

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

**Petition #:** 43-025-02-1-5-00001  
**Petitioners:** Karl & Carole Keiper  
**Respondent:** Turkey Creek Township Assessor (Kosciusko County)  
**Parcel #:** 0770501220 / 798148  
**Assessment Year:** 2002

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 Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 30, 2003.
2. The Petitioners received notice of the decision of the PTABOA on April 13, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on May 5, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated November 23, 2005.
5. The Board held an administrative hearing on February 2, 2006, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. Persons present and sworn in at hearing:<sup>1</sup>
  - a. For Petitioners: Karl Keiper, Owner
  - b. For Respondent: Charles A. Ker, PTABOA Member  
Gerald Bitner, PTABOA Member  
Susan Myrick, PTABOA Member  
Richard Shipley, PTABOA Member  
Laurie A. Renier, Kosciusko County Assessor

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<sup>1</sup> Mr. Ryan Keiper, Mr. Ron Corson and Ms. Jan Chiddister were present during the administrative proceedings, but they were not sworn in to present testimony.

Patricia Gammieri, Turkey Creek Township Assessor  
Kim Richardson, Turkey Creek Deputy Assessor

- c. Others In Attendance: Ryan Keiper, Observer  
Ron Corson, Observer  
Jan Chiddister, Observer

### Facts

7. The subject property is a two-story, single-family 3,060 square foot dwelling on a 100' x 208' lot, located at 9521 North Koher Road East, Syracuse, in Turkey Creek Township.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$26,100 for the land and \$333,000 for the improvements, for a total assessed value of \$359,100.
10. The Petitioners requested an assessment of \$26,100 for the land and \$213,900 for the improvements, for a total assessed value of \$240,000.

### Issue

11. Summary of Petitioners' contentions in support of an error in the assessment:
  - a. The Petitioners contend the assessed value of the subject property exceeds the market value. In support of this contention, the Petitioners submitted two appraisals for the subject property and assessment and sales information for a comparable property.
  - b. The Petitioners' first appraisal was prepared by Gloria Jean Williams and was dated August 25, 1995. *Petitioner Exhibit 3*. This appraisal included lot 33 Papakeechee Subdivision #7, which is a vacant lot located adjacent to the subject property and lots 20 and 21 Galloway Addition in addition to the subject property (lots 34 and 35 Papakeechee Subdivision #7). *Id.* The appraisal estimated a value of \$285,000 as of August 23, 1995. *Id.* The Petitioners testified that the appraisal included three additional lots and a residential structure not connected to the subject property. *Keiper testimony*.
  - c. The second appraisal was a Limited Appraisal prepared by Philip D. Beer, Beer Appraisal Company on January 13, 2004. *Petitioner Exhibit 4*. This appraisal estimated the total market value of the subject property to be \$235,000. *Petitioner Exhibit 4; Keiper testimony*. The appraisal describes the Papakeechee Lake as being unique and privately owned. *Id.* Motorized boats are not allowed on the lake and the area is considered a niche market. *Id.*

- d. The Petitioners testified the subject improvement was over built for the location. *Keiper testimony*. According to the Petitioners, the neighborhood contains mobile homes, summer cottages, and has little new construction. *Id.* The Petitioners argue that, while their house is very nice, the character of the neighborhood adversely impacts its value. *Id.*
- e. Finally, the Petitioners contend that the multiplication factor used to derive the assessed value was not correctly determined. *Petitioner Exhibits 2 and 4; Keiper testimony*. According to the Petitioners, if the 168% had not been applied to the improvements, the property would have been correctly assessed. *Petitioner Exhibits 2 and 4; Keiper testimony*.

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the subject property has been assessed in accordance with the 2002 REAL PROPERTY ASSESSMENT MANUAL at \$359,100. *Respondent Exhibit 1; Gammiere testimony*.
- b. The Respondent also provided sale disclosures of homes in the same area as the subject property that sold for between \$95,000 and \$162,500 from 1997 to 2000. *Respondent Exhibit 3; Gammiere testimony*. The Respondent admitted, however, that the subject property is over-built for the area and that, while these properties are comparable to the subject in location, there are differences in square footage, land values and grade. *Id.*
- c. Finally, the Respondent disputed the value of the appraisal. According to the Respondent, the appraisal prepared by Gloria Jean Williams in 1995 was prepared to secure a mortgage and at the time of the appraisal the subject property was only 70% complete. *Renier testimony*. Also, the Respondent notes, the Beer appraisal was prepared January 13, 2004, which is after the assessment date of March 1, 2002. *Id.*

**Record**

13. The official record for this matter is made up of the following:

- a. The Petition,
- b. The tape recording of the hearing labeled STB # 5177,
- c. Exhibits:

Petitioner Exhibit 1 - Form 131 appeal,

Petitioner Exhibit 2 - Petitioners' argument on location; two exterior photographs of the subject property; Kosciusko County property assessment report, dated January 31; subject property

- record card; and four exterior photographs of properties in the subject property's neighborhood,
- Petitioner Exhibit 3 - Petitioners' argument on the August 25, 1995, Certified Uniform Residential Appraisal, Kosciusko County assessment report for lot 33 Papakeechee lake; Kosciusko County assessment report for 9540 North Koher Road East (lot 20 & 21 Galloway addition, Papakeechee lake); and a copy of the Residential Appraisal Report prepared by Gloria Jean Williams,
- Petitioner Exhibit 4 - Petitioners' argument on the January 13, 2004, Appraisal Report and a copy of the Limited Appraisal Analysis-Summary Appraisal Report prepared by Philip D. Beer, Beer Appraisal Company,
- Petitioner Exhibit 5 - Petitioners' argument on a comparable property; two Photographs; Kosciusko Assessment Report; sale disclosure, dated July 23, 2003; property record card; and aerial map of the location for the Jeffrey Radkey property.
- Respondent Exhibit 1 - Subject property record card; two exterior photographs of the subject property; plat map and aerial map of the subject area,
- Respondent Exhibit 2 - Form 131 appeal with the following attachments: subject property record card; Scott Bailey's property record card; plat map of the subject area; two exterior photographs of the subject property; five exterior photographs of the subject property's neighborhood; a copy of the Limited appraisal prepared by Beer Appraisal Company; and a copy of the Form 115 prepared by the PTABOA,
- Respondent Exhibit 3 - Sales disclosure forms, property record cards, plat and aerial maps for the following properties: Roy Hanauer and Daniel Gross, Brent Bauer, Mary Fink DelFabro, Phillip Rohyans, Kathleen Likeness, Lawrence Migedt and Michael Glaser,
- Respondent Exhibit 4 - Petitions for Correction of Error (Form 133) for the subject property for March 1, 2002 and 2003,
- Board Exhibit A - Form 139L petition,  
 Board Exhibit B - Notice of Hearing,  
 Board Exhibit C - 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 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).
  - 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 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”).
  - 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. The Petitioners contend that the assessed value exceeds the market value of the subject property. In support of this contention the Petitioners presented an appraisal dated August 25, 1995, that established a value of the subject property and two additional properties at \$285,000. In addition, the Petitioners presented a second appraisal dated January 13, 2004, that they contend establishes the proper value of the subject property at \$235,000. *Petitioner Exhibits 3 and 4; Keiper testimony.*
  - b. 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 method 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.
  - c. 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.*

- d. Here, the Petitioners presented two appraisals, one from 1995 and a second appraisal from 2004. The Petitioners' first appraisal, dated August 25, 1995, establishes the value of the subject property and two additional properties owned by the Petitioners to be \$285,000 as of August 23, 1995. *Petitioner Exhibit 3*. The properties at 9521 and 9540 North Koher Road East and lot 33 at Papakeechee Lake were considered one property. According to the Petitioners, if the assessed value of \$14,800 for lot 33 Papakeechee Lake and \$68,000 for 9540 North Koher Road East are subtracted from the appraised value of \$285,000, the remaining value of \$202,200 represents the market value price of the subject property. *Id.* The Petitioners claim their property is over-assessed on the one hand, however, and deduct assessed values of the additional properties from their appraised value on the other. The Petitioners cannot have it both ways. As the Manual itself recognizes, "True tax value does not mean fair market value." MANUAL at 2. Absent evidence relating the assessed value to the properties' market values, the Petitioners' valuation of the additional properties is an undocumented conclusory statement that has no weight in establishing the market value of the subject property. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Thus, the Petitioners have presented no probative evidence, to support what portion of the appraisal is attributed to the subject property. Moreover, the appraisal was approximately four years prior to the valuation date of January 1, 1999. Petitioners are required to provide explanation or evidence as to how the appraisal demonstrates, or is relevant to, the market value as of that date. Because the Petitioners provided no such explanation, the evidence does not carry any probative value. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- e. The Petitioners also presented an appraisal from Beer Appraisal Company that concluded the value of the subject property was \$235,000 as of January 13, 2004. *Petitioner Exhibit 4*. 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. A qualified expert performed the appraisal. The appraisal is based on a sales comparison approach and uses three sales of properties in the subject area to estimate the subject property value at \$235,000 as of January 13, 2004. The appraisal constitutes a prima facie case that the assessment of \$359,100 is too high and that the property should be valued at no more than \$235,000. Moreover, while the appraisal occurred five years after the relevant valuation date of January 1, 1999, the Respondent confirmed through testimony that market values in the subject area have increased drastically from 1998, 1999, and 2000. *Renier testimony*. The Petitioners, therefore, have established a prima facie case that the current assessment is incorrect and that the correct assessment is no more than the \$235,000 that the property was assessed for in 2004.

- f. The Petitioners established a prima facie case. The burden, therefore, shifts to the assessing official to rebut the Petitioners' case. *American United Life*, 803 N.E.2d 276. The assessing official must offer evidence that impeaches or rebuts the Petitioners' evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479. Here, the Respondent presented sales disclosures of properties in the neighborhood of the subject property, and plat and aerial maps of the area. The sales disclosures show that property in the area was selling for \$95,000 to \$162,500 from 1997 to 2000. To rebut or impeach Petitioner's case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted). The Respondent failed to provide any information regarding the comparability of the neighboring properties and, in fact, testified that the properties were not comparable due to the size and grade of the subject property. Thus, the Respondent's sales disclosures, standing alone, do not support the current assessment. *See Damico v. Department of Local Government Finance*, 769 N.E.2d 715, 723 (Ind. Tax 2002) (stating that conclusory statements and documents unaccompanied by an explanation do not constitute probative evidence). Likewise, the Respondents plat and aerial map do nothing to contradict the Petitioners' appraisals. The Respondent neither sufficiently impeaches the probative value of the appraisal of the subject property, nor presents its own evidence of the property's market value.
- g. The Board therefore finds that the January 13, 2004, appraisal is the best evidence of the subject property's true tax value. Thus the Board holds that that the current assessment is incorrect, and that the correct assessment is no more than \$235,000.

#### *Neighborhood Factor*

- h. The Petitioners further contend that the multiplication factor applied to the improvements of 1.68 was not correctly determined and applied. According to the Petitioners, if that factor had not been applied, the subject property's assessed value would be correct. *Keiper testimony*.
- i. A neighborhood is defined as "[a] geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A (GUIDELINES), glossary at 14 (incorporated by reference at 50 IAC 2.3-1-2). A "neighborhood factor" accounts for the "economic characteristics" of a

neighborhood, “such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size.” GUIDELINES, app. B at 8. The neighborhood factor is determined “based upon an analysis of residential properties that have sold within the neighborhood.” *Id.* The factor is computed by dividing the actual sales price of a property’s improvements (determined by subtracting the land value) by the assessed improvement value. *Id.* at 9. The resulting number is an adjustment factor to further refine the assessments in a neighborhood so that they better reflect the market value-in-use.

- j. Here, the Petitioners did not present any evidence to demonstrate that the Respondent improperly applied the factors identified in the applicable administrative rules drawing the neighborhood boundaries. See GUIDELINES, ch. 2 at 8. Nor did the Petitioners show that a different neighborhood factor was applied to the subject property than to other properties in the same neighborhood or that an error was made in calculating the neighborhood factor that is applied to the subject property. The Petitioners presented no alternative calculation or any additional sales disclosures to suggest that the neighborhood factor is incorrect. Instead, the Petitioners present sales and assessment information for a single property located at 8944 East Nordman Drive that the Petitioners allege is “comparable” to the subject property. *Keiper testimony*. According to the Petitioners, while the Nordman Drive property sold for \$215,000, it was assessed for over \$307,000. *Id.* It would require far more evidence than a single sale in a neighborhood, however, to call into question the validity of the assessment of an entire neighborhood. Thus, Petitioners failed to raise a prima facie case that their property is over-valued and fell far short of proving that the neighborhood factor was in error.
- k. Petitioners failed to raise a prima facie case that an error was made in developing Petitioners’ neighborhood factor. 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).

### **Conclusion**

- 16. The Petitioners made a prima facie case that the subject property is over-valued. The Respondent failed to rebut or impeach the Petitioners’ case with substantial evidence. The Board finds in favor of the Petitioners and determines the total assessed value is not more than \$235,000. The Petitioners failed to raise a prima facie case on all other matters.



## 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: \_\_\_\_\_

\_\_\_\_\_  
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>>. 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 days of the date of this notice.**