

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

**Petition Nos.:** 84-002-06-1-5-00741  
84-002-06-1-5-00742  
84-002-06-1-5-00743  
**Petitioner:** Larry J. Smith  
**Respondent:** Vigo County Assessor  
**Parcel Nos.:** 840610292006000002  
840613151002000002  
840613152001000002  
**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 Vigo County Property Tax Assessment Board of Appeals (PTABOA) by written document dated April 18, 2007.
2. The PTABOA issued its decision on November 1, 2007.
3. The Petitioners filed an appeal to the Board by filing three Form 131 petitions dated December 9, 2007. The Petitioners elected to have their cases heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 26, 2008.
5. The Board held an administrative hearing on December 4, 2008, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
  - a) For Petitioners: Larry and Rachael Smith, Petitioners
  - b) For Respondent: Susan McCarty, Vigo County Assessor

## Facts

7. The properties are vacant lots located at 2722 North 18<sup>th</sup> Street, 1020 North 36<sup>th</sup> Street, and 921 North 36<sup>th</sup> Street, respectively, in the city of Terre Haute, Harrison Township in Vigo County.
8. The Administrative Law Judge (ALJ) did not inspect the property.
9. For 2006, the PTABOA determined the assessed value of subject properties to be \$4,700 for the land for 2722 North 18<sup>th</sup> Street, \$7,000 for the land for 1020 North 36<sup>th</sup> Street, and \$4,200 for the land for 921 North 36<sup>th</sup> Street. There are no improvements on any of the parcels.
10. The Petitioners requested an assessed value of \$2,000 for 2722 North 18<sup>th</sup> Street, a value of \$4,800 for 1020 North 36<sup>th</sup> Street, and a value of \$4,000 for 921 North 36<sup>th</sup> Street.

## Issues

11. Summary of the Petitioners' contentions in support of an alleged error in the assessments:
  - a) The Petitioners contend that the assessed values of the properties in question are excessive, based on a prior Board determination and appraisals of the properties. *L. Smith testimony; Pet. Exs. 3 and 5.* According to Mr. Smith, the Petitioners appealed the assessed values of these properties to the Board for 2002, and won reductions in the values of the properties. *Id; Pet. Ex.3.* The Board based these reductions primarily on appraisals done by Bill Strecker and Associates, which the Petitioners offered as evidence in the current appeal as well. *Pet. Exs. 3 and 5.* The appraisals estimate a value of \$2,000 for 2722 North 18<sup>th</sup> Street, \$4,800 for 1020 North 36<sup>th</sup> Street, and \$4,000 for 921 North 36<sup>th</sup> Street as of December 31, 1999. *L. Smith Testimony; Pet. Ex. 5.*
  - b) The Petitioners argue that there have been no changes to the parcels since the Board determined the properties' value for 2002. *L. Smith Testimony.* According to Mr. Smith, all of the parcels are vacant wooded lots and property values have decreased. *Id.* Furthermore, if the county used sales information from 1999 and 1998 as a basis for the new land order, Mr. Smith argues, the 1999 values stated on the appraisals then should also be valid for the 2006 assessment year. *Id.*
  - c) Finally, the Petitioners contend the parcel located at 2722 N. 18<sup>th</sup> St. is not worth its assessed value because it borders the creek and the street fronting the lots is barricaded. *L. Smith testimony.* According to Mr. Smith, the parcel is "scavenger land" with junk cars and the well water in the neighborhood is contaminated. *Id.*

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

- a) The Respondent testified that for the 2006 assessment year, the county created a new land order, largely because of the appeals that were filed for 2002. *McCarty testimony; Resp. Ex. 1*. From those appeals, the county discovered the land order used at that time was too broad in defining neighborhoods, and a new land order was created for the 2006 assessment year which "tightened up" the neighborhoods for a better result. *McCarty testimony*. The land order was based on sales data from 1998 and 1999, and then trended to the January 1, 2005, valuation date. *Id; Resp. Exs.1 and 2*. The county used this land order to assign a value to the Petitioners' properties. *Id*. According to the Respondent, values increased for 2006, because property values had not started declining as of January 1, 2005. *Id*.
- b) The Respondent argues that the results of the Petitioners' previous appeals are not relevant to their 2006 values. *McCarty testimony*. According to Ms. McCarty, the appeals were for 2002, which had a valuation date of January 1, 1999. *Id*. The current appeals are for 2006, which has a valuation date of January 1, 2005. *Id*.
- c) Finally, the Respondent argues that the assessments are correct. *McCarty testimony*. According to Ms. McCarty, the PTABOA reviewed the assessments of the Petitioners' properties and made changes, assigning additional negative influence factors to two of the three parcels. *Id.; Resp. Ex. 4*. The third parcel already had significant negative influence factors assigned to it, and no additional changes were warranted. *Id*.

**Record**

13. The official record for this matter is made up of the following:

- a. The Petitions, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1: Form 131 petitions

Petitioner Exhibit 2: Form 130 petitions to the PTABOA

Petitioner Exhibit 3: IBTR determination for Petitions Nos. 84-002-021-4-00635, 84-002-02-1-5-00632, 84-002-02-1-4-00633, and 82-002-02-1-5-00634

Petitioner Exhibit 4: Plat map showing the subject properties

Petitioner Exhibit 5: Appraisals of the subject properties  
Petitioner Exhibit 6: Aerial photograph of 1020 North 36<sup>th</sup> Street and 921  
North 36<sup>th</sup> Street

Respondent Exhibit 1: Neighborhood land order  
Respondent Exhibit 2: Plat maps of the subject properties  
Respondent Exhibit 3: Sales used for 2006 land order  
Respondent Exhibit 4: Form 115s  
Respondent Exhibit 5: Property record cards for the subject properties

Board Exhibit A: Form 131 Petitions,  
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 value. The Board reached 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 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) *reh'g den. sub nom.; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But 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) In addition, for 2006, the 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).
- d) Here the Petitioners argue that the values of the properties should not change because the properties themselves did not change, and that the reduction ordered by the Board for the 2002 assessment year should carry over to the 2006 assessment year. However, according to Indiana Code § 6-1.1-4-4.5, the assessed value of real property is to be annually adjusted beginning with the 2006 assessment year to account for changes in the market values of properties. *See* also 50 IAC 21 *et seq.* While the Petitioners' 2002 through 2005 assessments were all based on a January 1, 1999, valuation date, the Petitioners' 2006 assessments were based on a January 1, 2005, valuation date. Thus, the assessments, by statute, change for the 2006 assessment year to account for changes in the market regardless of whether any physical changes have occurred to the properties. Moreover, in original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Therefore, evidence of a prior year's assessment is not sufficient to show that the current assessment is incorrect.
- e) The Petitioners further contend that their assessed values are overstated based on the properties' December 31, 1999, appraised values. As stated above, for 2006, a property's assessment is to reflect the value of the property as of January 1, 2005. Thus any evidence of market value must relate to the January 1, 2005, valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Here, the Petitioners presented an appraisal valuing the property six years prior to the valuation date. Mr. Smith argued that property values in general have

decreased. However, the Petitioners failed to present any evidence to support their contention that property values on January 1, 2005, were lower than property values in 1999. Unsupported and conclusory statements are not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioners' appraisals therefore do not raise a prima facie case that the properties were over-valued.

- f) Finally, to the extent that the Petitioners argue that the property located at 2722 N. 18<sup>th</sup> St. is not worth its assessed value because its well is contaminated, the parcel is "scavenger land," and the street fronting the lots is barricaded, the Petitioners also fail to raise a prima facie case. *L. Smith testimony*. While these factors may affect the properties' value, the Petitioners failed to relate those factors in any way to the market value-in-use of the properties. *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001) (The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor"). Moreover, these factors were already taken into consideration in determining the properties' 2006 assessed values. According to the Respondent, the county applied a -30% and a -25% influence factor to the lot. The Petitioners failed to demonstrate why the Board should award any further reduction of the property's assessed value.
- g) The Petitioners failed to raise a prima facie case that their properties were assessed in excess of their 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**

14. The Petitioners 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 Indiana Board of Tax Review now determines that the assessments 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>.**