

REPRESENTATIVE FOR PETITIONERS:  
Julia and Jeffrey Baker, *Pro se*

REPRESENTATIVE FOR RESPONDENT:  
Linda Phillips, Tippecanoe County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Julia and Jeffrey Baker,	)	Petition Nos.:	79-032-10-1-5-00002
	)		79-032-10-1-5-00003
	)		
Petitioners,	)	Parcel Nos.:	79-11-04-480-023.000-032
	)		79-11-04-480-015.000-032
	)		
v.	)		
	)		
Tippecanoe County Assessor,	)	County:	Tippecanoe
	)	Township:	Wea
	)		
	)		
Respondent.	)	Assessment Year:	2010

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Appeal from the Final Determination of the  
Tippecanoe County Property Tax Assessment Board of Appeals

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**January 15, 2014**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

In this case, the Petitioners own two single family homes that are used as income producing rental properties. The Petitioners contend that the Tippecanoe County Assessor relied on erroneous data and valuations to arrive at the assessment for the properties. Specifically, the Petitioners assert that the assessments should be based on actual rents collected rather than gross

market rents. But the Petitioners failed to present any authority to support this assertion, or present any analysis or alternate calculations to determine value. The Board finds that the Petitioners failed to make a prima facie case and affirms the 2010 PTABOA assessments.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

1. The subject properties are two single-family residences located at 2217 Southaven Boulevard and 2319 Southaven Boulevard in Lafayette, Indiana.
2. The Petitioners initiated their 2010 assessment appeals by filing Form 130 petitions to the Tippecanoe Property Tax Assessment Board of Appeals (PTABOA) on May 12, 2011. The PTABOA issued its assessment determinations on March 25, 2012.
3. The Petitioners filed Form 131 Petitions for Review of Assessment on May 9, 2012.
4. Administrative Law Judge (the ALJ) Ellen Yuhan held a hearing on October 17, 2013. She did not inspect the property. The following individuals testified under oath:  
For Petitioner: Julia and Jeffrey Baker,  
  
For Respondent: Linda Phillips, Tippecanoe County Assessor,  
Pamela Hruska, Valuation Specialist.
5. The Petitioners presented the following exhibits for both petitions:  
Petitioner Exhibit 1 – The lease for the appealed parcel,  
Petitioner Exhibit 2 – State Form 53569, property tax information,  
Petitioner Exhibit 3 – State of Indiana Memorandum dated August 24, 2007,  
Petitioner Exhibit 4 – Form 134 with cover letter dated January 24, 2012,  
Petitioner Exhibit 5 – Sales disclosure form for 3410 Summertime Trail.  
Petitioner Exhibit 6 – Dwelling information for 3410 Summertime Trail from the Tippecanoe County website.
6. The Respondent presented the following exhibits for all the petitions:  
Respondent Exhibit C1 – Calculation of the gross rent multiplier (GRM) for 2009,  
Respondent Exhibit C2 – Review of GRM for 2010,  
Respondent Exhibit C3 – Market rents for three-bedroom, two-bath properties in Burnett’s Creek Service Area,  
Respondent Exhibit C4 – Market rents for three-bedroom, two-bath properties in

Earhart Service Area,<sup>1</sup>

Additionally, the Respondent presented individual packets for each petition including:

Respondent Exhibit 1 – Burden analysis,  
Respondent Exhibit 2 – Sales comparison analysis,  
Respondent Exhibit 3 – Calculation via GRM.

7. The following additional items are officially recognized as part of the record of proceedings:
  - Board Exhibit A – Form 131 Petitions,
  - Board Exhibit B – Notices of Hearing-Reschedule, dated September 13, 2013,
  - Board Exhibit C – Hearing sign-in sheet.
  
8. For 2010, the PTABOA determined the value of 2217 Southaven Blvd. was \$23,000 for the land and \$73,000 for the improvements, for a total assessed value of \$96,000. For 2010, the PTABOA determined the value of 2319 Southaven Blvd. was \$23,000 for the land and \$72,900 for the improvements, for a total assessed value of \$95,900.
  
9. According to the Form 131 appeals, the Petitioners requested a total assessed value of \$84,150 for 2217 Southaven Blvd. and \$91,800 for 2319 Southaven Blvd. However, during the hearing the Petitioners contended that the assessment should be \$86,200 for each property based on the Respondent's Gross Rent Multiplier calculations.

**BURDEN**

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

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<sup>1</sup> The Respondent labeled the exhibits 1 through 4, but, to avoid confusion in these findings, the exhibits common to all petitions will be referred to as Respondent C-1, C-2, etc.

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

11. Here, the parties disagreed who had the burden. The Petitioners filed appeals for the 2009 assessments and the previous Assessor changed the value from her initial assessment without a PTABOA hearing. To determine burden, the Petitioners argued that the percentage of increase should be based on the final adjusted assessed value for the previous year.
12. In contrast, the Respondent contended the increase is calculated from the original value shown on Form 11.
13. In this case, the previous Assessor changed the initial 2009 assessments following the Petitioners' tax appeals. A notation on the property record cards shows the Assessor "settled" and decreased the values from the initial assessments. Settlement agreements are not afforded any precedential effect in property tax appeals. The difference between the initial 2009 value and the PTABOA value for 2010 is the basis for calculating the increase in assessed value for the purpose of determining the burden of proof.
14. A review of the initial 2009 assessment and the 2010 PTABOA value for 2217 Southaven Blvd. shows a decrease of 4%, from \$100,000 in 2009 to \$96,000 in 2010.

15. A review of the initial 2009 assessment and the 2010 PTABOA value for 2319 Southaven Blvd. shows a decrease of 18%, from \$116,400 in 2009 to \$95,900 in 2010. It is clear to the Board that the Petitioners have the burden for both properties in this case because the assessed values for both properties decreased between 2009 and 2010.

#### **SUMMARY OF THE PETITIONERS' CONTENTIONS**

16. The Petitioners argue that the values for both 2217 Southaven Blvd. and 2319 Southaven Blvd. should be \$86,200 based on the GRM shown in Respondent Exhibit 3. *Jeffrey Baker testimony; Respondent Exhibit 3.*

#### **2217 Southaven Blvd.:**

17. The Respondent's sales analysis for 2217 Southaven contains numerous errors. The amounts for negative adjustments were added instead of subtracted. The Assessor did not adjust for differences in the amount of exterior brick on the properties nor did she adjust for a shed on comparable #1. She also did not include the sale of a property down the street which sold for \$59,900. *Julia and Jeffrey Baker testimony; Respondent Exhibit 2; Petitioner Exhibit 5.*
18. In Respondent Exhibit C-4, the Assessor compared properties to show how she arrived at the rental amount for the GRM. The amount of living space shown for 2217 Southaven is incorrect. It is not 1,294 square feet, but 1,125 square feet. Further, this property is one of the smallest and should not be compared to a property with 1,528 square feet because it will not rent for the same amount of money even when the comparables are both three-bedroom, two-bath houses. *Jeffrey Baker testimony; Respondent Exhibit C-4.*
19. The Assessor made an adjustment for patio size for comparable #1 in the analysis for 2217 Southaven. Also, the adjustment she made for the difference of 177 square feet of living area for comparable #1 is equivalent to \$28 a square foot, which is low. *Julia and Jeffrey Baker testimony; Respondent Exhibit 2.*

**2319 Southaven:**

20. Originally, 2319 Southaven was assessed at \$111,900. The Assessor admitted that was too high and offered \$95,900 based on a monthly rent of \$940, but this property only rents for \$900 a month. Additionally, the Assessor used comparable #1 in her analysis for the subject property, but failed to make that adjustment for patio size. *Jeffrey Baker testimony; Petitioner Exhibits 1 and 4.*
  
21. The Assessor's adjustments are inconsistent throughout her comparison process. Even if small adjustments are immaterial, the same dollar amount should be used across all the samples. For instance, if an adjustment for a shed is made on one comparable property, that adjustment should be applied to all the comparable properties that have sheds. The same holds true on the Assessor's adjustment for the lack of brick on comparable #5. The analysis makes no adjustments for differences in exterior brick. Appraisers would account for differences in garages, sheds, patios, exterior finishes, and things like that. *Jeffrey Baker testimony; Respondent Exhibit 2.*

**SUMMARY OF RESPONDENT'S CONTENTIONS**

22. The \$86,200 assessed value shown on Respondent Exhibit 3, the 2010 Valuation by GRM, for both 2217 Southaven and 2319 Southaven is a mistake. The purpose of that exhibit was to show the Petitioners' rent, which is not representative of the market. A reasonable rent for the area is \$900. Also, the Assessor does not use an individual property's rent because that can reward the bad landlords and penalize the good landlords. The PTABOA determination of \$95,900 and the Assessor's burden analysis and sales comparable analysis reflects the market more accurately. *Phillips testimony; Respondent Exhibits 1-3 and C-4.*
  
23. The previous Assessor developed the GRM for 2009. There was no change in the GRM for 2010 because of inadequate sales data. *Phillips testimony.*

24. The Petitioners' sales disclosure form is not reliable evidence because it does not present evidence as to the condition of the sold property. If a property sold for a lower than normal price, the property may have had habitability issues that would require expensive remediation. *Phillips testimony; Petitioner Exhibit 5.*

**2217 Southaven:**

25. In the sales comparable analysis for 2217 Southaven all of the comparable properties are located in Lafayette in the same elementary school district as the subject property. Similarly, the comparables are three-bedroom, two bath homes on a slab foundation. All have two-car attached garages and are air-conditioned. They are all of a similar age and are similar in design and quality of construction to the subject property. Adjustments were made for differences in fencing, patio size, and landscaping. *Phillips testimony; Respondent Exhibit 2.*
26. The Petitioners are correct that there are mathematical errors in the sales analysis, but the median adjusted sales price is still correct. The adjusted sale price of comparable #1 should be \$113,000, comparable #2 should be \$99,500, and comparable #3 should be \$110,500. There were no adjustments to comparables #4 and #5, so the median adjusted sale price is still \$101,000. *Phillips testimony.*
27. Adjustments were not made for sheds because generally they add little, if any, market value. There are different amounts of brick on the front of some of the properties, but the remainder is vinyl, which is common for the neighborhood. The Assessor does not recognize a market difference in the amount of brick used on a house. *Phillips testimony.*

**2319 Southaven:**

28. The comparable properties in the sales comparable analysis for 2319 Southaven are all located in Lafayette in the same elementary school district as the subject property. They are three-bedroom, two bath, homes on slabs with two-car attached garages and air-conditioning. The lot sizes are similar except for one that is a little bigger, but that did

not add anything to market value. They are all of a similar age and condition and similar in design and quality of construction. Adjustments were made for differences in fencing, patio size, and landscaping. *Phillips testimony; Respondent Exhibit 2.*

29. In her sales comparison analysis for 2319 Southaven, the Assessor's adjustment for the patio is not a significant difference. As to the square foot value for additional living space, each incremental square foot adds less value. The adjustments the Assessor uses for gross living area are stratified by market level using data from professional appraisals. *Phillips testimony; Respondent Exhibit 2.*

### **Analysis**

30. Real property is assessed based on its "true tax value," which 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. 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. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676-77 (Ind. Tax. Ct. 2006).
31. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2010 assessment is March 1, 2010.



32. The GRM is the preferred method for valuing rental properties with fewer than four units. Ind. Code § 6-1.1-4-39(b). The properties in this appeal are both single family rental properties. The Petitioners do not live at either property.
33. The Petitioners presented the leases for the properties under appeal, but did not provide any calculation or analysis showing the market values of the properties based on the GRM approach. Further, the Petitioners want to use actual rents to determine market value based on GRM, but failed to show their rents are consistent with similar properties in the market. *See Indiana MCH, LLC v. Scott County Assessor*, 987 N.E.2d 1182, 1185-6 (Ind. Tax Ct. 2013). It is necessary to consider data from other comparable properties in order to protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management or poor business decisions) that have nothing to do with the inherent value of a property. *Id.* at 1184.
34. While critical of the Respondent's choice of comparable properties and the adjustments made in the sales comparison analyses, the Petitioners failed to offer alternate analysis or submit calculations of their own to establish values. In fact, the Petitioners offered no analysis based on GRM, or any alternative approach otherwise to determine value in this case. 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).
35. Despite the errors in the 2010 Valuation by GRM and the mathematical errors in the sales analysis, the Petitioners failed to establish a prima facie case for a reduction in the assessed values for 2217 Southaven Boulevard and 2319 Southaven Boulevard. The Petitioners offered no independent analysis or alternative approach to determine value in this case. Where a petitioner has not supported its claims with probative evidence, or any evidence in this case, a respondent's duty to support these assessments with substantial evidence was not triggered. *Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.*,

799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2001). The Respondent's duty was not triggered here.

### **FINAL DETERMINATION**

In accordance with the above findings and conclusions, 2010 PTABOA assessments for 2217 Southaven Boulevard and 2319 Southaven Boulevard are affirmed.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.