

REPRESENTATIVE FOR PETITIONER:

Judith A. Calvert, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Edward J. Bisch, Jr., Indiana Assessment Service

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                        |   |                                   |
|------------------------|---|-----------------------------------|
| Gerald M. Calvert, Jr. | ) | Petition No.: 84-013-06-1-5-00045 |
| and Judith A. Calvert, | ) | Parcel: 84-02-36-177-005.000-013  |
|                        | ) |                                   |
| Petitioners,           | ) |                                   |
|                        | ) |                                   |
| v.                     | ) |                                   |
|                        | ) |                                   |
| Vigo County Assessor,  | ) | Vigo County                       |
|                        | ) | Otter Creek Township              |
| Respondent.            | ) | 2006 Assessment                   |
|                        | ) |                                   |

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Appeal from the Final Determination of the  
Vigo County Property Tax Assessment Board of Appeals

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**June 1, 2009**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

Did the Petitioners prove that the current assessment of \$177,800 fails to accurately reflect the market value-in-use of the subject property and did they prove specifically what the correct assessment should be?

## HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is a single family residence at 3476 East Park Avenue in Terre Haute.
2. The Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the 2006 assessment is \$177,800. On March 19, 2009, the Petitioners filed a Form 131 Petition seeking a review of that determination. They contend the assessed value should be \$122,500. The Petitioners opted out of small claims procedures.
3. The Board's designated Administrative Law Judge, Paul Stultz, held the hearing on March 19, 2009. He did not conduct an on-site inspection of the property.
4. Judith A. Calvert and Edward J. Bisch were sworn as witnesses and testified at the hearing.<sup>1</sup>
5. The Petitioners presented the following exhibits:
  - Petitioner Exhibit 1 – Appraisal of the subject property and four pages of multiple listings data,
  - Petitioner Exhibit 2 – Two photographs of south views from the subject property,
  - Petitioner Exhibit 3 – Two photographs of east views from the subject property,
  - Petitioner Exhibit 4 – Two photographs of west views from the subject property and one photograph of a double-wide mobile home located at 3424 East Park Avenue,
  - Petitioner Exhibit 5 – Twelve photographs of eight surrounding properties,
  - Petitioner Exhibit 6 – Assessment Guidelines, ch. 2, page 8 and property record card for 2006,
  - Petitioner Exhibit 7 – Assessment Guidelines, ch. 2, page 78,
  - Petitioner Exhibit 8 – Vigo County Trending Reports,
  - Petitioner Exhibit 9 – Property record card for 2002,
  - Petitioner Exhibit 10 – General text addendum to the appraisal,
  - Petitioner Exhibit 11 – Seven photographs of Otter Creek flooding in 1993.
6. The Respondent presented following exhibit:
  - Respondent Exhibit 1 – Notice of Appearance.

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<sup>1</sup> One of the Petitioners, Gerald M. Calvert, Jr., passed away before this hearing was held.

7. The following additional items are recognized as part of the record of proceedings:
  - Board Exhibit A – The 131 Petition,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing Sign In Sheet.

#### SUMMARY OF THE PETITIONERS' CASE

8. The location of the property diminishes its value. Contrary to the “improving” classification on the property record card for 2006, the neighborhood is not improving. *Calvert testimony; Pet’r Ex. 6.* The property is located near a heavily traveled railroad track. *Calvert testimony; Pet’r Exs. 2 and 3.* The northern property boundary is Otter Creek, which experienced significant flooding in 1993. *Calvert testimony; Pet’r Ex. 11.* Subsequently, double-wide mobile homes were brought in to replace flood-damaged homes in the neighborhood that could not be repaired. Now mobile homes and properties that have not been properly maintained dominate the neighborhood. *Calvert testimony; Pet’r Exs. 4 and 5.* A church and residential structures on the Petitioners’ street have been turned into businesses, further detracting from the value of the subject property. There is no sidewalk or road shoulder in the neighborhood, forcing pedestrians to walk on the Petitioner’s property. *Id.* All of these things are negative influence factors for the subject property. *Calvert testimony.*
9. An appraisal valued the property at \$122,500 as of January 1, 2005. It was prepared by a certified Indiana Appraiser, Richard T. Conley, Jr. *Calvert testimony; Pet’r Ex. 1.* The appraisal compared sales in the immediate area and found that comparable properties sold for significantly less than the assessed value of the subject property. *Pet’r Ex. 1 at 8-9.* The appraisal certifies the appraiser has no personal interest or bias with respect to the property or the participants in the transaction. It also certifies that he performed the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice. *Pet’r Ex. 1 at 24.*

## SUMMARY OF THE RESPONDENT'S CASE

10. The appraisal is not supported with market evidence and is “very questionable.” The appraisal was not based on an arm’s-length business relationship. Gerald Calvert, Warren Soales<sup>2</sup>, and the appraiser were friends. Sometimes Mr. Soales and Mr. Calvert recommended that taxpayers use Mr. Conley as an appraiser for appeals. Mr. Soales recommended Mr. Conley to replace him as the township assessor. The close personal relationships suggest that undue influence may have affected Conley’s appraisal. *Bisch testimony and argument.*
11. The appraiser used a 10% “rule of thumb” adjustment for the presence of a railroad track running by the subject property, but he did not support this adjustment with market evidence. *Bisch testimony; Pet’r Exs. 1 and 10.*
12. The appraisal and the general text addendum submitted by Petitioner should not be used to establish the assessment because both documents expressly state that the appraisal is intended for use only by Gerald and Judith Calvert and it cannot be used by anyone else. *Bisch testimony; Pet’r Ex. 1 at 11 and Ex. 10.*
13. The Petitioners did not meet their burden of proof. Therefore, the Respondent does not need to support the assessment with evidence. *Bisch testimony.*

## ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN

14. 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).

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<sup>2</sup> Warren Soales was identified as a former township assessor.

15. In making a 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”).
16. 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.

#### ANALYSIS

17. 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). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine fair market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence to rebut that presumption. 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.
18. Regardless of the approach used to prove a property’s value-in-use, a 2006 assessment must reflect its value as of January 1, 2005. An appraisal or any other evidence of value must have some explanation about how it demonstrates or is relevant to value as of the

required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

19. While both parties addressed facts such as the busy railroad and Otter Creek flooding that almost certainly have some impact on the subject property, the determinative issue is their collective impact, and ultimately, an accurate determination of market value-in-use. Therefore, the primary concern here is with the appraisal that the Petitioners submitted.
20. An appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) is often the most effective method to rebut the presumption that an assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The appraisal was prepared by a licensed appraiser, who concluded that as of January 1, 2005, the market value of the subject property was \$122,500. On its face, Mr. Conley's appraisal of the subject property appears to be substantial, probative evidence that supports the Petitioner's claim for an assessment of only \$122,500.
21. Nevertheless, the Respondent argued that the appraisal is "questionable" or "suspect" in three respects—and consequently the Petitioners failed to make a prima facie case. The Respondent attacked the appraisal, but presented no evidence in support of the existing assessment because (in the Respondent's opinion) none was required. Thus, the outcome of this case depends on whether or not the probative value of the appraisal was destroyed.
22. First the Respondent argued that the appraisal *might* have been influenced by personal interest or bias because Gerald Calvert, Warren Soales, and Richard Conley were friends who did favors for one another—including referring appraisal business to Mr. Conley. Mr. Soales even recommended Mr. Conley to be his successor as the township assessor. The Respondent established that there was something closer than an arm's-length business relationship and speculated that the appraisal's opinion of value for the subject property was low because of it. But there is no probative evidence that the relationship

actually influenced the appraisal to reach a lower conclusion about value. The Respondent's speculation about personal interest or bias influencing the appraisal is not probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The totality of the evidence is not sufficient to disprove the certification that the appraiser had no personal interest or bias.

23. Second, the Respondent argued that the appraisal is flawed because the appraiser failed to support the 10% adjustment for the presence of the railroad track that runs by the subject property with market evidence. (This adjustment ranged from \$12,000 to \$14,000 for each comparable sale.) The Respondent did not dispute that the presence of the railroad track is a significant difference between the subject property and the comparable sales used in the appraisal. An adjustment for that difference is certainly reasonable and accords with generally accepted appraisal principles. The Respondent failed to provide authority for requiring the market evidence to back up such an adjustment to be contained in the appraisal itself. The Respondent did not offer evidence that the appraisal's amount of adjustment is wrong. Furthermore, the Respondent failed to show that a better justified adjustment amount would have changed the appraiser's conclusion of value.
24. Third, the Respondent argued that the appraiser used specific language—"This appraisal report is intended for use only by Mr. & Mrs. Gerald M. Calvert, no other person or legal entity is entitled to this report, or may use this appraisal report except the intended user so stated (Mr. & Mrs. Gerald M. Calvert)."—that somehow precludes consideration and use of the appraisal in regard to this assessment appeal. But the Respondent failed to establish how such a limitation precluded the Calverts from voluntarily submitting the appraisal in these proceedings. Such a limitation has little, if any, bearing on the probative value of the appraisal in determining what the assessment on their property should be.
25. A recent statement from the Tax Court is particularly relevant: "assessing officials should defend their assessment decisions with their own evidence at the Indiana Board hearing, even if they think a taxpayer has failed to make a prima facie case." *Lake Co.*

*Property Tax Assessment Bd. of Appeals v. St. George Serbian Orthodox Church*, No. 49T10-0712-TA-72, slip op. at 6 n.4 (Ind. Tax Ct. May 7, 2009). In this case, the Respondent poked a few holes in the credibility of the appraisal, but did not completely destroy its probative value.<sup>3</sup> Consequently, even though the appraisal may have some flaws, it still is enough to make the Petitioners' prima facie case. And the Respondent did not provide any evidence to support the accuracy of the existing assessment.

SUMMARY OF FINAL DETERMINATION

26. Therefore, the Board finds in favor of the Petitioner and determines the total assessed value of the subject property must be reduced to \$122,500.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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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

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<sup>3</sup>The points against the appraisal might have been significant if the Board were weighing the credibility of *conflicting evidence* to make a final determination of value, but the Respondent chose to present no probative evidence about the market value-in-use that conflicts with the appraisal's opinion of value.

**- 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>>