

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

**Petition No.:** 45-026-06-1-5-00016  
**Petitioner:** Marko Varinac, *et al.*  
**Respondent:** Lake County Assessor  
**Parcel No.:** 007-18-28-0585-0055  
**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 Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 24, 2007.
2. The PTABOA issued notice of its determination on June 11, 2010.
3. The Petitioners filed their Form 131 Petition with the Board on July 22, 2010. 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 November 19, 2010.
5. The Board held an administrative hearing on December 20, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners: Marko Varinac, property owner

No one appeared for the Respondent.

**Facts**

7. The subject property is a residential property located at 1707 Poplar Lane, Munster, in Lake County.
8. The ALJ did not conduct an on-site visit of the property.

9. For 2006, the PTABOA determined the assessed value of the subject property to be \$63,500 for the land and \$378,800 for the improvements, for a total assessed value of \$442,300.
10. The Petitioners requested an assessment of \$63,500 for the land and \$250,000 for the improvements, for a total assessed value of \$313,500.

### **Issues**

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
  - a. The Petitioners contends that their property is over-assessed based on an Indiana Board of Tax Review determination on the property's March 1, 2002, value. *Varinac testimony; Petitioner Exhibit 2*. According to Mr. Varinac, the Board determined the assessed value of the property to be \$286,500 for the 2002 assessment. *Id.* Mr. Varinac argues, therefore, that the assessor should have used the \$286,500 value from the Board determination to trend for the property's 2006 value. *Varinac testimony*. Instead, Mr. Varinac contends that the assessor started with \$370,900 – the assessed value of the property for 2002 prior to the Board's determination lowering the property's value – and trended that value to \$442,300. *Id.; Petitioner Exhibit 3*.
  - b. The Petitioners further contend their property is over-assessed based on the assessment of a neighboring property. *Varinac testimony*. According to Mr. Varinac, the comparable property is "identical" in design and interior fixtures but is assessed at \$117.00 per square foot, while the Petitioners' property is assessed at \$137.00 per square foot. *Id.* In support of this contention, Mr. Varinac submitted assessment information and a drawing of the comparable property. *Petitioner Exhibit 4*.
  - c. Finally, the Petitioners argue that the properties used by the assessor to support the assessment are not comparable to their house. *Varinac testimony; Petitioner Exhibit 5*. According to Mr. Varinac, the Respondent's "comparable" properties have finished basements, hardwood floors, granite countertops, and grade one cabinets and stainless steel appliances. *Id.* Mr. Varinac contends that the Petitioners' house does not have those features. *Id.*

### **Record**

13. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. The compact disk recording of the hearing labeled Marko Varinac,

c. Exhibits:

Petitioner Exhibit 1 – Form 131 petition,  
Petitioner Exhibit 2 – Indiana Board of Tax Review determination on the  
subject property for 2002, dated August 11, 2005,  
Petitioner Exhibit 3 – Form 11 R/A, assessment information, property  
record card, and photograph of the subject property,  
Petitioner Exhibit 4 – Assessment information for 9844 Sequoia Court,  
Petitioner Exhibit 5 – Letter from the Lake County PTABOA,

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of Hearing, dated November 19, 2010,  
Board Exhibit C – Hearing sign-in sheet,  
Board Exhibit D – Proof of mailing.

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to establish an error in their property's assessment. 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). Appraisers traditionally have 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. Indiana assessing officials generally assess 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 market value-in-use as determined using the Guidelines is presumed to be accurate. *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 Ct. 2006). A taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal practices. 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 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.
- c. Here the Petitioners contend that the Board lowered their property’s assessment for 2002 to \$286,500. *Varinac testimony*. The Board notes, however, that the property’s 2002 assessed value was based on a valuation date of January 1, 1999. MANUAL at 12. In its determination, the Board found the value of the property’s improvements to be \$222,000 for the March 1, 2002, assessment date based on the Petitioners’ January 28, 1998, contract to build the house. When added to the assessed value of the land, the assessed value of the property for 2002 was \$286,500.<sup>1</sup> As stated above, the 2006 assessment must reflect the value of the property as of January 1, 2005. 50 IAC 21-3-3. Mr. Varinac failed to provide any evidence of how their property’s January 1, 1999, value related to the January 1, 2005, valuation date for the March 1, 2006, assessment year.

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<sup>1</sup> The Petitioner purchased the unimproved land separately for \$54,800 in 1997. The Board found that the purchase price of the land did not include development costs and was not probative of the value on January 1, 1999, the valuation date for the March 1, 2002, assessment.

- d. Mr. Varinac argues, however, that the assessor was somehow required to start with the property's January 1, 1999, value and "trend" it to January 1, 2005, for the March 1, 2006, assessment date. The Indiana Tax Court addressed an analogous argument in *Charwood LLC v. Bartholomew County Assessor*, 906 N.E.2d 946 (Ind. Tax Ct. 2009). In that case, the Petitioners argued that, absent a physical change in their properties or a change in the properties' use, the assessed value of a property should "roll over" between general reassessment years. The Tax Court noted that "Prior to 2002, the assessed value of real property in Indiana was determined under Indiana's own assessment regulations and bore no relation to any external, objectively verifiable standard of measure. Beginning in 2002, however, Indiana's overhauled property tax assessment system began to incorporate an external, objectively verifiable benchmark -- market value-in-use." 906 N.E. 2d at 951 (citations omitted). According to Judge Fisher, "*Implicit in this new system of assessment is the recognition that market trends can affect the assessed value of real property.*" *Id.* (emphasis in original). Thus, the Judge concluded, "the Petitioners' properties could have been undervalued as of the 2003 tax year despite the fact that none of their properties had been physically changed or put to a new use after the 2002 tax year." Like the Petitioners in *Charwood*, here the Petitioners merely claimed that their 2002 assessed value should "roll forward" to be trended in 2006. Absent evidence of the property's value as of January 1, 2005, the Petitioners failed to raise a prima facie case that their property's assessment was in error merely by arguing that the assessor should have started its trending with the property's January 1, 1999, value.
- e. Additionally, each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year does not prove its true tax value in a different tax year. *Id.* This is particularly true for the March 1, 2006, assessment year and beyond because starting in the 2006 tax year assessments must be annually adjusted to reflect changes in value between general reassessment years. See Ind. Code § 6-1.1-4-4.5(b) (requiring the Department of Local Government Finance (DLGF) to adopt rules for establishing a system to adjust assessed values in years between general reassessments); 50 IAC 21 (DLGF's rules governing annual adjustments). Therefore the Petitioners' evidence of the property's value in 2002 is not probative of the property's value in 2006.
- d. The Petitioners further argue that their property is over-valued based on the assessed value per square foot of another property in his neighborhood. *Varinac testimony*. In support of this contention, the Petitioners provided assessment information and the builder's specifications for a nearby property. *Petitioner Exhibit 4*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind.

Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*

- e. Further, the Petitioner failed to show the comparability of its "comparable" property. By comparing their property's assessed value to the assessed value of a comparable property, the Petitioners essentially rely on a "sales comparison" method of establishing the market value of the property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, Mr. Varinac argues that the nearby property was "identical" to the subject property. However, while the photograph of the Petitioners' property indeed appears similar to the neighboring property, the assessment data provided by the Petitioners show that the Petitioners' house is substantially larger than the Petitioners' "comparable" property. Because the Petitioners made no attempt to value the differences between the properties, the Petitioners' comparable assessment analysis must fail.
- f. The Board therefore finds that the Petitioners failed to raise a prima facie case that their property was assessed in error. Where a petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

16. The Petitioners' evidence failed to raise a prima facie case that their property is over-valued. The Board therefore finds in favor of the Respondent. The Board, however, reaches this conclusion reluctantly in light of the Assessor's lack of

regard for its process and the time and expense incurred by the Petitioners in pursuing their case.<sup>2</sup>

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioners' property 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

<sup>2</sup> The Board reminds the Assessor that to the extent that it believes its assessment is correct, the Assessor should appear at the hearing and vigorously defend its assessment. If the Assessor believed the assessment was in error, the Assessor should have stipulated or settled the matter prior to hearing. The Board does not appreciate wasting its resources or those of the Petitioners to hold a hearing where the Respondent does not even appear.

### 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>