

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

**Petition #:** 04-011-03-1-5-00001  
**Petitioners:** Kenneth & Melissa Fellure  
**Respondent:** Oak Grove Township Assessor (Benton County)  
**Parcel #:** 12-18-444-010000-11  
**Assessment Year:** 2003

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 Benton County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 12, 2004.
2. The PTABOA mailed notice of its decision on August 25, 2004.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 with the Benton County Assessor on September 13, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 13, 2006.
5. The Board held an administrative hearing on June 6, 2006 before the duly appointed Administrative Law Judge Joan Rennick.
6. Persons present and sworn in at hearing:

For Petitioners: Kenneth Fellure, Taxpayer  
Melissa Fellure, Taxpayer  
Judy A. Tudor, Appraiser

For Respondent: Kelly Rose, Benton County, Deputy Assessor  
Linda Cripe, Benton County Assessor's Office  
Jennifer Becker, Consultant on Behalf of Benton County Assessor<sup>1</sup>

### Facts

7. The subject property is located at 406 E. Luin Street, Oxford, Indiana, and it is classified as a one-family residential dwelling, as is shown on the property record card for parcel 12-18-444-010000-11.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined that the assessed value of the subject property is \$13,600 for the land and \$118,300 for the improvements for a total assessed value of \$131,900.
10. The Petitioners request a total value of \$85,000.

### Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a) The Petitioners submitted an appraisal of the subject property prepared by Judy A. Tudor, a certified appraiser. *Pet'r Ex. 1*. Ms. Tudor prepared the appraisal in connection with the Petitioners' tax appeal. *Tudor testimony*. Ms. Tudor estimated the market value of the subject property to be \$85,000 as of "1998/1999." *Pet'r Ex. 1*.
  - b) Ms. Tudor acknowledged that the appraisal submitted by the Petitioner was a corrected version of an appraisal submitted at the PTABOA hearing. *Tudor testimony*. In the original appraisal, Ms. Tudor had included certain information about comparable property #3 that she had obtained from another appraisal her

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<sup>1</sup> The Oak Grove Township Assessor is the proper Respondent in this case because she made the original assessment determination. *See* Ind. Code § 6-1.1-15-3. The Oak Grove Township Assessor did not appear at the hearing. While Ms. Becker purported to represent the Oak Grove Township Assessor, she did not provide written authorization signed by the Oak Grove Township Assessor for such representation. *See* Ind. Admin. Code tit. 52, r. 3-1-4 (allowing a party to appear before the Board on his or her own behalf or by a representative that is expressly authorized by the party in writing to appear on the party's behalf). The written authorizations provided by Ms. Becker are signed by Janet Guimond, the Benton County Assessor, and Kelly Rose, the Benton County Deputy Assessor. *See Resp't Exs. 1A, 1I*. The Benton County Assessor was statutorily authorized to appear as an additional party by filing a notice of appearance prior to the hearing. Ind. Code § 6-1.1-15-3(p); *see also*, Ind. Admin. Code tit. 52, r. 2-6-6(b). While Ms. Becker filed a notice of appearance authorizing her to represent the Benton County Assessor, the notice did not specify that the County Assessor was appearing as party in the case. Nonetheless, given that this issue of representation was not raised prior to or at the hearing, the Board will treat Ms. Becker as the Respondent's representative and will consider the evidence and arguments that she proffered on behalf of the Respondent.

office had performed. *Tudor testimony*. She changed her appraisal of the subject property upon learning the correct information for comparable property #3. *Id.* In addition, Mr. Fellure had indicated that one of the sales Ms. Tudor had relied upon was a sheriff's sale pursuant to a foreclosure. *Id.* Ms. Tudor "threw out" that sale. *K. Fellure testimony*.

- c) Property values in Benton County generally are decreasing. *Tudor testimony; K. Fellure testimony*.
  - d) The subject property is not in better condition than are neighboring properties. *Id.* Since 2002, the Petitioners have made \$16,000 worth of repairs to the subject dwelling, particularly to the roof. *K. Fellure testimony*.
12. Summary of Respondent's contentions in support of the assessment:

- a) The appraisal that the Petitioners presented to the Board differs from the appraisal they presented to the PTABOA. *Becker testimony*. The details and data concerning one of the comparable properties - comparable #3 - changed. *Id.* This detracts from the credibility of the appraisal. *Becker argument*. The Respondent points to Standards Rule 1-1(c) from the Uniform Standards of Professional Appraisal Practice ("USPAP"), for the proposition that an appraiser "shall not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results." *Resp't Ex. 1H*. In addition, Ms. Tudor made different adjustments to the sale price of comparable #3 in the revised appraisal than she did in the original appraisal even with regard to features that remained the same. *Becker argument*. For example, in the original appraisal Ms. Tudor adjusted the sale price of comparable #3 upward by \$3,000 based on that property's lot size of 60' x 120'. *Resp't Ex. 1D*. In the revised appraisal, Ms. Tudor made a \$2,000 adjustment based upon the exact same lot size. *Resp't Ex. 1E; Pet'r Ex. 1*.
- b) The Respondent also presented a comparable sales analysis performed by Ms. Becker in support of the assessment. First, Ms. Becker examined the sale prices of properties that sold more than once within a one or two year period. *Becker testimony*. Based upon this "paired sales analysis," Ms. Becker determined that property values were increasing by 3.5% per year. *Id.; Resp't Ex. 1F*. Ms. Becker therefore used 3.5% as the factor by which to adjust her comparable sales to reflect a value as of January 1, 1999. *Becker testimony; Resp't Ex. 1F-1G*.
- c) Ms. Becker identified what she believed to be three properties that are comparable to the subject property. *Becker testimony; Resp't Ex. 1F*. Two of the properties are located in Oxford, Indiana and one is located in Fowler, Indiana. *Id.* Ms. Becker adjusted the sale prices to reflect values as of January 1, 1999, using the 3.5% factor derived from her paired sales analysis. *Id.* Ms. Becker then developed a spreadsheet and tried to determine the price per square foot of each

dwelling without any exterior features, outbuildings or land. *Id.* To do so, Ms. Becker took the time-adjusted sale price for each property and subtracted the amounts attributed on the property record card for land, outbuildings and exterior features. *Id.* Ms. Becker then made adjustments to reflect various differences between the comparable properties and the subject property, including differences relating to: square footage, the existence/size of basement or crawl space, the number of bathrooms and location. *Id.* The Respondent determined the amount of each adjustment from the property record cards of the properties being examined. For example, the Respondent added the cost of three plumbing fixtures to the sale price of comparable #2 to account for the fact that it had only 1.5 bathrooms as compared to the 2.5 bathrooms contained in the subject dwelling. *See Resp't Ex. F at 2.*

- d) After making the above-described adjustments, the Respondent determined an average price per square foot of dwelling area for the three comparable properties of \$21.60. *Becker testimony; Resp't Ex. F at 1.* The Respondent multiplied that number by the finished living area of the subject property (2100 square feet) to arrive at a value of \$45,360. *Id.* The Respondent then added the value of the subject property's land, outbuildings, exterior features, attached garage and basement/crawl as reflected on its property record card to arrive at a total value of \$117,660. *Id.* That number is within 5% of the subject property's assessed value, if the assessment condition rating of the subject dwelling were reduced from "good" to "average." *Id.*

### **Record**

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

- a) The Petition
- b) The tape recording of the hearing labeled IBTR # 6235<sup>2</sup>
- c) Exhibits:

Petitioner Exhibit 1: Appraisal of subject property for 1989 and 1999

Petitioner Exhibit 2: Multiple Listing Service (MLS) data sheets for sold properties in Oxford

Respondent Exhibit A: Notice of Appearance of Consultant on Behalf of Assessor

Respondent Exhibit B: Subject property record card (PRC)

Respondent Exhibit C: Photographs of Subject Property

Respondent Exhibit D: Copy of original appraisal submitted by Petitioner with Form 130

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<sup>2</sup> The Board also made a digital recording of the hearing.

Respondent Exhibit E: Copy of second appraisal submitted by Petitioner with Form 131  
Respondent Exhibit F: Comparable sales analysis supporting the assessment of the subject property  
Respondent Exhibit G: Paired sales analysis for development of time adjustment percentage, with sale disclosure forms for each sale.  
Respondent Exhibit H: Page 16 of USPAP 2004 Edition  
Respondent Exhibit I: Signature and Attestation Sheet

Board Exhibit A: The Form 131 Petition with attachments.  
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.

### **Respondent’s Hearsay Objection**

15. The Respondent objected to Ms. Tudor’s testimony that properties in Benton County are decreasing in value. *Becker objection*. The Respondent based its objection on grounds that Ms. Tudor’s testimony was hearsay. *Id.*

16. Pursuant to the Indiana Rules of Evidence, “Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Ind. Evidence Rule 801. Ms. Tudor did not testify as to any out-of-hearing statement to prove the truth of the matter asserted, *i.e.* that property values in Benton County were decreasing. While it is possible that Ms. Tudor based her testimony on hearsay rather than upon personal knowledge, the record does not reflect that she did so. Moreover, an expert witness such as Ms. Tudor may form her opinion based on inadmissible evidence, including hearsay, provided that it is of the type reasonably relied upon by experts in the field. *See* Evid. R. 703. The Board therefore overrules the Respondent’s objection.

#### Merits of the Petitioner’s Claim

17. The Petitioners provided sufficient evidence to support their contentions. The Board arrives at this conclusion because:
- a) The Petitioners contend that the assessment of the subject property exceeds its market value.
  - b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property 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). As set forth in the Manual, 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. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess real property.
  - c) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, 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) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with [USPAP].”). A taxpayer may also rely upon actual construction costs, sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- d) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4, 8. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal to establish the true tax value of a property should explain how the value estimated by the appraisal relates the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- e) The Petitioners submitted an appraisal estimating the value of the subject property to be \$85,000. *Pet'r Ex. 1*. The appraisal was performed by Judy A. Tudor, a licensed appraiser. Ms. Tudor attested that she prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* Ms. Tudor used the sales comparison approach in arriving at her opinion of value. *Id.*; *Tudor testimony*. Moreover, Ms. Tudor expressly estimated the market value as of "1998/1999," which is reasonably proximate to the appropriate valuation date of January 1, 1999. Thus, the Petitioner presented exactly the type of evidence recognized by the Manual and the Tax Court as sufficient to rebut the presumption that the Respondent's assessment of the subject property is correct. The Board therefore finds that the Petitioner presented a prima facie case that the current assessment is in error and that the correct assessment should be \$85,000.
- f) Because the Petitioners presented a prima facie case, the burden shifted to the Respondent to impeach or rebut Ms. Tudor's appraisal of the subject property. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
- g) The Respondent first points to errors contained in Ms. Tudor's original appraisal of the subject property. The original appraisal contained numerous errors in its description of a property located at 307 S. Sheets Street, which is listed as comparable sale #3 in the appraisal. The Respondent acknowledges that Ms. Tudor corrected those errors in the revised appraisal submitted to the Board, but argues that the errors raise doubts as to the credibility of Ms. Tudor's opinion. In support of its position, the Respondent points to USPAP Standards Rule 1-1(c), which states that an appraiser must not render appraisal services in a careless or negligent manner, such as by making a series of errors that although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results. *Resp't Ex. H*. The Respondent also points to the fact that, in her revised appraisal, Ms. Tudor changed some of her adjustments to the sale price for comparable #3 even though the physical features upon which those adjustments were based remained the same as in her original appraisal. *Becker argument; Resp't Exs. 1D-1E*.

- h) While the errors in Ms. Tudor's original appraisal detract somewhat from her credibility, the Board does not find that such errors deprive Ms. Tudor's opinion of probative value entirely. The errors highlight the fact that Ms. Tudor did not actually inspect comparable #3. Moreover, the fact that Ms. Tudor subsequently discarded a comparable sale contained in her original appraisal after being informed by Mr. Fellure that the property was sold at a sheriff's sale indicates a lack of thoroughness in her analysis, at least as it relates to the original appraisal. Nonetheless, Ms. Tudor made corrections when she became aware of the errors in her original appraisal, and the Respondent does not contend that Ms. Tudor's corrections do not accurately reflect the physical characteristics of comparable #3. Moreover, the corrections resulted in a very modest reduction of the adjusted sale price of comparable #3 (from \$86,600 to \$84,400), and it did not cause Ms. Fellure to alter her opinion of value.
- i) The Board also finds that Ms. Tudor did not adequately explain why her two appraisals reflect different adjustments attributable to the size of comparable #3's lot and garage despite that fact that she did not change any of the underlying data regarding those features. Nonetheless, the differences were minor and they do not appear to have significantly affected Ms. Tudor's overall opinion of value.
- j) The Respondent also offered Ms. Becker's opinion of value based upon her own sales comparison analysis. Ms. Becker is not a licensed or certified appraiser, although she is a Level II assessor/appraiser. *Becker testimony*. Moreover, unlike Ms. Tudor, Ms. Becker did not testify or otherwise certify that she prepared her sales comparison analysis in conformance with USPAP. While those facts affect how the Board weighs Ms. Becker's and Ms. Tudor's competing opinions of value, they are not dispositive of the question. Instead, the Board must examine Ms. Becker's sales comparison analysis in light of the standards set forth in the Manual and in decisions of the Indiana Tax Court.
- k) The sales comparison approach is based on the assumption that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute improved property already existing in the market place. MANUAL at 13. The appraiser locates sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value. *Id.* The adjustments represent a quantification of characteristics that cause prices to vary. *Id.* The appraiser "considers and compares all possible differences between the comparable properties and the subject property that could affect value," using objectively verifiable evidence to determine which items have an influence on value in the market place. *Id.* The appraiser quantifies the contributory values of the items affecting value in the market place and uses those contributory values to adjust the sale prices of comparable properties. *Id.* at 13-14.
- l) Thus, in order to use the sales comparison approach as evidence in a property assessment appeal, 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 two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent 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 proponent must explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71.

- m) Ms. Becker examined three properties that she asserts are comparable to the subject property. Ms. Becker bases her assertion of comparability on grounds that all of the dwellings: have a two-story section and a one-story section, are assigned a quality grade of “C,” are in average condition, and have similar amounts of total living area. *Becker testimony*. While the items identified by Ms. Becker are relevant to a proper sales comparison analysis, they ignore numerous characteristics that cause market prices to vary. Moreover, unlike Ms. Tudor, Ms. Becker did not provide photographs of the properties upon which she premised her analysis. Based on those facts, the Board gives little weight to Ms. Becker’s sales comparison analysis.
- n) Even if the Board were to accept the proposition that the properties examined by Ms. Becker generally are comparable to the subject property, Ms. Becker’s adjustments to the sale prices of the purportedly comparable properties are not appropriate. Ms. Becker took her adjustments from the property record cards (“PRCs”) for the properties at issue. Thus, Ms. Becker based her adjustments upon the values, as determined under the Guidelines, for the physical features in question. Ms. Becker’s analysis, therefore, mingles two separate approaches to value – the mass appraisal cost approach utilized by the Guidelines and the sales comparison approach. In doing so, Ms. Becker essentially compares apples to oranges. For example, Ms. Becker relied upon a property located at 207 W. Benton as one her comparable properties. That property sold for a time-adjusted price of \$59,830, yet it is assessed under the Guidelines for \$113,000. *Resp’t Ex. 1F at 1*, 7-8. If the costs assigned to the various physical components of that property under the Guidelines corresponded to their contributory market values, the property’s assessment would closely approximate its sale price.
- o) The distortion caused by Ms. Becker’s mingling of approaches is magnified by the fact that once she determined a value for the subject dwelling’s finished living area, she simply added the values listed on the subject property’s PRC for outbuildings, exterior features and an attached garage to arrive at her final opinion of value. *See Becker testimony; Resp’t Ex. 1F at 1*. The values for those features, however, total \$46,900, or slightly more than forty percent (40%) of Ms. Becker’s overall opinion of value for the subject property (\$117,000). *See Resp’t Ex. F at 1*.

- p) Based on the foregoing, the Board finds Ms. Tudor's opinion of value to be more convincing than either the Respondent's assessment of the subject property or Ms. Becker's opinion of value based upon her sales comparison analysis. Consequently, the Petitioner demonstrated by a preponderance of the evidence that the current assessment is incorrect, and that the subject property should be assessed for \$85,000.

### **Conclusion**

18. The Petitioners made a prima facie case. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of Petitioner.

### **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: September 1, 2006**

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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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.