002, for \$345,000. *W. Byrd testimony; Board Exhibit A.* In addition, the Petitioners submitted an appraisal for \$345,000 as of November 14, 2004. *Petitioners Exhibit 1.*
21. The 2002 Real Property Assessment Manual (“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 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).

22. 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. *Long*, at 471; 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.*
23. The sale of a subject property is often the most compelling evidence of its market value and absent evidence to the contrary, the Board will not assume that the subject property depreciated substantially between January 1, 1999, and the date that the Petitioners bought the property. Here, the Petitioners presented a closing statement showing the purchase of the subject property in 2002 for \$345,000. In addition, the Petitioners submitted an appraisal valuing the property at \$345,000 in 2004. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Thus, while the property was purchased in April of 2002, the Petitioners presented sufficient evidence that the market has not declined in the area. Therefore, we find that the Petitioners have raised a prima facie case that the subject property's value would be no more than \$345,000 in 1999.

24. Where the Petitioner has established a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, in support of the assessment, the Respondent submitted property record cards of purportedly comparable properties in the Petitioners' neighborhood. *Respondent Exhibit 4*. Contrary to rebutting Petitioners' case, however, Respondent's evidence supports a reduction in value. According to Respondent's "comparable" properties, assessed values ranged from \$251,800 to \$367,800 for 2002, whereas the subject property is assessed at \$402,500. *Petitioners' Exhibit 3*. Thus, the Respondent failed to rebut Petitioners' evidence.

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

27. The Petitioners made a prima facie that the subject property is over-valued. This evidence was not rebutted by the Respondent. The Board, therefore, finds in favor of the Petitioner and holds that the value of the subject property is \$345,000.

This Final Determination of the above captioned matter is issued this 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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**