

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

**Petition:** 84-009-02-1-5-00004  
**Petitioners:** Robert W. and Marilyn R. Haerr  
**Respondent:** Lost Creek Township Assessor (Vigo County)  
**Parcel:** 120-07-18-453-003  
**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. Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 21, 2003.
2. The PTABOA issued notice of its decision on November 12, 2004.
3. Petitioners filed a Form 131 with the county assessor on December 10, 2004. Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 31, 2005.
5. The Board held an administrative hearing on December 6, 2005, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn as witnesses at the hearing:  
For Petitioners - Robert W. Haerr, Petitioner,  
Marilyn R. Haerr, Petitioner,  
For Respondent - Ann Akers, Vigo County PTABOA,  
Gloria Donham, Vigo County PTABOA.<sup>1</sup>

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<sup>1</sup> Lost Creek Township Assessor Judith Robinson filed a post-hearing Notice of County Assessor Representation, authorizing Vigo County Assessor Deborah J. Lewis to represent the Township Assessor's office. *See Bd. Ex. D.* The Vigo County Assessor did not appear at the hearing. The assessment purportedly was defended by two members of the PTABOA, whose representation does not appear to conform to applicable small claim procedures. 52 IAC 3-1-4. Petitioners did not challenge the standing of the PTABOA members to defend the assessment. The Board considers the issue waived.

## Facts

7. The property is a single-family dwelling located at 133 Lakeshore Drive, in Terre Haute.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The assessed value of subject property as determined by the PTABOA is:  
land \$26,200                      improvements \$306,800                      total \$333,000.
10. The assessed value requested by Petitioners is:  
land \$25,000                      improvements \$269,000                      total \$294,000<sup>2</sup>.

## Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a) Petitioners purchased the property for \$279,900 on March 26, 1999. *Pet'rs Ex. 1.*
  - b) A full residential property appraisal prepared by Gregory Scott Rusk, an Indiana Certified Residential Appraiser, determined the market value of the property on March 5, 1999, was \$287,500. The appraisal was prepared for financing purposes. *Pet'rs Ex. 2.*
  - c) A full residential property appraisal prepared by Shelli A. Jones, an Indiana Certified Residential Appraiser, determined the market value of the property on September 26, 2002, was \$294,000. The appraisal was prepared for re-financing purposes. *Pet'rs Ex. 3.*
  - d) A full residential property appraisal prepared by Larry A. Cutts, an Indiana Certified Residential Appraiser, determined the market value of the property on December 2, 2004, was \$302,500. *Pet'rs Ex. 4.*
  - e) A collection of data on eight properties identified by Petitioners as comparable to the subject demonstrates that the 2002 assessed value of the subject is overstated. *Pet'rs Exs. 5-12.*
12. Summary of contentions in support of the assessment:
  - a) There are differences in the square footage of the subject improvement in the 1999, 2002, and 2004 appraisals. It is not clear whether the appraisals include the improved basement. Several questions are raised by the differences in the cost approach in the three appraisals. *Donham testimony.*

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<sup>2</sup> On Form 131 Petitioners request a value of \$294,000, but on Form 130 Petitioners appear to request \$279,900, the price they paid for the property in 1999.

- b) The township assessments are based on square footage costs and involve market value-in-use, not fair market value. *Akers testimony.*
- c) Most of the comparable properties identified by Petitioners are not comparable. The last property is most like the subject. It is assessed at \$317,000 and sold in 2004 for \$305,000. *Pet'rs Ex. 12.* This sale supports the 2002 assessed value of the subject within 10 percent at \$330,000, which is an acceptable range. *Donham testimony.*

### **Record**

13. The official record for this matter is made up of the following:
- a) The Petition,
  - b) Digital recording of hearing,
  - c) Petitioners Exhibit 1 – Settlement statement dated March 26, 1999,  
Petitioners Exhibit 2 – Appraisal dated March 5, 1999,  
Petitioners Exhibit 3 – Appraisal dated September 26, 2002,  
Petitioners Exhibit 4 – Appraisal dated December 2, 2004,  
Petitioners Exhibit 5 – Data sheet for 129 Lakeshore,  
Petitioners Exhibit 6 – Data sheet for 141 Lakeshore,  
Petitioners Exhibit 7 – Data sheet for 136 Lakeshore,  
Petitioners Exhibit 8 – Data sheet for 132 Lakeshore,  
Petitioners Exhibit 9 – Data sheet for 125 Lakeshore,  
Petitioners Exhibit 10 – Data sheet for 129 Country Club,  
Petitioners Exhibit 11 – Data sheet for 4958 Beechwood Court,  
Petitioners Exhibit 12 – Data sheet for 2901 Woodcrest Lane,  
Petitioners Exhibit 13 – Copy of Form 131,  
Petitioners Exhibit 14 – Copy of Form 130,  
Petitioners Exhibit 15 – Copy of Form 115, Notification of Final Assessment,  
Petitioners Exhibit 16 – Copy of Form 11 R/A, Notice of Assessment of Land and Structures,  
Respondent Exhibits – None,  
Board Exhibit A – Form 131,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing sign-in sheet,  
Board Exhibit D – Notice of County Assessor Representation,
  - 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. Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) Petitioners presented evidence of the purchase of the property in 1999 and three market appraisals of the property (from 1999, 2002, and 2004). *Pet’rs Exs. 1-4*. Petitioners also identified eight purported comparable properties in support of their position that the subject’s 2002 assessed value is incorrect. *Pet’rs Exs. 5-12*.
  - b) 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. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party presenting market evidence to establish the market value-in-use of a property must provide some explanation as to how the evidence demonstrates, or is relevant to, the property’s value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c) Further, 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. The party 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 values. *See Long*.

- d) Petitioners did not establish any link between the 2002 and 2004 appraisal values and the value as of January 1, 1999. Therefore, these appraisals are not probative. Additionally, Petitioners failed to prove how the purportedly comparable properties are similar to their property and failed to account for any differences. Petitioners' unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- e) Petitioners purchased the property for \$279,900 on March 26, 1999. The purchase was less than 90 days after the valuation date. This price was supported by an appraisal estimating the value to be \$287,500 on March 5, 1999.
- f) The actual purchase price of a property is often the best evidence of that property's market value-in-use.
- g) Petitioners established a prima facie case for a reduction in the assessment based on the actual 1999 purchase price of their property.
- h) Respondent did not contest the 1999 purchase price of the property. Respondent also offered no market evidence to support the current assessment. Instead, two PTABOA members merely contended the three appraisals reflected inconsistencies in the square footage of the improvements. Such general statements are insufficient to impeach or rebut Petitioners' evidence of total market value as established by the purchase price. Although the PTABOA members further contended that a 2004 sale supports the assessment, Respondent did not establish any link between the sale date and valuation date.
- i) Respondent does not provide any authority or explanation for the conclusion that there is an acceptable market 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. *Lacy Diversified*, 799 N.E.2d 1215, 1221 (Ind Tax Ct. 2003); *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, the argument that the current assessment is close enough to be acceptable appears to be wrong. MANUAL at 5.
- j) Respondent failed to rebut Petitioners' prima facie case.

### **Conclusion**

16. Petitioners established an un rebutted prima facie case that the total assessed value should be \$279,900. The Board finds in favor of Petitioners.

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to \$279,900.

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>>. 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.**