

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

**Petition:** 06-003-07-1-5-00575  
**Petitioners:** David L. and Paula M. Franz  
**Respondent:** Boone County Assessor  
**Parcel:** 003-12161-21  
**Assessment Year:** 2007

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 by filing Form 130 with the Boone County Property Tax Assessment Board of Appeals (PTABOA) on October 17, 2008.
2. The PTABOA issued notice of its decision (Form 115) for the 2007 assessment on December 10, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 on January 7, 2009. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 16, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 17, 2009.
6. David Franz and County Assessor Lisa Garoffolo were sworn as witnesses and testified at the hearing. Clifford Hardy also was sworn, but he did not testify.

**Facts**

7. The property is a single family residence located at 7431 Fox Hollow Court in Zionsville.
8. The Administrative Law Judge did not inspect the subject property.
9. The PTABOA determined the assessed value for the subject property is \$74,200 for land and \$580,200 for improvements (total \$654,400).
10. The Petitioners claimed the total assessed value should be \$553,100.

## Contentions

11. Summary of the Petitioners' case:
  - a. An appraisal estimated the market value of the subject property at \$605,000. This determination of value was based on the sales prices of five comparable properties. *Franz testimony; Pet'rs Ex. 4.*
  - b. The average assessed value to market value ratio for the five comparable properties used in the appraisal is 91.4%. (The individual ratios for those five sales are 70.9%, 89.8%, 90.5%, 98.9%, and 108.7%.) *Franz testimony; Pet'rs Ex. 5.*
  - c. Multiplying the appraised value of \$605,000 by the average assessment ratio of the five comparable properties results in the proposed assessed value of \$553,100. That amount would be an equitable assessment. *Franz testimony; Pet'rs Ex. 5.*
  
12. Summary of the Respondent's case:
  - a. The Petitioners presented an appraisal, but its valuation date does not correspond with the sales data that was supposed to be used for 2007 assessments. *Garoffolo testimony.*
  - b. As part of the appeals process, the assessor visually inspected the neighborhood. *Garoffolo testimony.*
  - c. The current assessment of \$654,400 for the subject property is correct. *Garoffolo testimony.*

## Record

13. The official record for this matter contains the following:
  - a. Petition for Review of Assessment (Form 131) with attachments,
  - b. Digital recording of the hearing,
  - c. Petitioners Exhibit 1 – Form 130,  
Petitioners Exhibit 2 – Notice of County Hearing (Form 114),  
Petitioners Exhibit 3 – Form 115,  
Petitioners Exhibit 4 – Appraisal,  
Petitioners Exhibit 5 – Summary comparing sale prices to assessments,  
Petitioners Exhibit 6 – Property record cards for comparable properties,  
Petitioners Exhibit 7 – Correspondence to the Boone County Assessor dated December 16, 2008,

- Respondent Exhibit 1 – Boone County appeal worksheet with attachments:
  - Petitioners’ Form 130,
  - Summary comparing sale prices to assessments,
  - Statement of the Petitioners’ position,
  - Appraisal of the subject property,
- Respondent Exhibit 2 – Property record card,
- Respondent Exhibit 3 – Photograph of the subject property,
- Respondent Exhibit 4 – Form 114,
- Respondent Exhibit 5 – Correction of error,
- Respondent Exhibit 6 – Property record card,
- Respondent Exhibit 7 – Form 115,
- Respondent Exhibit 8 – Form 131 with the Petitioners’ seven exhibits attached,
- Respondent Exhibit 9 – Notice of Hearing,
- Respondent Exhibit 10 – Comparative market analysis,
- Board Exhibit A – Form 131 with attachments,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing Sign In Sheet,

d. These Findings and Conclusions.

### Analysis

14. 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).
15. 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”).
16. The Petitioners did not make a prima facie case for any assessment change for the following reasons:
  - a. 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). Indiana promulgated Guidelines for assessing officials that are based on the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted

to offer evidence relevant to market value-in-use to rebut that presumption. 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.

- b. A 2007 assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c. The effective date of Petitioners’ appraisal is unclear. The cover page and page 2 of the appraisal state that it estimates a value of \$605,000 as of October 9, 2008. The Supplemental Addendum (page 10), however, states the valuation is as of March 1, 2007. Petitioners’ offered no evidence to address the ambiguity in the effective date of the appraisal. Furthermore, they did not establish how either possible date for the appraised value might relate to value as of January 1, 2006. Therefore, the valuation in the appraisal does not establish what the 2007 assessment should be.<sup>1</sup>
- d. The Petitioners’ claim really is based on a uniformity and equality issue. They contend that other homes in the neighborhood are assessed for less than their selling prices, while the subject property is assessed for more than its expected selling price would be (based on the appraised value).
- e. As shown on their Exhibit 5, the Petitioners computed the assessment/sale ratios for five other properties in their Fox Hollow neighborhood.<sup>2</sup> These five properties are the ones used as comparable sales in the appraisal.

<u>Sale Date</u>	<u>Sale Price</u>	<u>Assessed Value</u>	<u>% AV/SP</u>
12/14/2006	\$650,000	\$460,600	70.9%
8/15/2006	\$627,000	\$681,800	108.7%
2/23/2007	\$582,500	\$527,400	90.5%
10/24/2006	\$597,000	\$536,000	89.8%
7/31/2006	\$532,500	\$526,800	98.9%

According to the Petitioners, this data shows the average assessment is 91.4% of the actual selling price for these comparables. The Respondent did not challenge the accuracy of this data or the computation of the average ratio that those five properties demonstrated. Furthermore, nothing else in the record creates any

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<sup>1</sup> In addition, the appraised value was not what the Petitioners claimed their assessment should be, even though it is a major step in explaining their reasoning.

<sup>2</sup> The ratios are based on assessed values for March 1, 2007.

doubt about the accuracy of this information, and therefore, the Board will accept it as being accurate *regarding those five properties*.

- f. Nevertheless, that point does not mean that the Petitioners proved their case. According to the Tax Court, “when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). Such studies must be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).
- g. The assessment/sale ratio that the Petitioners submitted is based on only five sales, one of which was outside the time for sales that are properly considered in determining 2007 assessments. Ind. Admin. Code tit. 50, r. 21-3-3. The Petitioners apparently used the same properties that were used as comparables for the appraisal, but otherwise they gave no indication about how the properties were selected. They failed to establish that their data constituted a statistically reliable sample or that their assessment/sale ratio was prepared according to professionally acceptable standards. Therefore, the evidence is not sufficient to make any legitimate conclusion about uniformity and equality of assessment in this case.
- h. Assuming, *arguendo*, that some sort of adjustment would be appropriate to achieve uniformity and equality of assessment for the subject property, the Petitioners failed to establish that using a simple average of the percentages would be a statistically reliable, professionally acceptable basis for change. Furthermore, the very limited data that was submitted, its wide range, and apparently random variation make any conclusion about what an appropriate change might be impossible in this case. The Petitioners failed to prove that their property should be assessed for only 91% of its market value-in-use.
- i. Where both the appraised value and the average assessment/sale ratio are problematic, multiplying those two numbers results in a product that is meaningless. It is not probative evidence. It does not help to prove what a more accurate assessment of the subject property might be.
- j. Therefore, the Petitioners did not make a *prima facie* case.

17. When taxpayers fail to provide probative evidence supporting their 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

18. The Petitioners failed to make a prima facie case for a lower assessed value. 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>