

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

**Petition #:** 84-002-02-1-5-00038  
**Petitioner:** Ruth Cutliff  
**Respondent:** Harrison Township Assessor (Vigo County)  
**Parcel #:** 118-06-02-183-005  
**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 Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated September 24, 2003.
2. The Petitioner received notice of the decision of the PTABOA on July 23, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on August 2, 2004. The Petitioner elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated May 12, 2005.
5. The Board held an administrative hearing on June 22, 2005, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn as witnesses at the hearing:
  - For Petitioner – April T. Johnson, property owner’s daughter,  
Ruth Cutliff, property owner,
  - For Respondent – Debbie Cagel, Harrison Township Assessor’s Office,  
Richetta Hale, Harrison Township Chief Deputy Assessor,  
Gloria Donham, Vigo County PTABOA member,  
Ann Akers, Vigo County PTABOA member,  
Deana Chrisman, Vigo County Assessor’s Office,  
Susan McCarty, Vigo County Chief Deputy Assessor.

**Facts**

7. The property is a 1,216 square foot residential dwelling on a lot measuring 88 feet by 130 feet located at 2339 Dahlen Avenue 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:
 

Land \$7,400	Improvements \$69,400	Total \$76,800.
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10. The assessed value requested by Petitioner:
 

Land \$7,400	Improvements \$55,600	Total \$63,000.
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**Issue**

11. Summary of Petitioner’s contentions in support of alleged error in assessment:
  - a) In April 2005, the subject sold in an arms-length transaction for \$72,500. The current assessment of \$78,600 is 6 percent too high compared to the actual market value. *Petitioner Exhibit 1; Johnson testimony.*
  - b) The average sale price of 10 properties located in the same subdivision as the subject property is \$47,000. The properties located at 2265 Spang Avenue and 2232 Frisco Avenue are most like the subject property. The Spang Avenue property sold for \$60,000 in 2003. The Frisco Avenue property sold for \$61,000 in 2000 and sold again in 2002 for \$66,500. Based on the two properties most like the subject property, the assessment of the subject property should be \$63,000. *Petitioner Exhibit 9; Johnson testimony.*
  - c) In 1999 the value of the subject property would have been less than the 2005 purchase price. The subject property would have sold in the mid-\$60,000 range, \$63,000 to \$65,000, in 1999. *Johnson testimony.*
12. Summary of Respondent’s contentions in support of the assessment:
  - a) As a result of the Form 130 appeal hearing, the current assessment for the subject property was lowered. The current assessment of \$76,800 is within 10 percent of the price this property sold for in 2005. *Hale testimony.*
  - b) In 2000, a similar property located at 1945 Clay Avenue sold for \$89,000 and is assessed for \$83,000. This evidence demonstrates that the assessments in the neighborhood are accurate. *Donham testimony; Respondent Exhibit 2.*
  - c) The market values in that area have not increased or decreased. They have remained stable. *Donham testimony; Hale testimony.*

## Record

13. The official record for this matter is made up of the following:
- c) The Petition,
  - d) The tape recording of the hearing labeled BTR 6206,
  - e) Exhibits:
    - Petitioner Exhibit 1 – Settlement statement for the 2005 sale of the subject property for \$72,500,
    - Petitioner Exhibit 2 – Copy of the subject property record card,
    - Petitioner Exhibit 3 – Copy of the Form 115,
    - Petitioner Exhibit 4 – Copy of the Form 130,
    - Petitioner Exhibit 5 – Copy of the corrected tax bill,
    - Petitioner Exhibit 6 – Copy of the property taxes and applicable exemptions,
    - Petitioner Exhibit 7 – Copy of a letter from Ms. Johnson to Ms. Deb Lewis dated May 2, 2004,
    - Petitioner Exhibit 8 – Copy of a letter from Ms. Johnson to Ms. Deb Lewis dated July 16, 2004,
    - Petitioner Exhibit 9 – Listing of sales of properties within the same subdivision as the subject property,
    - Petitioner Exhibit 10 – Power of Attorney,
    - Petitioner Exhibit 11 – Statement of contentions,
    - Respondent Exhibit 1 – Copy of the sales disclosure form for the subject property,
    - Respondent Exhibit 2 – Copy of the sales disclosure form and property record card for 1945 Clay Avenue,
    - Board Exhibit A – Form 131 petition,
    - Board Exhibit B – Notice of Hearing,
    - Board Exhibit C – Sign In Sheet,
  - f) 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 evidence supports the Petitioner’s claim for a change to the current assessment. This conclusion was arrived at 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 evidence establishes that the subject property sold for \$72,500 in April 2005. There is no indication that the sale was anything other than an arms-length transaction that is evidence of market value-in-use as of April 2005. For purposes of relevance to the 2002 assessment, however, it is necessary to establish how that value relates to what the value was as of January 1, 1999.
  - d) The Petitioner presented only a conclusory opinion about increasing values in the subject neighborhood between 1999 and 2005. A conclusory opinion is not

probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Therefore, the Petitioner's evidence falls short of establishing that the assessed value should be based on the sale price for the subject property. *Long*, 821 N.E.2d at 471.

- e) In addition, the Petitioner presented the sale prices of the Spang Avenue property and the Frisco Avenue property to establish that the current assessment is incorrect. The evidence shows that those properties sold between 2000 and 2002 for \$60,000 to \$66,500, respectively. While these sales are in the range of value the Petitioner seeks, she has not shown that these properties are comparable to the subject property. The testimony merely said these properties are most similar to the subject property. The Petitioner did not provide or explain how or why these properties are comparable the subject property. Without knowing how the physical characteristics of the properties compare and the impact any differences might have on value, it is not possible to determine whether the alleged comparable properties are truly comparable to the subject property. *Id.* As such, the evidence regarding purportedly comparable properties has no probative value.
- f) Although the Petitioner's evidence failed to relate the 2005 value back to January 1, 1999, the Respondent offered testimony on this point. According to the Respondent, values remained stable during that entire period. The Respondent's testimony also is conclusory. It has no probative value as support for the Respondent's case. Nevertheless, the Board will give that testimony some weight as an admission that supports the Petitioner's claim. In this case, an admission that property values remained stable in the subject neighborhood between 1999 and 2005 is sufficient to establish that the assessment should not be any more than the sale price (\$72,500).
- g) The burden shifted to the Respondent to present evidence to rebut or impeach the Petitioner's case. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- h) The Respondent attempted to rebut the Petitioner's case by establishing that the neighborhood assessments were correctly determined because the subject property and a purportedly comparable property have assessed values within an acceptable range of actual sale prices. The Respondent does not provide any authority or explanation for the conclusion that there is an acceptable range for establishing the value of the property for assessment or what that range might be. Therefore, this conclusory statement does not qualify as probative evidence. *Whitley Products*, 704 N.E.2d at 1119. Furthermore, because the taxpayer is specifically permitted to offer evidence relevant to the market value-in-use of a property that includes actual construction costs, sales and appraisals, an argument that generally the neighborhood assessments are correct or that the value determined from the cost approach in the guidelines is somehow close enough to be acceptable appears to be wrong. *MANUAL* at 5.

### Conclusion

16. The evidence makes a prima facie case for the Petitioner's claim that the assessment is too high and should be reduced to \$72,500. The Respondent did not successfully rebut or impeach that evidence. The Board finds in favor of the Petitioner.

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

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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>.