

REPRESENTATIVE FOR PETITIONERS:

William Colvin, property owner  
Linda Colvin, property owner

REPRESENTATIVE FOR RESPONDENT:

Lorena A. Stepro, Harrison County Assessor

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**INDIANA BOARD OF TAX REVIEW**

William and Linda Colvin,	)	Petition No.:	31-013-09-1-5-00001
	)		
Petitioners,	)	Parcel:	31-03-31-276-001.000-013
	)		
v.	)		
	)	County:	Harrison
Harrison County Assessor,	)	Township:	Morgan
	)		
Respondent.	)	Assessment Year:	2009

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

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**April 11, 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:

**ISSUE**

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioners' property is overstated.

## PROCEDURAL HISTORY

- Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners, William and Linda Colvin, filed a Form 130 Petition with the Harrison County Property Tax Assessment Board of Appeals (the PTABOA) for review of their property's 2009 assessment on April 15, 2010. The PTABOA issued notice of its decision on October 1, 2010. On October 26, 2010, the Petitioners filed a Form 131 Petition requesting that the Board conduct a review of the PTABOA's determination.

## HEARING FACTS AND OTHER MATTERS OF RECORD

- Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing to consider the Petitioners' appeal on January 14, 2011, in Corydon, Indiana.
- The following persons were sworn and presented testimony at the hearing:
  - For the Petitioners:
    - William Colvin, property owner,
    - Linda Colvin, property owner,
  - For the Respondent:
    - Ken Surface, Nexus Group.<sup>1</sup>
- The Petitioners presented the following evidence:

- Petitioner Exhibit 1 – Assessment detail report and 2009 tax information for 965 Hunters Road, Palmyra,
- Petitioner Exhibit 2 – Assessment detail report and 2009 tax information for 885 Hunters Road, Palmyra,
- Petitioner Exhibit 3 – Assessment detail report and 2009 tax information for 17905 Highway 135, Palmyra,
- Petitioner Exhibit 4 – Assessment detail report and 2009 tax information for 12955 Highway 135, Palmyra,

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<sup>1</sup> Harrison County Assessor Lorena Stepro and Joshua Harrell of Nexus Group were also present and sworn but did not testify.

- Petitioner Exhibit 5 – Assessment detail report and 2009 tax information for 12615 Highway 135, Palmyra,
- Petitioner Exhibit 6 – Multiple listing service, agent detail report for 6620 Highway 135, New Salisbury, 10445 Highway 135, New Salisbury, and 6007 Highway 135, New Salisbury, and a CMA report for 8980 NW Turkey Farm Road, New Salisbury, 900 Deer Ridge Way, New Salisbury, 2350 Motts Road, New Salisbury, and 6007 Highway 135, New Salisbury,
- Petitioner Exhibit 7 – Transmittal letter for an appraisal of the subject property, estimating the value of the property to be \$141,000 as of February 26, 1998,
- Petitioner Exhibit 8 – Excerpt of an appraisal of the subject property estimating the value of the property to be \$170,000 as of December 21, 2007,
- Petitioner Exhibit 9 – Copy of the property record card (PRC) for the subject property.

6. The Respondent presented no documentary evidence.
7. The following items, in addition to the digital recording of the hearing labeled as 31-013-09-1-5-00001 Colvin, are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
  - Board Exhibit A – Form 131 petition with attachments,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing sign-in sheet.
8. The property under appeal is a residential home on 7.2170 acres located at 985 Hunters Road, Morgan Township, Harrison County, in Palmyra, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2009, the PTABOA determined the assessed value of the property to be \$27,400 for the land and \$202,700 for the improvements, for a total assessed value of \$230,100.  
*Board Exhibit A.*

11. The Petitioners requested an assessed value of \$26,300 for the land and \$170,600 for the improvements, for a total assessed value of \$196,900. *Board Exhibit A*.

### **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 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 PETITIONERS' 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 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. Wash. 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 case. *Id; Meridian Towers*, 805 N.E.2d at 479.

## PETITIONERS' CONTENTIONS

16. The Petitioners contend that the 2009 assessed value of their property is overstated compared to the assessments and tax bills of properties located near their property in Morgan Township. *W. Colvin argument*. In support of this contention, the Petitioners submitted assessment information and tax bill information for five properties in their neighborhood. *Petitioner Exhibits 1 through 5*. According to Mr. Colvin, the property located at 965 Hunters Road, has about the same acreage and the house has about the same living area as the Petitioners' property, but its owners paid \$600 less in taxes than the Petitioners. *W. Colvin testimony; Petitioner Exhibit 1*. Similarly, the property at 885 Hunters Road was assessed for \$198,700 and the owners paid only about \$1,800 in taxes. *W. Colvin testimony; Petitioner Exhibit 2*. The owners of the property at 17905 Highway 135 paid only \$450 in taxes and the property has twice as much land as the subject property. *W. Colvin testimony; Petitioner Exhibit 3*. According to Mr. Colvin, the property at 17905 Highway 135 is a 1,484 square foot modular home with an attached garage, lean-to, and deck on thirteen acres. *Id.* It was assessed for \$21,900 for the land and \$46,500 for the improvements. *Id.* The property at 12955 Highway 135 is a 1,500 square foot house with an attached garage, two pole barns and three lean-tos on 5.5 acres. *W. Colvin testimony; Petitioner Exhibit 4*. It was assessed for \$22,600 for the land and \$120,200 for the improvements. *Id.* Finally, Mr. Colvin testified, the property at 12615 Highway 135 is an older, smaller house, but it sits on ninety acres. *W. Colvin testimony; Petitioner Exhibit 5*. According to Mr. Colvin, it was assessed for \$93,700 for the land and \$36,100 for the improvements and it was taxed the same as the Petitioners' property. *Id.*
17. Similarly, Mr. Colvin contends that the Petitioners' property is over-assessed compared to the sales and listing prices of properties in the area. *W. Colvin argument*. In support of this contention the Petitioners presented multiple listing service information from October 7, 2010, showing the sale prices of three properties and a CMA report dated October 10, 2010, showing one listing and three sales in Morgan Township. *Petitioner Exhibit 6*. The properties sold for between \$165,900 and \$192,000 and the property

owners are reported to have paid between \$1250 and \$1343 in property taxes. *Id.* According to Mr. Colvin, the properties are as nice as the Petitioners' property and many are newer, but the Petitioners' property is assessed for more than the comparable properties sold for and the Petitioners paid more property tax than the reports identify the comparable properties' owners as paying. *W. Colvin testimony.*

18. The Petitioners further contend that two appraisals valuing their house show that their property is over-valued. *W. Colvin argument.* According to Mr. Colvin, the property was appraised in 1998 by McCartin & Associates. *Id.; Petitioner Exhibit 7.* In that appraisal, Mr. McCartin estimated the property's value to be \$141,000 as of February 26, 1998. *Id.* The property was also appraised in 2007 by Andres Appraisal Services, LLC. *W. Colvin testimony; Petitioner Exhibit 8.* In the 2007 appraisal, the appraiser estimated the property's value to be \$170,000 as of December 21, 2007. *Id.*
19. In addition, the Petitioners argue, they have had their property listed for sale for a period of time and the only potential buyer who viewed the property informed them that their asking price was too high. *W. Colvin testimony.* According to Mr. Colvin, the Petitioners were told by their listing agent that their listing price of \$239,000 was \$50,000 over the actual value of the property. *Id.* They have since lowered their asking price on the property to \$235,000. *Id.*
20. Finally, the Petitioners contend that the assessor erred in assessing their property with four bedrooms instead of three. *W. Colvin testimony; Petitioner Exhibits 8 and 9.* Mr. Colvin admitted, however, that the living area of the house was properly calculated. *W. Colvin testimony.* Further, Mrs. Colvin argues that many of the residences in the Petitioners' subdivision are modular homes, which diminish the value of their property. *L. Colvin testimony.*

## RESPONDENT'S CONTENTIONS

21. The Respondent's witness contends that the property's 2009 assessment was correct and that the Petitioners' asking price of \$239,000 is very near to the county's \$230,100 assessment. *Surface testimony*. Further, Mr. Surface argues, the Petitioners' 2007 appraisal was prepared for refinancing purposes is not applicable to this proceeding and the Petitioners' 1998 appraisal is too far removed from the valuation date to be probative. *Id.* The Respondent presented no exhibits at the hearing.

## ANALYSIS

22. 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, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL (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. 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).
23. 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 Twp. 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 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 (USPAP) often will suffice. *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.

24. Regardless of the method used to rebut an assessment's presumption of accuracy, a party to an appeal must explain how his or her evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2009, assessment, that valuation date was January 1, 2008. 50 IAC 21-3-3.
25. The Petitioners first argue that their property was assessed in excess of the assessed values of neighboring properties.<sup>2</sup> *W. Colvin testimony*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the property's assessed value does not accurately reflect the property's market value-in-use. *Id.* Like the Petitioner in *Westfield Golf*, the Petitioners here only argued that the method of the Petitioners' assessment was not uniform.
26. Further, the Petitioners failed to show the comparability of the neighboring properties. By comparing the assessed value of the Petitioners' house to the assessed values of comparable houses, the Petitioners essentially rely on a "sales comparison" method of establishing the market value of their property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 properties. *Long*, 821

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<sup>2</sup> The Petitioners also contend that they were paying more taxes on their property than their neighbors were paying, but the Board has no jurisdiction over this claim. The Board is a creation of the legislature and has only those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 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.



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 merely offered a “Property Assessment Detail Report” for each of the properties and testified regarding each house’s living area and the size of the lots. This falls far short of the showing required to prove the properties are comparable.

27. The Petitioners also argue that their property is over-valued based on the property’s market value-in-use. *W. Colvin testimony*. In support of this contention, the Petitioners presented Multiple Listing Sheets and a CMA report for a listing and sales in the area. *Petitioner Exhibit 6*. Again, 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. Here, Mr. Colvin testified only that the properties were located in the same township as the Petitioners’ property, but he provided no other evidence as to the characteristics of the properties or how they compared to the Petitioners’ property. *See Long*, 821 N.E.2d at 470. Moreover, the Petitioners failed to show how sales in 2009 and 2010 related to the value of the Petitioners’ property as of the January 1, 2008, valuation date for the 2009 assessment they are appealing. *See O’Donnell v. Dept. of Local Government Finance*, 854 N.E.2d 90, 97 (Ind. Tax Ct. 2006) (When a taxpayer submits evidence regarding the value of property related to years other than the challenged assessment year, the taxpayer must also provide an explanation as to how the evidence relates to the challenged assessment period).<sup>3</sup>
28. Finally, the Petitioners contend that two appraisals support their argument that the property’s assessment is too high. *W. Colvin argument*. The Petitioners first presented the cover sheet of an appraisal of the subject property performed by McCartin &

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<sup>3</sup> The Petitioners also contend their property is over-valued based on their listing price for the house. According to Mr. Colvin, the Petitioners’ agent told them their \$239,000 asking price is \$50,000 too high. *Colvin testimony*. However, the Board gives little weight to such hearsay testimony. More importantly, the Petitioners failed to show how their attempt to sell the subject property for a price in excess of its assessed value proves that their property’s assessed value is too high.

Associates Real Estate Appraisers/Consultants for Harrison County Bank estimating the value of the property to be \$141,000 as of February 26, 1998. *Petitioner Exhibit 7*. However, the Board notes that the appraisal date is too far removed from the January 1, 2008, valuation date for the March 1, 2009, assessment to be considered probative evidence. The Petitioners also presented two pages of a 2007 Uniform Residential Appraisal Report by Andres Appraisal Services, LLC, which estimates the value of the property to be \$170,000 as of December 21, 2007. *Petitioner Exhibit 8*. The Petitioners, however, failed to present the complete appraisal for the Board's evaluation. The excerpt of the 2007 appraisal includes information on the Petitioners' property and three comparable properties and estimates a value of \$170,000 as of December 21, 2007. Importantly, the excerpt did not include a signature or certification page or any listing of the assumptions used to develop the property's estimate of value. While this information may appear to simply be "boilerplate," the Board notes that it is the appraiser's compliance with the Uniform Standards of Professional Appraisal Practice that gives an appraisal its inherent reliability. Without a signature or certification page, the Board cannot determine that the appraisal was prepared according to USPAP. Further, without any identification of the assumptions under which the appraiser valued the property, the Board cannot determine the scope of the appraisal engagement and whether the appraiser employed "extraordinary" assumptions in his or her estimate of value. Thus, the Board can give little weight to the Petitioners' December 21, 2007, appraisal. This is unfortunate because the appraisal estimates the value of the property within days of the January 1, 2008, valuation date and suggests that the Petitioners' property is significantly over-valued for the March 1, 2009, assessment.<sup>4</sup>

29. For the reasons outlined above, the Petitioners have failed to raise a prime facie case. Where the Petitioners have not supported their claims with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered.

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<sup>4</sup> To the extent that the Petitioners can be seen as arguing that the number of modular homes in their neighborhood diminishes the value of their property, the Board finds that the Petitioners failed to present any evidence to support this contention. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998);

*Lacy Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**SUMMARY OF FINAL DETERMINATION**

30. The Petitioners failed to raise a prima facie case that the 2009 assessed value of their property was overstated. The Board finds in favor of the Respondent and holds that the Petitioners' 2009 assessment should not be changed.

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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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>.**