

REPRESENTATIVE FOR PETITIONERS:

Wilbur R. Bingaman, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Brian Thomas, Ad Valorem Solutions

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Wilbur R. and Melinda Bingaman,	)	Petition Nos.: 09-010-09-1-5-00064
	)	09-010-09-1-5-00062
Petitioners,	)	
	)	Parcel Nos.: 09-17-56-442-015.000-010
	)	09-17-56-442-014.000-010
v.	)	
	)	
	)	County: Cass
Cass County Assessor,	)	
	)	
Respondent.	)	Assessment Year: 2009

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

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**September 13, 2011**

**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**

### **ISSUE**

1. The issue presented for consideration by the Board is whether the assessed values of the Petitioners' properties are overstated for the 2009 assessment year.

### **PROCEDURAL HISTORY**

2. The Petitioners, Wilbur R. and Melinda Bingaman, initiated assessment appeals by filing requests with the Cass County Assessor on May 12, 2010. The Cass County Property Tax Assessment Board of Appeals (the PTABOA) issued its determinations on December 17, 2010. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed Form 131 Petitions for Review of Assessment on December 28, 2010, petitioning the Board to conduct an administrative review of their petitions.

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

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on July 12, 2011, in Logansport, Indiana.
4. The following persons were sworn and presented testimony at the hearing:<sup>1</sup>

For the Petitioners:

Wilbur R. Bingaman, property owner  
Melinda Bingaman, property owner

For the Respondent:

Cathy Isaacs, Cass County Assessor  
Brian Thomas, Ad Valorem Solutions

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<sup>1</sup> Mrs. Bingaman and Ms. Isaacs were sworn in as witnesses but did not present any testimony.

5. The Petitioners presented the following exhibits:

- Petitioner Exhibit 1 – Broker’s opinion of value prepared by Cindy Heinzman, Galloway, Murray & Scheetz Real Estate, dated October 18, 2010,
- Petitioner Exhibit 2 – Multiple listing service (MLS) sheet for 305 Wilkinson, Logansport,
- Petitioner Exhibit 3 – MLS sheet for 706 Van Buren, Logansport,
- Petitioner Exhibit 4 – MLS sheet for 1523 Miles, Logansport,
- Petitioner Exhibit 5 – MLS sheet for 25 Lux, Logansport,
- Petitioner Exhibit 6 – Front page of Petitioners’ property record card,
- Petitioner Exhibit 7 – Sketch area of Petitioners’ property record card,
- Petitioner Exhibit 8 – Petitioners’ request for review before Cass County for 305 Wilkinson Street, Logansport,
- Petitioner Exhibit 9 – Petitioners’ request for review before Cass County for 309 Wilkinson Street, Logansport.

6. The Respondent presented the following exhibit:

- Respondent Exhibit A – Petitioners’ broker opinion of value dated December 6, 2010; MLS sheet for 922 State Street, Logansport; MLS sheet for 2218 East Broadway, Logansport; MLS sheet for 1210 Peter Street, Logansport; MLS sheet for 345 McKee, Logansport; and MLS sheet for 517 Clinton, Logansport.

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

- Board Exhibit A – Form 131 petitions with attachments,
- Board Exhibit B – Notice of Hearing, dated May 2, 2011,
- Board Exhibit C – Hearing sign-in sheets.

8. The properties under appeal consist of two contiguous residential lots located at 305 Wilkinson Street and 309 Wilkinson Street, Logansport, Eel Township in Cass County. 305 Wilkinson Street is a 66’ by 70’ lot with a 960 square foot house and 309 Wilkinson Street is 52’ by 66’ lot with a 280 square foot detached garage.

9. The ALJ did not conduct an on-site inspection of the properties.
10. For 2009, the PTABOA determined the assessed value of 305 Wilkinson Street to be \$5,000 for the land and \$38,500 for the improvements, for a total assessed value of \$43,500; and the assessed value of 309 Wilkinson Street to be \$3,800 for the land and \$1,700 for the improvements, for a total assessed value of \$5,500.
11. For 2009, the Petitioners contend the total assessed value of 305 Wilkinson Street and 309 Wilkinson Street together should be \$30,000.

### **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, (3) property tax exemptions, and (4) property tax credits 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 Indiana 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 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 Board of Tax Commissioners*, 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 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”).

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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

### PETITIONER’S CONTENTIONS

16. The Petitioners contend the properties at 305 Wilkinson Street and 309 Wilkinson Street are valued incorrectly based on their purchase prices. *Bingaman testimony*. According to Mr. Bingaman, the Petitioners purchased 305 Wilkinson for \$24,000 on May 29, 2009.<sup>2</sup> *Bingaman testimony*; *Petitioner Exhibit 2*. Mr. Bingaman testified that they purchased 309 Wilkinson at a tax sale in 2010 for approximately \$400. *Bingaman testimony*.
17. Additionally, the Petitioners contend that their properties were over-assessed based on the properties’ market value. *Bingaman testimony*. In support of their position, the Petitioners submitted a one-page opinion of value prepared by Cindy Heinzman, who is a broker associate with Galloway, Murray & Scheetz Real Estate, and three MLS listings.<sup>3</sup> *Petitioner Exhibits 1 through 5*. In her opinion of value, Ms. Heinzman estimated the properties’ value to be \$30,000 as of October 18, 2010, based on the sale prices of three comparable properties.<sup>4</sup> *Bingaman testimony*; *Petitioner Exhibit 1*.

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<sup>2</sup> The property record card reflects that the Petitioners purchased 305 Wilkinson Street on June 29, 2009. *Board Exhibit A*. Similarly, the Respondent’s representative refers to the Petitioners’ purchase of 305 Wilkinson as occurring on June 29, 2009. *Thomas testimony*. Whether the purchase occurred on May 29, 2009, or June 29, 2009, however, does not change the outcome of the Petitioners’ appeal.

<sup>3</sup> Mr. Bingaman referred to the document prepared by Ms. Heinzman as an “appraisal.” *Bingaman testimony*; *Petitioner Exhibit 1*.

<sup>4</sup> The broker’s opinion of value shows it is for 305 Wilkinson Street. *Petitioner Exhibit 1*. However, Mr. Bingaman argues that Ms. Heinzman considered 305 Wilkinson Street and 309 Wilkinson Street to be a single property when she estimated the market value. *Bingaman testimony*.

18. The Petitioners also contend their property at 305 Wilkinson Street would not sell for its assessed value because it was inadequately constructed and is in poor condition. *Bingaman testimony.* According to Mr. Bingaman, the house has no exterior plywood, no central heating system, the windows are bowed, the slab foundation is cracked, interior walls have collapsed and there are pest problems and problems with mold and mildew.<sup>5</sup> *Id.* In addition, the roof leaks on the detached garage at 309 Wilkinson Street. *Id.*
19. Similarly, the Petitioners argue that the properties under appeal are not located in the “best location” and therefore they would not sell for their assessed values. *Id.* According to Mr. Bingaman, their properties are located near some railroad tracks and are surrounded by rental properties. *Id.* The neighborhood has several poorly maintained businesses and condemned houses that have collapsed roofs, junk vehicles in their yards, and missing windows and siding and vandalism frequently occurs. *Id.* In addition, lights from the surrounding businesses shine into the houses all night and one business in the area has live entertainment that plays loud music into the early morning hours. *Id.*
20. Finally, Mr. Bingaman contends that assessing officials are not “trending” properties correctly.<sup>6</sup> *Bingaman testimony.* According to Mr. Bingaman, trending is a good tool for adjusting property values when homes are selling. *Id.* However, Mr. Bingaman argues that the housing market has been declining for the last few years. *Id.* Because local officials have not “reversed” the trending and lowered assessed values in the neighborhood, Mr. Bingaman concludes, their properties were over-valued. *Id.*

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<sup>5</sup> Mr. Bingaman testified that the house had baseboard heating. *Bingaman testimony.*

<sup>6</sup> Mr. Bingaman appears to be referring to Indiana Code § 6-1.1-4-4.5, which states “The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took place.” Ind. Code § 6-1.1-4-4.5.

## RESPONDENT'S CONTENTIONS

21. The Respondent's representative contends that the properties at 305 Wilkinson and 309 Wilkinson were correctly assessed for the March 1, 2009, assessment. *Thomas testimony.* According to Mr. Thomas, the county treated the Petitioners' two adjoining parcels as a single property. *Id.* Mr. Thomas testified that Karen Moss of Ad Valorem Solutions conducted a site visit to the property on October 15, 2010, prior to the PTABOA hearing. *Id.* As a result of the site visit, the PTABOA applied a negative thirty percent influence factor to the land value of both 305 Wilkinson and 309 Wilkinson for excess frontage. *Id.* In addition, the crawl space, and heating and air conditioning were removed from the house at 305 Wilkinson. *Id.* The changes resulted in a value of \$5,500 for 309 Wilkinson and \$43,500 for 305 Wilkinson. *Id.* Thus, the Respondent's representative concludes, the Petitioners' properties are not over-valued. *Thomas testimony.*
22. The Respondent's representative further argues that the Petitioners' broker's opinion of value should be given little weight. *Thomas testimony.* According to Mr. Thomas, the Petitioners' broker's opinion of value dated October 18, 2010, is more than two years and ten months removed from the proper valuation date.<sup>7</sup> *Id.* Moreover, the Respondent's representative argues, the Petitioners' broker, Ms. Cindy Heinzman, was not made available to the county to answer questions about her opinions of value. *Id.* For example, Mr. Thomas argues, the record contains no explanation as to why Ms. Heinzman used comparable properties that ranged in age from 52 years to 110 years old, when the property under appeal was only eight years old or why she considered the house at 345 McKee to be a comparable sale when the property was repossessed. *Thomas testimony; Respondent Exhibit A.*
23. Finally, the Respondent's representative argues that 305 Wilkinson Street was properly assessed based on its sales history. *Thomas testimony.* According to Mr. Thomas, the

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<sup>7</sup> The Respondent's representative presented a second broker's opinion of value, also prepared by Ms. Heinzman that was presented by the Petitioners at the PTABOA hearing. *Thomas testimony; Respondent Exhibit A.* That opinion of value estimates the value of the properties to be \$25,000 as of December 6, 2010. *Id.*

Petitioners' property record card shows that the property sold for \$60,000 on June 21, 2000; it sold again on September 27, 2006, for \$56,000; and it sold once more on March 16, 2009, for \$34,450. *Id.*; *Petitioner Exhibit 6*. The Deutsche Bank National Trust Company foreclosed on the property in 2009 and then sold it to the Petitioners on June 29, 2009, for \$24,000. *Id.* Recognizing the downward trend in the housing market, Mr. Thomas argues, the county reduced the assessed value of 305 Wilkinson to \$43,500 for the January 1, 2008, valuation date, which he contends is right in line with its \$56,000 sale in September of 2006 and its \$34,450 sale in March of 2009. *Thomas testimony*.

### ANALYSIS

24. 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). The appraisal profession traditionally has 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. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).
25. A property's assessment, determined under the Guidelines, is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the



subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

26. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2009, assessment date, the valuation date is January 1, 2008. 50 IAC 21-3-3.
  
27. The Petitioners first argue that the Petitioners' properties are over-valued based on their sale prices. *Bingaman testimony*. According to Mr. Bingaman, the Petitioners purchased the property at 305 Wilkinson on May 29, 2009, for \$24,000. *Id.*; *Petitioner Exhibits 2 and 6*. Mr. Bingaman testified that the Petitioners purchased 309 Wilkinson at a tax sale in 2010 for approximately \$400. *Bingaman testimony*. The sale of a property under appeal is often the best evidence of the property's value. *See Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). Here, however, the sales occurred approximately sixteen months and 24 months after the relevant valuation date of January 1, 2008. Because the Petitioners did not relate the properties' May 29, 2009, and 2010 purchase prices to the properties' values as of the January 1, 2008, valuation date, the purchase prices lack probative value. *See Long*, 821 N.E.2d at 471 (holding that an appraisal valuing a property as of December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how the appraised value related to the relevant valuation date).
  
28. The Petitioners also argue that their properties were over-assessed based on a broker's opinion of value that estimated the properties' value to be \$30,000 as of October 18, 2010. *Bingaman testimony*; *Petitioner Exhibit 1*. Again, the valuation date for the March 1, 2009, assessment date was January 1, 2008. Because the Petitioners failed to show

how the 2010 broker's estimate of their properties' market value was relevant to the January 1, 2008, valuation date, the Petitioners' evidence fails to raise a prima facie case that their properties' 2009 assessments were incorrect. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date).

29. Further, the broker's opinions of value did not state whether Ms. Heinzman used generally accepted appraisal methods to arrive at her opinions of market value. In fact, the October 18, 2010, document is a single paragraph that states "As per your request I have performed a search of homes that are similar to the home you own at the above mentioned address that have sold in the past few months. There has been limited sale activity in homes with limited interior square footage such as the subject property. I have included 3 sold properties for your consideration. #1 1523 Miles St. has a slightly superior location, unfinished basement and a 1 car detached garage. #2 25 Lux St. has a superior location, completely updated interior, crawl space and a 1 car attached garage. #3 706 Van Buren has had major remodeling completed with new kitchen, flooring, drywall throughout. With all of these facts considered, I give the estimated market value of your property to be \$30,000."<sup>8</sup> Consequently, the broker's estimated market values are not probative of the subject properties' market values-in-use. *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
30. In addition, the Petitioners contend that the value of their property is diminished by the condition and inadequacies of properties in the surrounding area. *Bingaman testimony*. External obsolescence is caused by an influence outside of a property's boundaries that

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<sup>8</sup> The December 6, 2010, document also states there was a search of the Logansport area to find homes that sold in the past year to estimate the property's market value.

has a negative influence on the property's value. GUIDELINES, app. B at 4. To receive an adjustment for obsolescence, the Petitioners must identify the causes of obsolescence present and quantify the amount of obsolescence they believe should be applied to their property. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioners must present probative evidence that the causes of obsolescence identified are resulting in an actual loss in value to the property. *See Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001).

31. Here, the Petitioners contend that their house is located by railroad tracks, rental properties and condemned houses. However, it is not sufficient for the Petitioners to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioners must explain how the purported causes of obsolescence cause the property to suffer an actual loss in value. *See Indian Industries, Inc. v. Department of Local Government Finance*, 791 N.E.2d 286, 290 (Ind. Tax Ct. 2003) (“All Indian has done in this case is provide the State Board with a laundry list of factors that may cause obsolescence to its improvements and then say ‘as a result, we’re entitled to a 70% obsolescence adjustment.’ However, Indian needed to link one with the other by showing an actual loss of value.”) Thus, in failing to tie the condition of neighboring properties to an actual loss in the value of their properties, the Petitioners have failed to raise a prima facie case that the properties’ assessments were incorrect.
32. Finally, the Petitioners contend that their properties are over-assessed because the house and detached garage on the properties are in need of extensive repairs. *Bingaman testimony*. The Board interprets this to be an argument that the condition of the house and garage were improperly assessed. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See* GUIDELINES, app. B, at 5. A condition rating is determined by relating the structure to comparable structures within the property’s neighborhood. While Mr. Bingaman testified that the house has no exterior plywood, no furnace, bowed windows, cracked foundation, a collapsed interior

wall and interior moisture and the detached garage roof leaks and needs replaced, there is no evidence that the condition of the subject property differs from other dwellings in the neighborhood. In fact, given Mr. Bingaman's testimony regarding the character of the neighborhood, the Board cannot find that a condition rating of "average" for the house was incorrect. Further, the Board notes that the detached garage on 309 Wilkinson is already rated in "poor" condition.

33. Even if the Petitioners had shown that the condition rating on the house or garage should have been lowered, or an obsolescence adjustment should have been applied to their properties, the Petitioners failed to show that their properties' assessments did not accurately reflect the properties' market values-in-use. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*.").
34. Where the Petitioners fail to provide probative evidence that their property's assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

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

35. The Petitioners failed to raise a prima facie case that 305 Wilkinson Street and 309 Wilkinson Street were over-valued for the March 1, 2009, assessment year. The Board finds in favor of the Respondent and holds that the properties' assessed values should not be changed.

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

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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 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>.**