

REPRESENTATIVE FOR PETITIONER:

Simon D. Jahner, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Tara Acton, Wayne Township Deputy Assessor

Michael Thompson, Wayne Township Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Simon D. Jahner,	)	Petition: 49-901-02-1-5-01121
	)	Parcel: 9023963
Petitioner,	)	
	)	
v.	)	
	)	County: Marion
Wayne Township Assessor,	)	Township: Wayne
	)	Assessment Year: 2002
Respondent	)	

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Appeal from the Final Determination of the  
Marion County Property Tax Assessment Board of Appeals

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**April 18, 2005**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the “Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

1. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner filed a Form 131 Petition for Review of Assessment, petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on April 6, 2004. The Marion County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination on March 26, 2004.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Paul Stultz, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3, held the hearing in Indianapolis on October 19, 2004.

3. The following persons were sworn as witnesses at the hearing:
  - a. Simon D. Jahner, property owner,
  - b. Michael Thompson, Wayne Township Deputy Assessor,
  - c. Tara Acton, Wayne Township Deputy Assessor.

4. List of Exhibits

Petitioner’s Exhibit 1 — Spreadsheet with parcels used by the assessor in reassessment,  
Petitioner’s Exhibit 2 — Summary of problems with above listed parcels,  
Petitioner’s Exhibit 3 — Map detailing neighborhood boundaries,  
Petitioner’s Exhibit 4 — Additional sales disclosures in immediate neighborhood,  
Petitioner’s Exhibit 5 — List detailing the Assessor used highest sales available,  
Petitioner’s Exhibit 6 — Appraisal prepared by Steve Hartranft,  
Petitioner’s Exhibit 7 — Form 131 Petition,  
Petitioner’s Exhibit 8 — Thirteen Sales Disclosure Forms, one with Property Record Card attached; the remaining twelve have Marion County complete tax reports and multiple listing reports attached,

Respondent’s Exhibit 1 — Subject Property Record Card,  
Respondent’s Exhibit 2 — Sales Disclosure Form of subject property,

Respondent's Exhibit 3 — Listing of the three comparables used in Petitioner's Exhibit 6, with each sales disclosure attached,  
Respondent's Exhibit 4 — Copy of page 53 of the INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, MASS APPRAISAL OF REAL PROPERTY,  
Respondent's Exhibit 5 — Two worksheets used to determine the neighborhood factor for the subject neighborhood with thirteen Sales Disclosure Forms attached,  
Board Exhibit A — Form 131 Petition,  
Board Exhibit B — Notice of Hearing.

5. The subject property is a single-family dwelling located at 120 South Hancock, Indianapolis. The location is in Wayne Township.
6. The Administrative Law Judge did not conduct an on-site inspection of the subject property.
7. The current assessed value of the property for 2002 is:

Land \$4,200	Improvements \$32,100	Total \$36,300.
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8. Petitioner contends the assessed value of the property should be:

Land \$2,000	Improvements \$22,000	Total \$24,000.
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#### **JURISDICTIONAL FRAMEWORK**

9. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

## ADMINISTRATIVE REVIEW AND BURDEN

10. 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).
11. 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”).
12. 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.

## ANALYSIS OF THE ISSUE

### *Is the assessed value of the subject property excessive?*

13. Petitioner argued that the local officials erred in the calculation of the neighborhood factor. Petitioner also argued that the assessment is more than the fair market value of the property. Petitioner contended the total assessed value should be \$24,000.
14. The Petitioner claimed the calculation of the neighborhood factor was erroneous. *Petitioner Exhibit 2*. The Petitioner pointed out that six of the comparables used to recalculate the subject neighborhood factor by the Respondent were duplexes. The Petitioner asserted the subject property is a single-family residence that is not comparable to duplexes. *Jahner testimony; Respondent Exhibit 5*. The Petitioner also contended the

Respondent used one parcel three times and when another parcel sold twice, the Respondent used only the higher sale. *Jahner testimony; Petitioner Exhibit 1.*

15. The Petitioner identified twenty-two sales that occurred in the neighborhood. The Petitioner contended these sales established that the market value of the property should be \$22,330. *Petitioner Exhibits 1, 2, 4, 5.*
16. In further support of this position, the Petitioner presented an appraisal that estimated the value of the property to be \$24,000 as of May 4, 2000. *Petitioner Exhibit 6.* The Petitioner presented the following testimony concerning this appraisal:
  - a. “To determine the value using the sales comparison approach, he [the appraiser] used three comps [comparable properties] ...these comparable sales that he used were outside the defined neighborhood.” *Jahner testimony.*
  - b. “All the data on comp one, other than it being out of that defined neighborhood, is good data, there’s not a problem with that comparable sale. Comp two, I would say we can throw it out because that was a bank transaction and he never should have used that sale...Comp 3 is a good sale, I don’t see a problem with that one....” *Id.*
  - c. “I don’t put a lot of weight into that appraisal, I’m putting most of the weight in additional sales....” *Id.*

The appraisal also contains a cost approach valuation, which concluded the total value of the property is \$25,500. *Petitioner Exhibit 6 at 2.*

17. Petitioner stated that if he were to sell it, the asking price for the property would be \$32,000. *Petitioner Exhibit 7.* The recent sales history of the property is as follows:
  - a. On April 10, 1996, Cummings Federal Credit Union sold the property to Prolove Enterprises (“Prolove”) for \$17,500. *Jahner testimony.*
  - b. On February 6, 1998, Prolove sold the property to First Investment Group Corp. (“FIGC”) for \$15,800. *Petitioner Exhibit 2 at B.*
  - c. On March 17, 1998, FIGC sold the property to Ralph W. Bibb for \$38,250. *Id.*

- d. On or about April 17, 2000, the Petitioner purchased the property from Bank One for \$22,500. *Petitioner Exhibit 7.*<sup>1</sup>

The Petitioner testified that both Prolove and FIGC are investment companies and these sales therefore represent arm's-length transactions. *Jahner testimony.*

18. Respondent contended the total assessed value should be \$36,300.
19. The Respondent testified the neighborhood factor was originally determined to be 79 percent, but it subsequently was revised to 70 percent. *Acton testimony.* At least nine of the sales identified by the Petitioner occurred in 2000. Therefore, they are outside the time frame used to make the neighborhood factor calculation. *Thompson testimony; Petitioner Exhibit 4.*
20. Respondent contended the adjustments in the appraisal are too large to be reliable. *Thompson testimony.*
21. Respondent also contended that the first two sales used in the appraisal were not arm's-length transactions because the first sale was by a corporation and the second comparable property was a Housing and Urban Development sale. *Id.* The Respondent further contended the sales by Prolove and FIGC are not arm's-length transactions because the sales were not between individuals. *Id.*
22. The Respondent pointed out that the property was insured for \$86,900. The Petitioner responded that the insurance was replacement insurance and that the \$86,900 was reasonably close to the replacement cost of \$72,796. *Acton testimony; Jahner testimony.*

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<sup>1</sup> The record is silent as to the chain of title between Mr. Bibb and Bank One.

## Neighborhood Factor

23. A neighborhood is defined as “[a] geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002- VERSION A (GUIDELINES), glossary at 14.
24. “The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services, and utilities. It also takes in to [sic] account the economic characteristics such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size.” GUIDELINES, app. B at 8.
25. The neighborhood factor is determined “based upon an analysis of residential properties that have sold within the neighborhood.” *Id.* The factor is computed by dividing “the total adjusted sale prices (improvements only) by the total Improvement Value.” *Id.* at 9.
26. In the calculation of a neighborhood factor, the comparability of properties is not an issue. “All improved residential properties that have sold with [sic; within] the neighborhood” must be initially included in the calculation of the neighborhood factor. GUIDELINES, app. B at 8. Sales that are not arm’s-length transactions should be excluded. *Id.* Petitioner proved that some sales were improperly excluded from the calculation and other sales were improperly included more than once. Respondent did not rebut the evidence regarding error in determining the neighborhood factor.
27. Petitioner introduced probative evidence that the neighborhood factor used for the assessment of his property was not determined properly, but presented no alternative calculation of what the neighborhood factor should be.

28. Petitioner proved error in the current neighborhood factor and the assessment that used it. Nevertheless, Petitioner must establish what the correct assessment should be. *Meridian Towers*, 805 N.E.2d at 478; *Clark*, 694 N.E.2d 1230. The record does not establish what the correct neighborhood factor should be. Consequently, Petitioner did not make a prima facie case based on the neighborhood factor. *Id.*

### Market Value

29. Petitioner presented three types of evidence in support his position on market value. He presented (1) sales data of other properties, (2) an appraisal of the subject property, and (3) sales data concerning the subject property.
30. As discussed, all neighborhood sales should be included in the calculation of a neighborhood factor. To establish the value of an individual property through the use of sales data, however, the properties must be comparable to each other. 2002 REAL PROPERTY ASSESSMENT MANUAL at 13 (incorporated by reference at 50 IAC 2.3-1-2). Petitioner's case failed to make this important distinction.
31. Petitioner identified twenty-two sales that occurred in the neighborhood.<sup>2</sup> The Petitioner subsequently presented thirteen additional sales disclosure forms of properties used in computing the revised neighborhood factor. The Petitioner offered no explanation as to the manner in which any of these properties are comparable to the property under appeal. Without specific reasons and explanation of the comparability of these properties, this evidence is not probative of market value and it failed to establish a prima facie case. *Long v. Wayne Township Assessor*, Cause No. 49T10-0404-TA-20, at 4 (Ind. Tax Ct. January 28, 2005).
32. Petitioner also presented an appraisal that estimated the value of the property to be \$24,000 as of May 4, 2000. There is no evidence that relates the appraisal's opinion of

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<sup>2</sup> These properties also represent the sales that were used to determine the neighborhood factor.



value to the valuation date of January 1, 1999. Consequently, the appraisal has no probative value. *Long*, slip op. at 8-9.

33. The Petitioner's own testimony established weaknesses in the appraisal he offered. The comparable sales used were outside the defined neighborhood. Petitioner admitted that he did not give much weight to that appraisal. He placed the most weight on additional sales. Furthermore, the appraiser recognized that his adjustments exceeded industry guidelines.
34. The appraisal also contains a cost approach valuation, which concluded the total value of the property is \$25,500. The Petitioner presented no discussion of this calculation of value, which the appraiser determined was less credible than the sales comparison approach. Such evidence with no explanation of its significance is not probative. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
35. Accordingly, the Board does not find the appraisal to be probative of error in the assessment.
36. On April 10, 1996, Cummings Federal Credit Union sold the subject property to Prolove for \$17,500. On February 6, 1998, Prolove sold the property to FIGC for \$15,800. On March 17, 1998, FIGC sold the property to Ralph W. Bibb for \$38,250. On or about April 17, 2000, the Petitioner purchased the property for \$22,500. The Petitioner testified that both Prolove and FIGC are investment companies and these sales therefore represent arm's-length transactions. The Respondent contended the sales by Prolove and FIGC are not arm's-length transactions because the sales were not between individuals.
37. Market value is defined as:

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a

sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed or advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

MANUAL at 10.

38. The Respondent identified no characteristic in the Prolove or FIGC sales that would indicate these transactions were not arm's-length or fail to reflect market value. The Respondent's conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
39. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4.
40. The property sold twice in 1998, for \$15,000 on February 6 and for \$38,250 on March 17. Even the Petitioner, who claims the market value should be \$24,000, does not contend the \$15,000 sale price is an accurate reflection of the market value on January 1, 1999. The sale date of March 17, 1998, is closer in time to the valuation date of January 1, 1999, than the Petitioner's purchase date (May 2000). Accordingly, the actual sale of the property for \$38,250, occurring within nine months of the valuation date of January 1, 1999, is deemed to be more credible than the subsequent sale of the property to the Petitioner approximately sixteen months after the valuation date.
41. The current total assessed value of the property is \$36,300. The actual sale of the property for \$38,250 on March 17, 1998, is the best evidence of market value and substantially supports the assessment.

## SUMMARY OF FINAL DETERMINATION

42. The Petitioner failed to make a prima facie case. There is no change in the assessment.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

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Commissioner, Indiana Board of Tax Review

## **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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.**