

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

**Petition #:** 91-021-02-1-5-00013  
**Petitioner:** Jeffrey N. Dague  
**Respondent:** Union Township Assessor (White County)  
**Parcel #:** 021-23530-00  
**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 White County Property Tax Assessment Board of Appeals (PTABOA) by written document dated January 8, 2004.
2. The Petitioner received notice of the decision of the PTABOA on November 10, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 30, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 11, 2005.
5. The Board held an administrative hearing on September 29, 2005, before the duly appointed Administrative Law Judge (the ALJ), Joan Rennick.
6. Persons present and sworn in at hearing:

For Petitioner: Jeffrey N. Dague, Petitioner

For Respondent: Scott Potts, Union Township Consultant

**Facts**

7. The subject property is classified as a single family residence, as is shown on the property record card (PRC) for parcel # 021-23530-00.
8. The ALJ did not conduct an on-site visit of the property.

9. The PTABOA determined the assessed value of subject property to be \$19,200 for the land and \$91,600 for the improvements, for a total assessed value of \$110,800.
10. The Petitioner requested a total assessed value of \$85,000.
11. At the hearing, the Petitioner submitted into evidence an estimate from a salesperson for Light House Center, Inc. who placed the subject home on the subject property. *See Petitioner Exhibit 11*. The Respondent requested that this evidence be disregarded because the document was hearsay evidence and that the author of the estimate was not present to testify to the actual price. The ALJ noted the Respondent's objection but allowed the document to be entered into the record.

### **Issues**

12. Summary of Petitioner's contentions in support of an error in assessment:
  - a) The Petitioner contends that the assessed value of the subject property is excessive. *J. Dague testimony*. In support of this contention the Petitioner submitted an appraisal dated December 24, 2001, which estimated the market value of the subject property at \$85,000. *Petitioner Exhibit 1*. The appraised used comparable properties sold in 2000 and 2001. *Id.*
  - b) Similarly, the Petitioner argues that the "cost" of the subject property proves that the assessed value is too high. The Petitioner submitted a "statement" from the salesperson who originally sold the manufactured home,<sup>1</sup> estimating that to deliver and set-up a similar 1998 Redman Cape Cod, measuring 28 feet x 48 feet (approximately 1,300 square feet), on the subject property would cost \$72,840. *See Petitioner Exhibit 11*.<sup>2</sup>
  - c) The Petitioner further contends that the subject property's land value is excessive when compared to sales of similar properties. *J. Dague testimony*. The Petitioner submitted sales disclosures and PRCs for properties that the Petitioner considered to be comparable to the subject property. *Petitioner Exhibit 5 and 6*. Based on these comparisons the Petitioner determined that the subject property's land value was excessive and should be valued at \$1.07 per square foot. *Id.* Further, the Petitioner submitted a sale in a "far superior" part of town that sold for \$95,000 in October 2002. *Petitioner Exhibit 10*. According to the Petitioner, the property had an assessment of \$145,200. *J. Dague testimony*. This, the Petitioner asserts, shows again that the subject property is over-assessed. *J. Dague testimony; Petitioner Exhibit 10*.

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<sup>1</sup> The Petitioner was not the original owner of the subject property but purchased it through a Sheriff's sale in 2001. See Respondent Exhibit 4.

<sup>2</sup> The Respondent requested that Petitioner's Exhibit 11 be disregarded because it states that the price would be for a "similar" home and not the exact same home. *Potts testimony*. In addition, the Respondent claimed that this evidence is hearsay evidence and the author is not present to testify to the actual cost of the home. *Id.*

- d) Finally, the Petitioner alleged there were errors in the assessment. According to the Petitioner, the subject structure is a one and one-half story building consisting of 1,343 square feet with no garage. *J. Dague testimony*. However, the property is assessed as having a two story structure. *Id.* Further, the Petitioner argued that the subject structure is not a stick built home because it does not have the quality of a stick built home. *Id.* The Petitioner testified that the subject home was hauled to the site in several pieces on a trailer. *Id.* Thus, according to the Petitioner, the home should not be assessed like a stick built home. *Id.*

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

- a) The Respondent contends that the assessed values attributed to the subject property are correct. *Potts testimony*. In support of this contention, the Respondent testified that the subject structure is not a mobile home because there was no "red tag" and that it is a manufactured home. *Potts testimony*. The Respondent added that the subject structure was assessed as a one story with a finished attic and was valued as a "stick built" structure with a lower grade factor applied to reflect the quality of materials. *Id.* Further, the square footage of the subject structure was determined by way of exterior measurements. *Id.*; *Respondent Exhibit 2*.
- b) The Respondent also submitted a residential sales file for the subject neighborhood as evidence that the land was assessed correctly. *Respondent Exhibit 5*. The Respondent testified that the sales were all within the time range specified by the State. *Potts testimony*. The Respondent added that the assessments to sales ratios of the properties in that neighborhood have a median ratio of 1.04 which indicates the models used for the land and improvement values are working. *Id.* The Respondent argued that if the models were not working the median ration would not be close to "1". *Id.*
- c) In response to the Petitioner's appraisal, the Respondent asserts that the appraisal does not accurately reflect the subject property's value. According to the Respondent, the appraisal was not performed by a local appraiser, and the comparables were not within the city limits but were out in the country with no adjustments being made to account for that. *Potts testimony; Petitioner Exhibit 1*. The Respondent further argues that there is a problem with the appraiser's "final reconciliation" statement that the cost approach to value supports the market approach to value in the appraisal. *Id.* According to the Respondent, the determined cost approach value (\$109,328) is 29% greater then the determined market approach value (\$85,000). *Id.*
- d) Finally, in response to Petitioner Exhibits 5 – 7, the Respondent asserted that the subject property is an improved property and not vacant land (Petitioner's comparables) and there are costs associated with an improved parcel. The Respondent further argued that the comparables were not in the same

neighborhood as the subject, were vacant land as opposed to an improved lot, were rear lots with no frontage, that one was an estate sale sold to a tax exempt entity and not a true indicator of value, and that the sales of some of those properties indicated that the land values were incorrect. *Potts testimony.*

### **Record**

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

- a) The Petition.
- b) The tape recordings of the hearing labeled BTR # 6216 (1 & 2).
- c) Exhibits:

Petitioner Exhibit 1: Appraisal of subject property prepared by Gary W. Burton Appraisals, dated December 24, 2001

Petitioner Exhibit 2: Form 131 petition

Petitioner Exhibit 3: Comment Addendum prepared by Gary W. Burton Appraisals, dated January 15, 2004

Petitioner Exhibit 4: Subject property record cards (PRC)

Petitioner Exhibit 5: Land Value Worksheet

Petitioner Exhibit 6: PRCs and sales disclosures for the properties used in Exhibit 5

Petitioner Exhibit 7: Map showing locations of properties used in Exhibit 5

Petitioner Exhibit 8: Land Value Comparables

Petitioner Exhibit 9: Plat Map

Petitioner Exhibit 10: Comparable sale

Petitioner Exhibit 11: Light House Homes estimate

Petitioner Exhibit 12: Summary of Testimony

Petitioner Exhibit 13: PRC (front), photograph, and map of property located at 406 E. Cleveland St.

Petitioner Exhibit 14: PRC (front) and a photograph of property located at 609 Maple St.

Respondent Exhibit 1: Form 131 Petition

Respondent Exhibit 2: Subject PRC

Respondent Exhibit 3: Copy of Petitioner's appraisal

Respondent Exhibit 4: Transcripts of PTABOA hearing

Respondent Exhibit 5: Residential Sale File

Respondent Exhibit 6: Copies of the PRCs from the appraisal

Respondent Exhibit 7: Aerial w/PRCs from the residential sales file

Respondent Exhibit 8: PRC & map of parcel # 0213020004 (split)

Board Exhibit 1: Form 131 Petition with attachments

Board Exhibit 2: Notice of Hearing on Petition  
Board Exhibit 3: Sign-In Sheet  
Board Exhibit 4: Notice of Appearance of Consultant

- d) These Findings and Conclusions.

### Analysis

15. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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.
16. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a) The Petitioner contends that the assessment of the subject property is excessive. In support of this contention, the Petitioner presented an appraisal, evidence of “comparable” properties, and evidence of “errors” in the assessment.

### Appraisal

- b) The Petitioner contends that the assessed value attributed to the subject property is excessive. The Petitioner submitted an appraisal completed by a certified licensed appraiser, dated December 24, 2001, which estimated the market value of the subject property to be \$85,000. *See Petitioner Exhibit 1.*
- c) Real property in Indiana is assessed on the basis of its “true tax value.” *See I.C. § 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 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.*

- d) 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. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
- e) Here, the Petitioner submitted an appraisal dated December 24, 2001, performed by a licensed appraiser. *Petitioner Exhibit 1*. The appraiser attests the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) and the appraiser used both the sales and cost approaches to value. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).
- f) Further, while the appraisal did not value the property as of the January 1, 1999, valuation date, three of the comparable properties used as sales comparisons were sold in May and June of 2000. To determine the land value for each neighborhood, a township assessor selects representative sales disclosure statements or written estimations of a property value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Chap.2, pg. 7 (the GUIDELINES), According to the GUIDELINES, “representative disclosure statements ... refer to a transaction, or written estimations of value must refer to an estimation of value, that is dated no more than eighteen (18) months prior or subsequent to January 1, 1999.” Accordingly, an appraisal comparing sales that occurred within eighteen months of the January 1, 1999 assessment valuation date must, therefore, have some evidentiary value. Thus, the Board finds that the Petitioner has raised a prima facie case that the subject property is over-valued.
- g) Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent questioned the fact that the appraisal was not performed by a local appraiser, and that the comparables were not within the city limits but were out in the country with no adjustments being made to account for that. *Potts testimony; Petitioner Exhibit 1*.

The Respondent further stated that there was a problem with the appraiser's "final reconciliation" statement that the cost approach to value supported the market approach to value in the appraisal. The determined cost approach value was \$109,328 and the market approach value was \$85,000. There is a 29% difference between the two approaches that makes it difficult to say that the one tends to support the other.<sup>3</sup> *Potts testimony.*

- h) Merely criticizing the comparables or the reconciliation in an appraisal as "flawed" or "suspicious" ... "falls well short of the substantial evidence" the Respondent must present to rebut an appraisal prepared by a licensed appraiser. *See Hometowne Associates v. Maley*, 839 N.E.2d 269, 280 (Ind. Tax Ct. 2005). It is not sufficient to make conclusory statements that the wrong values were used by the Petitioner. *Id.* The Respondent needed to provide evidence of the variables it contends are the proper value and how use of such "proper" values would change the appraised value offered by the Petitioner. *Id.* This, the Respondent failed to do. Further, the Respondent's allegation that the appraisal was not prepared by a "local" appraiser has no merit in dismissing the appraisal. An appraiser is a person who estimates value or possesses the expertise to execute or direct the execution of an appraisal. GUIDELINE, Glossary, at 2. Implicit in this definition is the fact that the appraiser is a professional who has met the necessary requirements of a state to be licensed and certified to do estimate market value within that state via an appraisal. The fact that an appraiser may not be from a specific locale does not preclude him or her from producing a fair market analysis for a property from data available to the appraiser in that locale. In addition, an appraiser is required to make an appraisal according to the requirements and guidelines set forth in the Uniform Standards of Professional Appraisal Practice (USPAP).
- i) The Respondent failed to present evidence that impeached or rebutted the Petitioner's appraised value or the comparables used within the appraisal. Thus, the Board finds that the \$85,000 value determined by the appraiser is the best evidence of market value for the subject property.

#### *Comparable Land Sales*

- j) The Petitioner also alleged that the assessed value of the land on subject property is incorrect. In support of this contention, the Petitioner submitted sales disclosures and PRCs for properties that the Petitioner contends are "comparable" to the subject property. *Petitioner Exhibit 5 and 6.* Further, the Petitioner submitted a sale in a "far superior" part of town that sold for \$95,000 in October

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<sup>3</sup> The Respondent's question regarding the "final reconciliation" in the appraisal was also asked at the PTABOA hearing. *See Respondent Exhibit 5.* In response, Mr. Gary W. Burton of Gary W. Burton Appraisals prepared a letter dated January 15, 2004, stating that the final weight for the estimated market value was placed on the market approach and not the cost approach. *See Petitioner Exhibit 3.* Mr. Burton indicated that the cost approach for a used home is generally the high end of the value range and is used for reference only because depreciation is an opinion. Mr. Burton also attached sales of lots in the area for 2000 and 2001. *Id.*

2002. *Petitioner Exhibit 10*. According to the Petitioner, the property had an assessment of \$145,200. *J. Dague testimony*. Thus, the Petitioner concluded, the subject property is over-assessed. *J. Dague testimony; Petitioner Exhibit 10*.

- k) The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.* However, 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. *Long*, 821 N.E.2d at 470. 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. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use.
- l) Here, the Petitioner provided no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine the lots presented by the Petitioner were “comparable” properties. *See Blackbird Farms Apartments, LP v. Dep’t of Local Gov’t Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Thus, the Petitioner failed to raise a prima facie case that the property was over-assessed based upon the value of its land.

#### *Errors in the Assessment*

- m) Finally, the Petitioner alleged that there were errors in the assessment including whether the subject dwelling was a one and one-half story building and whether the subject structure should be valued as a “stick built” structure. The Board, however, having determined that the Petitioner’s appraisal is the best indicator of value for the subject property, determines that these issues are rendered moot.

#### **Conclusions**

- 17. The Petitioner established a prima facie case. The Respondent failed to rebut the Petitioner’s 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 to \$85,000 reflected within the appraisal.

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>>.**