

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

**Petition #:** 91-021-02-1-5-00044  
**Petitioner:** Phil & Greg Vogel  
**Parcel #:** 021-28900-00  
**Respondent:** Union Township Assessor (White County)  
**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 Petitioners initiated an assessment appeal with the White County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated January 6, 2004.
2. The PTABOA mailed notice of its decision on December 14, 2004.
3. Petitioners initiated an appeal to the Board by filing a Form 131 petition with the White County Assessor on January 10, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 12, 2006.
5. The Board held an administrative hearing on March 1, 2006, before the duly appointed Administrative Law Judge, Joan Rennick. The Administrative Law Judge also heard evidence concerning three other petitions<sup>1</sup> filed by the Philip H. Vogel Revocable Trust at the same hearing. Because the Petitioner in those cases differs from the Petitioners in the instant cases, the Board addresses those petitions in a separate written decision.
6. Philip Vogel, property owner, and Scott Potts, consultant for Union Township, appeared at the hearing and were sworn as witnesses.

**Facts**

7. The subject property is classified as a residential one-family dwelling. The property is located at 308 Heritage Road, Monticello, Union Township, White County.

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<sup>1</sup> Petition Nos. 91-021-02-1-5-00055; 91-021-02-1-5-00056; 91-021-02-1-5-00060

8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined that the assessed value of the subject property is \$14,800 for the land and \$38,600 for the improvements for a total assessed value of \$53,400.
10. The Petitioners request a value of \$10,000 for the land and \$38,000 for the improvements for a total value of \$48,000.

### **Issues**

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a) A comparable property located at 313 Heritage Road (Parcel 021-19820-00) sold for \$52,000 on June 26, 2002. *Vogel testimony; Pet'r Ex. 1, 2.* The dwelling on the comparable property is similar to the subject dwelling in terms of square footage and exterior condition. *Vogel testimony.* The comparable property has two full baths, while the subject dwellings have only one. *Id.* Additionally, the interior condition of the comparable dwelling is superior to the interior condition of the subject dwellings. *Id.* Thus, the value of the subject property should be lower than the value of the comparable property. *Vogel argument.*
  - b) A second comparable property located at 1114 Poplar Drive sold for \$58,000 on November 8, 1999. *Vogel testimony; Pet'r Ex. 3.* The dwelling on that property is in better condition than the subject dwellings, and it is located in a much nicer neighborhood than are the subject dwellings. *Vogel testimony.* The comparable property's neighborhood has curbs and sidewalks, and it is closer to the hospital than the neighborhood in which the subject property is located. *Id.* Therefore, the site values should reflect a \$5,000 to \$6,000 difference between the two neighborhoods. *Vogel argument.*
  - c) Mr. Vogel is a realtor, and he has sold several properties in the neighborhood in which the subject property is located. *Vogel testimony.* Consequently, Mr. Vogel has been inside some of those houses, while the Respondent has not. *Vogel argument.*
12. Summary of Respondent's contentions in support of the assessment:
  - a) The subject neighborhood is very homogenous, and the houses are very similar. *Potts testimony.* As a result, the sales are very similar to each other. *Id; Resp't Ex. 3.* The sales and assessments are very close in the subject's neighborhood, with a coefficient of dispersion of only 6.88. That is well within the permissible limit of 15. *Id.* Inspections showed no discernible difference between the properties that sold and the subject property. *Potts testimony.* The subject is average for its neighborhood. *Id.*

- b) Assessing officials rarely get the opportunity to go inside houses. *Id.* Therefore, exterior inspections are the fairest way to compare grade and condition. *Id.*

### **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 - 6224.
- c) Exhibits:

Petitioners Exhibit 1: Property Record Card for Parcel 021-19820-00 at  
313 Heritage

Petitioners Exhibit 2: Sales Disclosure for 313 Heritage

Petitioners Exhibit 3: Property Record Card for Parcel 021-20840-00

Respondent Exhibit 1: Form 131

Respondent Exhibit 2: Property Record Card of parcel under appeal

Respondent Exhibit 3: Neighborhood Sales Ratio Study

Board Exhibit 1: The Form 131 Petition with attachments.

Board Exhibit 2: Notice of Hearing.

Board Exhibit 3: Notice of Appearance of Consultant on Behalf of  
Assessor

- 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 not provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:
- a) The Petitioners contend that the Respondent has assessed the subject property in excess of its market value. *See Vogel testimony*. The Petitioners base their claim on the sale prices of two purportedly comparable properties.
- b) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real property as "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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the 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, 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.
- c) 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, a taxpayer may rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- d) The Petitioners rely upon the sales comparison approach to demonstrate that the assessed value assigned to the subject property exceeds its market value. The sales comparison approach is based on the assumption that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute improved property already existing in the market place. MANUAL at 13. The appraiser locates sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value. *Id.* The adjustments represent a quantification of characteristics that cause prices to vary. *Id.* The appraiser "considers and compares all possible differences between the comparable properties and the subject property that could affect value," using objectively verifiable evidence to determine which items have an influence on

value in the market place. *Id.* The appraiser quantifies the contributory values of the items affecting value in the market place and uses those contributory values to adjust the sale prices of comparable properties. *Id.* at 13-14.

- e) Thus, in order to 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e) The Board therefore turns to the evidence offered by the Petitioners concerning the comparability of the properties at 313 Heritage Road and 114 Poplar Drive to the subject property. Mr. Vogel testified that the dwelling at 313 Heritage Road is similar to the subject dwellings in terms exterior condition, but that the 313 Heritage Road dwelling has two (2) baths, while the subject dwelling has only one bath. *Vogel testimony*. One of the baths in the 313 Heritage Road dwelling was renovated in 1997 or 1998. *Id.* Mr. Vogel also testified that the interior of the dwelling at 313 Heritage Road is in better condition than is the interior of the subject dwelling, and that the dwelling at 313 Heritage Road is larger than the subject dwelling. *Vogel testimony*. Similarly, Mr. Vogel testified that the dwelling at 114 Poplar Drive is in better condition than the subject dwelling because it has vinyl siding and updated windows. *Id.* The Petitioners did not submit photographs of the subject dwelling or of either of the purportedly comparable dwellings.
- f) The Petitioners did not provide a meaningful comparison of features of the subject property and those of the purportedly comparable properties. Mr. Vogel’s testimony regarding the similarity of the properties was largely conclusory. At best, his testimony focused on a limited number of characteristics. In fact, the Petitioners provided almost no information about the subject property from which a comparison could be made. While the property record card for the subject property contains information concerning its physical characteristics, the Petitioners did not discuss the information contained on the property record card or attempt to compare that information to the information contained on the property record cards for the purportedly comparable properties. It is not the Board’s responsibility to review all of the documents submitted by the Petitioners to determine comparability – that duty rests with the Petitioners. *Long*, 821 N.E.2d at 471.
- g) The Board also notes that the subject property is assessed for \$53,400 – only \$1,400 more than the sale price for the property at 313 Heritage Road, and less

than the sale price for the Property located at 114 Poplar Drive. Mr. Vogel argues that those sale prices nonetheless support a lower value for the subject property because the dwelling at 313 Heritage Road has one more bedroom than the subject dwelling and is in better condition dwelling. Mr. Vogel also contends that the property at 114 Poplar drive is located in a better neighborhood than the subject property and that the dwelling on that property is in better condition than the subject dwelling. Mr. Vogel, however, did not provide any evidence by which to quantify effect of those differences on the relative market values of the properties. At best, Mr. Vogel made the conclusory assertion that the difference between neighborhoods would render the site value for the 114 Poplar Drive property \$5,000 - \$6,000 greater than the site value for the subject property. Even if the Board were to credit Mr. Vogel's testimony on that point, adjusting the sale price of the property at 114 Poplar Drive to account for the difference in Site values would yield a value very close to the subject property's current assessment.

- h) Based on the foregoing, the Petitioners failed to establish a prima facie case of error in the assessment. Where the Petitioners have not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E. 2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus, no change in the assessment is warranted.

### **Conclusions**

16. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not 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>.