

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

**Petition #:** 84-004-02-1-5-00017  
**Petitioners:** Fredric M. & Vera J. Schuler  
**Respondent:** Honey Creek Township Assessor (Vigo County)  
**Parcel #:** 103-09-23-352-010  
**Assessment Year:** 2002

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

**Procedural History**

1. The Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated October 6, 2003.
2. The Petitioners received notice of the decision of the PTABOA on July 26, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on August 23, 2004. The Petitioners elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated May 12, 2005.
5. The Board held an administrative hearing on June 22, 2005, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn as witnesses at the hearing:  
For Petitioners – Fredric M. Schuler, property owner,  
For Respondent – Ann Akers, Vigo County PTABOA,  
Gloria Donham, Vigo County PTABOA,  
Deana G. Chrisman, Vigo County Assessor’s Office,  
Susan J. McCarty, Vigo County Assessor’s Office.

**Facts**

7. The property is a 2,394 square foot dwelling on a lot measuring 1.0 acres located at 7240 August Court in Terre Haute.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.

9. The assessed value as determined by the Vigo County PTABOA:  
Land \$58,000                      Improvements \$271,900                      Total \$329,900.
10. The assessed value requested by Petitioners:  
Land \$49,000                      Improvements \$246,000                      Total \$295,000.

**Issue**

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The current assessment of the subject property is over-stated compared to the 2001 purchase price of \$265,000. *Schuler testimony; Petitioner Exhibit 1, 2.*
  - b) The subject property was purchased in 2001 from a local bank. *Schuler testimony.* The bank held and marketed the subject property for more than a year after it repossessed the property. *Schuler testimony.* A realtor handled the transaction. The Petitioners bought the property in an arm's-length, open market transaction. *Schuler testimony.*
  - c) The property located at 7260 Augusta adjoins the subject property and is very similar to the subject except it is slightly smaller. The 7260 Augusta property sold three times: in 2000 for \$253,000; in 2001 for \$249,000; and in 2004 for \$247,500. The assessment of this property is not representative of its highest sale price of \$253,000 in 2000. *Schuler testimony.* The original assessment for this property (\$307,000) was reduced to \$263,000 by the local assessing official. *Schuler testimony.*
  - d) There have been eleven sales in the Viscaya Point Subdivision between 1997 and 2004 with most of those sale prices at 90 percent of the current assessments. *Schuler testimony.* Only the property located at 7499 Augusta sold for more than its assessed value (sold for \$345,000 and assessed for \$319,000). *Schuler testimony.* The sale prices of these properties show that the current assessment of the subject property is overstated. *Schuler testimony; Petitioner Exhibit 1, 2.*
  - e) There has been little or no appreciation of property values in the subject neighborhood in recent years. *Schuler testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The sales of four comparable properties in the subject property's subdivision support the assessments of the comparable properties as well as the subject property. *Donham testimony; Respondent Exhibit 1, 2, 3, 4.*
  - b) The property located at 7401 Augusta sold in 2001 for \$349,500 and is assessed at \$346,700. The property located at 7499 Augusta sold in 2001 for \$345,000 and is

assessed at \$329,200. The property located at 7280 Augusta sold in 2000 for \$300,000 and is assessed at \$315,000. The proximity of sale prices and assessments establishes that the assessments are correct. *Donham testimony; Respondent Exhibit 1, 2, 3.*

- c) While the values in the subdivision where the subject property and the comparable properties are located may have experienced a decrease between 1998 and 1999, the values have remained relatively stable without any increase. *Donham testimony; Akers testimony; McCarty testimony.*

### **Record**

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

- c) The Petition,
- d) The tape recording of the hearing labeled BTR 6203,
- e) Exhibits:
  - Petitioner Exhibit 1 – Summary of contentions,
  - Petitioner Exhibit 2 – Spreadsheet of sales in neighborhood,
  - Petitioner Exhibit 3 – Subject cost breakdown,
  - Petitioner Exhibit 4 – Tax payment history of subject,
  - Respondent Exhibit 1 – Sales disclosure and property record card for 7401 Augusta Court,
  - Respondent Exhibit 2 – Sales disclosure and property record card for 7499 Augusta Court,
  - Respondent Exhibit 3 – Sales disclosure and property record card for 7280 Augusta Court,
  - Respondent Exhibit 4 – Sales disclosure for 7401 Augusta Court and a property record card for 7351 Augusta Court,
  - Board Exhibit A – Form 131,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Notice of Appearance,
  - Board Exhibit D – Hearing Sign In Sheet,
- f) 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 a Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the case. *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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. There is sufficient evidence to support the Petitioners' claim that the assessment should be changed. This conclusion was arrived at because:
- 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); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter 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. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter GUIDELINES). 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) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c) The Petitioners offered evidence relating to the sale prices and assessments of several other properties. They failed to provide probative evidence or analysis to establish the comparability of any of these properties to the subject property. Therefore, the other sales and assessments lack probative value. *Id.* at 470-471.

- d) The evidence establishes that the subject property sold for \$265,000 in 2001. There is no evidence that the sale was anything other than an arm's-length transaction and a reasonable indication of market value. For purposes of relevance to the 2002 assessment, however, it is necessary to establish how that value relates to value as of January 1, 1999. *Id.*
- e) Both parties offered conclusory testimony that for the period from 1999 to 2001, property values remained stable in this particular neighborhood. Conclusory statements are not probative evidence, but where both the Petitioners and the Respondent are claiming stable values for that period, the Board will accept that representation as true for this case. Therefore, the relationship of values between the time the subject property sold and the valuation date requires no adjustment. The purchase price is direct, probative evidence of the market value-in-use of the subject property. It makes a prima facie case for the Petitioner.
- f) The burden shifted to the Respondent to present evidence to rebut or impeach the Petitioners' case. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- g) The Respondent attempted to rebut by establishing that the neighborhood assessments were correctly determined because other properties in the same neighborhood have assessed values within an acceptable range of actual sale prices. The Respondent does not provide any authority or explanation for the conclusion that there is an acceptable range for establishing the value of the property for assessment or what that range might be. Therefore, this conclusory statement does not qualify as probative evidence. *Whitley Products*, 704 N.E.2d at 1119. Furthermore, because the taxpayer is specifically permitted to offer evidence relevant to the market value-in-use of a property that includes actual construction costs, sales and appraisals, an argument that generally the neighborhood assessments are correct or that the value determined from the cost approach in the guidelines is somehow close enough to be acceptable appears to be wrong. *MANUAL* at 5.

### **Conclusion**

16. The evidence makes a prima facie case for the Petitioners' claim that the assessment is too high. The Respondent did not successfully rebut or impeach that evidence. The Board finds in favor of the Petitioners. The total assessment on this property should be changed to \$295,000, which was the amount requested by the Petitioners on their Form 131. The Board recognizes that this amount is more than the purchase price evidence. The change is limited to this amount because that is all that Petitioners requested.

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

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

\_\_\_\_\_  
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>.