

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

**Petition #:** 84-013-02-1-5-00001; 84-013-02-1-5-00002  
**Petitioners:** John L. Nens, Eleanor A. Nens<sup>1</sup>  
**Respondent:** Otter Creek Township Assessor (Vigo County)  
**Parcel #:** 109-02-24-101-008; 109-02-24-101-009  
**Assessment Year:** 2002

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

**Procedural History**

1. The Petitioners initiated assessment appeals with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated September 17, 2003.
2. The PTABOA mailed notice of its decisions on April 25, 2005.
3. The Petitioners initiated appeals to the Board by filing Form 131 petitions with the Vigo County Assessor on May 17, 2005. The Petitioners elected to have his petitions heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 10, 2006.
5. The Board held a consolidated administrative hearing with regard to the above referenced petitions on June 22, 2006, before the duly appointed Administrative Law Judge Joan Rennick.
6. John L. and E. Ann Nens, property owners, and Warren Soules, Otter Creek Township Assessor, appeared at the hearing and were sworn as witnesses.

**Facts**

7. Parcel 109-02-24-101-008 is classified as a residential one-family dwelling. Parcel 109-02-24-101-009 is classified as residential other structure (detached garage). Both parcels

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<sup>1</sup> John and Eleanor Nens are listed as the property owners on the Form 131 petition for parcel no. 109-02-24-101-008. *See Board Ex. A.* John Nens is the only property owner listed on the Form 131 petition for parcel no. 109-02-24-101-009. *Id.* John and Eleanor Nens are listed as property owners on the property record cards for both parcels. *Id.*

are located at 189 Rodighiero Avenue, Terre Haute, Indiana. The Board shall refer to the above referenced parcels collectively as the “subject property” and to the land portion of those parcels as “the subject land” unless otherwise indicated.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined the following assessed values for the subject parcels:

Parcel 109-02-24-101-008

Land: \$34,500          Improvements: \$57,400          Total: \$91,900

Parcel 109-02-24-101-009

Land: \$9,700          Improvements: \$9,600          Total: \$19,300

10. The Petitioners request the following values for the subject parcels:

Parcel 109-02-24-101-008

Land: \$16,000          Improvements: \$57,400          Total: \$73,400

Parcel 109-02-24-101-009

Land: \$6,500          Improvements: \$9,600          Total: \$16,100

### **Issues**

11. Summary of Petitioners’ contentions in support of alleged error in assessment:
  - a) The subject property is located in Rodighiero subdivision. *J. Nens testimony.* The entity that performed the reassessment, CLT, determined land values for the subdivision in which the subject property is located based on land values from a subdivision known as Mantia. *J. Nens testimony.* Rodighiero consists of larger lots with older, smaller ranch style houses, while Mantia consists of newer, larger houses on smaller lots. *Id; See also Pet’rs Exs. 7-8.* All lots in Mantia have city water, but only five lots in Rodighiero have city water. *J. Nens testimony.* The subject property does not have city water. *Id.*
  - b) CLT used the 120-foot depth chart factor from the assessment guidelines in determining land values for both Rodighiero and Mantia. *Id; See also Pet’rs Exs. 1-3.* CLT should have used the 200-foot depth-chart factor in valuing lots in Rodighiero. *J. Nens argument.* The subject lot is 196 feet deep. *J. Nens testimony.*
  - c) Rodighiero is much more comparable to a subdivision one-half mile to the south, called Bartley. *J. Nens argument.* The homes and lot sizes in Bartley are very similar to those in Rodighiero. *Id; see also Pet’rs Exs. 4-6, 9.* Land in Bartley subdivision is assessed at \$19,000 per acre or \$130 per front foot using the 200-foot depth chart factor. *J. Nens testimony.*

- d) Rodighiero should be assessed as a separate neighborhood from Mantia, but in the same neighborhood as Bartley. *J. Nens argument*. If the Respondent had assessed the subject property using the same rates applied to land in Bartley, the land assessment would be \$16,000 for parcel 109-02-24-101-008, and \$6,500 for parcel 109-02-24-101-009. *J. Nens testimony*.
- e) The Petitioners engaged Richard T. Conley, Jr., a licensed appraiser, to appraise the subject land. *Pet'rs Ex. 10*. Pursuant to his appraisal, Mr. Conley estimates the market value of the combined parcels to be \$15,000 as of May 1, 1999. *Id.*

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

- a) The subject property has a total land assessment of \$44,200. *Soules testimony*. No property in Otter Creek Township is worth over \$44,000 per acre. *Id.* The subject property's land assessment is "outrageous." *Id.*
- b) The Petitioners are correct that Rodighiero subdivision is not comparable to Mantia, but that it is comparable to Bartley subdivision. *Id.* The land assessments in Rodighiero subdivision are too high. *Id.*
- c) A new subdivision called Rio, which is in close proximity and comparable to Rodighiero, contains half-acre lots selling for \$10,000-\$12,000. *Soules testimony*.
- d) Richard T. Conley, Jr., who performed the Petitioners' land appraisal, is a well-respected appraiser. *Soules testimony*. If the Petitioners placed the subject property on the market, it probably would list at \$78,000-\$85,000. *Soules argument*. The subject property currently is assessed at \$111,200. *Soules testimony*.

### Record

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

- a) The Form 131 petitions.
- b) The digital recording of the hearing.
- c) Exhibits:

Petitioners Exhibit 1: Property record card for parcel 109-02-24-104-001  
Petitioners Exhibit 2: Property record card for parcel 109-02-24-104-002  
Petitioners Exhibit 3: Property record card for parcel 109-02-24-128-005  
Petitioners Exhibit 4: Property record card for parcel 109-02-24-328-002  
Petitioners Exhibit 5: Property record card for parcel 109-02-24-326-002  
Petitioners Exhibit 6: Property record card for parcel 109-02-24-301-011

Petitioners Exhibit 7: Photographs of houses in Mantia subdivision  
Petitioners Exhibit 8: Photographs of houses in Rodighiero subdivision  
Petitioners Exhibit 9: Photographs of houses in the Bartley subdivision  
Petitioners Exhibit 10: Land appraisal as of May 1, 1999

Board Exhibit 1: The Form 131 petitions with attachments  
Board Exhibit 2: Notice of Hearing  
Board Exhibit 3: Hearing Sign-In Sheet<sup>2</sup>

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. Wash. 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 did provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:

- a) Real property in Indiana is assessed based on its “true tax value,” *See* Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the 2002 Real Property Assessment Manual (Manual), the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana,

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<sup>2</sup> The Respondent did not submit any exhibits.

assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (Guidelines), to assess real property.

- b) A property's market value-in-use, as ascertained through application of the Guidelines' cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual's definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).”).
- c) The parties agree that the current assessment is erroneous. The parties further agree that the error stems from the subject land being over-assessed. Thus, the only issue for the Board to decide is the amount by which the assessment should be reduced.
- d) The Petitioners suggest two methods by which to compute the correct true tax value of the subject land. First, the Petitioners assume that the subject property's neighborhood is identical to Bartley subdivision, and they calculate the land assessment accordingly. The result is a total land assessment of \$22,500 (\$16,000 for parcel 09-02-24-101-008, and \$6,500 for parcel 109-02-24-101-009). *J. Nens testimony*. Second, the Petitioners submit an appraisal estimating the market value of the subject land to be \$15,000 as of May 1, 1999. *Id.*; *Pet'rs Ex. 10*.
- e) Both of the Petitioners' methods suffer from flaws. First, both methods seek to establish only one component - the land value - of the subject property's overall market value-in-use. This is at odds with the overarching goal of determining the market value-in-use of a property as a whole. In addition, in seeking to value the subject property in accordance with land values determined for Bartley subdivision, the Petitioners rely upon the mass appraisal approach set forth in the Real Property Assessment Guidelines for 2002 – Version A (Guidelines). The Guidelines, however, are simply a starting point in determining market value-in-use, and the Indiana Tax Court has cautioned parties against seeking to establish true tax value in an assessment appeal through reliance on the Guidelines. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 93-95 (Ind. Tax Ct. 2006)(holding that taxpayers failed to establish a prima facie case of error in assessment by pointing to alleged errors by assessor in applying Guidelines).

- f) Thus, of the two methods offered by the Petitioners, Mr. Conley's appraisal is clearly more probative of the market value-in-use of the subject land. In fact, the Respondent acknowledges Mr. Conley's credibility as an appraiser. *See Soules testimony*. Moreover, by using Mr. Conley's estimate of value for the subject land, the overall assessment of the subject property totals \$82,000, which fits squarely within the Respondent's own estimate of \$78,000-\$85,000. *See id.*
- g) Based on the foregoing, the Petitioners established a prima facie case that the current assessment is erroneous and that the subject property should be assessed for a total of \$82,000. As explained above, the Respondent did not attempt to impeach or rebut the Petitioners' evidence.

### **Conclusion**

- 16. The Petitioners made a prima facie case that the current assessment is incorrect and that the true tax value of the subject property is \$82,000. The Board finds for the Petitioners.

### **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: **December 6, 2006**

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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>.