

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

**Petition No.:** 43-032-06-1-5-00108  
**Petitioner:** Ray E. and Dianne L. Plummer  
**Respondent:** Kosciusko County Assessor  
**Parcel No.:** 04-718024-65  
**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 Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 11, 2007.
2. The Petitioners received notice of the decision of the PTABOA on October 23, 2007.
3. The Petitioners filed a Form 131 petition with the Board on December 10, 2007. The Petitioners elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated January 15, 2008.
5. The Board held an administrative hearing on February 20, 2008, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioners: Michael L. White, Appraisal Management Research Co.
  - b. For Respondent: Brock V. Ostrom, PTABOA Member  
Richard R. Shipley, PTABOA Member  
Susan Myrick, PTABOA Member  
Gerald Bitner, PTABOA Member  
Laurie Renier, Kosciusko County Assessor  
Jan Chiddester, Kosciusko Deputy Assessor  
Lori B. Shortz, Wayne Township Deputy Assessor

## Facts

7. The property under appeal consists of a 3542 square foot dwelling with an in-ground pool located at 2029 Deer Trail, Warsaw, Wayne Township, in Kosciusko County, Indiana.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The PTABOA determined the assessed value of the subject property to be \$50,900 for the land and \$243,700 for the improvements, for a total assessed value of \$294,600.
10. The Petitioners requested an assessment of \$50,900 for the land and \$199,100 for the improvements, for a total assessed value of \$250,000.

## Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a. The Petitioners contend the Respondent assessed the subject property for more than its market value-in-use. *White argument*. According to the Petitioners, the property appraised for \$250,000. *Id.* In support of its position, the Petitioners submitted an appraisal report prepared by Paul Reith of Paul Reith Appraisal Service. *Petitioner Exhibit A*. Mr. Reith is an Indiana Certified General Appraiser. *Id.* In the August 1, 2007, report Mr. Reith estimated the market value-in-use of the subject property to be \$250,000 as of December 31, 2005. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The Respondent contends the subject property is correctly assessed at \$50,900 for the land and \$243,700 for the improvements, for a total assessed value of \$294,600. *Respondent Exhibit 1; Renier & Shortz testimony*. According to the Respondent, two neighboring properties that sold in 2004 and 2005 support the property's assessed value. *Renier testimony; Respondent Exhibits 8 and 9*. The first property contained a 2222 square foot dwelling and a utility shed and sold for \$320,000 on July 22, 2005. *Respondent Exhibit 8; Id.* The second property contained a 3137 square foot dwelling and 648 square foot in-ground pool and sold for \$300,000 on July 2, 2004. *Respondent Exhibit 9; Id.*
  - b. The Respondent further argues that the Petitioner's appraisal suffers from numerous flaws and therefore should be given little weight. *Reiner testimony*. The Respondent argues that, while the appraiser relied upon four sales that occurred between 2004 and 2005, the adjustments to those sales were improper. *Renier testimony; Id.* For example, Ms. Renier testified, the appraiser only adjusted \$10.00 per square foot for differences in the amount of living square

footage in the comparable properties, which she argues is too low for the quality of workmanship in the structures. *Id.* In addition, the appraisal only adjusted comparable 2 and 3, \$5000 for the lack of an in-ground pool. *Id.* According to Ms. Renier, the adjustment is inadequate when you consider the cost to install a pool. *Id.* Further, the property in the appraisal report located at 1814 Deer Trail was under the threat of foreclosure but the appraiser failed to address this issue in his report. *Id.*

- c. Finally, the Respondent argues that the intended use of the appraisal was to evaluate the property for a mortgage finance transaction. *Respondent Exhibit 3; Renier testimony.* According to the Respondent, a Times-Union newspaper article reported that when an appraiser is hired by a mortgage lender, the appraiser is often instructed by the lender to come up with figures the lender wants on a property. *Renier testimony; Respondent Exhibit 10.* The Respondent testified the article also states that an appraiser has a strong motivation to give in to the mortgage lender's demands to ensure continued business with the lender. *Id.*

### **Record**

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit A – Appraisal report prepared by Paul Reith Appraisal Service,

Petitioner Exhibit B – Copies of property record cards for the subject property and three comparable properties,

Petitioner Exhibit C – Letter from Michael White, Appraisal Management Research Company to the Indiana Board of Tax Review, dated February 11, 2008,

Respondent Exhibit 1 – Property record card and four exterior photographs of the subject property,

Respondent Exhibit 2 – Aerial photograph of the subject area,

Respondent Exhibit 3 – Excerpt of the Petitioners' Appraisal Report,

Respondent Exhibit 4 – Four property record cards and four exterior photographs for the first comparable property in the Petitioners' appraisal,

- Respondent Exhibit 5 – Property record card and four exterior photographs for the second comparable property in the Petitioners’ appraisal,
- Respondent Exhibit 6 – Property record card and four exterior photographs for the third comparable property in the Petitioners’ appraisal,
- Respondent Exhibit 7 – Two property record cards and two exterior photographs for the fourth comparable property in the Petitioners’ appraisal,
- Respondent Exhibit 8 – Two property record cards, four exterior photographs and aerial photograph for 2169 E. Brunner Lane,
- Respondent Exhibit 9 – Property record card, four exterior photographs and aerial photograph for 1745 S. Walnut Drive,
- Respondent Exhibit 10 – Newspaper article from the weekend edition of the Time-Union, dated August 18 and 19, 2007,<sup>1</sup>
  
- Board Exhibit A – Form 131 petition with attachments,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing sign-in sheet.

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 Township 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 Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t

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<sup>1</sup> Ms. Renier also submitted a Notification of Final Assessment Determination-Form 115, property record card for the subject property, PTABOA Notice of Hearing on Petition-Form 114, PTABOA hearing script, Petition to the Property Tax Assessment Board of Appeals for Review of Assessment-Form 130, Notice of Assessment of Land and Structures-Form 11 R/A, Power of Attorney from Ray and Dianne Plummer to David G. Cook and Michael L. White, Appraisal Management Research Company, dated June 8, 2007, Disclosure Form from Ray and Dianne Plummer to Appraisal Management Research Company, two property record cards, exterior photograph, and aerial photograph for the subject property, and a copy of the Appraisal Report prepared by Paul E. Reith Appraisal Service from the PTABOA hearing. These documents, however, were not admitted into the record at the Board hearing.

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. The Petitioners provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. Real property is assessed based on its “true tax value.” 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). True tax value is “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, for the property.” *Id.* A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
  - b. In addition, the 2006 assessment is to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of January 1, 2005. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c. Here, the Petitioners presented an appraisal that estimated the value of the subject property to be \$250,000 as of December 31, 2005. *Petitioner Exhibit A; White testimony*. The appraiser attested that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices. (USPAP). *Id.* The appraiser used the sales comparison approach using comparable properties that sold during 2004 and 2005. *Id.* While generally the 2006 assessment is to reflect the value of the property as of January 1, 2005, pursuant to 50 IAC 21-3-3(a), local assessing officials “shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date.” Thus an appraisal valuing the property as of December 31, 2005, using sales in 2004 and 2005 must, therefore, also have some probative value. The Board therefore finds that the Petitioners raised a prima facie case that the subject property is over-assessed. *See Meridian Towers*, 805 N.E.2d at 479.

- d. 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). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted).
- e. Here, the Respondent presented aerial photographs and testimony regarding two properties that were sold in 2004 and 2005 as support for the assessment. *Respondent Exhibits 8 and 9; Reiner testimony*. The Respondent, however, failed to identify specific characteristics of those properties or explain how their characteristics compared to the characteristics of the subject property. Similarly, the Respondent failed to identify or explain the differences between the properties that might affect their relative market values-in-use. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence. *See Long*, 821 N.E.2d at 470. Thus, the Respondent's "comparable" properties are insufficient to impeach or rebut the Petitioners' evidence.
- f. The Respondent also argued that the number of adjustments made to the comparable properties and the size of the adjustments in the appraisal indicates the comparables used in the appraisal are not truly comparable to the Petitioners' property. *Reiner testimony*. The Respondent, however, provided no probative evidence or authority to support this contention. Such conclusory statements alone do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). It is well within an appraiser's expertise to choose the sales he or she deems most comparable to the subject property and apply adjustments to comparable properties to value the differences between them. Absent evidence to the contrary, the comparables chosen by the appraiser or the adjustments made by the appraiser in a USPAP-compliant appraisal are deemed reasonable.

### **Conclusion**

16. The Petitioners raised a prima facie case that the subject property was over-valued. The Respondent failed to rebut or impeach the Petitioners' evidence. Thus, the Board finds in favor of the Petitioners and holds that the market value-in-use of the subject property is \$250,000.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should be changed.

**ISSUED: April 21, 2008**

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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>.**