

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

**Petition No.:** 44-010-06-1-5-00155  
**Petitioner:** Quirk Family Limited Partnership  
**Respondent:** LaGrange County Assessor  
**Parcel No.:** 010-18430-09  
**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 Petitioner initiated an assessment appeal with the LaGrange County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated January 23, 2007.
2. The PTABOA issued notice of its decision on December 14, 2007.
3. The Petitioner filed a Form 131 petition with the Board on January 28, 2008. The Petitioner 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 July 9, 2008.
5. The Board held an administrative hearing on August 19, 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 Petitioner: Michael M. Quirk, owner of the property  
Thomas E. Quirk, witness  
Jeremy Quirk, attorney
  - b. For Respondent: Lori Carney, LaGrange County Assessor

## Facts

7. The property under appeal is a 2,550 square foot dwelling with a detached garage and lean-to on a 150' x 205' lot located at 4985 South 080 East, Wolcottville, Johnson Township, in LaGrange County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. The PTABOA determined the assessed value to be \$188,600 for the land and \$316,800 for the improvements, for a total assessed value of \$505,400.
10. The Petitioner requested a total assessed value of \$400,000 for land and improvements.

## Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a. The Petitioner contends the Respondent assessed the subject property for more than its market value-in-use. *J. Quirk argument*. In support of its position, the Petitioner submitted an appraisal report prepared by Katie Caldwell of Caldwell Appraisals, Inc. *Petitioner Exhibit 3, pages 19-35*. Ms. Caldwell is an Indiana Certified Residential Appraiser. *Id.* In her November 26, 2007, appraisal of the Petitioner's property, Ms. Caldwell estimated the market value-in-use of the property to be \$400,000 as of December 31, 2005. *Id.*
  - b. Alternatively, the Petitioner argues that its assessment should be lowered because its improvements are over-valued. *J. Quirk argument*. In support of its position, the Petitioner presented its homeowner's insurance policy declaration pages. *Petitioner Exhibit 3, page 39 and 40*. Jeremy Quirk testified that the Petitioner's home and garage were insured for an estimated replacement cost of \$286,000 from November 8, 2002, to November 8, 2005, and for \$275,000 from November 8, 2005, to November 8, 2006. *Id.* According to Mr. Quirk, the home's year of construction, its original roof and the deferred maintenance indicate that 20% to 25% is a reasonable rate of depreciation for the structures. *Petitioner Exhibit 5; J. Quirk argument*. Thus, the Petitioner argues, if 20% of depreciation is applied to the property's assessed value of \$356,900 for the improvements, it results in a replacement cost of \$285,520. *Id.* This is consistent with the insurance companies' replacement cost estimates for the improvements. *Id.*
  - c. The Petitioner also argues that its land is over-valued. *J. Quirk argument*. According to the Petitioner, the subject property is located on a small channel that connects to the main basin of Oliver Lake. *Petitioner Exhibit 3, page 24; J. Quirk argument*. This results in the property having an unsafe swimming area and

having increased motor boat noise and traffic. *Id.* In addition, it detracts from the lot's privacy. *Id.* Thus, the Petitioner argues, the market value-in-use of the property is diminished by the location of its lot. *J. Quirk testimony.*

- d. The Petitioner further contends that the property is over-valued based on the assessment of other properties. *J. Quirk argument.* According to the Petitioner, the certified net assessed values for Johnson Township shows that between 2005 2006 the net assessed value of properties increased 57%. *Petitioner Exhibits 3, page 55 and 6; J. Quirk argument.* The Petitioner argues that if the Johnson Township average increase of 57% is applied to the subject property's 2002 assessed value of \$253,900 it would result in an assessed value of \$398,623 for March 1, 2006. *Id.* The Petitioner argues that this value supports its appraised value and shows that the Petitioner's 114% increase in assessment between 2002 and 2006 is excessive. *Id.*
- e. In response to the Respondent's evidence, the Petitioner argued that the Respondent's comparables should be given little weight. *J. Quirk argument.* According to the Petitioner, the Respondent failed to show how a mobile home, two properties that sold in 2006, and a property with a 900 square foot structure are comparable or would establish the market value-in-use of the subject property which consists of a 2,550 square foot dwelling, a garage and a lean-to. *Petitioner Exhibit 5; Id.* In fact, the Petitioner argues, the current system used to establish assessed values for land and improvements is flawed. *Petitioner Exhibit 5; J. Quirk argument.* According to the Petitioner, the township used a wide range of properties to establish property values. *J. Quirk argument.* The Petitioner argues that determining values based on the sale of properties with dwellings that are superior, larger and newer inflates property values of dissimilar properties. *Id.* Likewise, sales of dwellings that are inferior and smaller can deflate values. *Id.*
- f. Finally, the Petitioner requests that the Petitioner be awarded a reasonable amount of interest on the property taxes already paid by the Petitioner if the Board rules in its favor and reduces the property's assessed value to \$400,000, *Petitioner Exhibit 5; J. Quirk argument.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that after the PTABOA adjusted the grade and changed the condition of the structures to average, the property is correctly assessed at \$505,400. *Respondent Exhibit 3; Carney testimony.* In support of this contention, the Respondent submitted sales disclosures and property record cards for three properties that sold in the area. *Respondent Exhibit 5 – 7.* The first property contained a double-wide mobile home and utility shed and sold for \$282,000 on October 24, 2005. *Respondent Exhibit 5; Id.* The second property contained a 768 square foot dwelling and sold for \$325,000 on October 6, 2006. *Respondent*

*Exhibit 6; Id.* The third property contained a 900 square foot dwelling, 480 square foot garage and utility shed and sold for \$445,000. *Respondent Exhibit 7; Id.* According to the Respondent, these three inferior properties sold for prices ranging from \$282,000 to \$445,000 between December 6, 2004, and October 6, 2006. *Respondent Exhibits 4 – 7; Carney testimony.* Thus, the Respondent concludes, these sales support the property's assessed value. *Id.*

- b. Further, the Respondent argues, the Petitioner's appraisal suffers from numerous flaws and should be given little weight. *Carney testimony.* According to the Respondent, while the appraiser relied upon three sales that occurred between 2004 and 2005, she failed to make adjustments for time of the sale, dwelling story height and age in her appraisal. *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 1 – Appearance of Jeremy O. Quirk, dated January 23, 2008,

Petitioner Exhibit 2 – Authorization of Representation dated August 13, 2008,

Petitioner Exhibit 3 – Form 131 Petition with attachments,

Petitioner Exhibit 4 – Certified mail receipts for Lori Carney, LaGrange County Assessor, and the Indiana Board of Tax Review, dated January 24, 2008,

Petitioner Exhibit 5 – Petitioner's argument and request summary,

Petitioner Exhibit 6 – Certificate of Net Assessed Valuations for LaGrange County for 2005 and 2006,

Respondent Exhibit 1 – Quirk Family Limited Partnership property record card,

Respondent Exhibit 2 – Notification of Final Assessment Determination – Form 115 for Parcel No. 0101843009, dated October 20, 2007,

Respondent Exhibit 3 – Notification of Final Assessment Determination – Form 115 for Parcel No. 0101843009, dated December 14, 2007,

Respondent Exhibit 4 – Sales disclosure sheet for the area,  
Respondent Exhibit 5 – Property record card and sales disclosure for  
Parcel No. 0101740004, dated October 24, 2005,  
Respondent Exhibit 6 – Property record cards and sales disclosures for  
Parcel No. 0101847001 and Parcel No.  
0101842500, dated October 6, 2006,  
Respondent Exhibit 7 – Property record cards and sales disclosures for  
Parcel No. 0101843012 and Parcel No.  
0101844041, dated November 19, 2004,

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 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 Petitioner established 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,” which 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.” 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). 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 must 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 that January 1, 2005, valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c. Here, the Petitioner presented an appraisal that estimated the value of the property to be \$400,000. *Petitioner Exhibit 3, pages 19-35; J. Quirk argument*. 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 probative value.
- d. The Petitioner also raised several additional arguments in support of a lower assessed value. First, the Petitioner argues that two homeowner’s insurance policy declarations on the subject dwelling and other structures, support the improvement value is overstated. *J. Quirk argument*. While the insurance renewal declarations estimate the replacement cost of the improvements, they do not explain how the estimates were calculated. *Petitioner Exhibit 3, pages 39 and 40*. The insurance renewal declarations therefore amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1119, 1120 (Ind. Tax Ct. 1998). Further, the declarations only relate to the replacement value of the home separate from and independent of the land. The declarations do not estimate the value of the property as a whole.

- e. Next, the Petitioner argues that the land value should be adjusted because its lot is hindered by its irregular shape, unsafe swimming area, lack of privacy, increased boat traffic and noise. While such use limitations or conditions on the property may be relevant to the issue of whether a negative adjustment should apply, the Petitioner must show how these conditions would impact the market value-in-use of the subject property. The Petitioner submitted its appraisal above, but presented no evidence that the appraisal did not consider these site specific conditions.
- f. The Petitioner also contends the subject property was not assessed in a uniform and equal manner in comparison to the percentage of increase in the certified net assessed values of properties in Johnson Township. *J. Quirk argument*. 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). 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 taxpayer must present probative evidence to show that the assessed value does not accurately reflect the property's market value-in-use. *Id.*
- g. The Petitioner also contends the current assessment system and the sales ratio study used by the assessor to establish assessed values are flawed. *J. Quirk argument*. The Petitioner's 2006 assessment must be considered under Indiana's current assessment, which seeks to determine a property's market value-in-use without being absolutely tied to a specific set of classifications, models, cost tables or depreciation tables comparable to the old Assessment Manual. While the new system has assessment Guidelines that are a starting point for assessors, other generally accepted valuation methods can also be used to establish what the property assessment should be. *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana and stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*"). A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
- h. The Board therefore finds that the Petitioner raised a prima facie case that the subject property is over-assessed based on its appraisal. *See Meridian Towers*, 805 N.E.2d at 479. The Petitioner's additional arguments, however, were insufficient to lower the assessed value of its property.

- i. 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 v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its 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 reason 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).
- j. Here, the Respondent presented property record cards, sales disclosures and testimony regarding three properties that were sold in 2004, 2005 and 2006, as support for the assessment. *Respondent Exhibits 5, 6, and 7; Carney testimony*. The Respondent, however, failed to identify characteristics of the comparable properties or explain how those characteristics compared to the characteristics of the property under appeal. 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 Petitioner's evidence.
- k. The Respondent also argued that the appraisal should be given little weight because the appraiser failed to make adjustments for time of sale, dwelling story heights and the age of the improvements. *Carney testimony*. The Respondent, however, provided no probative evidence or authority to support this contention. *See 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 she deems most comparable to the subject property and apply adjustments 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 Petitioner raised a prima facie case that the subject property was over-valued. The Respondent failed to rebut or impeach the Petitioner's evidence. The Board finds in

favor of the Petitioner and holds that the market value-in-use of the subject property is \$400,000.<sup>1</sup>

### **Final Determination**

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

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

\_\_\_\_\_  
Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review

<sup>1</sup>The Petitioner argues that if the assessed value of the property under appeal is reduced, the Petitioner should be awarded a reasonable amount of interest on property taxes already paid. *J. Quirk argument*. A person may file a claim for a refund of all or a portion of a tax installment with the auditor of the county in which the taxes were originally paid within three years after the taxes were first due. Ind. Code § 6-1.1-26-1. Pursuant to Ind. Code § 6-1.1-26-5, “When a claim for refund is allowed either by the county board of commissioners, the department of local government finance, the Indiana board, or the Indiana tax court on appeal, the claimant is entitled to a refund. The amount of the refund shall equal the amount of the claims so allowed plus, with respect to claims for refund filed after December 31, 2001, interest at four percent from the date on which the taxes were paid or payable, whichever is later, to the date of the refund.” Ind. Code § 6-1.1-26-5 (a).

## 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 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 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/bills/2007/SE0287.1.html>.**