

REPRESENTATIVES FOR PETITIONER:

Charles A. Slanina, Taxpayer

REPRESENTATIVES FOR RESPONDENT:

Susie Majors, Knight Township Deputy

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Charles A. Slanina,	)	Petition No.:	82-027-05-1-5-05011
	)	Parcel:	09-640-17-009-011
Petitioner,	)		
	)		
v.	)		
	)	County:	Vanderburgh
Knight Township Assessor,	)	Township:	Knight
	)	Assessment Year:	2005
Respondent.	)		

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

**August 4, 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 three issues, which the Board restates as follows:
  - 1) *Whether the Respondent erred in valuing the subject land based upon an incorrect measurement of the effective depth of the subject lot and the failure to account for a utility easement;*
  - 2) *Whether the assessment is erroneous because it assigns an excessive value to the subject dwelling's air conditioning; and,*
  - 3) *Whether the subject property is assessed in excess of its market value in light of the sale price of a neighboring property.*

### PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Charles A. Slanina filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition), petitioning the Board to conduct an administrative review of the assessment of the subject property. The Petitioner filed his Form 131 petition on September 29, 2005. Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) issued its Form 115 Notification of Final Assessment Determination on September 16, 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 May 12, 2005, in Evansville, Indiana before Jennifer Bippus, 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 Petitioner:

Charles A. Slanina, Taxpayer  
Mimi Slanina, Witness

For the Respondent:

Susie Majors, Knight Township Deputy  
Candy Wells, Vanderburgh County Deputy  
Tiffany Collins, Vanderburgh County Deputy

5. The following exhibits were presented for the Petitioner:

Petitioner Exhibit 1: Copy of property record card for subject property printed May 9, 2006,  
Petitioner Exhibit 2: Copy of property record card for subject property printed October 31, 1995,  
Petitioner Exhibit 3: Copy of page from Evansville Courier & Press Showing property selling for \$51,000 on February 14, 2005,  
Petitioner Exhibit 4: Assessor database detail of subject property from Vanderburgh County Assessor website,  
Petitioner Exhibit 5: Copy of invoice for air conditioning unit dated June 29, 1999.

6. The following exhibits were presented for the Respondent:

Respondent Exhibit 1: Form 11 for subject property,  
Respondent Exhibit 2: Form 130 submitted by taxpayer,  
Respondent Exhibit 3: Township comparables,  
Respondent Exhibit 4: Township recommendation,  
Respondent Exhibit 5: Deed of the subject property,  
Respondent Exhibit 6: Taxpayers information prior to PTABOA hearing,  
Respondent Exhibit 7: Form 115 PTABOA determination,  
Respondent Exhibit 8: Form 131 submitted by the taxpayer,  
Respondent Exhibits 9A - H: Copies of properties along Boeke Road,  
Respondent Exhibit 10: Copy of plat map,  
Respondent Exhibits 11 A – B: Definition of Easements and Right-of-ways.

7. 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 and attachments,  
Board Exhibit B – Notice of Hearing dated February 27, 2006,  
Board Exhibit C – Notice of Appearance for Vanderburgh County Assessor,  
Board Exhibit D – Sign In Sheet.

8. The subject property is classified residential, as shown on the property record card for parcel 09-640-17-009-011. The property is located at 1709 North Boeke Road, Evansville, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. The PTABOA determined that the assessed value of the subject property is \$5,400 for the land and \$58,400 for the improvements for a total assessed value of \$63,800.
11. The Petitioner did not request a specific assessed value.

### **JURISDICTIONAL FRAMEWORK**

12. 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**

13. A petitioner seeking review of a determination of a county property tax assessment board of appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence 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).
14. 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”).

15. 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

### Respondent’s Objections

16. The Respondent objected to the admission of the Petitioner’s exhibits on grounds that the Petitioner did not provide the Respondent either with a list of exhibits fifteen (15) days prior to the hearing or with copies of those exhibits five (5) days prior to the hearing. *See Majors objection*.
17. Evidentiary procedures at hearings before the Board are set forth generally at Ind. Admin. Code tit. 52, r. 2-7 (2004). More specifically, 52 IAC 2-7-1 provides, in relevant part:

(b) A party to the appeal must provide to the other parties:

(1) copies of documentary evidence or summaries of statements of testimonial evidence at least five (5) business days prior to the hearing; and

(2) a list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) business days prior to the hearing. . . .

(d) The board or the presiding administrative law judge may waive the deadlines under subsection (b) for any materials that had been submitted at or made part of the record at a PTABOA hearing, a department hearing, or other proceeding from which the appeal arises.

52 IAC 2-7-1.

18. All of the exhibits offered by the Petitioner were attached to the Petitioner's Form 131 petition. *See Board Ex. A.* The Respondent cannot dispute that it was served with the Petitioner's Form 131 petition and attachments in advance of the hearing, in light of the fact that the Respondent submitted a copy of the Petitioner's Form 131 petition and attachments as Respondent's Exhibit 8. In fact, the Board's admission of Respondent's Exhibit 8 renders the Respondent's objection moot. Moreover, it appears that the Petitioner submitted Petitioner's Exhibit 3 at the PTABOA hearing, which would constitute independent grounds for waiving the requirement that the Petitioner identify and provide a copy of that exhibit to the Respondent in advance of the hearing. *See 52 IAC 2-7-1(d).* Based on the foregoing, the Board overrules the Respondent's objection.

### Merits of the Case

#### **Issue I**

*Whether the Respondent erred in valuing the subject land based upon an incorrect measurement of the effective depth of the subject lot and the failure to account for a utility easement*

19. The Petitioner contends that the subject parcel is one hundred (100) feet deep, rather than one hundred and twenty (120) feet deep as reflected on the property record card (PRC) for the subject property. *C. Slanina testimony; M. Slanina testimony.* The Respondent increased the effective depth of the subject lot to one hundred and twenty (120) feet, despite the fact that the lot has always been assessed as having an effective depth of one hundred (100) feet. *M. Slanina testimony; Pet'r Exs. 1-2, 5.* The Petitioner also contends that the Respondent failed to account for an easement at the rear of the property for ingress and egress of utility vehicles. *Id.* According to the Petitioner, the subject property is subject to an existing utility easement of (4) feet. *C Slanina testimony.* Ms. Slanina, however, testified that a representative of the utility company informed her that a minimum of ten (10) to twelve (12) feet is required to allow for access by the utility company's equipment. *M. Slanina testimony.*
20. The Respondent contends that representatives of its office and of the Vanderburgh County "GIS" office met and examined the deeds for lots along Boeke Road and

determined that the effective depth for those lots should be one hundred and twenty (120) feet. *Majors testimony; Resp't Exs. 5, 10.* The deed for the subject property shows a lot depth of 160 feet, with a right-of-way forty (40) feet wide running across the property. *Majors testimony; Resp't Ex. 5.* The Respondent subtracted the forty (40) foot wide right of way from the subject property's actual dept to arrive at an effective depth of one hundred and twenty (120) feet. *Id.*

21. The only evidence presented by the Petitioner to demonstrate the depth of the subject lot consists of property record cards for the subject property from previous years listing the subject property as having an effective depth of one hundred (100) feet. *See Pet'r Exs. 1-2.* While this information may constitute at least some evidence regarding the correct measurement of the subject lot, the Respondent rebutted the Petitioner's evidence with the deed to the subject property. *Resp't Ex. 5.* The deed indicates that the subject property has a depth in excess of one hundred and sixty (160) feet and that the property is subject to a forty (40) foot wide right-of-way for North Boeke Road. *Resp't Ex 5.* The Respondent simply deducted the width of the right-of-way from the actual depth of the subject lot to determine the lot's effective depth. The Respondent's actions are consistent with Ind. Code § 6-1.1-4-14(a) (4), which provides that land within a right-of-way for a public highway shall not be assessed to an adjacent property owner.
22. The Board finds that the description of the subject lot provided in the deed to be more persuasive evidence of the actual dimensions of the lot than the fact that the Respondent previously measured the lot as having an effective depth of only one hundred (100) feet. Consequently, the Petitioner failed to prove that the Respondent erred in assessing the subject property based upon an effective depth of one hundred and twenty (120) feet.
23. The Petitioner similarly failed to establish a prima facie case of error based on the Respondent's failure to account for the utility easement in assessing the subject property. While it is entirely possible that the easement affects the market value-in-use of the subject property, the Petitioner did not present any evidence by which to quantify that effect.

24. For the reasons set forth, the Petitioner has failed to demonstrate error in the land portion of the assessment.

## **Issue II**

*Whether the assessment is erroneous because it assigns an excessive value to the subject dwelling's air conditioning*

25. The Petitioner next contends that the air-conditioning unit installed in 1999 cost only \$765. *C. Slanina testimony; Pet'r Ex. 5*. The Petitioner contends that the assessment is in error because it assigns a value of \$1100 for air conditioning. *C. Slanina testimony*.
26. The Respondent contends that it did not discover that it had failed to assess the subject property for having air conditioning until the Petitioner filed his appeal. *Majors testimony*. The Respondent corrected the error as part of the appeal process. *Id.* The Petitioner has benefited from the Respondent's error in prior years. *Id.* The Respondent does not seek to correct the error for prior years, but simply to assess the subject property correctly from 2005 forward. *Id.*
27. Pursuant to the Real Property Assessment Guidelines for 2002 – Version A (Guidelines), “[a]n air conditioning system consists of heat exchangers, blowers, filters, supply exhaust, and return air-systems, and includes any apparatus installed in connection therewith.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Glossary at 1 (incorporated by reference at 50 IAC 2.3-1-2).
28. Thus, pursuant to the Guidelines, the cost assigned for air conditioning accounts for the cost of all components of the system, not just the air conditioning unit. The invoice submitted by the Petitioner, however, is for the air conditioning unit only. *Pet'r Ex. 5*. Moreover, a Petitioner cannot establish a prima facie case of error in assessment by disputing the amounts the Guidelines' cost schedules assign to individual elements of construction.



29. Based on the foregoing, the Petitioner failed to establish a prima facie case of error based upon the cost used by the Respondent to value the subject property's air conditioning system.

### **Issue III**

*Whether the subject property is assessed in excess of its market value in light of the sale price of a neighboring property*

30. Finally, the Petitioner contends that the subject property is assessed in excess of its market value based upon the sale price of a neighboring property. In support of this claim, the Petitioner submitted a copy of a page from the Evansville Courier & Press listing real estate transactions. *C. Slanina testimony; Pet'r Ex.3*. According to the newspaper, a property located at 1706 N. Boeke Road sold for \$51,000 on February 14, 2005. *Id.* The Petitioner notes that the correct address for that property is 1705 N. Boeke Road and that it is adjacent to the subject property. *Id.* The Petitioner further contends that the adjacent property has the "same kind of house" as subject property and that the two houses were built in the same year. *C. Salina testimony*.
31. The Respondent contends that the Petitioner's evidence regarding the sale of the adjacent property is not relevant to an appropriate valuation of the subject property because the sale took place in 2005. *Majors testimony*. The Respondent cites to the case of *Long v. Wayne Twp. Assessor* 821 N.E.2d 466 (Ind. Tax Ct. 2005) in support of its position. *Majors testimony*. The Respondent presented its own evidence regarding sales of comparable properties from 1998 and 1999. *Majors testimony; Resp't Ex. 3*.
32. Real property in Indiana is assessed on the basis of its "true tax value." *See* I.C. § 6- 1.1-31-6(c). "True tax value" is defined as "[t]he 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." MANUAL at 12. The market value-in-use of a property may be calculated using several approaches, all of which have been used in the appraisal profession. *Id.* at

3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.* In order to use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of purportedly comparable properties. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use. *Id.*

33. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long* 821 N.E.2d at 471; *see also* MANUAL at 4, 8.
34. The Petitioner did not attempt to compare the physical characteristics of the property at 1705 N. Boeke Road to those of the subject property. At most, the Petitioner testified that the two properties are “the same kind of house” and that they were built in the same year. *See C. Slanina testimony*. Those are precisely the types of conclusory statements rejected by the Court in *Long*. Moreover, the Petitioner did not present any evidence to relate the sale price of the neighboring property to a value as of January 1, 1999.
35. Consequently, the Petitioner failed to make a prima facie case that the subject property is assessed in excess of its market value-in-use.

## Summary of Final Determination

36. The Petitioner failed to establish that the assessment is in error. The Board finds in favor of the Respondent. The assessment shall not be changed.

This Final Determination of the above captioned matter is issued this 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>.**