

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

**Petition No.:** 18-003-06-1-5-01016  
**Petitioners:** Brian A. and Sarah K. Shaw  
**Respondent:** Delaware County Assessor  
**Parcel No.:** 181109353003000003  
**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 dated May 3, 2007.
2. The PTABOA issued its decision on May 2, 2008.
3. The Petitioners filed an appeal to the Board by filing a Form 131 petition dated May 30, 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 January 28, 2009.
5. The Board held an administrative hearing on March 5, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
  - a) For Petitioners: Brian A. Shaw, Petitioner  
James A. Shaw, Petitioner's witness
  - b) For Respondent: Kelly Hisle, deputy assessor, Delaware County Assessor's office

**Facts**

7. The property is a single-family residence located at 1417 West North Street, in the city of Muncie, Center 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 subject property to be \$18,300 for the land and \$120,100 for improvements, for a total assessed value of \$138,400.
10. The Petitioners request a value of \$12,500 for the land and \$100,000 for improvements, for a total assessed value of \$112,500.

### **Issues**

11. Summary of the Petitioners' contentions in support of an alleged error in the assessment:
  - a) The Petitioners contend the assessed value of the subject property is excessive based on its sale price. *B. Shaw testimony; Pet. Ex. 1.* According to Mr. Shaw, the subject property was originally listed for sale for \$99,900. *Id.* Mr. Shaw testified that the Petitioners and the sellers agreed on a price of \$97,900 in October of 2005, but the bank would not approve a loan for that amount because of the condition of the home. *Id.* After \$11,100 in repairs and improvements were made to the property, the bank approved a loan of \$112,500, which was also the contract sales price. *Id.; Pet. Ex. 3.* Mr. Shaw admits that prior to the Petitioners' purchase, the subject property was listed for sale in 2003 for \$139,900 but, he argues, the home was on the market for 539 days and did not sell. *Id.*
  - b) The Petitioners further contend that the property is over-valued based on its appraised value. *B. Shaw testimony; Pet. Ex.2.* In support of this contention, the Petitioners presented an appraisal prepared by Robert E. Canan, an Indiana Certified Residential Appraiser. *Pet. Ex. 2.* Mr. Canan performed the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), and estimated the value of the property to be \$112,500 as of September 16, 2005. *Id.*
  - c) The Petitioners also argue that the assessment is incorrect based on the condition of the home. *B. Shaw testimony; Pet. Ex. 1.* According to Mr. Shaw, the fireplace is unusable because of cracks and holes in the flue lining. *Id.* In addition, although the home is assessed as a 1.5 story home, Mr. Shaw argues, it is better described as a one story home with a finished attic. *Id.* Further, Mr. Shaw testified, the attic does not have either finished walls or floors. *Id.* They are only studs covered with fiberboard. *Id.*
  - d) Finally, the Petitioners argue their property is overvalued when compared with other nearby properties. *B. Shaw testimony; Pet. Ex. 1.* According to Mr. Shaw, the property next door, located at 1413 W. North Street, has approximately the same size lot as the subject property. *B. Shaw testimony; Pet. Exs. 1, 8 and 9.* Mr. Shaw contends that the comparable house is in the same condition as the Petitioners' house and, like the subject property, it has 1.5 stories, a garage and a basement, yet the comparable property is assessed for only \$97,200. *Id.* The

Petitioners also contend that land values vary greatly from block to block along North Street. *B. Shaw testimony; Pet. Exs. 1 and 11-15.* As an example, Mr. Shaw testified that the property at 1420 W. Gilbert is assessed for \$7,500 less than the Petitioners' land even though it is located right behind the subject property. *B. Shaw testimony; Pet Exs. 1, 10 and 11.*

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

- a) The Respondent contends the property is correctly assessed. *Hisle testimony.* In support of this contention, the Respondent's representative presented information on four properties of a similar size and condition, with similar features that sold for between \$115,000 and \$162,000. *Id.; Resp. Exs. 1 - 3.* Ms. Hisle testified that she made adjustments to the sale prices of the comparable properties for the various features of the homes and determined adjusted sales values of \$122,800 to \$170,000. *Id.* Thus, the Respondent's representative concludes, the Petitioners' property was not over-valued. *Id.*
- b) The Respondent also argues that one of the comparable properties used in the Petitioners' appraisal is located very far from the subject property. *Hisle testimony.* In addition, the Respondent's witness testified that the property located at 1413 W. North Street differs considerably in size from the subject property. *Hisle testimony.* According to Ms. Hisle, the Petitioners' home is notably larger on all floors, including the basement. *Id.* Finally, the Respondent argues, that the comparables used in the appraisal may be foreclosures. *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: Letter from the Petitioners,

Petitioners Exhibit 2: Appraisal of the subject property as of September 16, 2005,

Petitioners Exhibit 3: Purchase Agreement for the subject property dated October 26, 2005,

Petitioners Exhibit 4: Form 131 Petition,

Petitioners Exhibit 5: Form 115,

Petitioners Exhibit 6: Form 130,

Petitioners Exhibit 7: Subject property's Property Record Card (PRC),

Petitioners Exhibit 8: Sales listing information for 1413 W. North St.,  
Petitioners Exhibit 9: PRC for 1413 W. North St.,  
Petitioners Exhibit 10: Assessment information for 1420 W. Gilbert St.,  
Petitioners Exhibit 11: Assessment information for 1424 and 1428 W.  
Gilbert St.,  
Petitioners Exhibit 12: Assessment information for 1224 and 1225 W.  
North St.,  
Petitioners Exhibit 13: Assessment information for 1301 and 1327 W.  
North St.,  
Petitioners Exhibit 14: Assessment information for 1516 W. North St.,  
Petitioners Exhibit 15: Assessment information for 405, 415, and 419 N.  
Dicks St.,

Respondent Exhibit 1: Summary of Comparable Properties,  
Respondent Exhibit 2: MLS listing sheet and PRC for the subject property,  
Respondent Exhibit 3: PRCs and MLS listing sheets for comparable  
properties,

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 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,” 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 valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c. Here, the Petitioners presented an appraisal prepared by Robert E. Canan, 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 \$112,500 as of September 16, 2005. *Id.* The appraiser applied the sales comparison approach using properties that sold during 2004 and 2005. *Id.* In addition, Mr. Shaw testified, the Petitioners contracted to purchase the property on October 26, 2005 for \$112,500. *B. Shaw testimony.*
  - d. 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 September 16, 2005, or a sale of the subject property in October of 2005 must also have some probative value. The Board therefore finds that the Petitioners raised a prima facie case that their property is over-assessed. *See Meridian Towers*, 805 N.E.2d at 479.
  - e. 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 Petitioners’ case, the Respondent has the same burden to present probative evidence that the Petitioners 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. Here the Respondent offered sales data on four purportedly comparable properties. *Hisle testimony; Resp. Exs. 1-2*. In essence, Ms. Hisle uses the sales comparison approach to support the Respondent's assessment. To use a sales-comparison analysis as evidence in an assessment appeal, however, a party must show that the properties upon which it bases its analysis are comparable to the property under appeal. Conclusory statements that a property is similar or comparable to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, a party 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 party must explain how any differences between the properties affect their relative market values-in-use. *Id.* While Ms. Hisle attempted to account for some differences in the properties with her adjustments to the sale prices, she provided no explanation as to how she determined the adjusted amounts for the various features. *Hisle testimony; Resp. Ex. 1*.
- g. The Respondent also contends that one of the comparable properties used in the appraisal is located quite far away from the subject property. *Hisle testimony*. According to Ms. Hisle, there were sufficient sales of closer properties to estimate the property's value. *Id.* Further, she argues, one of the appraisal's comparable properties' houses is significantly smaller in size than the subject property's house. *Id.* To the extent Ms. Hisle disputes the Petitioners' appraiser's choice of comparable properties, the Board finds this argument unpersuasive. 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 those comparable properties to value the differences between them. Absent evidence to the contrary, the comparable properties chosen by the appraiser or the adjustments made by the appraiser in a USPAP-compliant appraisal will be deemed reasonable.

### **Conclusion**

- h. The weight of the evidence supports the Petitioners' case. The Board finds in favor of the Petitioners and holds that the value of the property is \$112,500.

### **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

---

Commissioner,  
Indiana Board of Tax Review

---

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>.**