

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

**Petition:** 06-019-06-1-5-00419  
**Petitioners:** Joseph P. and Julie L. Smith  
**Respondent:** Boone County Assessor  
**Parcel:** 019-11480-48  
**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. The Petitioners initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (PTABOA) by filing a Boone County Appeal Worksheet on November 21, 2007.
2. The PTABOA issued notice of its decision on March 20, 2008.
3. The Petitioners appealed to the Board by filing a Petition for Review of Assessment (Form 131) and elected to have this case heard according to small claims procedures. The Board received the Form 131 on April 22, 2008.
4. The Board issued a notice of hearing to the parties dated December 5, 2008.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on January 8, 2009. He did not conduct an inspection of the property.
6. The Petitioners, Joseph P. Smith and Julie L. Smith, as well as County Assessor Lisa Garoffolo, PTABOA Member Charles Ewing, and PTABOA President Jeffrey Wolfe were sworn as witnesses at the hearing.

**Facts**

7. The property is a single family residence located at 4652 Winterstill Road in Zionsville.
8. The PTABOA determined the assessed value is \$78,200 for land and \$289,400 for improvements (a total of \$367,600).
9. The Petitioners contend that the assessed value should be \$75,900 for land and \$213,900 for improvements (a total of \$289,800).

## Contentions

### 10. Summary of the Petitioners' case:

- a. The Petitioners' property is currently assessed with a grade factor of B+2.<sup>1</sup> An identical house in the same neighborhood was assessed with a grade factor of C+2. The grade factor of the Petitioners' property should be reduced to C+2. *Joseph Smith testimony; Pet'rs Exs. 20, 21, and 21A.*
- b. There are significant discrepancies between the assessments of the Petitioners' home and the comparable property. Even though the two homes are basically the same, the assessed values differ considerably. *Joseph Smith testimony.*
- c. After the PTABOA hearing, the grade factor of that comparable property was raised to B. The two properties were built by the same builder and have the same architecture and floor plan. The two properties should receive the same grade factor. *Julie Smith testimony.*
- d. The Respondent's purportedly comparable properties really are not comparable to the Petitioners' property. Those properties are larger and their average selling price was \$497,827. The Petitioners purchased their home on April 20, 2005, for approximately \$365,000. *Joseph Smith testimony; Pet'rs Ex. 13.*
- e. The Petitioners did not attend the original PTABOA hearing because they were not notified of the date.<sup>2</sup> The PTABOA's Notification of Final Assessment Determination (Form 115) was not filled out correctly because it contained an incorrect address and provided no explanation for denying the appeal. *Joseph Smith testimony; Pet'rs Exs. 10 through 10B.*

### 11. Summary of the Respondent's case:

- a. The Petitioners purchased the property for \$365,796 on April 20, 2005. *Garoffolo testimony; Resp't Ex. 9.*
- b. A comparative market analysis demonstrates the average sales price of five properties during the relevant time frame was \$165 per square foot. Applying this value to the square footage of the Petitioners' home results in an assessed value of \$364,485, which approximates the current assessed value of \$367,600. Both the actual 2005 purchase price and the average square foot value support the current assessment. *Garoffolo testimony; Resp't Ex. 5.*

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<sup>1</sup> The property record cards show the Boone County Assessor uses the notation C++ to denote grade factor C+2 and the notation B++ to denote B+2. *Pet'rs Ex. 21; Resp't Ex. 9.* The Board will refer to these grade factors as C+2 and B+2. *See generally*, REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. A at 5 – 8 (incorporated by reference at 50 IAC 2.3-1-2).

<sup>2</sup> The Petitioners apparently attended a second PTABOA hearing. *Julie Smith testimony.*

- c. After reviewing the evidence of the comparable property presented by the Petitioners, local officials determined the comparable was assessed in error. But that fact is not evidence that the Petitioners' home was also assessed incorrectly. *Garoffolo testimony; Wolfe testimony.*
- d. The value of the Petitioners' home was determined by an outside contractor. The comparative market analysis was not used to assess any property. It was used to confirm that the assessed value approximates the selling prices of comparable homes. Only home sales contained in the Multiple Listing Service were included in the comparative market analysis. The comparable property selected by the Petitioners was not included in the comparative market analysis because it was not a Board of Realtor's sale—it was a direct sale between the builder and purchaser. *Wolfe testimony.*

### **Record**

12. The official record for this matter is made up of the following:
- a. The Petition,
  - b. A digital recording of the hearing,
  - c. Petitioners Exhibit 1 - Notice of Hearing,  
Petitioners Exhibit 2 - Request for continuance granted,  
Petitioners Exhibit 3 - Request for continuance by the Petitioners,  
Petitioners Exhibit 4 - Notice of Hearing for August 26, 2008,  
Petitioners Exhibit 5 - Notes from a meeting with the County Assessor,  
Petitioners Exhibits 6 through 6C - Form 131,  
Petitioners Exhibit 7 - Assessor's exhibit sheet,  
Petitioners Exhibit 8 - Handwritten note of discrepancies,  
Petitioners Exhibit 9 - Letter to the Board dated April 15, 2008,  
Petitioners Exhibits 10 through 10B - Form 115,  
Petitioners Exhibit 11 - Boone County Appeal Worksheet,  
Petitioners Exhibit 12 - Tax bill for 2006 pay 2007 for the subject property,  
Petitioners Exhibits 13 and 13A - Settlement statement for the purchase of the  
subject property,  
Petitioners Exhibits 14 through 14J - Documents relating to the 2005 assessment,  
Petitioners Exhibits 15 through 15D - Boone County Appeal Worksheet with  
attached property record cards of the subject  
property and a comparable property,  
Petitioners Exhibits 16 through 16F - Form 115, Boone County Appeal  
Worksheet, the tax bill for 2006 payable  
2007, and the settlement sheet,  
Petitioners Exhibits 17 through 17D - Form 131 and attachments,

Petitioners Exhibits 18 through 18B - County Comparative Market Analysis, photograph of the subject property, and Notice of Hearing,  
 Petitioners Exhibits 19 through 19B - County Comparative Market Analysis, photograph of the subject property, and Notice of Hearing,  
 Petitioners Exhibits 20 and 20A - The subject property record card,  
 Petitioners Exhibits 21 and 21A - The property record card for a comparable property (4625 Summersong Road),  
 Respondent Exhibit 1 - Assessment data sheet,  
 Respondent Exhibit 2 - Appeal worksheet filed November 21, 2007, with attached property record cards of the subject property and a comparable property,  
 Respondent Exhibit 3 - Form 115,  
 Respondent Exhibit 4 - Form 131 with attachments,  
 Respondent Exhibit 5 - County Comparative Market Analysis,  
 Respondent Exhibit 6 - Photograph of the subject property,  
 Respondent Exhibit 7 - Board Notice of August 26, 2008, hearing,  
 Respondent Exhibit 8 - Board Notice of January 8, 2009, hearing,  
 Respondent Exhibit 9 - Subject property record card,  
 Board Exhibit A - Form 131,  
 Board Exhibit B - Notice of Hearing on Petition,  
 Board Exhibit C - Hearing Sign In Sheet,

d. These Findings and Conclusions.

### **Analysis**

13. 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”).
14. The assessment should be lowered to \$365,800. This conclusion was arrived at because:
- a. The Petitioners asserted that the PTABOA’s determination was insufficient because the PTABOA held its initial hearing without giving them advance notice and the

PTABOA did not explain how it reached its decision. The Petitioners did not explain what, if any, remedy they wanted for these alleged procedural failures at the local level. In any event, none of those actions affected the Petitioners' appeal to the Board. Once a taxpayer properly invokes the Board's jurisdiction, the proceedings are *de novo*. The taxpayer is not limited to evidence offered at the PTABOA hearing. *See* Ind. Code § 6-1.1-15-4(k) ("A party participating in the hearing...is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county board.") And the Board owes the PTABOA determination no deference. Thus, while the lack of notice may have deprived the Petitioners of the ability to present evidence or arguments to the PTABOA, it did not hinder their ability to present their case to the Board. *Id.* The same is true for their claim that the PTABOA provided no explanation for denying the appeal. Because these alleged procedural failures did not impact the Board's hearing, these contentions are moot.

- b. Real property is assessed based on 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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.
- c. Further, a 2006 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. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d. The Petitioners presented no market evidence in support of their proposed value. Instead, they focused on the Guidelines' methodology by contending that the grade factor applied to their property is in error.
- e. Even if an assessment does not fully comply with the Guidelines, a taxpayer must show that the assessment is not a reasonable measure of market value-in-use in order to prevail. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) (stating that failure to comply with the Guidelines does not in itself show the assessment is not a reasonable measure of value); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."); *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (explaining that beginning in 2002, Indiana overhauled its property tax system and the new benchmark is market value-in-use. "As a result, the new system shifts the focus from examining how the regulations were applied ... to examining

whether a property's assessed value actually reflects the external benchmark of market value-in-use."); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006) (explaining that a taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana's new assessment system).

- f. Nevertheless, undisputed testimony established that the Petitioners purchased the property for \$365,796 in April 2005, a date close to the January 1, 2005, valuation date. Market value-in-use can also be thought of as the owner's asking price for property during a sales transaction. *O'Donnell*, 854 N.E.2d at 93. Accordingly, the Board determines the total assessment should be reduced to \$365,800.<sup>3</sup>

**Conclusion**

- 15. The assessment should be lowered to the April 2005 purchase price because that is the best evidence of value in this case.

**Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review determines that the assessment should be changed to \$365,800.

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

<sup>3</sup> Total assessed values are determined by rounding to the nearest \$100. GUIDELINES, ch. 2 at 81; ch. 3 at 62.

**- 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>