

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

**Petition:** 06-019-06-1-5-00165  
**Petitioners:** Benjamin M. and Marian J. Durham  
**Respondent:** Boone County Assessor  
**Parcel:** 019-19000-92  
**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioners initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (PTABOA) by letter dated November 7, 2007.
2. The PTABOA issued notice of its decision on April 28, 2008.
3. The Petitioners appealed to the Board by filing a Petition for Review of Assessment (Form 131) on May 20, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated December 5, 2008.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on January 8, 2009. He did not conduct an inspection of the property.
6. Citing their age and poor health, the Petitioners stated they would not appear at the hearing and their letter dated May 19, 2008, adequately explained their position. *Pet'rs Exs. 1, 2*. Boone County Assessor Lisa Garoffolo and PTABOA member Charles Ewing appeared on behalf of the Respondent and were sworn as witnesses.

**Facts**

7. The property is a single family residence located at 10437 Oak Ridge Drive in Zionsville.
8. The PTABOA determined the assessed value is \$77,200 for land and \$527,700 for improvements (total assessed value of \$604,900).
9. In their May 19, 2008, letter, the Petitioners contended the assessed value should be \$77,200 for land and \$405,900 for improvements (total assessed value of \$483,100).

## Contentions

10. Summary of the Petitioners' case:
  - a. The Petitioners have owned the property for fourteen years. The taxes doubled since 1997. Their total income is derived from Social Security. They are not in a financial position to pay more property taxes. *Pet'rs Ex. 1.*
  - b. A tax problem exists caused by uncontrollable spending by the local town government and school system as well as the property tax assessments prepared by Boone County officials. *Pet'rs Ex. 1.*
  - c. In September 2004, the Eagle Township Assessor determined the assessed value of the property was \$405,900 for improvements and \$77,200 for land (a total assessed value of \$483,100). There is no reason for the assessment increase in 2006 except to support increased local spending. *Pet'rs Ex. 1.*
  - d. The Petitioners sent a check for \$8,704.73 that was to be the full payment for the 2006 tax year. The check was cashed by Boone County as full payment for the taxes due. *Pet'rs Exs. 1, 4.*
  
11. Summary of the Respondent's case:
  - a. The local assessing officials prepared a comparative market analysis of sales of property in the Petitioners' neighborhood during 2004 and 2005. The nine sales established the average sale price was \$148 per square foot. Application of this rate to only the 3,714 square feet of living space on the two upper floors results in a value of \$549,672, an amount in excess of the assessed value sought by the Petitioners. *Garoffolo testimony; Resp't Exs. 5, 10.*
  - b. The PTABOA agreed to change the grade from B+2 to B+1 to make the assessment closer to the square foot value determined by the comparative market analysis. The effect of this change was a reduction in the Petitioners' assessment from \$645,500 to \$604,900. The property record card for the subject property introduced as evidence has not been updated to reflect this change in grade. *Garoffolo testimony; Resp't Exs. 5, 6.*

## Record

12. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. Digital recording of the hearing,
  - c. Petitioners Exhibit 1 – Letter to the Board dated May 19, 2008,

Petitioners Exhibit 2 – Letter to the Board dated November 10, 2008,  
 Petitioners Exhibit 3 – Bill for the 2006 payable 2007 property taxes,  
 Petitioners Exhibit 4 – Canceled check from the Petitioners to the Boone County  
 Treasurer for \$8,704.73,  
 Respondent Exhibit 1 – Letter from the Petitioners to the Respondent dated  
 November 7, 2007,  
 Respondent Exhibit 2 – Appeal worksheet,  
 Respondent Exhibit 3 – Letter from the Respondent to “Boone County Taxpayer”  
 dated November 21, 2007,  
 Respondent Exhibit 4 – Letter from the Petitioners to the Respondent dated  
 November 30, 2007,  
 Respondent Exhibit 5 – Property record card,  
 Respondent Exhibit 6 – Notification of Final Assessment Determination (Form  
 115) dated April 28, 2008,  
 Respondent Exhibit 7 – Form 131 with attachment (letter dated May 19, 2008),  
 Respondent Exhibit 8 – Photograph of the subject property,  
 Respondent Exhibit 9 – Notice of Hearing,  
 Respondent Exhibit 10 – Comparative Market Analysis of sales of property in the  
 subject neighborhood,  
 Respondent Exhibit 11 – Aerial photograph of the subject property,  
 Board Exhibit A – Form 131,  
 Board Exhibit B – Notice of Hearing on Petition,  
 Board Exhibit C – Hearing Sign In Sheet,

d. These Findings and Conclusions.

### **Analysis**

13. 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. Washington 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.

14. The Petitioners failed to make a prima facie case to lower the subject property's assessment. This conclusion was arrived at because:
  - a. The amount of the tax bill and the increase from prior years is not relevant to what the correct assessment is. The Board has only the power conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). Its jurisdictional power extends only to appeals concerning the assessed value of tangible property, deductions, and exemptions. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction over tax rates and local spending. Consequently, this decision cannot address allegations about tax problems related to uncontrolled spending by local government or schools. Similarly, this decision cannot address the allegation that the Petitioners already made payment in full for the 2006 tax year.
  - b. Real property is assessed based on its "true tax value," which does not mean fair market value. It 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption an assessment is correct. 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. MANUAL at 5.
  - c. The Petitioners presented no market evidence, such as an appraisal or sales information, to support their proposed assessed value. This failure alone is fatal to their claim; however, it is not the only reason their case fails.
  - d. The Petitioners relied upon the 2005 assessed value of \$483,100, contending that amount should be carried forward for the 2006 assessment. But they failed to provide any authority or substantial explanation for how that fact helps to prove what the relevant market value-in-use really is. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence of a property's assessment in one tax year is not probative of its true tax value in a different tax year. *Id.*
  - e. Consideration of the 2005 assessment is problematic for another reason. The 2005 assessment was based on a valuation date of January 1, 1999. MANUAL at 4.

A 2006 assessment must be based on valuation as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. The difference is not a one-year valuation change—it actually is a six-year change from January 1, 1999, to January 1, 2005. Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, the value as of the required valuation date for the disputed assessment. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioners failed to establish any such relationship between the 2005 assessment and the required valuation date for the 2006 assessment. Consequently, prior assessment does not help prove their case.

- f. When a taxpayer fails to provide probative evidence supporting its position 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); *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

**Conclusion**

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

**Final Determination**

In accordance with the above findings and conclusions, the assessment will not be changed.

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

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Commissioner,  
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, 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>