

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

**Petition No.:** 46-024-02-1-5-00001  
**Petitioner:** Robert C. Ransom  
**Respondent:** Michigan Township Assessor (LaPorte County)  
**Parcel No.:** 44-01-12-476-018  
**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 LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 29, 2003.
2. The Petitioner received notice of the decision of the PTABOA on September 30, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on October 8, 2004. The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 30, 2009.
5. The Board held an administrative hearing on March 5, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Robert C. Ransom, Petitioner,  
Michael Conner, Tax representative

For Respondent: Marilyn Meighen, Attorney,  
Joshua D. Pettit, Consultant, Nexus Group.

## Facts

7. The subject property is a residential dwelling located at 3809 Brookside Drive, in Michigan City.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2002, the PTABOA determined the assessed value of the subject property to be \$6,700 for the land and \$47,000 for the improvements, for a total assessed value of \$53,700.
10. The Petitioner requested an assessment of \$40,000.

## Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
  - a. The Petitioner contends the subject property is over-valued based on its appraised value. *Conner testimony*. In support of this contention, the Petitioner submitted an appraisal prepared by C. Frank Robinson, a certified residential appraiser (the Robinson appraisal), that values the property at \$40,000 as of January 1, 1999. *Petitioner Exhibit 1*. According to the Petitioner's witness, the appraisal considers the subject property's location in a floodway and also the interior condition of the property. *Id.*; *Conner testimony*.
  - b. The Petitioner further contends the property is over-valued because of its location in a floodway. *Conner testimony*. According to the Petitioner's witness, the property's development is restricted by the Department of Natural Resources because the elevation of the adjoining creek is 604 feet, while the subject property's elevation is 603 feet. *Conner testimony*; *Petitioner Exhibit 5*. Mr. Conner argues that the property's restrictions have a significant impact on the property's value because if over fifty percent of the property is destroyed or uninhabitable, the property cannot be rebuilt. *Id.*
  - c. The Petitioner also argues that, during the appeals process, three other lots contiguous to the subject property were reduced from \$8,800 each to \$2,000, \$2,300, and \$2,300 respectively. *Conner testimony*.
  - d. Finally, in response to the Respondent's argument, the Petitioner contends that the Respondent's appraisal should be given little weight. *Conner testimony*; *Respondent Exhibit 1*. According to the Petitioner's witness, the Respondent's appraiser did not do an interior inspection and, therefore, the interior condition was not considered. *Conner testimony*. Nor did the Respondent's appraiser apply a negative influence factor for the location of the property in a flood plain. *Id.* The Petitioner argues that if the property's

interior condition and flood plain location are taken into account, it is a very simple equation to get from \$53,700 to \$40,000. *Id.*

12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends the property is under-assessed based on the property's appraised value. *Meighen argument.* In support of its contention, the Respondent presented an appraisal prepared by Alan M. Landing, a certified general appraiser (the Landing appraisal), that valued the property at \$70,000 as of January 1, 1999. *Respondent Exhibit 1.* The Respondent's witness admitted the appraisal was a drive-by appraisal and that the appraiser did not do an interior inspection. *Pettit testimony.* Similarly, Mr. Pettit admitted the appraiser did not adjust for properties not located in a flood plain. *Id.*
  - b. Further, the Respondent contends that the land's assessed value of \$6,700 is lower than sales of vacant land. *Pettit testimony.* In support of this contention, the Respondent presented property record cards and sales information for three parcels of vacant land. *Respondent Exhibits 3, 4, and 6.* According to the Respondent, two lots that back up to the creek sold for \$15,000 on July 17, 1995. *Pettit testimony; Respondent Exhibit 3.* In 1999, another lot sold on Lupine Lane for \$10,000. *Pettit testimony; Respondent Exhibit 4.* The lot is similar in size to the subject lot, but it is outside of the flood plain. *Id.* The third sale of vacant land consisted of two lots outside the flood plain, which sold on May 21, 1998, for \$22,000. *Respondent Exhibit 6; Pettit testimony.* The Respondent also presented a 1998 sale of an improved parcel located at 19 Powhatan Trail for \$136,000. *Respondent Exhibit 5; Pettit testimony.* According to the Respondent, the land size is similar to the subject property, but it is north of the creek and outside the flood plain. *Id.* The assessed value of the land is \$13,000, while the subject land is assessed for \$6,700. *Id.* The Respondent further contends the house on Powhatan is similar to the subject dwelling in that it is also an older, smaller home. *Id.*
  - c. Finally, the Respondent contends that the Petitioner's appraisal is flawed. *Meighen argument.* According to the Respondent's witness, the Robinson appraisal includes two properties that sold to banks, which may be foreclosures and therefore would not be considered arm's length transactions. *Respondent Exhibits 7 and 8; Pettit testimony.* Further, the Robinson appraisal makes a significant adjustment to the comparable properties for quality of construction that was determined on the basis of the assessor's quality grade factor. *Id.; Petitioner Exhibit 1, Addendum 6 of 6.* In addition, the Respondent argues that Mr. Robinson's inspection was after the valuation date and the March 1, 2002, assessment date. *Id.; Petitioner Exhibit 1, Addendum page 3 of 6; Petitioner Exhibit 6.* Moreover, the Petitioner's appraiser included a flat \$5,000 adjustment for a comparable property's location outside of the flood plain. *Meighen argument.* According to the

Respondent's representative, if the same \$5,000 adjustment is deducted from the Landing appraisal, the appraised value of the property is \$65,000, which still exceeds the property's assessed value. *Id.*

### **Record**

13. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. The compact disk recording of the hearing labeled 46-024-02-1-5-00001 Ransom Hearing,
  - c. Exhibits:
    - Petitioner Exhibit 1 – Appraisal Report, January 1, 1999,
    - Petitioner Exhibits 2-4 – Photographs of the exterior and the crawl space,
    - Petitioner Exhibit 5 – Floodway map,
    - Petitioner Exhibit 6 – Electronic mail message to Michael Conner from Mr. Robinson, appraiser,
  
    - Respondent Exhibit 1 – Appraisal Report, January 1, 1999,
    - Respondent Exhibit 2 – Map,
    - Respondent Exhibit 3 – Property record card and sales disclosure for Parcel No. 44-01-12-433-006,
    - Respondent Exhibit 4 – Property record card and sales disclosure for Parcel No. 44-01-12-485-008,
    - Respondent Exhibit 5 – Property record card and photograph for Parcel No. 44-01-12-429-045,
    - Respondent Exhibit 6 – Sales Disclosure for Parcel Nos. 44-01-12-456-028 and -029,
    - Respondent Exhibit 7 – Property record card for 112 El Portal, Michigan City,
    - Respondent Exhibit 8 – Property record card for 3824 Birch Street, Michigan City,
  
    - Board Exhibit A - Form 131 petition,
    - Board Exhibit B - Notice of Hearing-Reschedule,<sup>1</sup>
    - Board Exhibit C - Hearing sign-in sheet,

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<sup>1</sup> This hearing was originally scheduled for May 11, 2006. At that hearing, the Respondent argued that the Petitioner had not exchanged a witness list and exhibits as requested by the Respondent. 52 IAC 3-1-5(d) states, "If requested by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least (5) business days before the small claims hearing." The Petitioner, however, testified he had never received the letter requesting the documents. At the Petitioner's request and over the Respondent's objection, the Board continued the hearing.

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 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.
15. The Petitioner provided sufficient evidence to establish an error in the assessment and the Respondent provided rebuttal evidence. The weight of the evidence supports the assessment. 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 2002 assessment must reflect the value of the property as of January 1, 1999. MANUAL at 2. 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 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 prepared by C. Frank Robinson, an Indiana Certified Residential Appraiser. *Pet. Ex. 2*. The appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice and estimated the value of the subject property to be \$40,000 as of January 1, 1999. *Id.* The appraiser applied the sales comparison approach using properties that sold from 1998 to 2001. The Board therefore finds that the Petitioner raised a prima facie case that his property is over-assessed. *See Meridian Towers*, 805 N.E.2d at 479.
- d. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Insurance Co. 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 a prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- f. The Respondent likewise presented an appraisal prepared by a certified general appraiser that valued the property at \$70,000 for the January 1, 1999, valuation date. The Respondent admits that its appraiser did not adjust for the property's location in a flood plain. The Respondent argues, however, that if the Petitioner's appraiser's \$5,000 adjustment for location is applied to the Landing appraisal, the subject property's value would be \$65,000, which is higher than the current assessed value of \$53,700. Thus, the Respondent presented sufficient rebuttal evidence to overcome the Petitioner's prima facie showing.
- g. The Board, therefore, must determine which appraisal is more persuasive. Both appraisals have significant issues. The Petitioner's appraiser based the quality of construction adjustments on the grade assigned by the assessor. For example, the house at 127 Northbrook Drive is assigned a grade of C+1, while the subject property's grade is a D-1. The appraiser apparently took the difference between the D-1 (70%) and the C+1 (105%) in the Guidelines cost tables to arrive at a 35% adjustment, or a \$26,600 adjustment to the comparable property's sales price. The appraiser followed the same process for the other comparables. Thus, the appraiser took the sales comparison approach and then, rather than using market-based data, used concepts from the mass appraisal cost approach to adjust the values. Without those adjustments, the comparable properties' values would range from \$53,600 to \$77,500. Further, the total adjustments to the comparable properties ranged from almost 30% to almost 60%. Finally, the Petitioner's appraiser inspected the property more than six years after the March 1, 2002, assessment date.

The appraiser, however, noted water damage, abnormal settling, and the presence of standing water.<sup>2</sup>

- h. The Respondent's appraisal is likewise flawed. As the Petitioner's representative pointed out and the Respondent admitted, the appraisal is a drive-by appraisal and no interior inspection was done. Further, Mr. Landing did not make an adjustment for the property's floodway location.
- i. The Board finds the Petitioner's appraiser's use of assessment principles to determine the quality of construction adjustment on each of the comparable properties seriously undermines the value of that appraisal in establishing the subject property's market value-in-use. If this adjustment is disregarded, the Petitioner's appraisal values the comparable properties from \$53,600 to \$77,500 – which supports the assessed value of the subject property. Further, while the Petitioner contends the Respondent's appraiser did not inspect the interior of the subject property, there is no evidence that the Petitioner's appraiser inspected the interior of the comparable properties. Similarly, the Petitioner's appraiser's inspection occurred six years after the assessment date. Thus, neither appraiser could claim to make condition adjustments to the comparable properties based on personal knowledge. Finally, while the Respondent's appraiser failed to adjust for the subject property's location in the floodway, the Petitioner's appraiser only applied a flat \$5,000 adjustment to each of the comparable properties for location. Thus, if the Petitioner's appraiser's adjustment is applied to the Respondent's appraisal, the appraised value still exceeds the assessed value of the subject property.

### **Conclusion**

- 16. The Petitioner raised a prima facie case that the subject property is over-valued on the basis of its appraisal. The Respondent provided rebuttal evidence that the assessed value did not exceed the market value-in-use of the subject property. The Board finds the weight of the evidence supports the assessed value. The Board finds in favor of the Respondent and determines the true tax value of the property is \$53,700.

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<sup>2</sup> The Respondent also contends that two sales were to banks and therefore may have been foreclosures. Absent evidence that the sales were actually foreclosures, however, the Board will not base its decision on such a speculative argument.

**Final Determination**

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

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

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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



### 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>>