

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

**Petition No.:** 41-020-06-1-5-00002  
**Petitioners:** Kenneth Colburn and Mary Moore  
**Respondent:** Johnson County Assessor  
**Parcel No.:** 411132043022001021<sup>1</sup>  
**Assessment Year:** 2006

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

**Procedural History**

1. Kenneth Colburn and Mary Moore, the Petitioners, initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (PTABOA) by written document dated August 31, 2007.
2. The PTABOA issued its decision on November 9, 2007.
3. Mr. Colburn and Ms. Moore filed an appeal to the Board by filing a Form 131 with the County Assessor on December 6, 2007. The Petitioners elected to have this case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 23, 2008.
5. The Board held an administrative hearing on June 4, 2008, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Mary Moore, Petitioner
  - b) For Respondent: Mark Alexander, Johnson County Assessor  
Michael S. Watkins, witness

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<sup>1</sup> The County testified that the parcel number of the property was changed as an administrative matter.

## Facts

7. The property is a single family home residence located at 375 West Roszell Drive, in Nineveh.
8. The Administrative Law Judge did not inspect the property.
9. The PTABOA determined the assessed value of subject property to be \$21,600 for the land and \$200,200 for the improvements, for a total assessed value of \$221,800.
10. The Petitioners request an assessed value of \$21,600 for the land and \$155,000 for the improvements, for a total assessed value of \$176,600.

## Issue

11. Summary of Mr. Colburn's and Ms. Moore's contentions in support of alleged error in assessment:
  - a) Ms. Moore testified that the subject property is a home located on Princes' Lakes. *Moore testimony.* The Petitioners contend that the community is older, with an uneven mix of homes. *Id.* Still, Ms. Moore testified, it is not known as a "high-end" neighborhood. *Id.* According to Ms. Moore, Princes' Lakes was originally an area for second homes, but now homes are becoming primary residences due to the cost. *Id.*
  - b) The Petitioners contend that the property's assessment exceeds its market value. *Moore testimony.* Ms. Moore testified that the home was built in the 1970s, with wood construction. *Id.* According to Ms. Moore, the property is very steep and wooded. *Id.* It takes 100 steps to reach the lake. *Id.* Thus, while it is a lakefront property, access to the lake is difficult, which makes the home difficult to resell. *Id.* According to Ms. Moore, when the Petitioners purchased the home it had been on the market a long time due to the difficult lake access. *Id.*
  - c) The Petitioners also argue that the property is over-valued based on the sale of comparable properties. *Moore testimony.* According to Ms. Moore, a realtor performed a "comparative market analysis" of homes that sold from March 2005 to March 2006. *Id.; Petitioner Exhibit 1.* Ms. Moore testified that the realtor restricted her search to three bedroom homes on lakefront properties in the area. *Id.* The average sale price of the homes was \$127,283. *Id.* Thus, the Petitioners argue, the average sales price of homes that sold between March 2005 and March 2006 is significantly lower than the assessed value of the subject property. *Moore testimony.*

- d) Finally, the Petitioners contend that the property is over-valued based on the assessed value of neighboring properties. *Moore testimony*. According to Ms. Moore, the property next to the subject property is assessed for \$117,900 and its adjacent property is assessed for \$70,400. *Id.* While another nearby property is assessed for \$262,900, the Petitioners argue, it is a newer, larger, brick home built on multiple lots. *Id.* Ms. Moore testified that the subject property's assessed value increased 68% in reassessment, which puts the property's assessment "way above" their counterparts. *Id.* The Petitioners contend the increased assessment undoubtedly has a bearing on the potential sale price of the property. *Id.*
12. Although the County Assessor chose not to testify in support of its assessment, the Assessor offered an aerial photograph of the property as evidence. *Watkins testimony; Respondent Exhibit 1.*

### **Record**

13. The official record for this matter is made up of the following:
- a) The Petition, and all pre-hearing, and post-hearing submissions by either party.
  - b) The digital recording of the hearing.
  - c) Exhibits:
    - Petitioner Exhibit 1: Form 131 Petition and attachments,
    - Petitioner Exhibit 2: Form 115, Notification of Final Assessment Determination,
    - Petitioner Exhibit 3: Form 130 Petition,
    - Respondent Exhibit 1: Aerial photograph,
    - Board Exhibit A: Form 131 Petition and attachments,
    - Board Exhibit B: Notice of Hearing,
    - Board Exhibit C: Hearing sign-in sheet.
  - 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 Township 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 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.
15. The Petitioners failed to provide sufficient evidence to support their contentions. The Board reached this conclusion for the following reasons:
- a) The 2002 Real Property Assessment Manual defines “true tax value” 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 (incorporated by reference at 50 IAC 2.3-1-2) at 2. The appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. Similarly, a taxpayer may offer sales information for the subject property or comparable properties or other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c) Here the Petitioners attempt to show an error in their property's assessment by offering a “comparative market analysis.” *Moore testimony; Pet'rs. Ex. 1*. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, 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 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. They must explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioners merely contend that the “comparable” properties are all three bedroom homes located on the lakefront. *Petitioner Exhibit 1*. This falls far short of the burden to show comparability between the properties.

- d) The Petitioners further contend that the property is assessed in excess of neighboring properties. *Moore testimony*. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus, the Petitioners argue, to the extent that they prove that their property is assessed higher than other properties, their assessment should be lowered. However, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.*
- e) Like the sales comparable analysis, to show their property is assessed in excess of comparable properties, the taxpayer must show the properties are, in fact, comparable. In the case at bar, Petitioners have not met their burden. While the Petitioners identify that neighboring properties are assessed lower, the Petitioners did not make any attempt to explain why or how the properties are comparable to the subject property. This falls short of the type of analysis required to establish comparability under *Long* and falls far short of the burden the Petitioners face. The Petitioners have only made a “de minimis factual showing” and have failed to “sufficiently link [their] evidence to the uniform and equal argument they raise.” *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
- f) The Petitioners failed to establish a prima facie case showing an error in the assessment. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

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

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: \_\_\_\_\_

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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

## IMPORTANT NOTICE

- Appeal Rights -

**You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.**