

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

**Petition #:** 46-022-03-1-5-00024  
**Petitioners:** George & Sandra Boeckling  
**Respondent:** Michigan Township Assessor (LaPorte County)  
**Parcel #:** 42-01-29-381-004  
**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 LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated August 13, 2004.
2. The Petitioners received notice of the decision of the PTABOA on December 13, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on December 30, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 22, 2006.
5. The Board held an administrative hearing on May 11, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
  - a. For Petitioner: George Boeckling, Property Owner,  
Victor Palmer, Attorney,
  - b. For Respondent: Terry Beckinger, Michigan Township Assessor,  
Carol McDaniel, LaPorte County Assessor,  
Michael Gregorich, Nexus Group.

Marilyn Meighen appeared as counsel for the Michigan Township Assessor and the LaPorte County PTABOA.

## Facts

7. The subject property is a single family residence on a lot measuring 26' x 99' located at 820 Elston Street, Michigan City, in Michigan Township.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$3,900 for the land and \$23,900 for the improvements, for a total assessed value of \$27,800.
10. The Petitioners requested an assessed value of \$19,000.

## Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
  - a. The Petitioners contend that the subject property is valued in excess of its market value in use. *Palmer argument*. In support of this contention, the Petitioners submitted an appraisal completed by a licensed appraiser. *Petitioner Exhibit 1*. The appraisal estimates the value of the subject property to be \$19,000 as of January 31, 1999. *Palmer argument and Petitioner Exhibit. 1*
  - b. The Petitioners further contend that the income approach to value supports a lesser value than the one established by the assessor. *Palmer argument; Petitioner Exhibit 2*. The Petitioners testified that the total gross income for all seven years is \$21,995 or \$3,142 per year. *Id.* Further, the Petitioners testified that the total net income for all seven years is a negative \$4,829 or a negative \$690 per year. *Id.* In support of this contention, the Petitioners submitted Schedule E from the Federal Income Tax Returns of George and Sandra Boeckling for 1999 through 2005. *Palmer argument and Petitioner Exhibit 2* According to the Petitioners, the application of the Respondent's Gross Rent Multiplier (GRM) of 7.66 to the gross rent of the subject property results in a value that is lower than the current assessed value. *Palmer argument*.
  - c. Finally, the Petitioners testified that improvements were made to the subject property since the assessment date under appeal. *Boeckling testimony* According to the Petitioners, on the March 1, 2003, assessment date, the property was not worth the amount it is assessed for. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The Respondent contends that the appraisal submitted by the Petitioners has multiple errors and therefore does not represent a reliable value for the subject property.

- Beckinger testimony.* According to the Respondent, the property used as comparable number 1 on the Petitioners' appraisal is not a 2-story house, does not have the amount of square footage indicated on the appraisal and sold for \$26,500 instead of the \$26,300 indicated on the appraisal. *Beckinger testimony; Respondent Exhibit A.* Similarly, the Respondent testified that the property used as comparable number 3 in the Petitioners' appraisal indicates a square footage of 1,722, while the property record card for the property shows a square footage of 1,185. *Beckinger testimony; Respondent Exhibit B.* Finally, the Respondent argued that the Assessor could not locate a sales disclosure that substantiates the \$22,000 sale amount indicated on the appraisal for comparable number 3; however, the assessors' records do indicate that comparable number 3 sold on March 2, 2005, for \$84,500. *Beckinger testimony.*
- b. The Respondent further contends that a property comparable to the subject property, located approximately 3 ½ blocks south of the subject property at 228 W. 11<sup>th</sup> Street, sold on September 18, 1997, for \$47,000. *Beckinger testimony and Respondent Exhibit C.* According to the Respondent, the "comparable" property is a 1 ½ -story dwelling with a comparable grade factor, condition rating, and year built as the subject property, but with less square footage than the subject property. *Id.* Similarly, the Respondent argues that the property located at 1009 Manhattan Street has more square footage than the subject property, but is similar to the subject in year built, story height and design characteristics. *Beckinger testimony and Respondent Exhibit E.* According to the Respondent, this "comparable" sold for \$70,000 on January 5, 2000. *Id.* Additionally, the Respondent argues, the property located at 811 Buffalo Street sold on August 12, 1996, for \$55,000. *Beckinger testimony and Respondent Exhibit F.* According to the Respondent, the "comparable" property is a 2-story dwelling and has considerably less square footage, but otherwise is similar in design characteristics and age. *Id.* The Respondent contends that, based on similarities in design, amount of square footage, age of the improvements, and proximity to the subject properties, the properties located at 228 W. 11<sup>th</sup> Street (Respondent Exhibit C), 1009 Manhattan Street (Respondent Exhibit E) and 811 Buffalo Street (Respondent Exhibit F) are more comparable to the subject property than the comparables used in the Petitioners' appraisal. *Beckinger testimony.*
- c. Finally, the Respondent contends that the assessor examined the sale prices and the market rents of properties comparable to the subject property and determined a GRM of 7.66 for the neighborhood. *Gregorich testimony; Respondent Exhibit H.* According to the Respondent, the median gross rent for properties comparable to the subject is \$5,325. *Id.* Thus, the application of the income approach to value utilizing a GRM of 7.66 and the median gross rent of \$5,325 results in a value for the subject property of \$40,790.<sup>1</sup> *Id.*

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<sup>1</sup> The Respondent testified that it does not seek a valuation of \$40,790 for the subject property, but rather uses this evidence to support that the value sought by the Petitioners is in error. *Meighen argument.*

## 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 BTR # 6236,

c. Exhibits:

Petitioner Exhibit 1 - Appraisal of subject property,

Petitioner Exhibit 2 - Schedule E pages of Federal Tax returns filed for 1999 thru 2005,

Respondent Exhibit A – Property record card and sales disclosure for 221 E. 10<sup>th</sup> Street,

Respondent Exhibit B – Property record card for 120 E. 10<sup>th</sup> Street,

Respondent Exhibit C – Property record card and sales disclosure for 228 W. 11<sup>th</sup> Street,

Respondent Exhibit D – Map,

Respondent Exhibit E – Property record card and sales disclosure for 1009 Manhattan,

Respondent Exhibit F – Property record card and sales disclosure for 811 Buffalo Street,

Respondent Exhibit G – DLGF issued *Overview of the Income Approach to Value*,

Respondent Exhibit H – Gross Rent Multiplier,

Board Exhibit A - Form 131 petition,

Board Exhibit B - Notice of Hearing,

Board Exhibit C – Notice of Appearance for Marilyn Meighen,

Board Exhibit D – 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 provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioners contend that the subject property is over-valued based on an appraisal of the property that establishes the value of the property to be \$19,000 as of January 31, 1999. *Palmer argument* In support of this contention, the Petitioners submitted the January 31, 1999 appraisal completed by a licensed Indiana appraiser. *Petitioner Exhibit 1*
  - b. The 2002 Real Property Assessment Manual (the MANUAL) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479.
  - c. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
  - d. Here, the Petitioners presented an appraisal prepared by a certified appraiser that valued the subject property at \$19,000 as of January 31, 1999. *Petitioner Exhibit 1*. An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479.

- e. 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.*, 803 N.E.2d 276. Here, the Respondent argued that there were mistakes in the appraisal because information in the appraisal differed from information contained in the property record cards for the comparable properties. *Beckinger testimony; Respondent Exhibits A and B*. The Respondent's testimony, however, did not go forward to explain why or how these "flaws" invalidate the Petitioners' evidence. "Open-ended questions" and "conclusory statements" are not sufficient to rebut the Petitioners case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) ("In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Rassel's calculations. Rather, he merely asked open-ended questions or made conclusory statements"). Thus, while some information in the appraisal might have conflicted with information on property record cards, there was no evidence as to which information was correct. Further, there was no testimony as to how or why some incorrect information regarding the appraisal's comparables would invalidate the appraisal as a whole.
- f. The Respondent also submitted property record cards and sales disclosures for three properties the assessor deems to be more comparable to the subject property than the comparables the appraiser used. *Beckinger testimony; Respondent Exhibits C, E and F*. The Respondent contends these properties are more comparable because of similarities in design, proximity in square footage and age-related characteristics.
- g. To rebut or impeach a petitioner's case, a respondent has the same burden to present probative evidence that the petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted). Here, the Respondent admitted that the "comparables" it used differed from the subject property in size, but the Respondent failed to show how those differences affected the value of the properties. Further, the Respondent failed to provide the property record card for the subject property to substantiate any similarities between the subject property and the alleged comparables.
- h. Finally, the Respondent contends that the subject property is a rental property and, therefore, the preferred method for valuing such property is the income approach to value. *Gregorich testimony*. In support of its assessment, the Respondent submitted a spreadsheet wherein the median gross rent multiplier (GRM) for market rents was calculated and used to determine the value of the property. *Id.*; *Respondent Exhibit H*. According to the Respondent, the median GRM for the neighborhood was 7.66

and the median rent for 2003 was \$5,325. Thus, the Respondent contends, the value of the subject property is \$40,800. *Id.*

- i. An income approach valuation on a rental property that properly uses market rents and reasonable expenses can be used to rebut a sales comparable appraisal on a rental property. The Respondent, however, still must show that the properties from which it developed the average rent or gross rent multiplier are comparable to the subject property. Here, the Respondent showed the size, neighborhood, grade, condition and year built of the “comparable” rental properties, but failed to present a property record card or other evidence of the size, neighborhood, grade, condition and year built of the subject property. Further, to the extent that differences in size, neighborhood, grade, condition and year of construction exist, the Respondent failed to value those differences or to show that such differences do not affect the rental values of the comparables.
- j. The Respondent testified that, due to confidentiality issues, the specifics on the properties could not be divulged. *Gregorich testimony*. Any alleged confidentiality of rental information, however, does not relieve the Respondent of its burden to show that the income producing properties, by which it values the Petitioners’ property, are sufficiently like the Petitioners’ property to be a reasonable estimate of the income-producing ability, and thus market value, of the Petitioners’ property. Therefore, the Respondent has failed to rebut the Petitioners’ case.

**Conclusion**

- 16. The Petitioners raised a prima facie case that the subject property is over-valued on the basis of its appraisal. The Respondent failed to rebut the Petitioners’ case with substantial evidence. The Board finds in favor of the 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 to \$19,000.

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

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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>.