

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

**Petition No.:** 08-018-10-1-5-00005  
**Petitioners:** Gerald & Janet Oliver  
**Respondent:** Carroll County Assessor  
**Parcel No.:** 08-05-04-000-235.000-018  
**Assessment Year:** 2010

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

**Procedural History**

1. Gerald & Janet Oliver filed a Form 130 petition contesting the subject property’s March 1, 2010 assessment. On April 13, 2011, the Carroll County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering the assessment, but not to the level that the Olivers had requested.
2. The Olivers then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On May 10, 2012, the Board held a hearing through its designated administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
  - a) Gerald Oliver
  - b) Neda Duff, Carroll County Assessor  
Brian Thomas, Ad Valorem Solutions

**Facts**

5. The subject property is a one-story, single-family home located at 5210 North Sleepy Hollow Road in Monticello, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following assessment for March 1, 2010:

Land: \$22,600	Improvements: \$54,200	Total: \$76,800
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8. On their Form 131 petition, the Olivers requested the following values:

Land: \$22,600	Improvements: \$37,400	Total: \$60,000
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## Summary of Parties' Contentions

### 9. The Oliver's evidence and contentions:

- a) The Oliver's primarily contend that the Assessor inaccurately classified and assessed the subject property's foundation. More specifically, the Assessor labeled the foundation as a basement and valued it at \$15,300 before depreciation. *Oliver testimony; Pet's Ex. 3C at 3.* But it is not a basement; it is an enclosed elevation built in compliance with Federal Emergency Management Agency ("FEMA") requirements and local flood ordinances after the home flooded in 2008 and 2009. In 2009, the Oliver's elevated the home's existing foundation and installed flood vents, which allow flood water to flow through the foundation. *Oliver testimony; Pet's Exs. 4A, 5A, 4B.* Because it was built only a foot above the flood level, the foundation will likely flood again. That is why FEMA no longer allows a basement on the site and also why the elevated foundation is uninsurable and usable only for storage. *Oliver testimony; Pet's Exs. 2B, 2C, 4A, 4C, 5A.*
- b) The Assessor's pricing of the enclosed elevation as a basement is unfair because it is not worth as much as a usable basement. The lack of a usable basement negatively affects the subject property's value, especially when there are nearby properties that have usable basements. If the Assessor cannot properly define the foundation, then she should not tax it. *Oliver testimony and argument.*
- c) The Oliver's also argue that the Assessor used different per-square-foot rates to value the property's two decks. The Assessor priced a 200-square-foot deck \$14.50 per square foot but priced an 80-square-foot deck—which is not really a deck, but an elevation to get into the house—at \$16.25 per square foot. The decks should be valued at the same rate. *Oliver testimony; Pet's Ex. 3B at 3.* The Assessor also priced an old concrete platform that is underneath the deck at \$200. But the platform was damaged from past flooding and it is certainly not worth \$200. *Oliver testimony; Pet's Exs. 3C at 2, 8.*
- d) The Oliver's also initially complained that the Assessor valued an 862-square-foot area of their home at \$55.10 per square foot, but valued another 120-square-foot area at \$71 per square foot. *Oliver testimony; Pet's Exs. 3B at 3, 6.* But Brian Thomas, the Assessor's expert witness, explained to Mr. Oliver's satisfaction that the subject property's 2010 record card reflects 982 square feet priced at \$52,900, or \$53.87 per square foot. *See Oliver testimony.*

### 10. The Assessor's evidence and contentions:

- a) There is no dispute that the Oliver's home sits on an elevated enclosed foundation. But the Real Property Assessment Manual has no listing for an enclosed elevation as a foundation option for pricing purposes. Consequently, after more than 100 homes flooded and were rebuilt in the county, the Assessor developed a protocol for pricing foundations. She consistently priced the rebuilt flooded homes with concrete floor

foundations as having basements, and priced the homes with gravel floor foundations as having a crawl foundation. And while the Assessor has been willing to work with the Olivers, when she asked about the cost to build the enclosed elevation, Mr. Oliver claimed that he did not know what that cost was. *Thomas testimony.*

- b) Significantly, the Assessor did not price the elevated foundation as if it was new construction. Thus, because the subject property’s effective age is 1980, the \$15,300 cost attributable to the basement was reduced through depreciation by 22%. *Thomas testimony; Resp’t Ex. B.*
- c) The wood deck pricing was based on construction costs, which come from cost tables approved by the Department of Local Government Finance (“DLGF”). Those costs reflect economies of scale—the smaller the area, the higher the base rate. As a result, the smaller of the two decks has a higher base rate than the larger deck. The concrete patio’s pricing was also based on construction costs. The Assessor priced it at \$200, but reduced that by 22% depreciation because of its effective age. *Thomas 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:

Petitioner Exhibit 1:	Grounds for Appeal
Petitioner Exhibit 1A:	Chapter 3, Page 36, <i>Foundation Type</i> , from a FEMA publication
Petitioner Exhibit 2A:	Carroll County Area Plan Commission damage report
Petitioner Exhibit 2B:	Chapter 3, Page 38, <i>Elevating on Continuous Foundation Walls</i> , from a FEMA publication
Petitioner Exhibit 2C:	July 14, 2009 letter from the Department of Natural Resources, regarding the reconstruction of the subject structure
Petitioner Exhibit 3A:	Subject 2008 Form 11, Notice of Assessment
Petitioner Exhibit 3B:	Subject 2009 Form 11, Notice of Assessment with 2009 property record card (“PRC”)
Petitioner Exhibit 3C:	Subject 2010 Form 11, Notice of Assessment with 2010 PRC
Petitioner Exhibit 4A:	FEMA Elevation Certificate
Petitioner Exhibit 4B:	Flood elevation drawing of the foundation
Petitioner Exhibit 5A:	Chapter 3, page 39, <i>Overview of the Retrofitting Methods</i> , from a FEMA publication
Petitioner Exhibit 5B:	Definitions from <a href="http://www.floodsmart.gov/floodsmart">http://www.floodsmart.gov/floodsmart</a>

- Petitioner Exhibit 6: The subject home's interior layout
- Petitioner Exhibit 7: Photograph of the deck used for ingress and egress to the property
- Petitioner Exhibit 8: Photograph of the concrete patio
  
- Respondent Exhibit 1: Photograph of the subject property
- Respondent Exhibit 2: 2011 PRC for the subject property
  
- Board Exhibit A: Form 131 petition
- Board Exhibit B: Hearing notice
- Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

### **Analysis**

#### Burden of Proof

12. Generally, 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2. That statute shifts the burden to the assessor in cases where the assessment under appeal represents an increase of more than 5% over the previous year's assessment for the same property:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date *for the same property*. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana Board of Tax Review or to the Indiana Tax Court.

Ind. Code § 6-1.1-15-17.2 (emphasis added).

13. There is no dispute that the subject property's assessment more than doubled, going from \$38,200 in 2009 to \$76,800 in 2010. *See 2010 Form 11, Notice of Assessment of Land and Structures, Pet'rs Ex. 3C*. But the parties also agree that the Olivers significantly restored and remodeled the home between 2009 and 2010 after it was damaged by severe flooding. Thus, the 2010 assessment was not "for the same property" that was assessed in 2009, and the burden of proof remains with the Olivers.

## Discussion

14. The Olivers did not make a prima facie case for reducing the subject property's assessment. 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 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) *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 that conforms to USPAP often will be probative. *See 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 acceptable appraisal principles. MANUAL at 5.
  - c) Here, the Olivers claim that the Assessor mislabeled their elevated foundation as a basement, which led her to over-assess the property. In other words, the Olivers question the Assessor's methodology in computing the assessment. A taxpayer, however, does not rebut the presumption that an assessment is correct simply by contesting the assessor's methodology in computing the assessment. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer normally must use the type of market-based evidence described in the Manual to show that the assessor's methodology yielded an assessment that does not accurately reflect the assessed property's market value in-use. *Id.*
  - d) The Olivers offered no such market-based evidence either to quantify the difference in value between a basement and an enclosed foundation or to show the property's value as a whole. And the Olivers' claims regarding the Assessor's pricing of the home's decks and concrete slab lack probative value for similar reasons.
  - e) Because the Olivers did not offer probative evidence of the subject property's market value-in-use, they failed to make a prima facie case for reducing the property's assessment.

### **Conclusion**

15. The Olivers failed to make a prima facie case for reducing the subject property's assessment. The Board therefore finds for the Assessor.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

ISSUED: August 6, 2012

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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>.