

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

**Petition No.:** 02-072-09-1-5-00054  
**Petitioner:** Nicole Klein<sup>1</sup>  
**Respondent:** Allen County Assessor  
**Parcel No.:** 02-08-07-455-014.000-072  
**Assessment Year:** 2009

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

**Procedural History**

1. Nicole Klein (Richeal) filed a Form 130 petition contesting the subject property’s March 1, 2009 assessment. On September 15, 2010, the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying Ms. Klein any relief.
2. Ms. Klein then timely filed a Form 131 petition with the Board. She elected to have her appeal heard under the Board’s small claims procedures.
3. On December 8, 2011, the Board held a hearing through its administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn-in and testified:
  - a) For Ms. Klein: Nicole Klein  
Dan Richeal
  - b) For the Assessor: Renee Buettner, Deputy County Assessor.<sup>2</sup>

**Facts**

5. The subject property contains a single-family home located at 2319 Jacobs Creek Run in Fort Wayne.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following assessment for the subject property:  
Land: \$21,600      Improvements: \$121,100      Total: \$142,700

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<sup>1</sup> The Petitioner has used two different names throughout the Board’s proceedings—Nicole Klein and Nicole Richeal. For purposes of these findings and conclusions, the Board will use Nicole Klein, the name that the Petitioner used when she signed her Form 131 petition.

<sup>2</sup> F. John Rogers appeared as counsel for the Assessor.

8. Ms. Klein requested the following assessment:  
 Land: \$19,000      Improvements: \$102,000      Total: \$121,000

**Parties' Contentions**

9. Summary of Ms. Klein's contentions:

- a) The subject property is assessed too high in light of the sale prices for other properties from the same subdivision, Jacobs Creek. While the subject property was assessed for \$142,700, nothing else in Jacobs Creek has sold for even close to that amount. *D. Richeal testimony; Pet'r Exs. 1-6.* According to Multiple Listing Service ("MLS") reports, the following Jacobs Creek properties sold in 2007 and 2008:

<u>Property address</u>	<u>List price</u>	<u>Sale price</u>	<u>Date of sale</u>
2725 Jacobs Creek Run	\$97,000	\$83,396	August 8, 2008
2729 Jacobs Creek Run	\$114,900	\$102,900	June 23, 2008
7511 Monaco Place	\$110,000	\$99,000	July 23, 2007
2614 Jacobs Creek Run	\$119,000	\$107,100	May 16, 2007
7328 Jasmine Place	\$105,000	\$95,000	November 7, 2008
2324 Jacobs Creek Run	\$104,000	\$97,783	January 9, 2008
7320 Riverton Drive	\$99,900	\$100,900	May 28, 2008
2421 Jacobs Creek Run	\$104,900	\$102,000	February 19, 2007
2227 Jacobs Creek Run	\$110,700	\$108,500	April 30, 2007
2312 Jacobs Creek Run	\$109,900	\$109,900	July 20, 2007
2614 Jacobs Creek Run	\$109,900	\$109,900	July 23, 2007
2803 Jacobs Creek Run	\$109,900	\$109,900	December 22, 2008
2316 Jacobs Creek Run	\$114,900	\$112,000	December 31, 2008
7410 Riverton Drive	\$109,900	\$109,900	September 15, 2008
7510 Conifer Place	\$114,900	\$114,000	March 31, 2007
2517 Jacobs Creek Run	\$113,499	\$115,000	June 27, 2008
7402 Riverton Drive	\$110,000	\$115,031	September 16, 2008
2716 Jacobs Creek Run	\$122,800	\$117,000	August 10, 2008
7306 Jasmine Place	\$124,900	\$121,000	August 28, 2007
2511 Jacobs Creek Run	\$124,900	\$124,900	July 24, 2008

*Pet'r Ex. 11.*

- b) That list includes "short sales" and "repos." Nonetheless, those types of sales should be considered in assessing the subject property because they have driven prices down. In fact, properties that initially sold at higher prices were foreclosed on and re-sold at much lower prices. *D. Richeal testimony.* But even if short sales and repos are excluded, the following sales still show that the subject property's assessment is too high:

<u>Property address</u>	<u>Sale price</u>	<u>Sale date</u>
7511 Monaco Place	\$88,655	July 23, 2007

2614 Jacobs Creek Run	\$89,900	May 16, 2007
2421 Jacobs Creek Run	\$102,000	February 19, 2007
2227 Jacobs Creek Run	\$108,500	April 30, 2007
2312 Jacobs Creek Run	\$109,900	July 20, 2007
2614 Jacobs Creek Run	\$109,900	July 23, 2007
7510 Conifer Place	\$114,000	March 31, 2007
7306 Jasmine Place	\$121,000	August 28, 2007
2725 Jacobs Creek Run	\$83,396	August 7, 2008
2729 Jacobs Creek Run	\$86,500	June 23, 2008
7328 Jasmine Place	\$95,000	November 7, 2008
2324 Jacobs Creek Run	\$97,783	January 9, 2008
7320 Riverton Drive	\$100,900	May 29, 2008
2803 Jacobs Creek Run	\$109,900	December 22, 2008
2316 Jacobs Creek Run	\$112,000	December 31, 2008
7410 Riverton Drive	\$113,000	September 15, 2008
2517 Jacobs Creek Run	\$115,000	June 27, 2008
7402 Riverton Drive	\$115,031	September 16, 2008
2716 Jacobs Creek Run	\$117,000	August 10, 2008
2511 Jacobs Creek Run	\$124,900	July 24, 2008

*Id.*; *Pet'r Exs. 2-3.*

- c) Based on the average price per square foot from all of the Jacobs Creek sales, the subject property should only be assessed for \$126,742.85. *D. Richeal testimony; Pet'r Ex. 16.* The subject property's actual assessment of \$142,700 leads to inflated property taxes and an inflated mortgage escrow payment. *D. Richeal testimony.*
- d) Ms. Klein bought the subject property for \$118,000 in May 2005. *D. Richeal testimony; See also Pet'r Ex. 15.* And an identical home is currently listed for sale at \$118,900, although it is assessed for \$146,200. Indeed, many Jacobs Creek properties are over-assessed. If the subject property were put on the market today, it would sell for only \$120,000 to \$125,000. *D Richeal testimony; Pet'r Ex. 8.*<sup>3</sup>

10. Summary of the Assessor's contentions:

- a) The Assessor performed several ratio studies, considering both "valid" sales from 2007 and 2008 as well as "short sales." *Buettner testimony; Resp't Ex. 1.* Assessing and appraising standards do not allow foreclosures to be considered. When considering only valid sales, the overall median assessment ratio for the subject's neighborhood was .95 and the neighborhood factor was 1.05. When short sales were

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<sup>3</sup> Mr. Richeal also expressed his belief that it is unfair to hold taxpayers to statutory deadlines for filing appeals when the PTABOA and the Board can schedule hearings past their statutory deadlines. *See D. Richeal testimony.* While the Board understands the need to resolve appeals as expeditiously as possible, taxpayers have the option to appeal directly to the Board when a PTABOA fails to hold a hearing within 180 days of receiving a notice for review of the taxpayer's assessment. *See I.C. § 6-1.1-15-1(k).* Similarly, if the Board fails to make a final determination within its statutory deadline, a taxpayer can bypass the Board and seek judicial review by the Indiana Tax Court. *See I.C. § 6-1.1-15-4(i).*

included, the median assessment ratio was .97 and the neighborhood factor was 1.03. *Buettner testimony; Resp't Exs 1, 21*. The Assessor finally settled on a neighborhood factor of 1.02 for the March 1, 2009 assessment, as it was in the best interest of taxpayers to exclude short sales. Thus, the subject property is accurately assessed. *Buettner Testimony; Resp't Exs. 2-4*.

- b) A comparative analysis of six two-story single-family homes that sold in the subject property's general area further supports the subject property's assessment. Those properties all sold between January 3, 2007, and July 28, 2008 for prices ranging from \$117,000 to \$148,131. After adjusting the sale prices for various ways in which the comparable homes differed from the subject home in terms of age, living area, garages, central air, and number of baths, the median sale price was \$145,370 or \$57.51 per square foot. A second analysis, using three properties that are located even closer to the subject property, also supports the subject property's assessment. While those three homes are smaller than the subject home, the Assessor adjusted their sale prices accordingly. The median sale price for those three homes was \$173,220, or \$67.48 per square foot. By contrast, the subject property's assessment equates to \$63.34 per square foot. *Buettner testimony; Resp't Exs. 5-6*.
- c) Finally, a property located at 7402 Riverton Drive, which is very similar to the subject property, sold for \$148,131 on March 28, 2008. *Buettner testimony; Resp't Exs. 9-10*. And four smaller homes sold for prices ranging from \$72.94 to \$83.55 per square foot. *Buettner testimony; Resp't Exs. 13-20*.

### 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,<sup>4</sup>
- c) Exhibits:

Petitioner's Exhibit 1:	Multiple Listing Service ("MLS") One Line Report of properties that sold from January 1, 2007, through December 5, 2011,
Petitioner's Exhibit 2:	MLS One Line Report of properties that sold from January 1, 2007, through December 31, 2007,
Petitioner's Exhibit 3:	MLS One Line Report of properties that sold from January 1, 2008, through December 31, 2008,
Petitioner's Exhibit 4:	MLS One Line Report of properties that sold from January 1, 2009, through December 31, 2009,
Petitioner's Exhibit 5:	MLS One Line Report of properties that sold from

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<sup>4</sup> Because of a malfunction in the ALJ's recording equipment, a short portion of the hearing is missing from the Board's recording. That portion consisted of the ALJ reading Ms. Klein's exhibits into the record and confirming that the Assessor did not have any objections to those exhibits.

- Petitioner's Exhibit 6: January 1, 2010, through December 31, 2010, MLS One Line Report of properties that sold from January 1, 2011, through December 31, 2011,
- Petitioner's Exhibit 7: Residential Agent Full Detail Report for 2227 Jacobs Creek Run,
- Petitioner's Exhibit 8: Residential Agent Full Detail Report for 2218 Jacobs Creek Run,
- Petitioner's Exhibit 9: Residential Agent Full Detail Report for 7402 Riverton Drive,
- Petitioner's Exhibit 10: Residential Agent Full Detail Report for 2629 Jacobs Creek Run,
- Petitioner's Exhibit 11: CMA Report for Jacobs Creek for properties sold from January 14, 2007, through December 31, 2008, including "repos" and "short sales,"
- Petitioner's Exhibit 12: CMA Report for Jacobs Creek properties that sold from January 14, 2007, through December 31, 2008, including "no repos" or "short sales,"
- Petitioner's Exhibit 13: CMA Report for Jacobs Creek properties that sold from March 14, 2005, through March 15, 2010,
- Petitioner's Exhibit 14: Property record ("PRC") card for 2511 Jacobs Creek Run,
- Petitioner's Exhibit 15: PRC for subject property, 2319 Jacobs Creek Run,
- Petitioner's Exhibit 16: PRC for subject property, 2319 Jacobs Creek Run,
- Petitioner's Exhibit 17: PRC for 2716 Jacobs Creek Run,
- Petitioner's Exhibit 18: PRC for 2719 Jacobs Creek Run,
- Petitioner's Exhibit 19: PRC for 2206 Jacobs Creek Run,
- Petitioner's Exhibit 20: PRC for 2324 Jacobs Creek Run,
- Petitioner's Exhibit 21: PRC for 7402 Riverton Drive.
- Respondent Exhibit 1: Assessor's position statement,
- Respondent Exhibit 2: Neighborhood Factor Calculation (2008 sales); Parcel Characteristics Report (two pages),
- Respondent Exhibit 3: Neighborhood Factor Calculation (07 & 08 sales); Parcel Characteristics Report (two pages),
- Respondent Exhibit 4: Parcel Characteristics Report (07 & 08 sales, including "valid" and "short" sales) (four pages),
- Respondent Exhibit 5: Comparative Sales Analysis,
- Respondent Exhibit 6: Comparative Sales Analysis,
- Respondent Exhibit 7: PRC for subject property,
- Respondent Exhibit 8: Photograph of subject property,
- Respondent Exhibit 9: PRC for 7402 Riverton Drive,
- Respondent Exhibit 10: Photograph of 7402 Riverton Drive,
- Respondent Exhibit 11: PRC for 2511 Jacobs Creek Run,
- Respondent Exhibit 12: Photograph of 2511 Jacobs Creek Run,
- Respondent Exhibit 13: PRC for 2716 Jacobs Creek Run,
- Respondent Exhibit 14: Photograph of 2716 Jacobs Creek Run,
- Respondent Exhibit 15: PRC for 2719 Jacobs Creek Run,
- Respondent Exhibit 16: Photograph of 2719 Jacobs Creek Run,

Respondent Exhibit 17: PRC for 2206 Jacobs Creek Run,  
Respondent Exhibit 18: Photograph of 2206 Jacobs Creek Run,  
Respondent Exhibit 19: PRC for 2324 Jacobs Creek Run,  
Respondent Exhibit 20: Photographs of 2324 Jacobs Creek Run,  
Respondent Exhibit 21: IAAO Sales Verification and Foreclosure Outline.

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Hearing notice,  
Board Exhibit C: Notice of appearance for F. John Rogers,  
Board Exhibit D: Sign-in sheet.

d) These Findings and Conclusions.

### **Analysis**

#### Burden of Proof

12. Generally, 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).
13. 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”).
14. Once the petitioner makes a prima facie case, the burden shifts to the respondent to impeach or rebut 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.

#### Discussion

15. Ms. Klein did not prove that the subject property’s assessment should be reduced. The Board reaches this 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 have traditionally used three methods to determine a property’s market value: the cost, sales comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

- b) A property's market value-in-use, as determined using the Guidelines, 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 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. *Id.*; *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, or any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) Regardless of the method used to challenge an assessment's presumed accuracy, a party must explain how its evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006), *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2009 assessments, the valuation date was January 1, 2008. 50 IAC 21-3-3(b) (2009) ("The valuation date is January 1 of the year preceding the assessment date.")
- d) Ms. Klein, through her witness, Mr. Richeal, tried to show that the subject property was assessed for more than its market value by comparing it to several other properties from the same subdivision that sold between January 1, 2007, and December 31, 2008. In doing so, Mr. Richeal recognized that one can estimate a property's value indirectly by looking to the values of comparable properties. Indeed, that is what the sales-comparison approach does. Ms. Klein, however, did not follow that approach's basic requirements.
- e) The sales-comparison approach assumes that potential buyers will pay no more for a given property than it would cost them to buy an equally desirable substitute property already existing in the market place. MANUAL at 13. When applying the sales-comparison approach, one must first identify comparable properties that have sold. *Id.* One then "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 actually affect value in the marketplace. *Id.* Typically, those items are then quantified by their contributory values and used to adjust the comparable properties' sale prices. *See id.*
- f) Thus, in order to effectively use a comparison approach as evidence in an assessment appeal, one must first show that the properties being examined are comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property are not probative of the properties' comparability. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- g) Mr. Richeal did not offer the type of analysis contemplated by either the Manual or the Indiana Tax Court. In some cases, he simply asserted that the sold properties were comparable to the subject property. In other cases, he compared the sold properties to the subject property along a few lines, such as the sizes of the respective homes. More importantly, Mr. Richeal did little to explain how any relevant differences affected the properties' relative values. Without a more reasoned analysis that complies with generally accepted appraisal principles, the sales data that Mr. Richeal pointed to does little to show the subject property's market value-in-use.
- h) That being said, Mr. Richeal did point to a home located at 2218 Jacobs Creek Run that he described as having a home that was identical to the subject home and that was listed for \$118,000 on December 15, 2009. *See Richeal testimony; Pet'r Ex. 8.* While Mr. Richeal did not really compare the two homes' features, the Assessor offered a property record card and photograph that arguably support Mr. Richeal's description. *See Resp't Exs. 7-8.* Even so, 2218 Jacobs Creek Run's list price was almost two years after the January 1, 2008 valuation date that applies to the March 1, 2008 assessment under appeal. And neither Mr. Richeal nor Ms. Klein explained how the listing related to the subject property's value as of that earlier valuation date. The listing information therefore lacks probative value.
- i) Next, according to Mr. Richeal, Ms. Klein bought the subject property for \$118,000 in May 2005. A property's sale price can be compelling evidence of its market value-in-use. Once again, however, neither Ms. Klein nor Mr. Richeal explained how the subject property's sale price related to its market value-in-use as of the January 1, 2008 valuation date that applied to the assessment under appeal. So, like the listing for 2218 Jacobs Creek Run, the subject property's sale price lacks probative value.
- j) Finally, the parties spent significant time arguing about when "short sales," "repos" and foreclosures can be used in determining a property's market value-in-use both in the assessment and appeal processes. Mr. Richeal, in particular, did little to explain what he meant by those terms, although it appears that he was referring to sales that related to a foreclosure in some way, including sales by lending institutions after they had gotten properties through foreclosure proceedings or in lieu of instituting foreclosure proceedings. Regardless, because Mr. Richeal did not sufficiently analyze any of his sales data, the Board need not address the parties' arguments about if, and when foreclosure-related sales may be probative evidence in an assessment appeal.

### **Conclusion**

- 16. Ms. Klein failed to make a prima facie case for reducing the subject property's assessment. The Board therefore finds for the Assessor.

## Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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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>>.