

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

**Petition #:** 71-001-06-1-5-02183  
**Petitioner:** Richard Weber  
**Respondent:** St. Joseph County Assessor  
**Parcel #:** 01-1001-001403  
**Assessment Year:** 2006

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

**Procedural History**

1. On August 1, 2007, Richard Weber filed a Form 130 petition contesting the subject property’s assessment. On May 14, 2008, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination denying Mr. Weber relief.
2. As a result, on June 23, 2008, Mr. Weber filed a Form 131 petition with the Board.<sup>1</sup> He elected to proceed under the Board’s small claims procedures.
3. On November 5, 2009, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in as witnesses:
  - a) For Mr. Weber: Richard Weber, *pro se*
  - b) For the Assessor: Frank Agostino, PTABOA attorney  
Kevin Klaybor, Deputy County Assessor, witness  
Ralph Wolfe, PTABOA member, witness  
Dennis Dillman, PTABOA member  
Ross Portolese, PTABOA member

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<sup>1</sup> On September 25, 2008, after Mr. Weber had filed his Form 131 petition, the PTABOA held a hearing on the subject property’s 2006 assessment. *Resp’t Ex. 7*. On October 31, 2008, the PTABOA issued a Form 115 determination purporting to lower the property’s assessment to \$108,500. *Resp’t Ex. 3*. As explained *infra*, once Mr. Weber filed his Form 131 petition with the Board, the PTABOA lost jurisdiction to unilaterally change the subject property’s 2006 assessment.

## Facts

5. The subject property is a single-family residence located at 61369 Miami Road, South Bend, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following values for the subject property:  

Land: \$20,200	Improvements: \$90,000	Total: \$110,200
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8. Mr. Weber requested the following values:  

Land: \$14,900	Improvements: \$66,200	Total: \$81,800
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## Contentions

9. Summary of Mr. Weber's contentions:
  - a) The subject property's assessment is too high because it (1) erroneously includes a non-existent concrete patio, (2) incorrectly values the home's basement, (3) fails to account for flooding, and (4) represents too much of an increase from the property's 2005 assessment. *Weber argument.*
  - b) The subject property contains a wood deck, which replaced a concrete patio. For 26 years, the property has been incorrectly assessed for both a wood deck and a concrete patio. Similarly, only half the area that the property's record card lists as a basement is actually a basement; the other half is a basement garage. *Weber testimony.*
  - c) In addition, the subject property floods. Local newspapers have reported the flooding, which makes the property difficult to sell. The Assessor, however, failed to recognize that the flooding affects the property's value. *Weber testimony.*
  - d) Finally, in 2006, the assessment for the subject property's improvements jumped from \$66,000 to \$90,000. Mr. Weber's taxes correspondingly increased by 35%-44%. That is too much of an increase for one year. Even after the PTABOA lowered the subject property's 2006 land assessment, the assessment for its improvements increased. The improvements' assessment decreased to \$86,100 for 2008, but then jumped back up to \$93,000. *Weber testimony.*
  - e) Throughout Mr. Weber's appeal, the Assessor and the PTABOA ignored appropriate procedures. The PTABOA originally failed to hold a hearing and denied Mr. Weber's appeal without explaining why. The PTABOA then scheduled a hearing after Mr. Weber had already appealed to the Board. Mr.

Weber was surprised that the Board scheduled a hearing because he thought the PTABOA's hearing had ended the process. *Weber testimony; Pet'r Ex. 2,*

10. Summary of the Assessor's contentions:

- a) Mr. Weber offered no evidence to show the subject property's market value-in-use. *Agostino argument.*
- b) Regardless, in its October 31, 2008, determination, the PTABOA corrected the errors that Mr. Weber had identified. First, the PTABOA removed the concrete patio from the property's assessment and replaced it with a wood deck. Second, the PTABOA changed the total area for the basement and added a basement garage. Finally, the PTABOA lowered the land's assessment. As a result, the subject property's total assessment went from \$110,200 to \$108,500. *Klaybor testimony; Resp't Ex. 9.*
- c) The valuation date for the March 1, 2005, assessment was January 1, 1999, while the valuation date for the March 1, 2006 assessment was January 1, 2005. Thus, the change in the subject property's assessment from 2005 to 2006 actually reflected a six-year increase, not a one-year increase as Mr. Weber suggested. Regardless, the 2006 assessment stands on its own. *Klaybor testimony.*

**Record**

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner's Exhibit 1: Notice of hearing containing Mr. Weber's handwritten notes,

Petitioner's Exhibit 2: Handwritten chronology of communications,

Respondent's Exhibit 1: Form 131 petition,

Respondent's Exhibit 2: Form 130 petition,

Respondent's Exhibit 3: Form 115 determinations,

Respondent's Exhibit 4: Form 11 assessment notice,

Respondent's Exhibit 5: Property record card for subject property printed July 27, 2007,

Respondent's Exhibit 6: "No Change Letter" (section IV from Form 130 petition),

Respondent's Exhibit 7: Form 114 Notice of Hearing,

Respondent's Exhibit 8: PTABOA Record of Hearing,

Respondent's Exhibit 9: Property record card for subject property printed  
October 21, 2009.

Board Exhibit A: Form 131 petition and attachments,  
Board Exhibit B: Notice of hearing,  
Board Exhibit C: Notice of Appearance for Frank Agostino,  
Board Exhibit D: Notice of County Assessor Appearance as Additional Party,<sup>2</sup>  
Board Exhibit E: Hearing sign-in sheet.

d) These Findings and Conclusions.

### Analysis

12. The following cases outline the parties' respective burdens of proof:

- a) A petitioner seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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 petitioner must explain how each piece of evidence relates to its 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) If the petitioner establishes a prima facie case, the burden shifts to the respondent to rebut or impeach the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

13. Mr. Weber did not make a prima facie case for reducing the subject property's assessment. Nonetheless, based on the Assessor's concession, the property's assessment should be reduced to \$108,500. The Board reaches that conclusion for the following reasons:

- a) Indiana assesses real property based on its "true tax value," which the 2002 Real Property Assessment Manual defines 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 value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a

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<sup>2</sup> The Assessor did not need to intervene as a party because the appeal statute automatically makes the Assessor a party. *See* Ind. Code § 6-1.1-15-3(b) ("The county assessor is the party to the review under this section to defend the determination of the county board.").

mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

- b) A property's assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *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. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption 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 often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
- c) A taxpayer, however, does not rebut the presumption that a property's assessment is accurate simply by contesting the assessor's methodology in computing it. *See Eckerling* 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id.*
- d) Here, Mr. Weber offered no market-based evidence to show that the subject property was assessed for more than its market value-in-use. Instead, he pointed to methodological errors in the assessment, such as the Assessor mistakenly assessing the property for a concrete patio and a full basement and unjustifiably failing to account for flooding.
- e) Mr. Weber also argued that the subject property's assessment increased too much over one year. But the 2006 assessment was not designed to capture a one-year difference in the market. To the contrary, it was designed to bring values forward from January 1, 1999, to January 1, 2005. *See* MANUAL at 2, 4, 8 (making January 1, 1999, the valuation date for 2002 – 2005 assessments) and 50 IAC 21-3-3(b) (making January 1 of the calendar year preceding the assessment date the valuation date for annually adjusted assessments beginning with March 1, 2006, assessments). Further, because each tax year stands alone, evidence of a property's assessment in one tax year is not necessarily probative of its true tax value in a different tax year. *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, the jump in the subject property's assessment from 2005 to 2006 does nothing to rebut the presumption that the subject property was accurately assessed.
- f) Although Mr. Weber failed to offer any probative market-value-in-use evidence to rebut the property's assessment, the PTABOA unilaterally made specific changes that Mr. Weber had requested, albeit after Mr. Weber had filed his Form 131 petition with the Board. Although the parties can agree to settle an appeal

while it is pending before the Board, the PTABOA loses jurisdiction to unilaterally change an assessment once a Form 131 Petition has been filed with the Board. Thus, the assessment of record is \$110,200—the amount listed in the PTABOA’s May 14, 2008, determination from which Mr. Weber appealed to the Board. Nonetheless, by offering testimony about the PTABOA’s changes, the Assessor appears to have conceded that the property’s assessment should be lowered to \$108,500. The Board accepts that concession.

### **Conclusion**

14. Mr. Weber did not make a prima facie case for reducing the subject property’s Assessment. The Assessor, however, conceded that the assessment should be lowered to \$108,500.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the 2006 assessment should be \$108,500.

ISSUED: January 28, 2010

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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

## IMPORTANT NOTICE

### - 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>>