

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

**Petition #:** 84-002-02-1-4-00635  
**Petitioners:** Larry J. & Rachel E. Smith  
**Respondent:** Harrison Township Assessor (Vigo County)  
**Parcel #:** 118-06-10-292-006  
**Assessment Year:** 2002

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

**Procedural History**

1. The Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated October 27, 2003.
2. The PTABOA mailed notice of its decision on August 9, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on August 26, 2004. The Petitioners elected to have this case heard as a small claim.
4. The Board issued a notice of hearing to the parties dated May 9, 2005.
5. The Board held an administrative hearing on June 21, 2005, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn as witnesses at the hearing:
  - a) For Petitioner – Larry J. Smith, property owner,  
Rachel E. Smith, property owner,
  - b) For Respondent – Debbie Cagle, Representative for Harrison Township Assessor,  
Richetta J. Hale, Harrison Township Chief Deputy,  
Ann Akers, Vigo County PTABOA member,  
Gloria Donham, Vigo County PTABOA member,  
Deana Chrisman, Vigo County Assessor,  
Susan McCarty, Vigo County Chief Deputy Assessor.

## Facts

7. The subject property is a vacant residential lot measuring 80 feet by 130 feet located at 2722 N. 18th Street in Terre Haute.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.
9. The assessed value as determined by the Vigo County PTABOA is \$8,300.
10. The assessed value requested by Petitioners is \$1,500.

## Issue

11. Summary of Petitioners’ contentions in support of alleged error in assessment:
  - a) The current assessed value of subject is over-stated compared to the value of \$2,000 established by an appraisal for the subject property as of December 31, 1999. *Petitioner Exhibit 1; L. Smith testimony.*
  - b) The subject property was purchased in a tax sale for \$60. *L. Smith testimony.*
  - c) Properties at 19<sup>th</sup> Avenue and 6<sup>th</sup> Avenue and at 28<sup>th</sup> Avenue and 8<sup>th</sup> Avenue have sold for \$2,500 and \$3,500, respectively. These sales further show that the current assessment of the subject property is over-stated. *L. Smith testimony.*
12. Summary of Respondent’s contentions in support of the assessment:
  - a) A proposed change to the current assessment would change the property classification from “commercial” to “residential”, apply a negative 30 percent influence factor for limited access, apply a negative 30 percent influence factor because the subject property is unimproved, and apply a negative 10 percent influence factor to account for restrictions caused by brush and trees. The proposed changes would have reduced the assessed value from \$8,300 to \$3,600. The PTABOA denied the changes. *Hale testimony.*
  - b) Using the five sales used in the appraisal plus two additional sales that occurred in November 1999 for \$10,000 and June 1998 for \$8,000, with the appraiser’s calculations, the indicated value for the subject property would be \$5,923. While this is more than the appraisal, it is less than the current assessment. More sales could have been used to establish value. The full assessment could be justified if time was taken to locate additional sales. *Respondent Exhibit 1; Donham testimony.*
  - c) The application of a negative 30 percent influence factor because the subject property is under improved and changing the property classification from “commercial” to “residential” is appropriate. *Donham testimony.* Because it was

difficult to determine access limitations and restrictions after looking at the plat map, the PTABOA declined to make any additional reductions to the subject property. *Donham testimony*.

### **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 IBTR 6199,
  - c) Exhibits:
    - Petitioner Exhibit 1 – Appraisal,
    - Respondent Exhibit 1 – Sales disclosure forms and property record cards for appraisal comparables and two other sales,
    - Board Exhibit A – Form 131 petition,
    - Board Exhibit B – Notice of Hearing,
    - Board Exhibit C – Hearing 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 support their contentions because:
- a) Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter GUIDELINES). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
  - b) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c) The Petitioners presented evidence regarding the sale of two nearby properties, one at 19<sup>th</sup> Street and 6<sup>th</sup> Avenue and one at 28<sup>th</sup> Street and 8<sup>th</sup> Avenue. The evidence establishes that these properties sold for \$2,500 and \$3,500. Petitioners failed to provide details, such as the date of the sale and the similarities of the comparables to the subject that are necessary to establish how those sales are relevant to the current case. Furthermore, conclusory statements do not constitute probative evidence. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  - d) The Petitioners failed to prove that the purchase price of \$60 at a tax sale indicates the actual market value-in-use of this property.
  - e) The Petitioners also presented an appraisal performed by an Indiana Certified Appraiser following the Uniform Standards of Professional Appraisal Practice. The appraisal establishes a market value of \$2,000 for the subject property as of December 31, 1999. The market value established by the appraisal is close enough to the January 1, 1999, valuation date to have probative value. Thus, the Petitioners have established a prima facie case.

- f) The burden shifted to the Respondent to present evidence to rebut or impeach Petitioners' case. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- g) The Respondent attempted to rebut Petitioners' case with seven sales including those used in Petitioners' appraisal, applying the calculations used by the appraiser, and concluding that the resulting value was \$5,923. The mere fact that the calculation results in a value higher than Petitioners seek, but lower than the current assessment does nothing to rebut the Petitioners' evidence of value. The Respondent does not provide any authority or explanation for this calculation or its significance. The conclusory statement that by adding additional sales the value would eventually reach the current level of assessment does not qualify as probative evidence. *Whitley Products*, 704 N.E.2d at 1119.

**Conclusion**

- 16. The Petitioners made a prima facie case. The Respondent did not rebut Petitioners' evidence. The Board finds in favor of Petitioners. Even though Petitioners sought an assessment of \$1,500, the appraisal establishes the best evidence of value.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$2,000.

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>.