

REPRESENTATIVES FOR PETITIONERS:

David and Caron Green, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Benjamin Buckles, Administrative Deputy,  
Washington Township Assessor's Office

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

D.M. and C.M. Green,	)	Petition No.: 49-800-02-1-5-05732
	)	Parcel: 8-058818
Petitioners,	)	
	)	
v.	)	
	)	County: Marion
Washington Township Assessor,	)	Township: Washington
	)	Assessment Year: 2002
Respondent.	)	

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Appeal from the Marion County  
Property Tax Assessment Board of Appeals

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**JANUARY 3, 2006**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issues:

*Issue 1 — Is the neighborhood factor correct?*

*Issue 2 — Is the assessed value equal to the property's market value?*

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

### **PROCEDURAL HISTORY**

1. The Marion County Property Tax Assessment Board of Appeals (the PTABOA) issued its assessment determination on January 28, 2005. Pursuant to Ind. Code § 6-1.1-15-3, Petitioners filed a Form 131 Petition for Review of Assessment, seeking the Board's review. They filed the Form 131 with the Marion County Assessor on February 25, 2005.

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

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3, held the hearing on July 7, 2005.
3. The following persons were sworn as witnesses at the hearing:
  - David and Caron Green, owners,
  - Benjamin Buckles, Administrative Deputy, Township Assessor's Office,
  - Chad Polak, Chief Deputy, Township Assessor's Office,
  - Joline Ohmart, Washington Township Assessor.
4. Petitioners presented the following exhibits:
  - Petitioners' Exhibit A – Form 115, Notification of Final Assessment Determination,
  - Petitioners' Exhibit B – Appraisal of subject property, 620 Alverna Drive,
  - Petitioners' Exhibit C – Group of documents pertaining to parcel 8058821 containing: a neighborhood factor calculation; the settlement statement for the sale on February 13, 1998; statement dated June 17, 2005, from Debra Oakes; and the parcel's property record card,
  - Petitioners' Exhibit D – Calculation of 138% neighborhood factor,

Petitioners' Exhibit E – Group of documents pertaining to parcel 8058831  
containing: a neighborhood factor calculation; settlement  
statement for the sale on May 27, 2005; the parcel's  
property record card; and property tax information from  
PROP INFO SYS-Washington Township,

Petitioners' Exhibit F – Group of documents pertaining to parcel 8058819  
containing: a neighborhood factor calculation;  
memorandum from RCI listing lot prices for the subject  
neighborhood; Broderick Billing; and letter from Tyler  
Crews dated October 20, 1998,

Petitioners' Exhibit G – Photograph of 7806 Morningside Lane,

Petitioners' Exhibit H – Photographs of 7419, 7407, 7442, and 7418 Washington  
Boulevard,

Petitioners' Exhibit I – Photographs of 775, 770, 725, 755, 845, and 730 Williams  
Cove Drive,

Petitioners' Exhibit J – Photographs of 8166 Darnley Court; 728, 515, 729, and  
735 Hill Road; 602, 625, 628, 525, and 455 Somerset  
Drive,

Petitioners' Exhibit K – Photographs of 616 West 83<sup>rd</sup> Street; 825, 640, 740, 852,  
680, and 620 Alverna Drive (the subject property),

Petitioners' Exhibit L - Summary of eight recent listings and sales in  
Washington Township with multiple listings information,

Petitioners' Exhibit M – “Exhibits for Petitioners” (quotations from Indiana  
Supreme Court, 675 N.E.2d 318),

Petitioners' Exhibit N - Summary of Witness Testimony,

Petitioners' Exhibit O - Summary of Witness Testimony,

Petitioners' Ex. P - Letter from Caron Green to Ben Buckles dated June 30, 2005,

Petitioners' Ex. Q – Eight property record cards,

Petitioners' Ex. R - Copy of subject floor plan.

5. The following exhibits were presented for Respondent:
  - Respondent Exhibit 1 – Subject property record card,
  - Respondent Exhibit 2 – Neighborhood factor analysis,
  - Respondent Exhibit 3 – Appraisal of subject property,
  - Respondent Exhibit 4 - Review of appraisal of the subject property,
  - Respondent Exhibit 5 - Appraisal of 825 Alverna Drive,
  - Respondent Exhibit 6 - Review of appraisal of 825 Alverna Drive,
  - Respondent Exhibit 7 - Appraisal of 740 Alverna Drive,
  - Respondent Exhibit 8 - Review of appraisal of 740 Alverna Drive,
  - Respondent Exhibit 9 - Multiple listing for subject property.
  
6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 131 Petition,
  - Board Exhibit B – Notice of Hearing dated May 19, 2005.
  
7. The subject property is a single-family dwelling.
  
8. The Administrative Law Judge did not conduct an on-site inspection of the property.
  
9. The PTABOA determined the assessed value of the property is:

land \$259,100	improvements \$1,281,500	total \$1,540,600.
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10. Petitioners contended the total assessed value of the property should be \$1,213,500.

### **JURISDICTIONAL FRAMEWORK**

11. The Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and 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 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).
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.

#### *Is the neighborhood factor correct?*

15. Petitioners presented the following evidence regarding this issue:
  - a) The subdivision consists of twelve homes, all constructed at the same time. Petitioners argued that the neighborhood factor, currently 1.38, is incorrect and should be reduced to 1.0. *D. Green testimony*.
  - b) The current neighborhood factor was calculated using two appraisals rather than actual sales information. Both appraisals are based on builder's cost data instead of

sales prices of comparable properties. As a result, the neighborhood factor calculation is less reliable. Additionally, the appraisal for 825 Alverna Drive includes two parcels rather than one. This further reduces the accuracy of the current neighborhood factor calculation. *D. Green testimony; Petitioners' Exhibit B; Respondent Exhibit 5.*

- c) A neighboring home, the Oakes' property, sold for \$1,200,000 in February 1998. *Petitioners Exhibit C.* This property is comparable to Petitioners' dwelling. Further, the Kyle Brown property, also located in the same subdivision, sold for \$1,700,000 in June 2005. Based on these sales, the neighborhood factor should be 1.0. *D. Green testimony. Petitioners' Exhibit E.*
- d) Petitioners contended the Respondent's coefficient of dispersion is not valid because it is not computed using uniform data. The coefficient of dispersion was computed using building costs. Township officials compared that cost information to sales data from the Oakes' property. As a result of comparing sales data to cost data, the township officials erred in concluding the Oakes' sale fell outside an acceptable range. *C. Green testimony.*<sup>1</sup>

16. Respondent presented the following evidence regarding this issue:

- a) The neighborhood factor formerly was 2.41. Subsequently, the neighborhood factor was reduced to 1.38, using only two appraisals. Two sales occurred in the neighborhood that were not included in the determination of the neighborhood factor. One sale was rejected because the buyer contacted the owner of a home that was not on the market. This sale did not have any market exposure. The second sale included a parcel located in Hamilton County. No value was allocated between the Alverna Estates property and the Hamilton County parcel. The local officials also initially had

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<sup>1</sup> The coefficient of dispersion is the average difference between individual assessment ratios and the median assessment ratio, which is the average level at which property is assessed. 2002 REAL PROPERTY ASSESSMENT MANUAL at 21 (incorporated by reference at 50 IAC 2.3-1-2).

three appraisals of homes located in Alverna Estates. One of these appraisals was rejected because it did not conform to Uniform Standards of Professional Appraisal Practice requirements. The remaining data consisted of two appraisals and the Oakes sale. The Oakes' sale was rejected because it did not fall within the coefficient of dispersion established by the two appraisals. *Buckles testimony*.

- b) Arguments concerning the neighborhood factor are not relevant. The subject assessment was based on actual market evidence in the form of an appraisal. The appraisal of Petitioners' property was prepared using generally accepted appraisal practice and is probative evidence of market value. *Buckles testimony; Respondent Exhibit 4*.

*Is the assessed value equal to the property's market value?*

17. Petitioners presented the following evidence regarding this issue:

- a) Petitioners' total costs for both the land and dwelling were \$1,354,217. *Petitioners' Exhibit F*.
- b) Petitioners contended the assessed value of their property should be similar to the sales price of the Oakes' property, which sold for \$1,200,000 on February 13, 1998. *Petitioners' Exhibit C*.

18. Respondent presented the following evidence regarding this issue:

- a) Using the cost approach, the appraisal concluded the value of the property was \$1,510,300. The appraiser determined, however, that cost information does not necessarily reflect market value for higher priced homes. Accordingly, the appraiser concluded the market value of the home on September 17, 1997, was \$1,455,000. Respondent trended this amount by an annual rate of three percent to a January 1999

figure of \$1,540,600, the current assessed value. *Buckles testimony; Respondent Exhibit 3.*

- b) Another home in the neighborhood was appraised for \$2,250,000 as of February 1998. *Respondent Exhibit 5.*
- c) Petitioners' property is currently on the market at a listing price of \$2,800,000. *Buckles testimony; Respondent Exhibit 9.*

### ANALYSIS

#### Issue: Is the neighborhood factor correct?

- 19. The current neighborhood factor is 1.38. Petitioners contended the correct neighborhood factor should be 1.0.
- 20. The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services and utilities. It also takes into account the economic characteristics such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection and, and zoning; and social characteristics such as crime rates, owner-occupied ratios, and family size. Neighborhood factors are assigned to each neighborhood based upon an analysis of residential properties that have sold within the neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINES), app. B at 8 (incorporated by reference at 50 IAC 2.3-1-2).
- 21. As indicated, the statistical sampling used by Respondent to determine the neighborhood factor is small. Assuming the use of appraisals is permitted in calculating a neighborhood factor, the GUIDELINES clearly indicates actual sales data is preferable. Respondent offered no explanation for determining the coefficient of dispersion based solely on two appraisals, while ignoring a valid sale in the neighborhood. For example, a



calculation based on the Oakes' sale and one of the appraisals would result in a different coefficient of dispersion. Petitioners' evidence is sufficient to establish an error in the calculation of the current neighborhood factor.

22. In support of their contention the correct neighborhood factor should be 1.0, Petitioners presented evidence of the sale of two properties. The Oakes' property sold for \$1,200,000 in February 1998. The Brown property sold for \$1,700,000 in June 2005.
23. Sales used in determining the neighborhood factor must occur between January 1, 1998, and December 31, 1999. GUIDELINES, app. B at 8. Petitioners acknowledged the Brown sale occurred outside this time period. *D. Green testimony*. Petitioners' statistical sampling is therefore even smaller than that used by Respondent. The burden is on Petitioners to demonstrate not only error in the assessment, but also what the correct assessment should be. *Meridian Towers*, 805 N.E.2d at 478. Petitioners failed to present adequate sales data to establish the correct neighborhood factor should be 1.0.

Issue: *Is the assessed value equal to the property's market value?*

24. Petitioners contended the assessed value of their property should be similar to the sales price of the Oakes' property, which sold for \$1,200,000 on February 13, 1998. *Petitioners' Exhibit C*. Petitioners presented property record cards of both their parcel and the Oakes' property in support of their contention the parcels are comparable. *Petitioners' Exhibit C, Q*.
25. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties

affect the relative market values-in-use. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

26. Petitioners failed to establish the Oakes' property is comparable to their own. For example, Petitioners' home is a 1.5 story structure and consists of 5,095 square feet. In contrast, the Oakes' home is a partial two story, partial 1.5 story dwelling and has 6,986 square feet. Petitioners did not present sufficient evidence to explain the common characteristics of the two properties or how the differences between the two affect their relative values.
27. Petitioners also presented evidence of the actual construction costs of their home, incurred during 1997 and 1998. Total costs for both land and improvements were \$1,354,217. *Petitioners' Exhibit F*.
28. These actual construction costs indicate the current assessment is excessive and are sufficient to make a prima facie case for a total assessed value of \$1,354,200.
29. Respondent contends the assessment is correct based on a trended 1997 appraisal of Petitioners' property. On the date of the appraisal, however, construction of the home was not yet completed. ("Subject is nearly complete.") *Respondent Exhibit 3*. There were \$63,402 in total change orders through September 17, 1998, a full year beyond the appraisal date. *Petitioners' Exhibit F*. These on-going changes after the appraisal date would impact the weight to be given to the 1997 appraisal.
30. Respondent also presented an appraisal for a nearby parcel. *Respondent Exhibit 5*. Respondent failed to explain how this appraised value of \$2,250,000 is probative evidence supporting the current assessment of \$1,540,600.
31. Respondent failed to rebut Petitioners' prima facie case of error.

## SUMMARY OF FINAL DETERMINATION

32. Petitioners presented a prima facie case the total assessed value should be \$1,354,200. Respondent did not rebut Petitioners' case.

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>.