

REPRESENTATIVE FOR PETITIONER:

Susan E. Draheim, *pro se*

REPRESENTATIVE FOR RESPONDENT:

George T. Spenos, Marion County Assessor's Office

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Susan E. Draheim, DDS, LLC	)	Petition Nos.: 49-101-12-1-4-00487
	)	49-101-12-1-4-00489
Petitioner,	)	
	)	Parcel Nos.: 1053758
	)	1065782
v.	)	
	)	County: Marion
	)	
Marion County Assessor,	)	Township: Center
	)	
Respondent.	)	Assessment Year: 2012

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

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**Issued: March 14, 2016**

**FINAL DETERMINATION**

The Indiana Board of Tax Review ("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**

**PROCEDURAL HISTORY**

1. Susan E. Draheim, DDS, LLC ("Petitioner") initiated 2012 assessment appeals ("Forms 130") on January 28, 2013. On August 30, 2013, the Marion County Property Tax

Assessment Board of Appeals (“PTABOA”) issued its final determinations (“Forms 115”). On October 15, 2013, Petitioner filed petitions for review (“Forms 131”) with the Board.

2. On December 15, 2015, the Board’s designated administrative law judge, Dalene McMillen, held a hearing on the petitions. Neither she nor the Board inspected the property.

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

3. The subject property consists of a dental office and a parking lot situated on two parcels located at 716 and 720 Russell Avenue in Indianapolis.<sup>1</sup>
4. The following people were sworn and testified:<sup>2</sup>

Susan E. Draheim, Taxpayer  
George T. Spenos, Deputy Director of Commercial/Industrial Assessments,  
Marion County Assessor’s Office

5. Petitioner offered the following exhibits:

Petitioner Exhibit 1 – Forms 131 for the subject parcels  
Petitioner Exhibit 2 – Forms 130 for the subject parcels  
Petitioner Exhibit 3 – Notices of Assessment of Land and Structures for the subject parcels  
Petitioner Exhibit 4 – 2011 property record card (“PRC”) for parcel 1053758  
Petitioner Exhibit 5 – ALTA / ACSM land title survey for the subject parcels  
Petitioner Exhibit 6 – 2011 PRC for parcel 1065782  
Petitioner Exhibit 7 – Forms 115 for the subject parcels  
Petitioner Exhibit 8 – Property tax summary for the subject parcels  
Petitioner Exhibit 9 – Property tax statements for the subject parcels  
Petitioner Exhibit 10 – Photographs of neighboring properties  
Petitioner Exhibit 11 – Site map of the subject area  
Petitioner Exhibit 12 – Photographs of Lucas Oil Stadium  
Petitioner Exhibit 13 – Copy of Ind. Code § 6-1.1-4-4.5  
Petitioner Exhibit 14 – Summary of property tax for the subject parcels

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<sup>1</sup> 716 and 720 Russell Avenue operate as one property. In 2013, the two parcels were combined into one.

<sup>2</sup> Gabe Deaton and Melissa Tetrick of the Marion County Assessor’s Office were sworn but did not testify.

Petitioner Exhibit 15 – Photographs of area properties in the subject area  
Petitioner Exhibit 16 – Sales disclosure forms for 845 South Meridian Street and  
123 West McCarty Street  
Petitioner Exhibit 17 – Subject property construction cost sheet  
Petitioner Exhibit 18 – Subject property floor plan  
Petitioner Exhibit 19 – Photographs of the subject property  
Petitioner Exhibit 20 – 2010 and 2012 aerial photographs of the subject property  
Petitioner Exhibit 21 – Photographs of the house purchased at 716 Russell  
Avenue  
Petitioner Exhibit 22 – Site map showing Petitioner’s former and current dental  
office locations  
Petitioner Exhibit 23 – 2015 PRC for parcel 1053758  
Petitioner Exhibit 24 – 2015 PRC for parcel 1024763.

6. Respondent offered the following exhibits:

Respondent Exhibit 1 – Form 131 for parcel 1065782  
Respondent Exhibit 2 – Form 131 for parcel 1053758  
Respondent Exhibit 3 – Form 115 for parcel 1065782  
Respondent Exhibit 4 – Form 115 for parcel 1053758  
Respondent Exhibit 5 – 2012 PRC for parcel 1065782  
Respondent Exhibit 6 – 2012 PRC for parcel 1053758  
Respondent Exhibit 7 – CoStar listing for 716 Russell Avenue  
Respondent Exhibit 8 – Multiple listing sheets/sales disclosure form for 716-720  
Russell Avenue  
Respondent Exhibit 9 – Construction mortgage dated June 10, 2010  
Respondent Exhibit 10 – Various permits for the subject parcels  
Respondent Exhibit 11 – Aerial photograph of parcel 1053758  
Respondent Exhibit 12 – Photographs of the subject property  
Respondent Exhibit 14 – Aerial photograph of 712 Russell Avenue  
Respondent Exhibit 15 – Aerial photograph and PRC for 727 Russell Avenue  
Respondent Exhibit 16 – Aerial photograph and PRC for 615 Russell Avenue  
Respondent Exhibit 17 – Summary appraisal report dated February 9, 2010  
Respondent Exhibit 21 – PRC for parcel 1039676 (712 Russell Avenue)  
Respondent Exhibit 22 – Sales disclosure form for 712 Russell Avenue.<sup>3</sup>

7. The following additional items are part of the record:

Board Exhibit A – Form 131 petitions with attachments  
Board Exhibit B – Hearing notices  
Board Exhibit C – Hearing sign-in sheets.

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<sup>3</sup> Respondent did not submit an exhibit 13 or exhibits 18 – 20.

8. The PTABOA determined the 2012 assessed values as follows:

Parcel	Land	Improvements	Total
1053758	\$87,700	\$285,700	\$373,400
1065782	\$86,400	-0-	\$86,400

9. Petitioner claims the following 2012 assessments on her Forms 131:

Parcel	Land	Improvements	Total
1053758	\$15,000	\$200,000	\$215,000
1065782	\$15,000	-0-	\$15,000

### **Burden of Proof**

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should 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). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. § Code 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d),

“if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The parties agree that the assessments for both parcels increased by more than 5% between 2011 and 2012. Consequently, Respondent has the burden of proof.

#### **SUMMARY OF RESPONDENT’S CONTENTIONS**

15. The total assessed value for the subject property for 2012 is \$459,800. *Spenos testimony; Resp’t Exs. 3-6.*
16. Petitioner purchased the property in 2009 for \$250,000, or approximately \$42 per square foot. The property is located near Lucas Oil Stadium and was zoned as residential at the time of the purchase. A house on the property had no value and was razed by Petitioner. *Spenos testimony; Resp’t Ex. 8.*
17. Petitioner obtained a mortgage in the amount of \$400,000 and the present improvements were constructed in 2010. Respondent speculates that the bank would likely not have loaned Petitioner 100% of the construction cost, so the amount of the mortgage does not entirely reflect that cost. *Spenos testimony; Resp’t Exs. 3-6, 9, 10.*
18. Respondent offered a summary appraisal report, as defined by the Uniform Standards of Professional Appraisal (“USPAP”), submitted by Petitioner. Sharon Williams of Williams Appraisal Services, Inc. analyzed the cost, sales comparison, and income approaches to value. She afforded the most weight to the cost and income approaches.

She arrived at an as-is market value of \$255,000 as of February 6, 2010 and a prospective market value of \$540,000 as of August 6, 2010. *Spenos testimony; Resp't Ex. 17.*

19. Respondent contends that Ms. Williams appraised the vacant land at \$42.00 per square foot and the prospective land and building at \$214.87 per square foot. In 2012 the county rezoned the property and assessed the land at \$30.00 per square foot, while the land and building were assessed at \$183.04 per square foot, demonstrating that the subject property is assessed under its market value for 2012. *Spenos testimony; Resp't Exs. 5, 6.*
20. Respondent presented an aerial map, a sales disclosure form, and a PRC for 712 Russell Avenue. Respondent contends that the property was submitted by Petitioner as a purported comparable. The property sold in 2015 for \$55,000 or approximately \$18.73 per square foot. Respondent claims the property is not comparable because it is zoned differently and has a house on it. *Spenos testimony; Resp't Exs. 14, 21, 22.*
21. Respondent offered evidence regarding an office building located at 615 Russell Avenue. In 2012, the property was assessed at \$927,100 or \$257.52 per square foot. The assessment was never appealed by the owner and it represents the highest per square foot value in the area. *Spenos testimony; Resp't Ex. 16.*
22. With regard to Petitioner's evidence related to 2013, 2014, and 2015, Respondent argues that evidence from any year other than 2012 is irrelevant because the county trends values every year and each year stands alone. *Spenos testimony.*
23. Respondent finally contends that the county has assessed the subject property below Petitioner's construction cost. According to the evidence, Petitioner's land purchase price and building construction cost totaled \$535,536. The 2012 assessment is \$459,800. Consequently, the subject property is not over-assessed. *Spenos testimony.*

## SUMMARY OF PETITIONER'S CONTENTIONS

24. Petitioner contends that the subject property is over-assessed. The 2011 value was based on a 100% complete dental office and parking lot. While no changes were made to the property between 2011 and 2012, the assessed value increased dramatically. Furthermore, the county claims to have reassessed the subject property in 2012, but other properties in the area have not been reassessed for several years. *Draheim testimony; Pet'r Exs. 3 and 14.*
25. Petitioner contends that she purchased the land for \$250,000, but that is not an indication of its actual value. She claims sales in the area would not support her purchase price and the only reason the bank appraised the land for that amount was because she had an established dental practice and a development plan in place. She purchased the subject property because she needed to relocate her new dental office in the immediate area. *Draheim testimony; Pet'r Exs. 20-22.*
26. Petitioner contends the actual construction cost for the building and the parking lot is \$285,536. She claims the cost of the parking lot should be subtracted from the total cost and that the resulting actual cost to construct the "bare bones" dental office was \$241,349, which was less than the assessment. *Draheim testimony; Pet'r Exs. 17-19.*
27. Petitioner presented photographs to show the diversity and absence of high property values in the neighborhood. The properties in the subject area consist of houses and an abandoned Indianapolis Power & Light substation. Several taxpayers have removed trees and landscaping in order to use their lots for Lucas Oil Stadium parking. *Draheim testimony; Pet'r Exs. 10, 12.*
28. Petitioner presented the semi-annual taxes for 2013 on twenty parcels that are approximately the same size as the subject. The taxes on the properties ranged from \$17 to \$29 per square foot. She contends that the low taxes impede development because the owners have no incentive to develop or sell their property. She claims the area is the "worst kept up" in downtown, the poor conditions of the properties are directly

proportionate to their low taxes. She also claims that assessments in the area are not uniform and equal. *Draheim testimony; Pet'r Exs. 11, 12.*

29. Petitioner presented photographs of eight other properties showing lot sizes and 2013 semi-annual taxes. She calculated what the taxes would have been if they were taxed at the same rate as the subject. Her calculations show that the taxes on five of the properties would be greater while the taxes on two of the properties would have been less (the remaining property was tax-exempt). *Draheim testimony; Pet'r Ex. 15.*
30. Petitioner presented sales of two commercial properties. The first property, located at 845 South Meridian Street, sold in 2012 for \$350,000, or \$13.73 per square foot. The second property, located at 123 West McCarty Street, sold in 2011 for \$180,000, or \$17.27 per square foot. Petitioner contends this was “the going rate of sales in the area.” *Draheim testimony; Pet'r Ex. 16.*
31. Petitioner contends that Respondent relied on incorrect land and building sizes. The 2012 PRCs show land of 5,948 square feet and improvements of 2,512 square feet. Petitioner presented a certified land survey prepared in 2010 showing land of 5,800 square feet and improvements of 2,154 square feet. *Draheim testimony; Pet'r Exs. 4-6, 23.*
32. Petitioner criticized several aspects of Respondent’s comparable properties:
  - a. Respondent presented 712 Russell Avenue which is a house located next door to the subject. According to Petitioner, 712 Russell Avenue and 719 South Illinois Street sold as one property for \$110,000, but the county only assessed the land at \$0.84 per square foot. 719 South Illinois Street is a parking lot and both properties were zoned industrial at the time of the sale. *Draheim testimony; Resp't Exs. 14, 21.*
  - b. Respondent presented 727 Russell Avenue which is a law office located across the street from the subject. The land was assessed at a base rate of \$30.00 per square



foot, but the county applied an 80% negative influence factor resulting in an assessment of \$6.00 per square foot. *Draheim testimony; Resp't Ex. 15.*

- c. Respondent presented 615 Russell Avenue which is also a law office. Petitioner contends that the property at 615 Russell Avenue consists of 21,326 square feet and was assessed at the same land base rate as the subject. She contends that 615 Russell Avenue's land assessment decreased by 45% from 2012 to 2015. In addition, 615 Russell Avenue's total assessed value decreased from \$927,100 in 2012 to \$707,500 in 2013 and decreased further in 2014 and 2015. *Pet'r Ex. 24; Resp't Ex. 16.*

### **Analysis**

33. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
34. Regardless of the method used to prove a property's true tax value, 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. 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).

The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

35. Respondent had the burden of proving that the 2012 assessments were correct and focused primarily on Petitioner's construction costs and summary appraisal report.
36. Respondent cited Petitioner's 2009 purchase price of the land, 2010 construction cost of the building, and 2010 construction mortgage. Respondent did not introduce sufficient evidence to relate those amounts to the relevant valuation date. Therefore, they fail to prove the assessment valuation as of March 1, 2012, is correct.
37. Petitioner's summary appraisal report presented by Respondent values the subject property on an as-is basis as of February 6, 2010, and on a prospective basis as of August 6, 2010. A USPAP appraisal often constitutes probative evidence. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). In this case, the effective date of the appraisal report is two years prior to the March 1, 2012, valuation date. As stated above, any evidence of value relating to a different date must have an explanation as to how such evidence is relevant to value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Respondent failed to explain how the summary appraisal report relates to the required valuation date. In addition, the report valued the prospective value of a proposed dental office rather than an actual dental office. Again, this evidence fails to prove the correct valuation for an assessment as of March 1, 2012.
38. Respondent offered two purportedly comparable properties. Parties may offer evidence of comparable assessments to prove the value of a property under appeal, but comparability must be determined using generally accepted assessment and appraisal practices. Ind. Code § 6-1.1-15-18. Conclusory statements that a property is "similar" or "comparable" to another property are not enough. *Indianapolis Racquet Club, Inc. v. Marion County Assessor*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014); *see also, Long*, 821 N.E.2d at 471. Instead, a party must compare the relevant characteristics of the

purportedly comparable properties to those of the property under appeal and explain how any similarities and differences affect the values. *Id.* at 471. While Respondent testified that the two comparable properties were professional offices in the area, no evidence was offered relating their specific features and amenities to the subject property.

39. For these reasons, Respondent did not offer sufficient probative evidence to prove the 2012 assessments were correct. Therefore, Petitioner is entitled to have the assessments returned to their 2011 amounts. Petitioners, though, sought an even lower assessment. The Board now turns to Petitioner’s argument.

40. While Petitioner claimed values lower than the 2011 assessed values, she made no express arguments at the hearing supporting those specific amounts. In any event, her analysis suffers from shortcomings similar to Respondent’s. She focused on tax liability amounts rather than assessed values and she failed to provide sufficient probative evidence regarding similarities and differences between her purportedly comparable properties and the subject. She also failed to provide any indication that her analysis conforms to generally accepted appraisal principles or USPAP. Thus, her evidence lacks probative value.

#### SUMMARY OF FINAL DETERMINATION

41. Respondent had the burden of proving the 2012 assessment was correct. He failed to make a prima facie case. Petitioner failed to make a prima facie case for an amount lower than the 2011 values. Consequently, the Board orders that the 2012 assessed values be reduced to the following 2011 amounts:

Parcel	Land	Improvements	Total
1053758	\$27,100	\$208,700	\$235,800
1065782	\$26,500	-0-	\$26,500

The Final Determination of the above captioned matter is issued by the Board 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

**-APPEAL RIGHTS-**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.