

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

**Petition #:** 84-013-02-1-5-00150  
**Petitioner:** Paul M. Cherepkai  
**Respondents:** Vigo County Assessor & Vigo County Property Tax Assessment Board of Appeals  
**Parcel #:** 109-02-24-103-001  
**Assessment Year:** 2002

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 Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by written document dated November 16, 2003.
2. The Petitioner received notice of the decision of the PTABOA on August 19, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on September 14, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated September 27, 2004.
5. The Board held an administrative hearing on November 4, 2004, before the duly appointed Administrative Law Judge Joan L. Rennick.
6. The following persons were present and sworn in at the hearing:
  - a) For Petitioner: Paul M. Cherepkai, Taxpayer  
Warren Soules, Otter Creek Township Assessor  
(Mr. Soules appeared as an advocate for the taxpayer)
  - b) For Respondents: Robert Walls, Vigo County PTABOA member  
Gloria Donham, Vigo County PTABOA member  
Susan McCarty, Vigo County Assessor’s Office

## Facts

7. The property is classified as Residential, as is shown on the property record card for parcel #109-02-24-103-001.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Vigo County PTABOA:  
Land: \$10,800      Improvements: \$106,700      Total: \$117,500.
10. Assessed Value requested by Petitioner:  
Land \$10,800      Improvements \$ 82,700      Total: \$93,500.

## Issue

11. Summary of Petitioner's contentions in support of alleged errors in the assessment:
  - a) Subject property has a "market adjustment factor" of 129%, meaning improvements are increased 29% over assessment at cost taken directly from the Indiana Assessment Guidelines. *Soules testimony; Cherepkai testimony.*
  - b) Properties around the subject are assigned different neighborhood codes with different market adjustment factors. These factors are lower than the subject, ranging from 68% to 100%. The entire area should actually be considered as one neighborhood. *Id; Petitioner Exhibits 5-8.*
  - c) An appraisal done by a certified appraiser for the purpose of this appeal shows the estimated market value to be \$91,000 as of January 30, 1999. *Petitioner Ex. 9.*
  - d) Petitioner added a garage in 1990 for \$7,800, and it is currently assessed at \$18,500. Petitioner just built an identical garage for his son across the street for \$10,800. *Cherepkai testimony.*
  - e) The Township Assessor contends that the land order for the subject's neighborhood is incorrect. *Soules testimony.*
  - f) Petitioner argues that if the market adjustment factor on the subject property were 100%, the total assessment would be \$93,500. Petitioner contends this figure would be well within the range of true market value. *Soules testimony.*
  - g) Petitioner contends that neighborhood adjustments should be applied to land rather than improvements. *Soules testimony.*

12. Summary of Respondents' contentions in support of the assessment:

- a) Ratio studies and equalization were approved by the DLGF. *McCarty testimony.*
- b) Neighborhoods are not necessarily geographic. *Id.*
- c) The sales in the neighborhood are compared to the assessments and a factor, the "market adjustment factor," is applied to account for the difference. *Id; Dunham testimony.*
- d) The appraisal figures adjusting the comparables to the subject appear to have "discrepancies." *McCarty testimony.* For example, the first comparable has no adjustment for conventional financing, while the second comparable has a -\$1,032 adjustment for conventional financing. *Id.* Similar discrepancies appear with adjustments for acreage, design and appeal, quality of construction, gross living area, basement, garage, fence, and amenities. *Id.* Finally, the value assigned to the subject is less than the average of the comparables. *Id.*
- e) While there are problems with the values in this neighborhood, a new land order is expected to be issued in the near future to correct these problems. *Id.*

**Record**

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR # 6034.
- c) Exhibits:
  - Petitioner Exhibit 1: Form 131 with written complaint.
  - Petitioner Exhibit 2: Form 130 original appeal.
  - Petitioner Exhibit 3: Form 115 Denial from local Board of Review.
  - Petitioner Exhibit 4: Subject Property Record Card with 129% Market Adjustment Factor – 109-02-24-103-001
  - Petitioner Exhibit 5: (Neighbor Behind) Property Record Card with 100% Market Adjustment Factor – 109-02-24-103-008.
  - Petitioner Exhibit 6: (Neighbor across street) Property Record Card with 96% Market Adjustment Factor – 109-02-23-227-015.
  - Petitioner Exhibit 7: (5<sup>th</sup> house north of Petitioner) Property Record Card with 70% Market Adjustment Factor – 109-02-13-352-012.
  - Petitioner Exhibit 8: CeMar Estates parcel (around the corner from Petitioner) Property Record Card with 68% Market Adjustment Factor – 109-02-24-253-016.
  - Petitioner Exhibit 9: Current Appraisal of subject property.
- d) These Findings and Conclusions.

## Analysis

14. 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.

15. Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) Petitioner showed that a clear disparity exists in the application of neighborhood ratings and market value adjustments between the subject and surrounding properties. *See Pet'r Exs. 4-8*. The township assessor also testified that the land order (Neighborhood Valuation Form) contains serious errors. *Soules testimony*. Additionally, Respondents recognize error in the assessment, as they admit to problems with assessments in the subject's neighborhood, and even disclosed that a new “land order” may be developed for the area in the near future. *McCarty testimony*.
- b) Petitioner presented an appraisal of the subject property establishing the market value as of January 30, 1999, to be \$91,000. *Pet'r Ex. 9*. The appraisal was performed by an Indiana Certified Appraiser and followed the Uniform Standards of Professional Appraisal Practice (USPAP). *Id. at 3*. Both the Cost Approach and Sales Approach were used to arrive at the estimated market value. *Id. at 7*. By introducing an appraisal establishing market value in accordance with generally recognized appraisal principles, Petitioner established a prima facie case that its improvements were entitled to an assessment of \$91,000. *See Meridian Towers E. & W. v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).

16. Respondents failed to rebut Petitioner's evidence. This conclusion was arrived at because:

- a) Respondents contend there are discrepancies in the appraisal and adjustments to comparable sales used therein. *McCarty testimony*. The adjustments questioned by Respondents are both positive and negative in nature, and have little or no net effect on the second and third comparables utilized in the appraisal. *See McCarty testimony; Pet'r Ex. 9*. The first and fourth comparables have more positive adjustments than negative adjustments. *Pet'r Ex. 9*. The sales of all four properties are well below the assessment both before and after adjustment. *Id.* Respondents do not explain what the adjustments should be, nor do they offer an alternate comparable sales analysis. The Board finds that Respondents failed to rebut Petitioner's prima facie case by not impeaching the validity of Petitioner's appraisal or offering alternate calculations of their own. *Meridian Towers*, 805 N.E.2d at 479.
- b) Other objections to the appraisal made by the Respondents are simply not valid objections. For example, the appraiser is not charged with computing an average of the comparables and using this figure as the value of the subject. The appraiser's job is to estimate the most likely fair market value of the subject property.

### **Conclusion**

17. The Petitioner established a prima facie case by presenting probative evidence proving the assessment was incorrect. The Respondents did not rebut the petitioner's evidence. The Board finds in favor of Petitioner and rules that the total assessment should be changed to \$91,000 as stated in the appraisal.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$91,000.

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

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Commissioner,  
Indiana Board of Tax Review

## IMPORTANT NOTICE

### - APPEAL RIGHTS -

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.**