

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

**Petition No.:** 12-015-08-1-5-00004  
**Petitioners:** Tony D. and Juline Brown  
**Respondent:** Clinton County Assessor  
**Parcel No.:** 12-05-13-300-011.000-015  
**Assessment Year:** 2008

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, Tony and Juline Brown, initiated an assessment appeal with the Clinton County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated March 17, 2010.
2. The PTABOA issued notice of its decision on September 28, 2010.
3. The Petitioners filed a Form 131 petition with the Board on October 20, 2010. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated January 20, 2011.
5. The Board held an administrative hearing on March 15, 2011, before the duly appointed Administrative Law Judge Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioners: Tony D. Brown, property owner
  - b. For Respondent: Dana M. Myers, Clinton County Assessor  
Jada Ray, Clinton County Deputy Assessor  
Brian Thomas, Ad Valorem Solutions

## Facts

7. The property under appeal is a house and detached garage located at 4790 State Road 38 West, Frankfort, Ross Township in Clinton County.
8. The ALJ did not conduct an on-site inspection of the Petitioners' property.
9. For 2008, the PTABOA determined the property's assessed value to be \$23,600 for the land and \$128,500 for the improvements, for a total assessed value of \$152,100.
10. The Petitioners requested an assessed value of \$23,600 for the land and \$95,000 for the improvements, for a total assessed value of \$118,600.

## Issue

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
  - a. The Petitioners contend the value of their property is overstated compared to the value of properties in the surrounding area. *Brown testimony*. In support of their position, the Petitioners submitted multiple listing sheets (MLS) for six properties that sold in 2008, 2009 and 2010 for prices ranging from \$93,000 to \$130,000.<sup>1</sup> *Petitioner Exhibits 3 – 9*. Mr. Brown admits that “a few years ago [the] house might have been at that level,” but he argues that, because of the current economic conditions in Clinton County, the Petitioners' property would not sell for the amount it is assessed for. *Brown testimony*.
  - b. The Petitioners also contend that their assessment is incorrect because of errors on the property record card. *Brown testimony*. According to Mr. Brown, the county improperly assessed the property for a concrete patio located under a newly constructed wood deck. *Brown testimony*. Mr. Brown admitted the concrete patio was not removed when the deck was constructed, but he argues it should not be assessed. *Brown testimony*. Similarly, Mr. Brown argues that the county is assessing his portable gazebo. *Brown testimony*. Because the gazebo is not a permanent fixture to the property, Mr. Brown argues, it should not be assessed as part of the real estate. *Id.*
  - c. Further, the Petitioners argue that the location of their property adversely impacts the value of the property. *Brown testimony*. According to Mr. Brown, their property is located across the road from Madison Township, which offers city water and natural gas. *Id.* However, Mr. Brown testified that because his property is located in Ross Township he is unable to hook- up to Madison Township's

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<sup>1</sup> Petitioner Exhibits 4 and 7, are identical multiple listing sheets for the property located at 5776 West County Road 300 South, Frankfort. *Petitioner Exhibits 4 and 7*.

water and gas lines. *Id.* In addition, he argues, there are no fire hydrants in the area and the closest fire department is three miles away which increases the cost to insure their home. *Id.*

- d. Finally, the Petitioners claim that their property taxes are too high. *Brown testimony.* According to Mr. Brown, the Petitioners' property taxes increased due to the construction of the Sunny Crest School and the Mulberry Library. *Brown testimony.* Because the school and library are not located in Ross Township, Mr. Brown argues, the Petitioners should not be obligated to pay taxes for those buildings. *Brown testimony.*

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

- a. The Respondent's representative contends the Petitioners' sales comparison analysis is flawed. *Thomas testimony.* According to Mr. Thomas, the property located at 5776 West County Road 300 South, Frankfort is inferior to the property under appeal because it has a smaller lot and no detached garage; it is seven years older than the Petitioners' property; and it is located in a less desirable area. *Thomas testimony; Respondent Exhibit A.* Similarly, Mr. Thomas argues, 6305 East County Road 580 South, Kirklin, 2952 North County Road 300 West, Frankfort, 3610 East State Road, Frankfort, and 3109 South State Road 39, Frankfort, are one-story ranch homes; whereas the Petitioners' home is a tri-level. *Thomas testimony.* In addition, Mr. Thomas contends, while 5162 West Manson Colfax Road is a tri-level home, the property sold as is on June 26, 2009, after only a very short period on the market. *Id.* Moreover, Mr. Thomas argues, all of the Petitioners' "comparable" sales occurred in 2008 or later, so the sales are at least a year and a half removed from the proper valuation date. *Id.; Respondent Exhibit A.*
- b. The Respondent's representative admitted, however, that there were errors on the Petitioners' property record card. *Thomas testimony.* According to Mr. Thomas, the area of the deck was corrected and the concrete patio located underneath the deck was removed. *Thomas testimony.* Thus, the Respondent requested that the Board lower the Petitioners' assessed value to \$23,600 for the land and \$127,400 for the improvements, for a total assessed value of \$151,000. *Thomas testimony; Respondent Exhibit A.*

### **Record**

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.

c. Exhibits:

- Petitioner Exhibit 1 – Front side of the Petitioners’ property record card,
  - Petitioner Exhibit 2 – Back side of the Petitioners’ property record card,
  - Petitioner Exhibit 3 – MLS for 6305 East County Road 580 South, Kirklin,
  - Petitioner Exhibit 4 – MLS for 5776 West County Road 300 South, Frankfort,
  - Petitioner Exhibit 5 – MLS for 2952 North County Road 300 West, Frankfort,
  - Petitioner Exhibit 6 – MLS for 5162 West Manson Colfax Road, Frankfort,
  - Petitioner Exhibit 7 – MLS for 5776 County Road 300 South, Frankfort,
  - Petitioner Exhibit 8 – MLS for 3610 East State Road 28, Frankfort,
  - Petitioner Exhibit 9 – MLS for 3109 South State Road 39, Frankfort,
  - Petitioner Exhibit 10 – Petitioners’ request for review to Clinton County,
- Respondent Exhibit A – Respondent’s written summary and three exterior photographs of the Petitioners’ property,
- 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. The Board reached this decision for the following reasons:
  - a. Indiana assesses real property based on its "true tax value," which the 2002 Real Property Assessment Manual defines 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, for the property." 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) (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 use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the GUIDELINES).
  - 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 Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut the presumption, however, 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. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
  - c. 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, 2008, assessment date, the valuation date is January 1, 2007. 50 IAC 21-3-3.
  - d. The Petitioners first contend that their property is over-assessed based on the sale prices of properties in the surrounding area. *Brown testimony*. In support of this contention, the Petitioners submitted MLS sheets for six properties that sold

between 2008 and 2010 for prices ranging from \$93,000 to \$130,000. *Petitioner Exhibits 3 – 9*. While a taxpayer may offer sales information for comparable properties in order to show an error in his or her assessment, MANUAL at 5, here, all of the sales occurred at least a year and a half after the relevant valuation date. Because the Petitioners did not relate the comparable properties' 2008, 2009 or 2010 sales prices to the property's value as of January 1, 2007, valuation date, the Petitioners' comparable sales analysis fails to raise a prima facie case that their property's assessed value was too high. *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).

- e. Moreover, the Petitioners failed to show how those nearby properties compared to their property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioners failed to offer anything more than the sales prices of six properties in the surrounding area. Mr. Brown made no attempt to show how the properties compared to the Petitioners' house. This falls far short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).
- f. The Petitioners also contend that the value of their property is diminished by the property's lack of amenities such as city water and natural gas connections that are offered to properties in the surrounding area. *Brown testimony*. Land values in a given neighborhood are generally determined by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. The Petitioners have the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- g. Here the Petitioners failed to show that the lack of amenities such as city water and natural gas caused a loss in the market value of their property. Nor did the Petitioners quantify the impact of the property's lack of amenities. It is not sufficient for the Petitioners to merely identify random factors that may cause the property to be entitled to an adjustment. *See Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874, 878 (Ind. Tax Ct. 1993) (finding expert's opinion as to the application of a negative influence factor, without additional evidence, to be insufficient to overcome the State Board's discretion). Thus, in failing to produce probative evidence that would support an application of a negative influence factor and a quantification of that influence factor, the Petitioners have failed to raise a prima facie case that the subject property's assessment was incorrect.
- h. Finally, Mr. Brown argued that his property taxes increased due to the construction of the Sunny Crest School and the Mulberry Library, which are not located in Ross Township. *Brown testimony*. To the extent that the Petitioners contest their taxes – as opposed to the property's assessment – the Board lacks jurisdiction to hear their claim. The Board is a creation of the legislature and has only those powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). The Board therefore must address appeals from determinations made by local assessing officials or county PTABOs that concern property valuations, property tax deductions, or property tax exemptions. Ind. Code § 6-1.5-4-1. By contrast, no statute authorizes the Board to review the propriety of local tax rates.
- i. The Petitioners failed to raise a prima facie case that their property's assessed value was in error. Where the Petitioners fail to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Nonetheless, the Respondent's representative conceded that the square footage of the Petitioners' deck was incorrect and that the concrete patio located underneath the wood deck should be removed because it was "double dipping" on the value of the deck.<sup>2</sup> *Thomas testimony*. Mr. Thomas testified that adjusting the area of the deck and removing the patio results in a reduction of the property's assessed value to \$151,000. *Thomas testimony; Respondent Exhibit A*. We commend the Respondent's representative's candor and find that the property should be valued at \$151,000.

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<sup>2</sup> The Petitioners also argue that the county assessed their gazebo which is not permanently affixed to their property. *Brown testimony*. According to the Guidelines, a gazebo is to be assessed as a residential yard structure. *See* GUIDELINES, ch. 5 at 2. Despite this, however, the property record card does not show that any gazebo is being assessed to the Petitioners' property. *Petitioner Exhibits 1 and 2*.

**Conclusion**

16. The Petitioners failed to provide sufficient evidence to establish a prima facie case that their property's assessment was over-valued for the March 1, 2008, assessment year. The Respondent, however, agreed that the property's assessment was in error due to the assessor's valuation of the Petitioners' deck. The Board accepts the Respondent's concession and finds that the property's assessed value should be reduced to \$151,000.

**Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed value of the Petitioners' property 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 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>.**