

REPRESENTATIVE FOR PETITIONER: William Mueller

REPRESENTATIVE FOR RESPONDENT: Edward Bisch, Jr.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Norma Burns-Mueller,	)	Petition: 84-021-06-1-5-00200
	)	Parcel: 84-05-26-252-008.000-021
Petitioner,	)	
	)	
v.	)	
	)	Vigo County
Vigo County Assessor,	)	Sugar Creek Township
	)	2006 Assessment
Respondent.	)	

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

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**June 8, 2010**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**ISSUE**

Are there errors or omissions on the property record card that should be corrected and that require the current assessment to be changed to more accurately reflect the market value-in-use of the subject property?

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

1. The subject property is located at 892 Thorpe Place in West Terre Haute.
2. On September 8, 2008, the County Property Tax Assessment Board of Appeals (PTABOA) issued its determination.
3. On October 22, 2008, the Petitioner filed a Form 131 Petition seeking the Board's review of that determination. The Petitioner opted out of small claims procedures.
4. The PTABOA determined the assessed value is \$20,300 for land and \$87,200 for improvements (total \$107,500).
5. The Petitioners claimed the total assessed value should be \$98,800.
6. The Board's designated Administrative Law Judge (ALJ), Paul Stultz, held the hearing in Terre Haute on March 16, 2010. The ALJ did not conduct an on-site inspection of the property.
7. Petitioner Norma J. Burns-Mueller, Petitioner's husband William A. Mueller, and Edward J. Bisch Jr. (a certified tax representative from the Indiana Assessment Service who represented Vigo County Assessor) were sworn as witnesses and testified at the hearing.
8. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Appeal Statement,
  - Petitioner Exhibit 2 – Worksheet,
  - Petitioner Exhibit 3 – Power of Attorney,
  - Petitioner Exhibit 4 – Remand Notice,
  - Petitioner Exhibit 5 – Property record card (PRC).

9. The Respondent presented the following exhibits:
- Respondent Exhibit 1 – Summary,
  - Respondent Exhibit 2 – Notice of Appearance,
  - Respondent Exhibit 3 – PRC,
  - Respondent Exhibit 4 – Form 130 Petition,
  - Respondent Exhibit 5 – Notice for PTABOA hearing,
  - Respondent Exhibit 6 – PTABOA evidence request,
  - Respondent Exhibit 7 – Remand Notice,
  - Respondent Exhibit 8 – Power of Attorney,
  - Respondent Exhibit 9 – PRC,
  - Respondent Exhibit 10 – Form 115,
  - Respondent Exhibit 11 – PRC,
  - Respondent Exhibit 12 – Power of Attorney.
10. The following additional items are recognized as part of the record:
- Board Exhibit A – Form 131 Petition,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing Sign in Sheet.

#### **OBJECTIONS**

11. The Respondent objected to the admission of Petitioner’s Exhibit 2 because the Petitioner did not provide copies of the exhibit prior to the hearing. But Mr. Mueller responded that he was unaware that he needed to provide the Respondent with copies of his exhibits. He also argued that the information in Exhibit 2 was derived from tax records to which the Respondent had access, and consequently, this evidence should be admitted.
12. The Board’s procedural rules state that a party to the appeal must provide copies of documentary evidence and summaries of statements of testimonial evidence at least 5 days before the hearing. 52 IAC 2-7-1(b)(1). A party’s failure to do so may serve as grounds to exclude the evidence. 52 IAC 2-7-1(f). The Petitioner admitted that she did not provide the Respondent with a copy of Petitioner’s Exhibit 2. Furthermore, the Petitioner failed to establish that the document has any probative value. Therefore, the Board sustains the objection. Petitioner’s Exhibit 2 is not considered to be part of the evidence that is in the record.

### SUMMARY OF THE PETITIONER'S CASE

13. The home is 54 years old and sits on 4.16 acres of land. The property's sole road access is through an easement. The Petitioner does not till the land. *W. Mueller testimony; Pet'r Ex. 1.*
  
14. In March 2007, the Petitioner was notified of the 2006 assessment. Due to "trending", the assessed value changed from \$97,900 to \$110,800 (a 13.2% increase). The Petitioner appealed. *W. Mueller testimony, Pet'r Ex. 1.* Following the local hearing, the PTABOA issued a remand notice to Mr. Gary Couch with instructions to "review the land and dwelling" and "check grade & condition". After Mr. Couch's visit, the PTABOA issued its final determination reducing the overall assessed value by \$3,300 to \$107,500. The reduction was in land value only. But the value of the improvement also should have decreased because Mr. Couch lowered the grade and changed the condition rating from good to average. There must be a mathematical error or omission on the PRC. *W. Mueller testimony; Pet'r Ex. 1, 4 and 5.*

### SUMMARY OF THE RESPONDENT'S CASE

15. Although the grade and condition ratings were lowered, Mr. Couch discovered a basement that previously had not been included in determining the assessment. Adding its value offset the two other factors (lowering grade and condition). A basement is assessed at a higher rate than a crawl space. It was mere coincidence that all these changes resulted in the improvement being assessed at the same amount. *Bisch testimony; Resp't Ex. 1.*
  
16. The Petitioner did not submit any comparables or appraisals to show the current assessed value is unfair. *Bisch testimony; Resp't Ex. 1.*

## ADMINISTRATIVE REVIEW AND BURDEN

17. 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).
18. In making a 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”).
19. 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

20. Real property is assessed on the basis of its “true tax value”, which does not mean fair market value. It means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine fair market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. Real Property Assessment Guidelines for 2002—Version A. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to

market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

21. The Tax Court has stated “the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).” *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The Petitioner’s evidence, however, contained no appraisal or any of the other evidence that is authorized to more accurately prove the value of a property.
  
22. The Petitioner failed to offer substantial, probative evidence about what a more accurate market value-in-use might have been. The Petitioner merely focused on the possibility of an oversight or error in the mathematics on the PRC. Essentially the Petitioner challenged the methodology used to develop her property’s assessed value. But evidence and arguments regarding strict application of the Guidelines are not enough to prove that an existing assessment must be changed. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (stating “when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”) The Petitioner did not show the assessor's methodology resulted in an assessment that fails to accurately reflect market value-in-use.
  
23. When a taxpayer fails to provide probative evidence supporting the position 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); *Whitley Products*, 704 N.E.2d at 1119.

## SUMMARY OF FINAL DETERMINATION

24. The Petitioner failed to make a prima facie case for a change in assessed value. The Board finds in favor of the Respondent. The assessment will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.

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Commissioner, 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

### - 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>