

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

**Petition No.:** 91-013-06-1-5-00089  
**Petitioners:** Merle L. and Pamela A. Peterson  
**Respondent:** White County Assessor  
**Parcel No.:** 010-30940-00  
**Assessment Year:** 2006

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 White County Property Tax Assessment Board of Appeals (the PTABOA) by written document on November 13, 2007.
2. The PTABOA issued notice of its decision on August 13, 2008.<sup>1</sup>
3. The Petitioners filed a Form 131 petition with the Board on August 26, 2008. The Petitioners elected to have this case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 7, 2009.
5. The Board held an administrative hearing on June 11, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioners: Merle Peterson, Property owner
  - b. For Respondent: Scott Potts, County Representative

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<sup>1</sup> The PTABOA issued an earlier Form 115 on March 18, 2008, finding the assessed value of the property to be \$63,000 for the land and \$116,900 for the improvements, for a total assessed value of \$179,900. The PTABOA issued a "corrected" Form 115 on August 13, 2008, finding the assessed value of the property to be \$103,600 for the land and \$159,900 for the improvements, for a total assessed value of \$263,500.

## Facts

7. The subject property is a 1,704 square foot single family residence and a detached garage located at 5007 North Canyon Loop, Monticello, Monon Township, in White County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2006, the PTABOA determined the assessed value to be \$103,600 for land and \$159,900 for the improvements, for a total assessed value of \$263,500.
10. The Petitioners requested an assessed value of \$103,600 for the land and \$121,400 for the improvements, for a total assessed value of \$225,000.

## Issue

11. Summary of the Petitioners' contentions in support of an alleged error in the assessment:
  - a. The Petitioners contend the Respondent assessed the property for more than its market value-in-use. *Peterson testimony*. According to the Petitioners, the property's value is \$225,000 based on an appraisal. *Peterson testimony*. In support of their position, the Petitioners submitted four pages from an appraisal report prepared by Becky M. Patty, MBP Appraisals, Inc.<sup>2</sup> *Petitioner Exhibit 2*. Ms. Patty is an Indiana Certified Appraiser. *Id.* In her appraisal report, Ms. Patty estimated the property's value to be \$225,000 as of August 31, 2007. *Id.*
  - b. The Petitioners contend that the PTABOA requested research to determine the differences in market values between the years of 2006 and 2007. *Peterson testimony*. According to Mr. Peterson, Networks Real Estate prepared a document entitled "Real Estate Market Snapshots" which shows that in 2005 there were 88 home sales and the average home sold for a price of \$117,924. *Petitioner Exhibit 3*. In 2006, there were 81 houses that sold for an average price of \$152,131 and for 2007, 75 homes sold for an average price of \$166,993. *Id.* Thus, Mr. Anderson argues, in 2007 the average sales price of homes in the Shafer-Big Monon area increased 9.7% over 2006. *Id.*
  - c. The Petitioners also contend the assessed value of their house is overstated compared to properties in the surrounding area. *Peterson testimony*. In support of their position, the Petitioners submitted two property record cards that listed the assessed values of the "comparable" homes as \$119,800 and \$128,700 respectively for the assessment year of March 1, 2008. *Petitioner Exhibit 5 and 6*. Mr. Peterson argues that the first property, located at 5005 North Canyon Loop, is

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<sup>2</sup> The Board notes that the full six pages were attached to the Petitioners' Form 131 Petition and, thus, are attachments to Board Exhibit A.

similar in size, location, construction type and age to the subject property,<sup>3</sup> while the second property is located at 5011 North Canyon Loop is superior to the property under appeal in construction type and size. *Peterson testimony*. Both of the houses, however, have lower assessed values than the property under appeal. *Peterson testimony*. Thus, the Petitioners conclude, their property's assessment is excessive. *Peterson testimony*.

- d. Finally, the Petitioners contend that the Respondent used inaccurate measurements to assess their house. *Peterson testimony*. Mr. Peterson contends there is an unheated, 144 square foot area that is used for storage between the house and the garage that is incorrectly classified as finished living area. *Petitioner Exhibit 4; Peterson testimony*. According to Mr. Peterson, the storage area cannot be accessed from the house or the garage. *Peterson testimony*. Thus, the Petitioner contend, the house is over-assessed on the basis that the storage area is assessed incorrectly. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent argues that the Petitioners' appraisal suffers from major flaws and therefore should be given little weight. *Potts testimony*. The Respondent's representative contends the appraiser did not address the fact that the first comparable sale was a foreclosure sale. *Respondent Exhibit B; Potts testimony*. In addition, Mr. Potts argues, the appraiser inadequately addressed the ages of the comparable houses and the value of the location of the comparable properties to the subject property. *Potts testimony*. Specifically, Mr. Potts contends that the Petitioners' comparable houses are all in excess of 50 years old, while the Petitioners' house is only five years old. *Id.* Further, Mr. Potts argues, the primary value of lake properties stems from the land. *Potts testimony*. Comparables 1 and 2 are located on narrower and shallower area of the lake than the property under appeal. Comparable 3 is located on a narrow inlet which has no view of the lake. *Petitioner Exhibit 2; Potts testimony*. No adjustments were made to account for the comparable houses' ages or locations. *Id.*
- b. The Respondent also contends the property's assessment is correct based on the property's market value. *Potts testimony*. In support of this contention, the Respondent submitted sale and assessment information for a comparable property located at 5011 North Canyon Loop that sold for \$261,900 on June 30, 2006. *Respondent Exhibit F; Potts testimony*. Mr. Potts testified the house's living area is slightly larger, but the house is older than the property under appeal. *Id.* Thus, Mr. Potts argues, a property's location on the lake effects the overall value of the property. *Potts testimony*.

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<sup>3</sup> The Petitioners contend the assessor has inaccurately measured the house located at 5005 North Canyon Loop. *Peterson testimony*. According to Mr. Peterson, he measured the structure at 1,477 square feet, whereas the property record card currently reflects 1,376 square feet. *Petitioner Exhibit 5; Peterson testimony*.

- c. Finally, in response to the Petitioners' testimony, Mr. Potts argues the \$24,000 difference in the assessed values between the neighbor's house located at 5005 North Canyon loop and the property under appeal is due to the fact that the property under appeal has 328 more square feet of living area than the comparable property. *Petitioner Exhibits 4 and 5; Potts testimony.*

### **Record**

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Petitioner Exhibit 2 – Four pages from a Uniform Residential Appraisal Report, prepared by Becky M. Patty, MBP Appraisals, Inc., dated September 4, 2007,

Petitioner Exhibit 3 – A sheet entitled “Real Estate Market Snapshots”,

Petitioner Exhibit 4 – A property record card for the property located at 5007 North Canyon Loop, Monticello,

Petitioner Exhibit 5 – A property record card for the property located at 5005 North Canyon Loop, Monticello,

Petitioner Exhibit 6 – A property record card for the property located at 5011 North Canyon Loop, Monticello,

Respondent Exhibit A – A property record card for the property located at 3130 East McKinley Drive, Monticello,

Respondent Exhibit B – The Indiana sales disclosure form for 3130 East McKinley Drive, Monon, dated June 25, 2007,

Respondent Exhibit C – A property record card for the property located at 6237 North McKinley Drive, Monticello,

Respondent Exhibit D – A property record card for the property located at 5233 East Blue Bell Court, Monticello,

Respondent Exhibit E – A plat map showing 5233 East Blue Bell Court, Monticello,

Respondent Exhibit F – Property record cards for Parcel No. 91-83-31-000-013.300-013 and Parcel No. 91-83-31-000-013-000-013.400-013 located at 5011 North Canyon Loop, Monticello,

Respondent Exhibit G – A plat map showing 5011 and 5007 North Canyon Loop, Monticello,

Respondent Exhibit H – Notice of Appearance of Consultant on Behalf of Assessor dated June 5, 2009, and Verification by the Department of Local Government Finance of Certification of Professional Appraisers, pursuant to 50 IAC 15-4-1,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing 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 Township 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 Township 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 2002 Real Property Assessment Manual defines “true tax value” 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 market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using 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 Ct. 2006). But a taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
  - c. Regardless of the method used, the 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - d. Here, the Petitioners presented an appraisal that concluded the value of the property was \$225,000 as of August 31, 2007. *Petitioner Exhibit 2; Peterson testimony*. The appraiser certified that the appraisal was prepared according to the Uniform Standards of Professional Appraisal Practices (USPAP). *Board Exhibit A*. Further, the Petitioners presented a "Real Estate Market Snapshots" document to show that the average sale prices of homes continued to increase from 2005 through 2007. *Petitioner Exhibit 3*. Thus, the Petitioners presented some evidence that the value of the property as of January 1, 2005, would be no more than the property's appraised value as of August 31, 2007.
  - 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 Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
  - f. Here, the Respondent contends that the Board should give little weight to the Petitioners' appraisal because the appraiser failed to adjust for the age of the

comparable homes and their locations. *Potts testimony*. The Board however finds this argument unpersuasive. It is well within an appraiser's expertise to choose the sales he or she deems most comparable to the property under appeal and apply adjustments to those comparable properties to value the differences between them. As the Respondent's representative noted, all three comparables had water access. Thus, it is clear the Petitioner's appraiser considered the properties' locations. Absent evidence to the contrary, the Board will find the comparable properties chosen by the appraiser or the adjustments made by the appraiser to be reasonable.

- g. The Respondent also argues that the Petitioners' property is properly assessed based on a neighboring property that sold for \$261,900 in June of 2006. *Respondent Exhibit F; Potts testimony*. The Respondent's representative, however, provided little information regarding the similarities between the properties and failed to value any differences. To rebut or impeach 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. ... 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). Thus, while the Respondent's comparable sale may be some evidence of the market value-in-use of the Petitioners' property, it is too conclusory to rebut the Petitioners' appraisal.
- h. The Board finds that the weight of the evidence supports the Petitioners' 2007 appraised value. The Board therefore holds that the value of the subject property is \$225,000.

### **Conclusion**

- 16. The Petitioners raised a prima facie case that their property was over-valued. The Respondent failed to present sufficient evidence to impeach the Petitioners' case. Thus, the Board finds in favor of the Petitioners and holds that the market value-in-use of the property for the March 1, 2006 assessment date is \$225,000.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

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

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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 pursuant to 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 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/bills/2007/SE0287.1.html>.**