

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

**Petition:** 48-035-06-1-4-07420  
**Petitioner:** David Smith  
**Respondent:** Madison County Assessor  
**Parcel:** 26-997-23  
**Assessment Year:** 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter. The Board finds and concludes as follows:

**Procedural History**

1. Petitioner initiated an assessment appeal with the Madison County Property Tax Assessment Board of Appeals (“PTABOA”) by filing Form 130 dated January 2, 2008.
2. The PTABOA mailed its decision on May 19, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on June 19, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 18, 2009.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on June 2, 2009. He did not conduct an inspection of the property.
6. Mr. Smith represented himself and County Assessor Cheryl Heath represented the Respondent. The following persons were sworn as witnesses at the hearing:  
For the Petitioner — David Smith,  
For the Respondent — County Assessor Cheryl Heath and Lori Farris, PTABOA member.

**Facts**

7. This is a case about a residential property located at 117 Shepherd in Chesterfield.
8. The PTABOA determined the assessed value is \$10,500 for land and \$57,300 for improvements (total \$67,800).
9. The Petitioner requested an assessed value of \$10,500 for land and \$50,500 for improvements (total \$61,000).

## **Record**

10. The official record for this matter is made up of the following:
  - a. Petition for Review of Assessment (Form 131) with attachments,
  - b. Notice of Hearing,
  - c. Hearing Sign-In Sheet,
  - d. Digital recording of the hearing,
  - e. Petitioner Exhibit 1 – Photograph of the subject property,  
Petitioner Exhibit 2 – Photograph of property at 126 Linden Lane with notations,  
Petitioner Exhibit 3 – Photograph of property located at 116 Shepherd,  
Petitioner Exhibit 4 – Photograph of property located at 122 Shepherd,  
Petitioner Exhibit 5 – Photograph of property located at 148 Mill Creek with tax  
billing information attached,  
Petitioner Exhibit 6 – Photograph of property located at 227 Pick with tax billing  
information attached,  
Petitioner Exhibit 7 – Photograph of property located at 132 Mill Creek with tax  
billing information attached,  
Respondent Exhibits – None,
  - f. These Findings and Conclusions.

## **Contentions**

11. Summary of the Petitioner's case:
  - a. The subject property should be assessed at \$61,000 because the property behind it at 126 Linden Lane (Comp 1) sold for \$59,000 on October 23, 2007. This sale was between a realtor and an individual. *Smith testimony; Pet'r Ex. 2.*
  - b. The neighborhood conditions are shown in the photographs of the properties located at 116 Shepherd and 122 Shepherd. A part of determining a property's value is the neighborhood where it is located. *Smith testimony; Pet'r Ex. 3, 4.*
  - c. The property located at 148 Mill Creek (Comp 2) is a brick home with a 2-car, 2-story garage. Comp 2 is assessed at \$61,800. Another property located down the street from the subject property at 132 Mill Creek (Comp 3) is identical to the subject property except that it lacks gutters and a paved drive. Comp 3 is assessed at \$58,700. The property located at 227 Pick (Comp 4) is a stone home with a 2-car garage. Comp 4 is assessed at \$54,700 for 2006 and \$62,700 for 2007. *Smith testimony; Pet'r Ex. 5, 6, 7.*

12. Summary of the Respondent's case:
  - a. The Petitioner's comparables are not the same ones he presented to the PTABOA. Without the property record cards for these comparables, it is not possible to compare characteristics such as grade, condition, and age between the subject property and the comparables. *Heath testimony*.
  - b. The photograph of 132 Mill Creek shows deterioration of that property. The subject property is in better condition than 132 Mill Creek. *Heath testimony*.
  - c. The PTABOA felt the subject property would sell for \$67,000. The PTABOA's decision is correct. *Heath testimony*.

### Analysis

13. A Petitioner who seeks 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). In making its case, a 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”).
14. The Petitioner failed to prove that the current assessment is wrong or what a more accurate assessment might be. This conclusion was arrived at for the following reasons:
  - a. Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It means “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.” Ind. Code § 6-1.1-31-6(c); REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- b. The Petitioner presented photographs of two neighboring properties to demonstrate neighborhood conditions, which the Petitioner implied reduce the value of his property. While the photographs provide some evidence about the appearance of two homes across the street from the subject property and they perhaps give a little indication about the desirability of the neighborhood, the Petitioner did not establish how much those considerations might specifically affect the market value-in-use of his property. Even if neighboring properties bring down the value of the subject property, that isolated fact fails to prove what a more accurate valuation for the subject property might be.
- c. The Petitioner compared the assessments of neighboring properties (Comp 2, Comp 3, and Comp 4) to his assessment in an attempt to show that his property is over assessed. But he failed to establish specific facts and explanation for how those other properties are truly comparable.<sup>1</sup> The Petitioner failed to deal with how differences affect the relative values of the properties. Without specific facts and analysis about the similarities and differences of the properties, such evidence is not probative. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (stating that the parties are responsible for explaining the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable property, and how any differences affect the relevant market value-in-use of the properties). Unsupported conclusions about relative values cannot be the basis for any legitimate comparison and they do not help to make a case for a lower assessment.
- d. The Petitioner also offered evidence about the sale of a neighboring property, Comp 1, to show that the subject property is over assessed. Comp 1 sold for \$59,000 on October 23, 2007. But the Petitioner failed to establish specific facts about the subject property and Comp 1 that might form the basis for comparing values. *Id.* Furthermore, a 2006 assessment must reflect value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Evidence of value as of any other date must have some explanation as to how it demonstrates or is relevant to value as of the required valuation date. *See Long*, 821 N.E.2d at 471. The Petitioner failed to establish how the sale price for Comp 1 might relate to value as of January 1, 2005. As a result, the Comp 1 sale does not help to prove the current assessed value is wrong or what a more accurate value might be.

15. Where the Petitioner fails to provide probative evidence supporting his position that an assessment should be changed, the Respondent's duty to support the assessment with

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<sup>1</sup> The Petitioner's conclusions about comparability appear to be based on what can be seen in the photographs of his property and the purported comparables—general size and style, brick exterior, 1-car or 2-car garage, and type of drive. Although those facts are a start, many additional factors—such as land size, age of the home, square footage, number of bedrooms, number of bathrooms, air conditioning, etc.—must all be considered for any legitimate comparison.

substantial evidence is not triggered. *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 Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

### Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

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

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Commissioner,  
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>