

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

**Petition No.:** 02-072-08-1-5-01539  
**Petitioners:** Michael & Kim Jacoby  
**Respondent:** Allen County Assessor  
**Parcel No.:** 02-08-20-276-007.000-072  
**Assessment Year:** 2008

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

**Procedural History**

1. Michael and Kim Jacoby appealed the subject property’s assessment to the Allen County Property Tax Assessment Board of Appeals (“PTABOA”). On January 29, 2010, the PTABOA issued its determination lowering the subject property’s assessment, but not to the level that the Jacobys had requested.
2. On March 8, 2010, the Jacobys filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On February 16, 2011, the Board held an administrative hearing through its designated administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:

Michael Jacoby

Renee Buettner, Allen County Assessor’s Senior Residential Appraisal Deputy

**Facts**

5. The subject property contains a single-family home located at 4417 Spring Burn Drive in Fort Wayne.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for the subject property:  
Land: \$54,900      Improvements: \$186,500      Total: \$241,400
8. Mr. Jacoby requested the following values:  
Land: \$54,900      Improvements: \$161,000      Total: \$215,900

## Parties' Contentions

9. The Jacobys offered the following evidence and arguments:
- a) Mr. Jacoby first asked that the Board enter what he described as a “directed finding” for the Jacobys because the PTABOA did not issue a determination within 120 days of its hearing on the Jacobys’ appeal. Instead, the PTABOA issued its determination more than one week after that 120 day deadline. *Jacoby testimony; Pet’rs Ex. 2*. According to Mr. Jacoby, the PTABOA would have denied the Jacobys’ appeal if they had filed it after the statutory 45-day deadline for taxpayers to appeal their assessments. *Jacoby argument*. The same rules should apply to the government officials. *Id.*
  - b) In any case, the subject property’s assessment is too high. *Jacoby argument*. The Jacobys bought the property for \$232,000 in August 2007. *Jacoby testimony*. The house was affordable because it was in such poor condition; at the time of the sale, it was in the worst condition of any house in the neighborhood. *Id.* Plus, the subject house is one of the smallest houses in a nice neighborhood. *Id.*
  - c) The Assessor increased the subject property’s assessment despite the fact that the market has gone down every quarter since the Jacobys bought the property. *Jacoby testimony*. To show that decline, Mr. Jacoby offered what he described as the best available data for the Ft. Wayne area. *Id.; Pet’rs Ex. 1 at 6*. That data shows a 9.1% decrease for the first quarter of 2009. *Id.* Similarly, a September 22, 2009 article from *The Journal-Gazette* indicates that home values in Fort Wayne decreased from 2006 through 2008. *Jacoby testimony; Pet’rs Ex. 1 at 23*. In that same vein, a comparable home at 4327 Foxknoll Cove was being listed for less than what it sold for in 2007. *Jacoby testimony; Pet’rs Ex. 3*.
  - d) The Assessor’s witness, Ms. Buettner, attempted to support the subject property’s assessment by using the per-foot sale prices for three other properties. But many factors play into a property’s price per square foot, especially location. *Id.* And Ms. Buettner’s analysis ignores differences between the subject property’s location and the locations of her three purportedly comparable properties. Those comparable properties are all located on retention ponds, which makes them preferable to the subject property. *Id.* Two of those comparables are in Cherry Hill, which has a golf course, clubhouse, pool, and tennis courts. *Id.* Similarly, the subject house lacks some of the items found in Ms. Buettner’s comparables, such as crown-molding, travertine tile, jacuzzi tubs, french doors, and granite counter tops. *Jacoby testimony*. And the subject house is older than the comparables, up to 15 years older in one instance. *Id.* Finally, a 150-square-foot three-season room is included in the subject house’s total area. The room has a heating duct, but it is all windows and has no insulation. Thus, while the room is usable, it is not as valuable as the rest of the house. *Id.*
  - e) All of those things figure into a property’s per-square-foot price. *Jacoby testimony*. Because of the differences between the subject property and Ms. Buettner’s

comparables, Ms. Buettner was comparing apples to oranges. *Jacoby testimony; Pet'rs Ex. 1 at 11-22.*

- f) Finally, while the subject property was assessed for more than what the Jacobys paid for it, each of Ms. Buettner's comparables was assessed for less than its sale price:
- 4327 Foxknoll Cove—sold one month before the subject property for \$257,200<sup>1</sup> and had a 2008 assessment of \$232,500, or 9.6% below its sale price. *Jacoby testimony; Pet'rs Ex. 1 at 14.*
  - 8525 Sweet Blossom Court—sold one month after the subject property for \$235,000, and had a 2008 assessment of \$210,800, or 9.7% below its sale price.<sup>2</sup> *Jacoby testimony; Pet'rs Ex. 1 at 17.*
  - 8030 Taliesin Way—sold for \$250,000 10 or 11 months before the subject property and had a 2008 assessment of \$226,000, or 9.6% below its sale price. *Id.; Pet'rs Ex. 1 at 20.*

Decreasing the subject property's sale price by 9.6% would result in a 2008 assessment of \$209,768. *Jacoby testimony.*

10. The Assessor offered the following evidence and arguments:

- a) The subject property contains a one-story home on a slab built in 1991. *Buettner testimony; Resp't Ex. 1.* It has 2,599 square feet with three bedrooms, two and a half baths, and a three-car attached garage. *Id.* The PTABOA lowered the home's quality grade to "B-1" to help account for any materials in the home that might have been of a lesser grade. *Id.* That change lowered the assessment to \$241,400 and lowered the price per square foot to \$92.88. *Id.*
- b) For 2008 assessments, assessors used sales from January 1, 2006 though December 31, 2007. The Buettner's purchase of the subject property was included. *Buettner testimony; Resp't Ex. 1.*
- c) Due to the limited number of sales of one-story homes on slabs, Ms. Buettner had to go outside the subject property's addition to find comparables. *Buettner testimony.* Both Wyndemere, where the subject property and one comparable are located, and Cherry Hill, where the other two comparables are located, are excellent additions. *Id.* Ms. Buettner offered the following descriptions for her three comparables:
- 8525 Sweet Blossom Court. This home is located in Cherry Hill and was built in 1996. It has 2,366 square feet with three bedrooms, two baths, and a two-car attached garage. It is not located on the golf course. It sold for

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<sup>1</sup> The property record card shows a sale price of \$246,100. *Pet'rs Ex. 1 at 14.* Mr. Jacoby did not explain the discrepancy.

<sup>2</sup> Those are Mr. Jacoby's numbers. The Board's calculations show that the property was assessed at 89.7% of its sale price (or 10.3% less than its sale price).

\$235,000, or \$99.32 per square foot, on July 25, 2007. *Buettner testimony; Resp't Exs. 4-5.*

- 4327 Foxknoll Cove. This home is located in Wyndemere and was built in 2005. It has 2,233 square feet with three bedrooms, two and a half baths, and a two-car attached garage. It sold for \$246,100, or \$110.21 per square foot, on July 2, 2007. *Buettner testimony; Resp't Exs. 6-7.*
  - 8030 Taliesin Way. This home is located in Cherry Hill and was built in 2002. It has 2,071 square feet with three bedrooms, two and a half baths, and a two-car attached garage. It is not on the golf course. It sold for \$250,000, or \$120.71 per square foot, on September 6, 2006. *Buettner testimony; Resp't Exs. 8-9.*
- d) The *Journal-Gazette* article that the Jacobys offered is merely the newspaper's opinion. *Pet'rs Ex. 1 at page 23.* Each area of St. Joseph Township is different; there are areas where the market has increased. *Buettner testimony.*

### **Record**

11. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1:

- Page 1: August 7, 2009 letter from Jacobys to Treasurer,
- Page 2: 2008 pay 2009 tax statements for the subject property,
- Page 3: Form 130 petition (page 1 of 4),
- Page 4: Subject property record card (front),
- Page 5: Subject property record card (back),
- Page 6: *Realtor Research*, Ft. Wayne Area, Metro Market Report, First Quarter 2009,
- Page 7: "Data Sources" for Metro Market Report,
- Page 8: August 31, 2009 letter from Renee Buettner to Jacobys,
- Page 9: Form 130 petition (page 4 of 4),
- Page 10: September 8, 2009 letter from Jacobys to Buettner,
- Page 11: Subject property record card ("PRC") with highlighting and handwritten notes,
- Page 12: Photograph of subject property,
- Page 13: MapQuest printout,
- Page 14: Comparable 1 - PRC for 4327 Foxknoll Cove with highlighting and handwritten notes,
- Page 15: Photograph of Comparable 1,

- Page 16: MapQuest printout with location for Comparable 1,
- Page 17: Comparable 2 - PRC for 8525 Sweet Blossom Court with highlighting and handwritten notes,
- Page 18: Photograph of Comparable 2,
- Page 19: MapQuest printout with location for Comparable 2,
- Page 20: Comparable 3 - PRC for 8030 Taliesin Way with highlighting and handwritten notes,
- Page 21: Photograph of Comparable 3,
- Page 22: MapQuest printout with location of Comparable 3,
- Page 23: Article from *The Journal-Gazette* dated September 22, 2009,
- Page 24: Summary of the Jacobys' contentions,

Petitioners Exhibit 2:

- Page 1: March 3, 2010 letter from the Jacobys to the PTABOA and Assessor requesting a "directed finding,"
- Page 2: Form 131 page 1
- Page 3: Form 131 page 2
- Page 4: Form 131 page 3
- Page 5: August 7, 2009 letter from the Jacobys to Treasurer,
- Page 6: Form 115 page 1
- Page 7: Form 115 page 2
- Page 8: Form 115 page 3

Petitioners Exhibit 3: Listing information for Comparable 1,

- Respondent Exhibit 1: Assessor's position statement,
- Respondent Exhibit 2: Subject property record card ("PRC"),
- Respondent Exhibit 3: Picture of subject property,
- Respondent Exhibit 4: Comparable 1 - PRC for 8525 Sweet Blossom Court,
- Respondent Exhibit 5: Picture of Comparable 1,
- Respondent Exhibit 6: Comparable 2 - PRC for 4327 Foxknoll Cove,
- Respondent Exhibit 7: Picture of Comparable 2,
- Respondent Exhibit 8: Comparable 3 - PRC for 8030 Taliesin Way,
- Respondent Exhibit 9: Picture of Comparable 3,
- Respondent Exhibit 10: Copies of portions of an appraisal of the subject property (4 pages),
- Respondent Exhibit 11: Form 115 determination,

- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Hearing notice dated January 11, 2011,
- Board Exhibit C: Hearing sign-in sheet,

d) These Findings and Conclusions.

## Analysis

### Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the 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).

13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer’s evidence. See *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

### Discussion

#### **A. Motion for Directed Finding**

15. The Jacobys asked for a “directed finding” granting the relief they had requested in their Form 131 petition because the PTABOA issued its determination more than 120 days after its hearing on the Jacobys’ notice of review. The Jacobys are right in one respect—Ind. Code § 6-1.1-15-1(n) requires a PTABOA to give written notice of its determination no later than 120 days after it holds a hearing on a taxpayer’s notice of review. But the Jacobys are mistaken about the remedy for when a PTABOA fails to meet that deadline. The statute does not automatically entitle a taxpayer to have his assessment reduced. Instead, the statute allows the taxpayer to either wait for the PTABOA to issue its determination or to bypass the PTABOA and file a petition for review with the Board. Ind. Code § 6-1.1-15-1(o). Here, the Jacobys waited for the PTABOA’s determination and then filed their Form 131 petition asking the Board to review that determination. The Board therefore denies Mr. Jacoby’s request for a “directed finding” and turns to the Jacobys’ substantive claims.

#### **B. Substantive Claims**

16. The Jacobys proved that the subject property’s assessment should be reduced to \$232,200, but they did not prove that they were entitled to any further reduction. The Board reaches this conclusion for the following reasons:
  - a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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). Appraisers traditionally have used three methods to determine a property’s value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

- b) A property's market value-in-use, as determined using the Guidelines, 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. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer 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 ("USPAP") often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. See *id.* ("[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.")(emphasis added). For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3(2006).
- d) The Jacobys claim that the subject property was assessed for a higher percentage of its sale price than were the three purportedly comparable properties identified by the Assessor's witness, Ms. Buettner. The Jacobys therefore contend that the subject property's assessment should be lowered to a comparable percentage of the property's sale price.
- e) Indiana's constitution and statutes require uniform and equal assessments. IND. CONST. ART. 10 § 1; Ind. Code § 6-1.1-2-2. In interpreting those provisions, the Indiana Supreme Court has recognized that a taxpayer may seek an adjustment to his property's assessment on grounds that his taxes are higher than they would have been had other properties been properly assessed. *Dep't of Local Gov't Fin. v. Commonwealth Edison, Co.* 820 N.E.2d 1222, 1226-27 (Ind. 2005). Similarly, the Indiana Tax Court has explained that "one approach" a taxpayer may adopt in attempting to prove an actionable lack of uniformity and equality "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)(emphasis in original).
- f) There are many unanswered questions about how to make a lack-of-uniformity-and-equality claim using sales ratios. For example, should the taxpayer make class-wide or taxing-unit-wide comparisons, or may he instead confine his analysis to smaller groupings, such as assessment neighborhoods? But whatever the grouping, it appears that the analysis must conform to professionally acceptable standards and be based on statistically reliable samples. See *Bishop v. State Bd. of Tax Com'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (quoting *Southern Bell Tel. and Tel. Co. v. Markham*, 632

So.2d 272, 276 (Fla. Dist. Ct. App. 1994) (In dictum, the Tax Court cited to a case that defined a sales assessment ratio study as “a scientific comparison of the assessments of properties with the sales prices of a statistically reliable sample of properties that are actually sold in the taxing jurisdiction.”). Here, Mr. Jacoby has simply shown the sale-price-to-assessment ratios for three properties from St. Joseph Township. That is not a sufficiently reliable sample from which to infer anything about the common level of assessment in St. Joseph Township or any other area. The Jacobys therefore failed to make a prima facie case for equalizing the subject property’s assessment with the assessments of Ms. Buettner’s comparable properties.

- g) Even though the Jacobys failed to make an equalization case, they are still entitled to have their property assessed at its market value-in-use. And they offered probative evidence that the subject property was worth \$232,000—the amount they paid for it in August 2007. Indeed, the sale of a given property is often the most compelling evidence of its market value-in-use as of the sale date.
- h) Of course, that begs the question of whether a particular sale price relates to a property’s market value-in-use as of the relevant valuation date for a particular assessment appeal. In this case, the Jacobys’ purchase price does relate to the appropriate valuation date. The Jacobys bought the subject property in August 2007—less than eight months after the January 1, 2007 valuation date that applied to 2008 assessments. Indeed, the Jacoby’s purchase of the subject property fell within the window that assessors were directed to use in performing ratio studies for 2008 assessments. *See* 50 IAC 21-3-3(a)(2006) (directing assessing officials to use sales from the two calendar years preceding the assessment date). The Jacobys’ August 2007 purchase of the subject property therefore bore at least some inherent relationship to the subject property’s true tax value for the 2008 assessment. Based on that purchase price, the Jacobys made a prima facie case for reducing the subject property’s assessment to \$232,000.
- i) The burden therefore shifted to the Assessor to impeach or rebut that purchase price. Ms. Buettner attempted to do that with sales data for three properties that she described as being comparable to the subject property. Broadly speaking, that is an acceptable way to attempt to prove a property’s market value-in-use. Indeed, the sales-comparison analysis, under which one estimates a given property’s market value by comparing it to similar properties that have sold in the market, is a generally accepted valuation approach. *See* MANUAL at 3. But the sales-comparison approach requires more than a cursory examination of the properties being compared. One must compare the properties that have been sold on the market to the property that is the subject of the analysis in terms of all relevant characteristics that affect market value and explain how any relevant differences affect the properties’ relative market values. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005).
- j) Ms. Buettner did not follow those basic requirements for applying the sales-comparison approach. Granted, she did explain how the three sold properties compared to the subject property in terms of several relevant characteristics: location, number of bedrooms, number of bathrooms, amount of finished living area,



and the presence of an attached garage. But she made no attempt to explain how any relevant differences affected the properties' relative market values-in-use, other than to account for size differences by using price-per-square-foot as her unit of comparison. Ms. Buettner's comparative sales data therefore had little or no probative value and did not outweigh the Jacobys' evidence that they bought the subject property for \$232,000.

### **Conclusion**

17. The Jacobys made a prima facie case that the subject property was worth no more than its \$232,000 purchase price. The Assessor failed to impeach or rebut the Jacobys' evidence. The Board therefore finds for the Jacobys.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that the subject property's March 1, 2008 assessment be changed to \$232,000.

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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>>.