

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

**Petition No.:** 18-006-06-1-5-00013  
**Petitioners:** James P. and Kimberly R. Rybarczyk  
**Respondent:** Delaware County Assessor  
**Parcel No.:** 18-07-12-400-014.000-006  
**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 Delaware County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The PTABOA issued its decision on July 9, 2008.
3. The Petitioners filed a Form 131 petition with the Board on August 29, 2008. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 8, 2009.
5. The Board held an administrative hearing on December 10, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
  - a) For Petitioners: James P. Rybarczyk, Petitioner
  - b) For Respondent: Kelly Hisle, Delaware County Deputy Assessor

**Facts**

7. The property is a residence located at 9815 North County Road 300 East in the city of Muncie, Hamilton Township in Delaware County.
8. The Administrative Law Judge (ALJ) did not inspect the property.
9. For 2006, the PTABOA determined the assessed value of the property to be \$19,000 for the land and \$185,600 for the improvements, for a total assessed value of \$204,600.

10. The Petitioners requested an assessed value of \$14,000 for the land and \$162,000 for the improvements, for a total assessed value of \$176,000.

### **Issues**

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
  - a) The Petitioners contend the Assessor, the PTABOA, and the Board violated Indiana law in their appeals process. *Rybarczyk testimony*. According to Mr. Rybarczyk, although he contacted the Township Assessor several times to schedule an informal meeting pursuant to the Indiana Code, no such meeting occurred. *Id.*; *Petitioners Exhibit 1*. After their hearing before the PTABOA, Mr. Rybarczyk testified, the Petitioners received three different Form 115 determinations, some of which were untimely and all of which contained significant errors. *Id.* Finally, Mr. Rybarczyk argues, the hearing before the Board was not scheduled until a year and 132 days after the Petitioners filed their Form 131 petition. *Rybarczyk testimony; Petitioners Exhibits 1 and 3*.
  - b) The Petitioners further contend that their house is over-valued based on its market value. *Rybarczyk testimony*. Mr. Rybarczyk argues that comparing the assessed values of their house over time to two appraised values as well as to the property's original construction cost, shows that the assessed value departed dramatically from the market value in 2006, when the property's assessed value increased 28%. *Rybarczyk testimony; Petitioners Exhibit 4*. Moreover, Mr. Rybarczyk contends, the assessed value has continued to increase in subsequent years.<sup>1</sup> *Id.*
  - c) In addition, the Petitioners argue, due to the unique circumstances of the time when their house was constructed, it should only be compared to properties of a similar age when determining the assessed value. *Rybarczyk testimony*. Thus, Mr. Rybarczyk testified, he only looked at houses that were built from 1980 to 1983 and sold for between \$160,000 and \$224,000 in the Assessor's sales database. *Rybarczyk testimony; Petitioners Exhibits 6-8*. Using those four sales, Mr. Rybarczyk determined a correlation ratio of 0.900 between the properties' sales values and their assessed values. *Rybarczyk testimony; Petitioners Exhibits 7 and 8*. When Mr. Rybarczyk applied this correlation ratio to the 2005 assessment, which he contends is the property's last accurate assessment, the property's value is \$176,940. *Rybarczyk testimony; Petitioners Exhibit 7*.

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<sup>1</sup> Mr. Rybarczyk also testified that the room addition to their house was simply a great room with no subdivisions or doors and "absolutely no amenities." *Rybarczyk testimony*. Mr. Rybarczyk argues that the great room should not be averaged in with the rest of the home for assessment purposes because the cost to build the room was much less than any other area of the house. *Id.*

- d) The Petitioners also contend their property is over-assessed based on the sale prices of two neighboring properties. *Rybarczyk testimony*. According to Mr. Rybarczyk, the property located at 9901 North County Road 300 East was initially listed for sale in January of 2005 for \$325,000, but it did not sell until March of 2006 when it was purchased for \$250,000. *Rybarczyk testimony; Petitioners Exhibit 10 and 12*. Mr. Rybarczyk testified that he adjusted the sale price to account for the differences in the properties and from that sale, he estimated that the Petitioners' property would have a value of \$178,700. *Rybarczyk testimony; Petitioners Exhibit 10*. Further, Mr. Rybarczyk testified that the property located at 9801 South County Road 300 East was listed in 2009 for a price below its assessed value, but it did not sell. *Rybarczyk testimony; Petitioners Exhibit 11*.
- e) Similarly, the Petitioners contend their land is over-assessed. *Rybarczyk testimony*. In support of this contention, Mr. Rybarczyk presented real estate listings for properties with asking prices of about \$5,000 per acre from August of 2007, and he testified that another property sold for \$3,200. *Rybarczyk testimony; Petitioners Exhibit 13*. Based on these properties, Mr. Rybarczyk contends the subject property should have a land value of only \$16,000. *Rybarczyk testimony*.
- f) Finally, the Petitioners contend the Board should give little weight to the Respondent's comparable analysis. *Rybarczyk testimony*. According to Mr. Rybarczyk, only one of the Respondent's comparable properties was built around the same time as the subject property; the other two were built in 1993 and 1899 respectively. *Rybarczyk testimony; Respondent Exhibits 1-10*. Further, Mr. Rybarczyk argues, the property built in 1984 has additional features that were not accounted for in the Respondent's analysis. *Rybarczyk testimony; Respondent Exhibits 8-10*. Mr. Rybarczyk argues that the assessor skewed the assessed values by grouping properties into neighborhoods for assessment purposes. *Rybarczyk testimony*. According to Mr. Rybarczyk, the Petitioners' own property is close to a development with very expensive homes, and grouping both communities into one neighborhood results in unfair assessments. *Id.*

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

- a) The Respondent contends the assessed value of the Petitioners' property is fair based on an analysis of three comparable properties that sold in 2004 and 2005. *Hisle testimony; Respondent Exhibit 1-10*. The Respondent's representative, Ms. Hisle, testified that she started with the base sale prices of the comparable properties and then made adjustments for various features such as date of sale and the living area of the properties. *Id.* According to Ms. Hisle, the adjusted prices of the three comparable properties were \$221,800, \$226,200 and \$187,800, respectively. *Id.* Whereas the subject property is only assessed for \$204,600. *Id.*
- b) The Respondent further contends that the Petitioners' assessment was done in accordance with the Department of Local Government Finance guidelines. *Hisle*

*testimony.* According to Ms. Hisle, the Assessor has no way of analyzing properties based on the year of construction, as Mr. Rybarczyk suggests should be done. *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 digital recording of the hearing.
- c. Exhibits:

Petitioners Exhibit 1: Appeal timeline,  
Petitioners Exhibit 2: Three Form 115 - Notifications of Final Assessment Determination,  
Petitioners Exhibit 3: Form 131 Petition,  
Petitioners Exhibit 4: Historic comparison of assessments, appraisals, and market value for the subject property,  
Petitioners Exhibit 5: PTABOA Notice of Hearing and the initial Form 115,  
Petitioners Exhibit 6: Summary of the Petitioners' analysis of the Assessor's sales database by year of construction,  
Petitioners Exhibit 7: Correlation ratio analysis of the Assessor's sales database by sale price and year of construction,  
Petitioners Exhibit 8: Hamilton Township sales database for 2004-2005,  
Petitioners Exhibit 9: Details of the property at 9901 North CR 300E,  
Petitioners Exhibit 10: Comparison of the subject property and the property located at 9901 North CR 300E,  
Petitioners Exhibit 11: Information on the property located at 9801 North CR 300 East,  
Petitioners Exhibit 12: Aerial photograph and 2007 tax information for the subject property and surrounding properties,  
Petitioners Exhibit 13: Property listings from August 2007,  
Petitioners Exhibit 14: Property listings from August 2007,  
Petitioners Exhibit 15: Property listings from August 2007,

Respondent Exhibit 1: Subject property's property record card (PRC),  
Respondent Exhibit 2: Sales comparison spreadsheet,  
Respondent Exhibit 3: PRC for the property at 15021 North CR 400 East,  
Respondent Exhibit 4: MLS listing sheet for 15021 North CR 400 East,  
Respondent Exhibit 5: Sales disclosure form for the property located at 15021 North CR 400 East,  
Respondent Exhibit 6: PRC for the property at 11800 West CR 200 East,

Respondent Exhibit 7: MLS listing sheet for 11800 West CR 200 East,  
Respondent Exhibit 8: PRC for the property at 9909 State Road 67/28,  
Respondent Exhibit 9: MLS listing sheet for 9909 State Road 67/2,8  
Respondent Exhibit 10: Sales disclosure form for the property located at  
9909 State Road 67/28,  
Respondent Exhibit 11: Sales in the Petitioners' neighborhood from 2004-  
2005,  
Respondent Exhibit 12: CMA Summary Report for all sales in Delaware  
County from 2004 to 2005,  
Respondent Exhibit 13: CMA Summary Report for all sales in Delaware  
County from 2004 to 2005,  
Respondent Exhibit 14: CMA Summary Report for all sales in Delaware  
County from 2004 to 2005,<sup>2</sup>

Board Exhibit A: Form 131 Petition,  
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 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. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. The Board reached this decision for the following reasons:

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<sup>2</sup> Respondent Exhibits 12, 13, and 14 comprise one set of data.

- 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales-comparison approach, and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value 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 assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 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 to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
- d) The Petitioners first seek to invalidate their property’s assessment by citing multiple procedural issues and violations of Indiana Code. *Rybarczyk testimony; Petitioners Exhibits 1-3*. According to Mr. Rybarczyk, the township failed to schedule a preliminary meeting. However, Indiana Code § 6-1.1-15-1(h)(2) states that the assessing official who receives an appeal notice *shall attempt* to hold a preliminary informal meeting. Ind. Code § 6-1.1-15-1(h)(2) (emphasis added). A preliminary meeting is not mandatory. Nor is there any 30-day requirement for the Township Assessor to file a response with the PTABOA.<sup>3</sup> Mr. Rybarczyk also argues that the PTABOA failed to act timely on its request for appeal. Indiana Code § 6-1.1-15-1(k) states that the county board shall hold a hearing no later than 180 days after the date of a taxpayer’s notice of review. Ind. Code § 6-

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<sup>3</sup> Indiana Code § 6-1.1-15-1(i) states that the assessing official “shall forward to the county auditor and the county board the results of the conference,” no later than ten days after the informal preliminary meeting. However, if an informal meeting is not held, logically the results of the conference cannot be reported to the auditor and the county board. This situation is contemplated in Indiana Code § 6-1.1-15-1(k)(2) which provides that the PTABOA should hold a hearing if it does not receive the results of a preliminary conference from the assessor within 120 days of a taxpayer filing its notice of review.

1.1-15-1(k). Similarly, Indiana Code § 6-1.1-15-1(n) states that the “county board shall, by mail, give notice of its determination not later than one hundred twenty (120) days after the hearing.” Ind. Code § 6-1.1-15-1(n). While the PTABOA’s hearing and determination may violate those deadlines, the relief for such violations is clearly laid out in Indiana Code § 6-1.1-15-1(o). That section states that “if the maximum time elapses: (1) under subsection (k) for the county board to hold a hearing; or (2) under subsection (n) for the county board to give notice of its determination; the taxpayer may initiate a proceeding for review before the Indiana Board by taking the action required by [Indiana Code § 6-1.1-15-3] at any time after the maximum time elapses.” *See also* 52 IAC 2-4-2(f). In other words, when the PTABOA violated their deadline to hold a hearing or failed to issue a proper determination, the taxpayer’s recourse was to file with the Board. Similarly, if the Board does not hold a hearing or issue a determination within its prescribed timeframes, the taxpayer may seek judicial review before the Indiana Tax Court. *See* Ind. Code §§6-1.1-15-4, 6-1.1-15-5, 52 IAC 2-6-1, 52 IAC 2-6-4. Thus, while the delay in having their appeal heard was undoubtedly frustrating to the Petitioners, the remedy for that delay is not the invalidation of their assessment as the Petitioners urge here.

- e) Next the Petitioners contend that, while historically the property’s assessed value and its market value have closely correlated, the 2006 assessed value is a large departure from the actual market value of the property. *Rybarczyk testimony; Petitioners Exhibit 4*. In support of this contention, the Petitioners presented a chart entitled “Trending Until 2005” suggesting that the property’s “market” value remained \$110,000 from 1984 until 1994 when the Petitioners added a great room to their house. *Id.* Then, according to the Petitioners’ graph, their property’s value increased to \$156,000, where it remained from 1994 until 2010. *Id.* The Petitioners’ analysis is based on the flawed assumption that the market value of their property did not change from 1984 to 2010 except to the extent that a room addition occurred. Clearly, however, property values change from year to year, perhaps even month to month in volatile markets. That is why the legislature passed legislation requiring assessors to trend the assessed value of properties annually between general reassessment years. *See* Ind. Code § 6-1.1-4-4.5 (a) (“The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took effect”); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (market value information that is removed from the statutory valuation date has no probative value in a property tax appeal).
- f) The Petitioners also argue that because the Petitioners’ house was built in the early 1980s – during a period of recession – it should only be compared to other properties built in that same time period. *Rybarczyk testimony*. Thus, to value their property, Mr. Rybarczyk identified the properties from the Assessor’s records that were constructed in the early 1980s and sold for between \$160,000 and \$224,000. *Id.* From those four sales, Mr. Rybarczyk determined a correlation factor that he applied to the property’s 2002 assessed value. *Rybarczyk testimony*;

*Petitioners Exhibits 6-8.* In comparing the property's assessed value to the sales prices of other properties, Mr. Rybarczyk is, in essence, using a sales comparison method to value the Petitioners' property. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* While parts of Mr. Rybarczyk's analysis resemble the sales comparison method, merely comparing properties based on age and sales price falls far short of the evidence required to establish comparability of the properties.<sup>4</sup>

- g) The Petitioners' comparison of the property located at 9901 North County Road 300 East fails for the same reason. *Rybarczyk testimony; Petitioners Exhibit 10 and 12.* In reaching his conclusion of value, Mr. Rybarczyk testified that he adjusted the \$250,000 sales price for the size of the lot, the property's brick construction, the amount of concrete and asphalt and for the value of the various outbuildings. *Rybarczyk testimony.* However, he provided no basis for his adjustments. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). Further, while the adjustments in Mr. Rybarczyk's analysis may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his or her education, training, and experience. The appraiser also typically certifies that he or she complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his or her adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his or her education, training and experience to estimate a reliable quantification. There is no evidence that Mr. Rybarczyk is a licensed appraiser in Indiana. Moreover, he did not certify that he complied with USPAP in performing his valuation analysis. The Board therefore finds that the Petitioners' sales comparable analysis is insufficiently reliable to raise a prima facie case.<sup>5</sup>

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<sup>4</sup> Further, to the extent that the Petitioners contend their property can only be valued based on the values of properties constructed during the same period of time, the Board notes that the time of construction is only one of many factors that are considered when determining comparability.

<sup>5</sup> The Petitioners' argument that their property's land value is over-assessed is similarly unsupported by substantial evidence. Mr. Rybarczyk offered property listings from newspapers dated August of 2007, but he failed to establish that the listed properties were comparable to the subject property. *Rybarczyk testimony; Petitioners Exhibit 13.* Further, Mr. Rybarczyk made no attempt to relate the properties' 2007 listing prices to the January 1, 2005, valuation date. Likewise, Mr. Rybarczyk's contentions concerning the value of the great room and the Assessor's method of evaluating properties by neighborhood were conclusory in nature and unsupported by any substantial evidence. As stated above, such statements do not constitute probative evidence.



- h) The Petitioners failed to raise a prima facie case that their property was assessed in excess of its market value-in-use. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

16. The Petitioners failed to raise a prima facie case. The Board finds in favor of the Respondent.

### **Final Determination**

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

## 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>.**