

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

**Petition No.:** 45-026-06-1-5-00001  
**Petitioners:** Charles D. and Mary Sue King  
**Respondent:** Lake County Assessor  
**Parcel No.:** 007-16-27-0454-0003  
**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. The Petitioners initiated an assessment appeal with the North Township Assessor by written document dated October 3, 2007.
2. The Petitioners received the North Township Assessor's decision on June 4, 2008.<sup>1</sup>
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the Board on July 2, 2008.<sup>2</sup> The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 10, 2009.
5. The Board held an administrative hearing on October 15, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners: Charles D. King, Owner,  
Mary Sue King, Owner,

---

<sup>1</sup> The Form 115 appears to be dated May 7, 2008. The envelope from the North Township Assessor's office, however, was postmarked June 4, 2008.

<sup>2</sup> The Petitioners did not have a hearing before the Property Tax Assessment Board of Appeals (PTABOA). However, Indiana Code § 6-1.1-15-1(o) provides that a taxpayer may appeal directly to the Board if the PTABOA has not held a hearing within 180 days of the filing of the appeal or issued a determination within 120 days of a hearing.

No one appeared to represent the Respondent.

### Facts

7. The subject property is a residential property located at 9207 Southmoor, Highland, in Lake County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the North Township Assessor determined the assessed value of the subject property to be \$26,900 for the land and \$159,200 for the improvements, for a total assessed value of \$186,100.
10. The Petitioners requested an assessment of \$26,900 for the land and \$155,100 for the improvements, for a total assessed value of \$182,000.

### Issues

11. Summary of the Petitioners' contentions in support of an error in their assessment:
  - a. The Petitioners contend their assessment is too high when compared to the property's appraised value. *M. King testimony*. In support of this contention, the Petitioners submitted an appraisal prepared by Marlon Veldcamp, a certified general appraiser, who valued the property at \$182,000 as of November 1, 2006. *Petitioner Exhibit 1*.
  - b. The Petitioners also contend that the Assessor erred in their assessment. *M. King testimony*. According to the Petitioners, the appraisal shows that living area and number of bathrooms is incorrect on their property record card. *Id.*; *Petitioner Exhibit 1*. Ms. King argues that the appraisal indicates the Petitioners' home has 1,267 square feet of above-grade finished living space, not 1,298 square feet. *Id.* Further, the house has 2 bathrooms, not 2½ bathrooms, as shown on the property record card. *Id.*
  - c. Finally, the Petitioners contend that their house is over-assessed based on the assessments of similar properties in their neighborhood. *M. King testimony*. In support of their contention, the Petitioners presented assessment information for four nearby homes. *Petitioner Exhibit 3*. According to Ms. King, the assessed value for 9430 Southmoor increased by \$33,900, while their assessment increased by \$34,900. *Id.* Further, 9430 Southmoor is assessed less than the Petitioners' property even though it has an additional improvement. *Id.* Ms. King testified that the Petitioners' second comparable property, 9436 Southmoor, has a larger lot than the Petitioners' lot, but the land is assessed for less. *Id.* Additionally, the improvements at 9436 Southmoor include a fireplace, a deck, and an above-ground pool that their property does not have, but the improvements are assessed for less than the

Petitioners' property. *Id.* The Petitioners also contend that their property is assessed \$14,900 higher than 9331 Idlewild, which has a pool and a deck. *Id.* Similarly, the property at 9311 Waymond is assessed lower than the subject property and has a fireplace, deck, and a pool. *Id.*

### **Record**

12. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. The compact disk recording of the hearing labeled 45-026-06-1-5-00001 Charles and Mary Sue King,
  - c. Exhibits:
    - Petitioner Exhibit 1 – Appraisal of 9207 Southmoor by Capital Appraisal Company,
    - Petitioner Exhibit 2 – Form 131 petition,
    - Petitioner Exhibit 3 – Assessment information on the Petitioners' comparable properties,
    - Petitioner Exhibit 4 – Request for Preliminary Conference,
    - Petitioner Exhibit 5 – Form 11 R/A,
    - Petitioner Exhibit 6 – Form 115,
    - Petitioner Exhibit 7 – Proof of Mailing for Form 115,
    - Petitioner Exhibit 8 – Notice of Hearing on Petition,
  
    - Board Exhibit A – Form 131 petition,
    - Board Exhibit B – Notice of Hearing dated September 10, 2009,
    - 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 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).
  - 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.
14. The Petitioners failed to provide sufficient evidence to establish an error in their assessment. The Board reached this decision 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess 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 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
  - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his 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); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, that valuation date is January 1, 2005. 50 IAC 21-3-3.
  - d. Here, the Petitioners first offered an appraisal prepared by a certified general appraiser. Appraisals are generally probative of the subject property’s true tax value. The Petitioners’ appraisal, however, values the property as of

November 1, 2006, almost 2 years after the valuation date of January 1, 2005. The Petitioners did not explain how the appraised value related to their property's value as of January 1, 2005. The appraisal therefore lacks probative value. *See Long*, 821 N.E.2d at 471.

- e. The Petitioners also contend their property is over-assessed based on the assessed values of other properties in their neighborhood. In support of this contention, the Petitioners provided assessment information for four nearby homes. *Petitioner Exhibit 3*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- f. Further, the Petitioners failed to show the comparability of those neighboring properties. By comparing their assessed value of their property to the assessed values of other comparable properties, the Petitioners essentially rely on a "sales comparison" method of establishing the market value of the property. 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 properties. *Long*, 821 N.E.2d at 470. 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 offered the property record cards for the purportedly comparable properties and highlighted the differences between the properties. This falls far short of the showing required to prove comparability.
- g. Finally, the Petitioners contend the Assessor erred in recording the living area and number of bathrooms in their home. While this data should be corrected to reflect a more accurate description of the property, the Petitioners cannot rely solely on the methodology used to assess their property to make a case its assessment should be changed. The goal under Indiana's new assessment system is to ascertain market value-in-use. Even if the Respondent's assessment did not fully comply with the Guidelines, the Petitioners must show that their property's total assessment is not a reasonable measure of its

true tax value. Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 764, 768 (Ind. Tax Ct. 2006).

- h. The Petitioners therefore failed to raise a prima facie case. Where Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 15. The Petitioners failed to establish a prima facie case that their property is over-valued. The Board finds the true tax value of the property should remain the same.

### **Final Determination**

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

ISSUED: January 7, 2010

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

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>>