

REPRESENTATIVE FOR PETITIONERS:

Reinhard Pollach, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Chad Polak, Washington Township Assessor's Office

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Jane Ann Pitz and Reinhard Pollach	)	Petition No.:	49-801-02-1-5-08089
	)	Parcel:	8017684
Petitioners,	)		
	)		
v.	)	County:	Marion
	)	Township:	Washington
Washington Township Assessor,	)	Assessment Year:	2002
	)		
Respondent.	)		

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

**August 8, 2006**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the "Board") having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ISSUES**

1. The parties presented several issues for consideration by the Board, which the Board consolidates and restates as follows:

ISSUE 1 - *Whether the assessed value of the subject property exceeds its market value as of January 1, 1999.*

ISSUE 2 - *Whether the subject property is entitled to the same base rate, depth factor and neighborhood factor used to assess properties in an adjacent assessment neighborhood.*

ISSUE 3 - *Whether the subject property is entitled to application of a negative influence factor of 10% to account for it being a corner lot.*

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioners, Jane Ann Pitz and Reinhard Pollach, filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (“Form 131 petition”), requesting the Board to conduct an administrative review of assessment of the subject property. The Petitioners filed their Form 131 petition on February 28, 2005. The Marion County Property Tax Assessment Board of Appeals (“PTABOA”) issued its Form 115 Notification of Final Assessment Determination with regard to the subject property on January 28, 2005.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on February 21, 2006, in Indianapolis, Indiana before Alyson Kunack, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Reinhard Pollach, Petitioner

For the Respondent:

Chad Polak, Washington Township Assessor’s Office

5. The following exhibits were presented for the Petitioners:

Petitioners’ Exhibit 1A– Summary of Petitioners’ Arguments

Petitioners' Exhibit 1 – Appraisal of the subject property  
Petitioners' Exhibit 2 – List of property sales in area  
Petitioners' Exhibit 3 – Information on neighborhood base rates  
Petitioners' Exhibit 4 – Plat map showing subject property  
Petitioners' Exhibit 5 – Property Record Card (PRC) for subject  
Petitioners' Exhibit 6 – Response to Petitioners' Request for Admissions

6. The following exhibits were presented for the Respondent:

Respondent's Exhibit 1 – MIBOR statement for subject property  
Respondent's Exhibit 2 – Sales disclosure form for subject property  
Respondent's Exhibit 3 – MIBOR statement for 5940 Central Ave.  
Respondent's Exhibit 4 – MIBOR statement for 5725 N. Washington Blvd.  
Respondent's Exhibit 5 – MIBOR statement for 4310 Central Ave.  
Respondent's Exhibit 6 – Form 115 dated January 28, 2005  
Respondent's Exhibit 7 – Subject Property Record Card (PRC)  
Respondent's Exhibit 8 – Department of Local Government Finance, *The Communicator*, Issue 25, Fall 2004

7. The ALJ provided the Respondent with additional time, through and including March 7, 2006, to offer a response to the appraisal submitted by the Petitioners at the hearing. *See Board Ex. D.* The Board received a letter from the Respondent in that regard on March 6, 2006. The Respondent provided a copy of its letter to the Petitioners. *See id.* That letter is admitted into evidence, made part of the record, and labeled as Respondent's Exhibit 9.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The Form 131 Petition  
Board Exhibit B – Notice of Hearing  
Board Exhibit C – Hearing Sign-In Sheet  
Board Exhibit D – Request for Additional Information

9. The subject property is a single family residence located at 5602 Central Avenue, Indianapolis.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2002, the PTABOA determined the assessed value of the subject property to be:

Land: \$61,900      Improvements: \$220,800      Total: \$282,700.

12. For 2002, the Petitioners contend the total assessed value of the subject property should be \$200,000, as stated in the appraisal. *Pet'r Ex 1*.

### **JURISDICTIONAL FRAMEWORK**

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **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).
15. 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 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. The Petitioners contend that the subject property's assessment exceeds its market value as of January 1, 1999. In support of their position, the Petitioners submitted a Uniform Residential Appraisal Report prepared by a certified appraiser. *Pet'rs Ex. 1*. Pursuant to that report, the appraiser estimated the market value of the subject property to be \$200,000 as of January 1, 1999. *Pollach testimony; Pet'rs Ex. 1*. The Petitioners bought the subject property on October 30, 2003, for \$310,000. *Pollach testimony*. Property in the area in which the subject property is located, however, has appreciated at an accelerated rate. *Id.* The appraiser expressly recognized that increased rate of appreciation. *Pet'rs Ex. 1*. The increased rate of appreciation is also reflected by the vast increase in sale prices experienced by several other properties in the area between 1996 and 2003. *See Pet'rs Ex. 2*. For example, the Petitioner's former house sold for \$120,000 in August of 1999, and resold for \$224,000 in May of 2003 – an increase of 87%, or 9% per year. *Pollach testimony; Pet'rs Ex. 2*.
18. The Petitioners also contend that the Respondent erred in drawing the boundaries for the assessment neighborhood in which it determined the subject property to be located, and consequently, that the Respondent applied an incorrect base rate, depth factor and neighborhood factor in valuing the subject property. *See Pollach testimony; Pet'rs Exs. 1A, 3-6*. In addition, the Petitioners contend that the subject property is entitled to a negative influence factor for being a corner lot. *Id.*
19. At the hearing, Mr. Polak testified that the Respondent applied a factor of 3% per year to “trend” sale prices. *Polak testimony*. Mr. Polak requested that the Board uphold the current assessment in order to be consistent with that 3% trending factor. *Id.* Subsequent to the hearing, however, Mr. Polak submitted a letter in response to the Petitioners' appraisal. *Resp't Ex. 9*. In its letter, Polak states that, after having reviewed the appraisal submitted by the Petitioners at the hearing, “[t]he township will use the value submitted on the appraisal dated February 16, 2006 for \$200,000.” *Resp't Ex. 9*.

20. Thus, the parties do not dispute that the current assessment is incorrect and that the correct assessment is \$200,000. As explained above, the Petitioners identified additional issues concerning whether the Respondent applied an appropriate base rate, depth factor and neighborhood factor in assessing the subject property and whether the Respondent should have applied a negative influence factor to the subject land. Given parties' agreement regarding the overall value of the subject property, however, those issues are moot.

#### **SUMMARY OF FINAL DETERMINATION**

21. Based on the foregoing, the Board finds that current assessment is incorrect and the assessment should be changed to a total of \$200,000. A change in the assessment is made as a result of this appeal.

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

## 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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <[http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html)>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.