

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

**Petition No.:** 45-026-08-1-5-00003  
**Petitioners:** William Regnier, Janice Regnier, Jill White  
**Respondent:** Lake County Assessor  
**Parcel No.:** 45-07-31-481-001.000-027  
**Assessment Year:** 2008

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

**Procedural History**

1. On October 15, 2009, the Petitioners filed written notice challenging the subject property's assessment. Because the Lake County Property Tax Assessment Board of Appeals ("PTABOA") failed to hold a hearing within 180 days, the Petitioners opted to file a Form 131 petition with the Board. *See* Ind. Code § 6-1.1-15-1(o)(1) (allowing a taxpayer to file a petition for review with the Board if the maximum time for a PTABOA to hold a hearing elapses). The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
2. On April 27, 2011, the Board held a hearing, before its administrative law judge, Ellen Yuhan ("ALJ").
3. Persons present and sworn in at hearing:  
  
William Regnier, taxpayer  
  
LaTonya Spearman, Lake County hearing officer.

**Facts**

4. The subject property contains a home located at 10205 St. James Place in Munster.
5. The ALJ did not inspect the property.
6. The Lake County Assessor assessed the subject property as follows:  
Land: \$158,900      Improvements: \$327,600      Total: \$486,500.

7. The Petitioners requested a total assessment of \$400,000.<sup>1</sup>

### Issues

8. Summary of the Petitioners' contentions:
- a. The subject property is assessed for more than its market value, as shown by an appraisal prepared by Thomas S. Bochnowski, a certified Indiana appraiser who prepared his appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'rs Ex. 4*. Bochnowski estimated the subject property's market value at \$400,000 as of January 1, 2007. *Id.* He used only the sales-comparison approach to value, because he believed that approach best reflected the actions of buyers and sellers in the market. *Id.* Bochnowski did not use the cost approach due to what he described as the inherent difficulties of estimating depreciation in the subject property's improvements and amenities. *Id.* He similarly found that the income approach was inapplicable. *Id.*
  - b. Because Bochnowski estimated the property's value as of January 1, 2007, he looked at sales of comparable properties from January 1, 2006 to December 31, 2007. *Pet'rs Ex. 4*. He found 18 sales of 1 ½- and 2-story homes during that period. The sale prices ranged from \$469,900 to \$472,000, with an average of \$408,878 and a median of \$397,500. *Id.* Bochnowski laid out six particular sales which, after he adjusted the sale prices to account for relevant ways in which they differed from the subject property, sold for prices ranging from \$384,000 to \$425,000. *Id.* Bochnowski gave some consideration to all the closed sales in reaching his valuation opinion. *Id.*
  - c. Although the Respondent relied on a different appraisal in which GERALYN M. ECKLUND estimated the subject property's market value at \$420,000 as of April 7, 2009, Ecklund did not inspect the subject home's interior. *Regnier testimony*. While Ecklund refers to interior photographs, the appraisal report does not include any photographs. *Id.; Resp't Ex. 2*.
  - d. Similarly, the six properties that the Respondent offered to support the subject property's assessment all have larger homes than the subject home and therefore are not comparable to the subject property. *Regnier testimony; Resp't Ex. 3*. The subject home has only 2,619 square feet, while the Respondent's purportedly comparable homes range from 3,017 square feet to 3,898 square feet. *Id.* Two of those homes, 1424 Wellington and 10228 St. James Place, have higher quality grades than the subject home, and their sale prices significantly inflate the Respondent's analysis. *Id.* Excluding those

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<sup>1</sup> This is the amount that Mr. Regnier requested at the Board's hearing. It is based on an appraisal by Thomas S. Bochnowski. On the Petitioners' Form 131 petition, they asked for a total assessment of \$355,000—\$71,500 for land and \$283,500 for improvements. *See Board Ex. A*.

two properties, the Respondent's comparables sold for an average of \$133.25 per square foot of living area, which translates to a value of \$364,572 for the subject property. *Id.*

- e. Finally, the Petitioners claim that the Respondent erred in measuring the subject lot. *Regnier testimony*. According to Mr. Regnier, the lot is assessed as having .70 acres when it is actually only .54 acres. *Id.* And easement restrictions reduce the lot's useful area to .27 acres. *Id.*; *Pet'rs Exs. 1, 3*. An abutting .36-acre lot is assessed for only \$88,700, a much lower per square foot rate than what the subject lot is assessed for. *Regnier testimony*; *Pet'rs Exs. 1-3*.
9. Summary of the Respondent's contentions:
- a. The Petitioners originally gave the Respondent Ecklund's appraisal. *Spearman testimony*. The Respondent trended that appraisal by 3% per year and recommended a value of \$445,200 as of the January 1, 2007 valuation date applicable to 2008 assessments. *Id.*; *Resp't Ex. 2*.
  - b. According to the Respondent's witness, LaTonya Spearman, Ecklund's appraisal is more reliable than Bochnowski's appraisal because Ecklund used homes that were more like the subject home in terms of age, condition, and gross living area. *Id.* Indeed, because Bochnowski listed the subject home as having only 2,619 square feet of gross living area instead of the 2,826 square feet used by Ecklund, Bochnowski compared the subject property to smaller homes. *See Spearman testimony*; *Pet'rs Ex. 4*; *Resp't Ex. 2*. And Bochnowski described the subject home's condition as "average," while Ecklund had described its condition as "good." *Spearman testimony*; *Resp't Ex. 2*; *Pet'rs Ex. 4*. Ms. Spearman testified that the change may have stemmed from Bochnowski comparing the subject property to newer homes than the homes that Ecklund used. *Spearman testimony*.
  - c. The Respondent also offered information about six sales from the subject property's subdivision. *Resp't Exs. 3-4*. According to Ms. Spearman, those homes are comparable to the subject home in terms of age, utility, and gross living area. *Spearman testimony*. Unlike Mr. Bochnowski's appraisal, the Respondent included photographs both of the subject homes and the six comparable homes. *Id.*; *Resp't Ex. 3*. Those six properties sold for prices ranging from \$415,000 to \$640,000, with an average price of \$513,000 and a median of \$475,000. *Id.*
  - d. Ms. Spearman re-measured the subject lot in advance of the Board's hearing, and has corrected the Respondent's records to show that the lot is only .56 acres instead of .7 acres. *Spearman testimony*; *Resp't Ex. 5*. Although the new measurement reduces the property's land assessment to \$127,100, it does

not change the Respondent's recommendation that the property as a whole be assessed for \$445,200. *Spearman testimony.*

### **Record**

10. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. The compact disk recording of the hearing labeled 45-026-08-1-5-00003 Regnier,
  - c. Exhibits:
    - Petitioner Exhibit 1: Memo on letterhead for William M. Regnier summarizing contentions, printout from Lake County Assessor's website for 10205 St. James PL, Mortgage Inspection Survey, printout from YAHOO@ANSWERS, printout from [www.clarku.edu](http://www.clarku.edu) titled "Area of a Triangle
    - Petitioner Exhibit 2: Printout from Lake Count Assessor's website for 10206 St. James Ct.,
    - Petitioner Exhibit 3: Survey showing easement restrictions,
    - Petitioner Exhibit 4: Appraisal valuing the subject property as of January 1, 2007,
    - Petitioner Exhibit 5: E-mails from Bill Regnier to Barry Wood and from Barry Wood to Bill Regnier, April 8, 2011 letter from William Regnier to Dave Wickland, Form 11 Notice of Assessment of Land and Structures for 10205 St. James PL, Notice of Final Assessment for 10205 St. James PL,
    - Petitioner Exhibit 6: Calculation of selling price per square foot for the Respondent's comparable properties,
    - Respondent Exhibit 1: Summary of the Respondent's position,
    - Respondent Exhibit 2: Appraisal valuing the subject property as of April 7, 2009,
    - Respondent Exhibit 3: Residential Agreement Summary Report for six properties,
    - Respondent Exhibit 4: MLS Statistics,
    - Respondent Exhibit 5: ProVal Plus screenshots for parcel no. 45-07-31-481-001.000-027, aerial maps, Real Property Assessment Guidelines for 2002-Version A, ch. 2, pp. 44-45, calculations for corrected lot size, property record card for the subject property,

Respondent Exhibit 6: ProVal Plus screenshot,

Board Exhibit A: Form 131 petition,

Board Exhibit B: Notice of Hearing, dated March 18, 2011,

Board Exhibit C: Hearing sign-in sheet.

d. These Findings and Conclusions.

### Analysis

11. The most applicable governing cases are:
  - a. A petitioner seeking review of an assessing official's determination 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 petitioner 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 makes 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.
12. The weight of the evidence supports reducing the subject property's assessment to \$400,000. The Board reaches this decision for the following reasons:
  - a. The 2002 Real Property Assessment Manual defines “true tax value” 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 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). 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 prepared according USPAP often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 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 accepted appraisal principles. MANUAL at 5.

- c. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, that evidence lacks probative value. *Id.* For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3 (2006).
- d. Here, the Petitioners offered an appraisal report prepared by Thomas Bochnowski in which Bochnowski estimated the subject property's market value at \$400,000 as of January 1, 2007. *Pet'rs Ex. 4*. Bochnowski is an Indiana certified appraiser who certified that he prepared his appraisal in accordance with USPAP. *Id.* And Bochnowski used the sales-comparison approach—one of three generally accepted valuation approaches. Thus, the Petitioners made a prima facie case for reducing the subject property's assessment to \$400,000.
- e. The burden therefore shifted to the Respondent to offer probative evidence to impeach or rebut Bochnowski's valuation opinion. The Respondent sought to impeach Bochnowski's opinion through Ecklund's appraisal report, pointing out that Bochnowski based his opinion on the subject home being smaller and in worse condition than did Ecklund. While that may be true, there is little evidence in the record to answer whether Bochnowski or Ecklund more accurately characterized the home's size and condition. Nobody explained how either appraiser measured the home, and while the Respondent offered a document with a small photograph of the home's exterior, that image does little to answer the subjective question of whether the home was in good, or merely average, condition.
- f. Of course, that does not preclude the Board from finding that Ecklund's valuation opinion is more persuasive than Bochnowski's. The Board need not immerse itself too deeply in that analysis, however, because Ecklund estimated the subject property's value as of a date more than two years after the relevant valuation date for the 2008 assessment under appeal. Granted, Ms. Spearman trended Ecklund's value estimate to January 1, 2007 using a

rate of 3% per year. But she did not explain where she got that figure from. Ecklund's appraisal therefore lacks probative value.

- g. The Respondent, however, also offered data for six sales from the subject property's subdivision. And unlike the comparable sales from Ecklund's appraisal, the Respondent's sales all occurred within one year of the relevant January 1, 2007 valuation date. But it takes more than raw data to prove a given property's market value-in-use through other properties' sale prices. First, one must explain how the properties are comparable to each other in terms of relevant characteristics that affect market value. Conclusory statements that the properties are "similar" or "comparable" do not suffice. *Long*, 821 N.E.2d at 470. Likewise, one must explain how any relevant differences affect the properties' relative market values-in-use. *Id.*
- h. The Respondent's witness, Spearman, did little to compare the subject property to the six other properties from the same subdivision other than to say that they all contained homes that were similar in terms of age, size, and utility. Moreover, there were relevant differences between the subject property and the six purportedly comparable properties that likely affected their relative market values-in-use. For example, several of the purportedly comparable properties had homes that were significantly larger than the subject home. Yet Spearman did nothing to account for any of those differences. Under those circumstances, the Respondent's raw sales data lacks probative value.

### **Conclusion**

- 13. The Petitioners made a prima facie case for reducing the subject property's assessment, and the Respondent failed to significantly impeach or rebut the Petitioners' evidence. The Board therefore finds for the Petitioners and orders that the subject property's March 1, 2008 assessment be reduced to \$400,000.

### **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: \_\_\_\_\_

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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>