

REPRESENTATIVES FOR PETITIONERS:

Cheryl L. & David L. Gall, pro se

REPRESENTATIVE FOR RESPONDENT:

John Baumann, Chief Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Cheryl L. & David L. Gall,	)	Petition Nos.: 46-050-08-1-5-00171
	)	46-050-09-1-5-00067
	)	46-050-10-1-5-00005
	)	46-050-08-1-5-00172
Petitioners,	)	46-050-09-1-5-00068
	)	46-050-10-1-5-00006
	)	
	)	
	)	Parcel Nos.: 46-04-28-156-007.000-050
v.	)	46 04-28-156-008.000-050
	)	
	)	
LaPorte County Assessor,	)	LaPorte County
	)	
	)	
Respondent.	)	Assessment Years: 2008, 2009, 2010

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

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**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:

## **INTRODUCTION**

In these assessment appeals, the Petitioners contested the 2008, 2009, and 2010 assessments of the above-captioned parcels. The Board finds that the Petitioners had the burden of proving that the assessments were incorrect. The Petitioners failed to make a prima facie case for a reduction in the assessments.

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

1. The subject properties are two contiguous parcels, one vacant parcel and one parcel improved with a single-family home located at 8473 E. Lakeshore Drive in New Carlisle.
2. The Petitioners initiated the 2008 and 2009 assessment appeals with the LaPorte County Property Tax Assessment Board of Appeals (the "PTABOA") on September 28, 2012. The Petitioners initiated the 2010 assessment appeals on December 4, 2012.
3. On October 24, 2013, the PTABOA held a hearing for all three years appealed.
4. The Petitioners filed the Form 131 petitions for 2008 and 2009 on January 27, 2014. The Petitioners filed the Form 131 petitions for 2010 on December 6, 2013.
5. On December 26, 2013, the Board sent the Petitioner Notices of Defect in Completion of Assessment Appeal Form ("Notices of Defect") for the 2010 appeals, informing the Petitioner that the statutory time limit for the PTABOA to issue a determination had not elapsed. *See* Ind. Code § 6-1.1-15-1(n) ("the county board shall, by mail, give notice of its determination not later than one hundred twenty (120) days after the hearing"). The Petitioners had until January 27, 2014, to respond to the Notices of Defect.
6. The Petitioners responded in a timely fashion, however, the PTABOA had still not issued the determinations and the Board again sent Notices of Defect instructing the Petitioners to return the petitions by March 24, 2014. The Petitioners returned the 2010 petitions on March 24, 2014 pursuant to the Board's instructions

7. On February 21, 2014, the Board sent the Petitioners Notices of Defect for the 2008 and 2009 appeals for the same reason as cited for the 2010 appeals. The Petitioners returned the 2008 and 2009 petitions on March 24, 2014.
8. The Board issued notices of hearing to the parties on August 15, 2014.
9. Administrative Law Judge Ellen Yuhan (the “ALJ”) held the hearing on September 18, 2014.
10. Cheryl L. Gall and David L. Gall, the Petitioners and owners of the property, were sworn and testified. Chief Deputy Assessor John Baumann, and Deputy Assessor Kristi Brownd, were sworn and testified for the Respondent.
11. The Petitioners presented the following exhibits:
  - Petitioner Exhibit 1 – Assessment information for the subject property for 2009-2012 from the Beacon website,
  - Petitioner Exhibit 2 – Assessment information for the subject property for 2011-2014 property from the Beacon website,
  - Petitioner Exhibit 3 – Assessment information for 7429 Hollyhock Lane for 2009-2012 from the Beacon website,
  - Petitioner Exhibit 4 – Assessment information for 7429 Hollyhock Lane for 2009-2012 from the Beacon website,
  - Petitioner Exhibit 5 – Assessment information for 7429 Hollyhock Lane for 2011-2014 from the Beacon website,
  - Petitioner Exhibit 6 – Assessment information for 7514 N. Catalpa Lane for 2011-2014 from the Beacon website,
  - Petitioner Exhibit 7 – Assessment information for 7514 N. Catalpa Lane for 2010-2013 from the Beacon website,
  - Petitioner Exhibit 8 – Comparison of land assessments,
  - Petitioner Exhibit 9 – Issues on appeal,
  - Petitioner Exhibit 10 – Property record card (“PRC”) for parcel 46-04-28-156-007.000-050 (parcel 007).
12. The Respondent presented the following exhibits:
  - Respondent Exhibit 1 – Respondent’s appraisal as of March 1, 2010,
  - Respondent Exhibit 2 – Appeal documents,

Respondent Exhibit 3 – Assessment valuation history for parcel 007,  
 Respondent Exhibit 4 – Assessment valuation history for parcel 46-04-28-156-008.000-050 (parcel 008),  
 Respondent Exhibit 5 – Aerial photo of the subject property,  
 Respondent Exhibit 6 – Aerial photo of homes that sold.

13. The following additional items are officially recognized as part of the record:

Board Exhibit A – Form 131 Petitions,  
 Board Exhibit B – Notices of Hearing,  
 Board Exhibit C – Hearing sign-in sheet.

14. The Assessor determined the following assessments for parcel 007:

Year	Land	Improvements	Total
2008	\$22,900	\$145,400	\$168,300
2009	\$21,800	\$138,200	\$160,000
2010	\$25,000	\$ 90,500	\$115,500

15. The Assessor determined the following assessments for parcel 008<sup>1</sup>:

Year	Land	Improvements	Total
2008	\$2,000	\$0	\$2,000
2009	\$2,000	\$0	\$2,000
2010	\$1,400	\$0	\$1,400

16. The Petitioners requested a total assessment for both parcels of \$100,000 for 2008, 2009, and 2010.

### BURDEN OF PROOF

17. Generally, a taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp.*

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<sup>1</sup> A notation on the PRC (*Respondent Ex. 2*) shows the PTABOA reduced the assessed value of parcel 008 to \$1,400 for years 2008 and 2009 but that value is not reflected in the valuation record.

*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 the rule.

18. 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 Indianan board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
19. 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. Under those circumstances,  
  
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.
20. Ind. Code § 6-1.-1-15-17.2 was amended on March 25, 2014, to include the above burden-shifting language. The change applies to all appeals pending before the Board. *See* P.L. 97-2014.
21. Because the assessed value for parcel 007 increased less than 5% between 2007 (\$165,000) and 2008 (\$168,300), and because the assessed value for parcel 008 increased less than 5% between 2007 (\$2,000) and 2008 (\$2,000), the Petitioners had the burden of proving that the 2008 assessments were incorrect. The burden with regard to the 2009 assessed values depends on the resolution of the 2008 matters and will be addressed in

turn. Similarly, the burden with regard to the 2010 assessed values depends on the resolutions of the 2009 matters and will be addressed in turn.

#### **SUMMARY OF PETITIONERS' CASE**

22. According to the Petitioners, the land has been assessed between \$22,000 and \$25,000 for the years in question. The land assessment for the property next door was \$7,700. Two neighboring properties consist of larger lots and their land assessments are less than the subject property. *C. Gall testimony; Petitioner Exhibits 1-8.*
23. The Petitioners argue that the subject property is old and needs repairs to the roof and windows. The house next door is new and has a finished basement and an extra garage with an additional building, but the land value is less. The Petitioners contend that if you compare the subject property with the neighboring property, the land and improvement values are inconsistent and make no sense. *C. Gall testimony; Petitioner Exhibits 1-5.*
24. The Petitioners argue that the land is assessed as lake front property but the property is not in fact lake front property. *C. Gall testimony; Petitioner Exhibit 10.*
25. Mr. Gall contends he told someone he would sell the property for \$115,000 cash. *D. Gall testimony.*

#### **SUMMARY OF THE RESPONDENT'S CASE**

26. The Respondent's witness, Mr. Baumann, testified that the changes in the assessed values of the improvements between the appealed years are less than 5%. The changes in 2008 and 2009 were due to state-mandated trending, up 2% and then down 3%. *Baumann testimony.*

27. In 2010, LaPorte County went through a complete reassessment. The Respondent inspected properties and analyzed data. The Respondent adjusted the subject property based on the condition at the time of inspection as well as by analyzing sales in the area. As a result, there was a change in value to \$115,000. *Baumann testimony.*
28. When the Petitioners filed their appeal, the Respondent obtained an appraisal to support the valuation. The appraiser prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraised value was \$120,000 as of March 1, 2010. *Baumann testimony; Respondent Exhibit 1.*
29. The Respondent assessed the property as if it were in a lake front neighborhood. The property has a road in front of it but there is an unobstructed lake view. The Respondent argues that the neighborhood label does not necessarily affect the value. *Baumann testimony; Respondent Exhibit 5.*
30. According to Mr. Baumann, the property next door to the Petitioners' property sold for \$230,000. He contends that if the assessed value on that property is too low, it can be corrected. He believes the valuation on the subject property is appropriate given the data they have to support the value. The Petitioners have not presented any evidence to support a different valuation on the land or the buildings. *Baumann testimony.*
31. Mr. Baumann contends the Beacon valuation history is accurate as of the date printed and may be inconsistent with the years under appeal. *Baumann testimony.*

#### ANALYSIS

32. Indiana assesses real property based on its true tax value, which is 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. Evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice will often be probative. *See*

*Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501,506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sales, or assessment information for comparable properties, and any other evidence compiled according to generally accepted appraisal principles may also be probative.

33. Regardless of the type of evidence, a party must explain how its evidence relates to the required 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 2008 and 2009 assessment dates, the valuation date was January 1 of the year preceding the assessment. 50 IAC 21-3-3. For 2010, the assessment and valuation dates were both March 1, 2010. Ind. Code § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.
34. Here, the Petitioners presented assessment information for two properties in their neighborhood in an effort to show that the subject properties were over-valued. Other assessments do not automatically show the market value-in-use of a property under appeal. The party relying on those assessments must (1) show that the other properties are comparable to the property under appeal, and (2) explain how any relevant differences affect the properties' relative values. *See* Ind. Code § 6-1.1-15-18(c)(2) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties are comparable); *see Indianapolis Racquet Club, Inc. v. Marion County Assessor*, 15 N.E 3<sup>rd</sup> 150, 155 (Ind. Tax Ct. 2014); *see also Long supra* at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value). The Petitioners did not explain how any differences among the properties affect their market values-in-use. Further, while the Beacon information gives a valuation history, the physical traits of the properties shown are as of the dates the



information was printed. Petitioner Exhibits 1-7 show the physical characteristics of the properties either for 2012 or 2014 and not the years appealed.

35. The Petitioners claim they offered to sell the property to an unnamed individual for \$115,000. There is nothing in the record to indicate that the Petitioners were marketing the property or when such an offer may have occurred. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d at 1113, 1119, (Ind. Tax Ct.).
36. The Petitioners contend the property is incorrectly assessed as lake front property. Even if the land classification or neighborhood classification is in error, the Petitioners failed to make a case by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct.)
37. The Petitioners failed to make a prima facie case that the assessed values for 2008 are incorrect. Because the Petitioner failed to prove the incorrectness of the assessments at issue, the Respondent's duty to prove the correctness of the assessments with substantial evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003). Consequently, the Board orders no change for 2008.
38. Because the Board orders no change for 2008, and the assessed value of neither parcel increased by more than 5% between 2008 and 2009, the Petitioner also has the burden of proof for the 2009 assessment year. The Petitioners relied on the same evidence and arguments for 2009 as they did for 2008, and the Board reaches the same conclusion. The Petitioners failed to make a prima facie case that the assessed values for 2009 are incorrect. Consequently, the Board orders no change for 2009.

39. Similarly, because the Board orders no change for 2009, and the assessed value of neither parcel increased by more than 5% between 2009 and 2010, the Petitioner also has the burden of proof for the 2010 assessment year. The Petitioners relied on the same evidence and arguments for 2010 as they did for 2009, and the Board reaches the same conclusion. The Petitioners failed to make a prima facie case that the assessed values for 2010 are incorrect. Consequently, the Board orders no change for 2010.

#### **FINAL DETERMINATION**

40. The Petitioners failed to establish a prima facie case that the assessments were incorrect. Accordingly, the Board finds for the Respondent and the 2008, 2009, and 2010 assessed values will not be changed.

ISSUED: December 17, 2014

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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 after 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>>.