

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

**Petition:** 02-072-13-1-5-00010  
**Petitioners:** Michael & Kim Jacoby  
**Respondent:** Allen County Assessor  
**Parcel:** 02-08-20-276-007.000-072  
**Assessment Year:** 2013

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

**Procedural History**

1. The Petitioners initiated their 2013 assessment appeal with the Allen County Assessor on May 9, 2013. On October 25, 2013, the Allen County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level the Petitioners requested.
2. The Petitioners timely filed their Petition for Review of Assessment (Form 131) with the Board on December 2, 2013. They elected the Board's small claims procedures.
3. The Board issued a notice of hearing on March 28, 2014.
4. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on May 8, 2014. She did not inspect the property.
5. Michael Jacoby appeared *pro se*. Attorney John Rogers appeared for the Respondent. Mr. Jacoby and Deputy Assessor Renee Buettner were sworn as witnesses.

**Facts**

6. The property under appeal is a single family home located at 4417 Spring Burn Drive, in Fort Wayne.
7. The PTABOA determined the 2013 assessment is \$57,100 for the land and \$177,200 for the improvements (\$234,300 total).
8. The Petitioners did not request a specific value.

**Record**

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

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioners Exhibit 1: Page two of Form 131, subject property record card, and property record card for 4609 Spring Burn Drive.
- Respondent Exhibit 1: “Respondent’s Position Statement,”
- Respondent Exhibit 2: Page one of subject property record card,
- Respondent Exhibit 3: Page two of subject property record card,
- Respondent Exhibit 4: Subject property photograph – front view,
- Respondent Exhibit 5: Subject property photograph – back view,
- Respondent Exhibit 6: Subject property photograph – side view,
- Respondent Exhibit 7: Page one of subject property record card with field inspection notes,
- Respondent Exhibit 8: Page two of subject property record card with field inspection notes,
- Respondent Exhibit 9-10: Ratio studies for Wyndemere sections 1 – 3 of St. Joe Township,
- Respondent Exhibit 11-12: Sales comparison analysis after June 25, 2013, field inspection,
- Respondent Exhibit 13-14: Sales comparison analysis prior to June 25, 2013, field inspection.
- Board Exhibit A: Form 131 petition with attachments,
- Board Exhibit B: Hearing notice dated March 28, 2014,
- Board Exhibit C: Notice of appearance from John Rogers,
- Board Exhibit D: Hearing sign-in sheet.

- d) These Findings and Conclusions.

### **Contentions**

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

- a) The subject property is over assessed in comparison to a neighboring property. The homes located in the subject property’s neighborhood are generally custom-built. Therefore, comparables are often difficult to find; however, the Petitioners were able to find one comparable assessment. *Jacoby argument; Pet’r Ex. 1.*
- b) The property located at 4609 Spring Burn Drive is assessed at \$235,700. The subject property is assessed at \$234,300. There is a \$1,400 difference between the two assessments even though substantial differences between the two properties exist. The lot sizes are similar, but the neighboring home is 623 square feet larger than the

subject property. Further, the neighboring home is all brick and has a four car garage that is 750 square feet larger than the Petitioner's garage. *Jacoby argument; Pet'r Ex. I* at 3.

- c) The Petitioners acknowledged that the 4609 Spring Burn Drive property was once a rental property and valued using the income approach, which in turn yields a lower value. This approach may no longer be applicable because it is not clear if this property has been recently purchased. Regardless of the method used to value a property, the Petitioners argue that "real market is the true gauge." *Jacoby argument.*

11. Summary of the Respondent's case:

- a) The subject property is assessed correctly. The home is located in a nice subdivision with other custom-built homes. Field inspectors from the assessor's office viewed the subject property on June 25, 2013, and made a few changes to the assessment as a result. One change in particular was to the square footage of the house. *Buettner testimony; Resp't Ex. 2-8.*
- b) To obtain an accurate assessment, the Respondent performed ratio studies using valid sales that occurred from January 1, 2012, thru March 1, 2013. The Respondent also included sales from 2011 because there was a lack of data. *Buettner testimony; Resp't Ex. 9-10.*
- c) The Respondent also presented a set of sales-comparison analyses to justify the assessment. Seven comparable properties were utilized to estimate the value. The comparable sales ranged from \$207,000 to \$330,000. The Respondent offered two separate analyses for the subject property, one prior to the square footage correction, and one after the corrections were made. The Respondent utilized the cost schedules in the "Guidelines" to adjust for differences in things such as fireplaces, central air, plumbing fixtures, garage size, basement discrepancies, and square footage differences. After incorporating the adjustments, the Respondent determined the market value-in-use of the subject property should be \$235,700 according to one analysis and \$238,200 according to the other. *Buettner testimony; Resp't Ex. 11-14.*
- d) Finally, the purportedly comparable property evidence the Petitioners presented is for a property that was assessed utilizing the income approach. Valuing a property using the income approach would yield a lower value on a property because it is based on leases, and on the rental market for an area. If the Respondent would have valued this comparable utilizing the cost approach it would have a value of \$281,400. *Buettner testimony.*

### **Burden of Proof**

- 12. Generally, the taxpayer has the burden to prove that an 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

13. First, Ind. Code section 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
14. Second, Ind. Code section 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
15. At the hearing, both parties agreed that the 2013 assessed value did not increase by more than 5% over the 2012 level. Further, no evidence was presented that would indicate the previous year’s assessment had been reduced. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners.

### **Analysis**

16. The Petitioners failed to make a prima facie case for reducing the 2013 assessment.
  - a) Real property is assessed based on its "true tax value," which 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. 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.

- b) Regardless of the method used, a party must explain how the 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 Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2013, assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).
- c) The Petitioners attempted to support their position by comparing their assessment to the assessment of a purportedly comparable property. Parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1). Here, the Petitioners' comparable property is just two doors away from the subject property, so it is well within the taxing district.
- d) Nevertheless the determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18.
- e) The Petitioners failed to offer a meaningful comparison of the subject property and the purportedly comparable property in terms of characteristics that would affect their market values-in-use. While the Petitioners testified that the neighboring home had a larger garage, more square footage, and was all brick, they failed to explain or account for how those differences affected the respective values. Further, the Petitioners acknowledge that their purported comparable was valued using the income approach, while the subject property was valued using the cost approach. The Petitioners did not account for this difference and failed to make any adjustments. Consequently, the Petitioners failed to base their comparison on generally accepted appraisal and assessment practices.
- f) The Petitioners failed to make a prima facie case that the 2013 assessment is incorrect.
- g) Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

17. The Board finds for the Respondent.

## Final Determination

In accordance with these findings and conclusions, the 2013 assessment will not be changed.

ISSUED: August 4, 2014

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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

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.