REPRESENTATIVE FOR PETITIONERS: E.L. Holsapple, *pro se*

REPRESENTATIVE FOR RESPONDENT: Marilyn S. Meighen, Meighen & Associates, P.C.

BEFORE THE INDIANA BOARD OF TAX REVIEW

E.L. & B.L. HOLSAPPLE,	)	Petition Nos.: 53-006-06-1-5-00027
	)	53-006-07-1-5-00018
Petitioners,	)	
	)	Monroe County
v.	)	
	)	Clear Creek Township
MONROE COUNTY ASSESSOR	)	
	)	Parcel: 004-06890-00
	)	
	)	Assessment Years: 2006 and 2007
Respondent.[1]	)	

Appeal from the Final Determinations of
Monroe County Property Tax Assessment Board of Appeals

May 8, 2009

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:

[1] The Clear Creek Township Assessor made the original assessment determinations under appeal. Thus, under Ind. Code 6-1.1-15-3(b), as it existed at the time of the PTABOA determination addressing the subject property's 2006 assessment, the Clear Creek Township Assessor was the statutorily designated respondent. *See* I.C. 6-1.1-15-3(b)(2006); P.L. 219-2007 § 156(c). But on June 30, 2008, the Clear Creek Township Assessor's duties were transferred to the Monroe County Assessor. *See* § I.C. 36-6-5-1(h). Thus, the Monroe County Assessor is the Respondent for both appeals.

INTRODUCTION

1. In this assessment appeal, each party offered evidence that the Board could not ignore, but that needed additional explanation for the Board to make sense of it. For example, the Petitioners offered an appraisal and the Respondent pointed to a prior sale involving the subject property, but neither side explained how its evidence related to the subject property's value as of the relevant valuation dates for the assessment years under appeal. The Indiana Tax Court has repeatedly said that a party must walk the Board through its case. *See, e.g., Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). While the Board was ultimately able to understand how the appraisal and sale price related to the subject property's value as of the relevant valuation dates,[2] it is uncomfortable with having had to sift through the evidence at such a fine level without guidance from the parties. And this case represents the outer limit of the Board's willingness to do so.

2. Ultimately, the Board finds that the Petitioners' appraisal is too unreliable to be given probative weight, because the appraiser ignored an earlier sale involving the subject property despite having relied on even older sales of comparable properties. Nonetheless, because the subject property's sale price, as trended to the appropriate valuation dates, was lower than the appealed assessments, the Board finds that those assessments should be reduced.

PROCEDURAL HISTORY

3. On December 26, 2006, the Petitioners filed a Form 130 petition contesting the subject property's 2006 assessment. On March 15, 2007, the Monroe County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination reducing that property's March 1, 2006, assessment from $139,800 to $128,500. Still not satisfied, on

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[2] In *French Lick Twp. Tr. Assessor v. Kimball Int'l, Inc.*, 865 N.E.2d 732 (Ind. Tax Ct. 2007), the Tax Court upheld the Board's determination despite the French Lick Township Assessor's claim that the Board had erred by accepting the taxpayer's appraisal without the taxpayer explaining the appraisal's contents or reliability. *Id*. at 738-39. The Court explained that it will not overturn the Board's determination denying an appeal if the taxpayer did not, as a threshold matter, adequately present its evidence at the administrative hearing. But if the Board understands the evidence and determines it has probative value, the court typically will not overturn the Board's determination that a taxpayer made a prima facie case, absent an abuse of discretion. *Id*. at 739.

April 13, 2007, the Petitioners filed a Form 131 petition with the Board. They elected to have their appeal heard pursuant to the Board's small claims procedures.

4. On January 14, 2008, the Petitioners filed a Form 130 petition contesting the subject property's 2007 assessment. On April 29, 2008, the PTABOA issued its determination upholding that assessment, but noting that "[c]hange in values, if any, will be determined by the pending 2006 State hearing. Determination will be applied to both 2006 and 2007." *Board Ex. A*. On June 13, 2008, the Petitioners filed a Form 131 petition with the Board. The Petitioners elected not to have the appeal heard pursuant to the Board's small claims procedures.

5. The Board has jurisdiction to hear both appeals. *See* Ind. Code § 6-1.5-4-1(a)(directing the Board to conduct reviews of appeals from PTABOA determinations).

6. The Board notified the parties that it would hold hearings on both appeals on January 14, 2009. Before those hearings began, the parties agreed to hold a single hearing and to proceed under the Board's plenary rules (52 IAC 2) rather than under its rules for small claims (52 IAC 3). The Board's designated Administrative Law Judge, Rick Barter ("ALJ"), therefore held a single hearing to address the Petitioners' appeals.

7. The following people were sworn in and presented testimony at the hearing:

    For the Petitioners:

        E.L. Holsapple, Petitioner

    For the Respondent:

        Ken Surface, Monroe County Assessment Contractor

        Judith Sharp, Monroe County Assessor

8. The Petitioners presented the following evidence:[3]

[3] The Petitioners submitted a packet with documents numbered from 1 to 85. In some cases, each page had a separate number. For example, the Petitioners separately numbered each page of their appraisal report. In other instances, the Petitioners used the same number for multiple pages.

Petitioners Exhibits 1-45d:	Appraisal report by Figg Appraisal Corp., dated March 1, 2006,
Petitioners Exhibit 46:	Form 11 R/A Notice of Assessment of Land and Structures, dated November 10, 2006,
Petitioners Exhibit 47:	Form 114 Notice of Hearing dated March 1, 2007,
Petitioners Exhibits 48-50:	Form 115 Notice of Final Assessment, Determination mailed March 15, 2007,
Petitioners Exhibits 51-53:	Copy of Petitioners' Form 131 petition file stamped April 13, 2007,
Petitioners Exhibit 54:	Form 11R/A, dated November 30, 2007,
Petitioners Exhibits 55-56:	2006 property record card ("PRC") for subject property,
Petitioners Exhibit 57:	One page of subject property's record for 2004,
Petitioners Exhibit 58:	Handwritten note,
Petitioners Exhibit 59:	Lists of parcels and neighborhood numbers from 2006-2007,
Petitioners Exhibit 60:	Copy of clipping from *The Herald Times* dated November 29, 2006,
Petitioners Exhibit 61:	Copies of photographs of two houses; Property Assessment Detail Report and two PRCs for 8027 S. State Rd. 37,
Petitioners Exhibit 62:	Form 11R/A dated November 30, 2007,
Petitioners Exhibit 63:	Form 115 for 8025 S. Old State Rd. 37,
Petitioners Exhibit 64:	PRC for 823 Sieboldt Quarry Rd., PRC for subject property printed October 26, 2006; 2005 payable 2006 tax bill for the subject property; subject property's 2004 PRC; Property Assessment Detail Report for the subject property,
Petitioners Exhibit 65:	Copy of photograph of unidentified building,
Petitioners Exhibit 66:	List of sales disclosures for property class code 521 for 2003,
Petitioners Exhibit 67:	List of sales disclosures for property class code 521 for 2004,
Petitioners Exhibit 68:	List of sales disclosures for property class code 521 for 2005,
Petitioners Exhibit 69:	List of sales disclosures for property class code 521 for 2006,
Petitioners Exhibit 70:	Purchase agreement for subject property dated November 12, 2003,
Petitioners Exhibit 71:	Order Approving Report of Sale of Real Estate,
Petitioners Exhibit 72:	Copy of deed for subject property,
Petitioners Exhibit 73:	Settlement statement for Petitioners purchase of the subject property,
Petitioners Exhibit 74:	Copy of check dated December 30, 2003, identified as "Fowler/Holsapple Comm.,"

Petitioners Exhibit 75:	Termite Inspection Report dated November 18, 2003,
Petitioners Exhibit 76:	Wood Destroying Insect Infestation Report dated November 18, 2003,
Petitioners Exhibit 77:	Proposal to repair termite damage dated November 26, 2003,
Petitioners Exhibit 78:	Sales disclosure form for the subject property dated December 30, 2003,
Petitioners Exhibit 79:	Photograph and PRC for 7620 S. Fairfax Rd.,
Petitioners Exhibits 80-82:	Copies of pages19 and 21 from the 2002 REAL PROPERTY ASSESSMENT MANUAL and page 68 from the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A,
Petitioners Exhibit 83:	2007 property tax bill for subject property,
Petitioners Exhibit 84:	Hand-drawn graph,
Petitioners Exhibit 85:	Copy of blank sales disclosure form,

9. The Respondents presented the following evidence:

Respondent Exhibit 1:	Sales disclosure form for the subject property dated December 30, 2003.[4]

10. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A:	Form 131 petitions,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheet.

11. The property is one acre with a 1,754-square-foot duplex and a 1,440-square-foot pole barn. It is located at 8023 and 8150 South Old State Road 37, Bloomington.

12. The ALJ did not inspect the subject property.

13. For 2006, the subject property was assessed at $128,500 – $20,000 for land and $108,500 for improvements.

[4] Mr. Holsapple claimed that the Respondent did not give the Petitioners a copy of Respondent's Exhibit 1 until less than five business days before the hearing. Counsel for the Respondent claimed that, while she did not give Mr. Holsapple a copy of that exhibit within five business days of the hearing, she nonetheless complied with the Board's small-claims rules by giving Mr. Holsapple the exhibit two days after he requested it. The question is moot, however, because the Petitioners themselves offered the same document as Petitioners Exhibit 78.

14. For 2007, the subject property was assessed at $138,100 – $20,000 for land and $118,100 for improvements.

15. On their Form 131 petition for 2006, the Petitioners requested a total assessment of $100,000. On their Form 131 petition for 2007, they requested a total assessment of $89,000.[5]

ADMINISTRATIVE REVIEW AND THE PETITIONERS' BURDEN

16. A petitioner seeking review of an assessing official's determination has the burden to establish a prima facie case proving both 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).

17. In making its case, the petitioner must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor,* 802 N.E.2d 1018, 1022 (Ind. Tax Ct., 2004).

18. If the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley,* 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers,* 805 N.E.2d at 479.

PARTIES' CONTENTIONS

19. Summary of the Petitioners' contentions:
    a. Kevin W. Jansen, an Indiana Certified Residential Appraiser with Figg Appraisal Corp., appraised the subject property. In a report issued on January 10, 2008, Mr. Jansen estimated the subject property's market value at $89,000 as of March 1, 2006. *Holsapple testimony; Pet'rs Exs. 1-45*. Figg Appraisal is respected throughout Monroe County, and Mr. Jansen looked at nine comparable properties

[5] At one point in the hearing, Mr. Holsapple also said that the property was worth $112,400. *Holsapple testimony*

in estimating the subject property's value. All those comparable properties contained duplexes that looked like the subject duplex. *Holsapple testimony*. Therefore, the Board should lower the subject property's 2006 and 2007 assessments to $89,000. *Holsapple testimony.*

b. The Petitioners live in one-half of the subject duplex and lease out the other half. *Holsapple testimony*. In calculating the neighborhood factor used to assess the subject property, the assessor used sales of properties with a single-family-dwelling code instead of properties with a two-family-dwelling code. *Holsapple testimony; Pet'rs Exhibit 59*. That led the assessor to wrongly increase the subject property's assessment by 18%. *Holsapple testimony; Pet'rs Exs. 57, 64*.

c. The Petitioners bought the subject property in December 2003. While Ms. Holsapple signed a disclosure form saying that the Petitioners bought the property for $120,000, the actual sale price was lower. The following things should have been deducted from the $120,000 price originally listed in the purchase agreement that the Petitioners signed:

   - $2,000 for personal property included in the sale;
   - an amount for points;
   - $2,400 for the broker's fee that Mr. Holsapple received from the sale; and
   - $5017.50 for the cost of repairing water and termite damage.

   Thus, the actual sale price was only $110,600. *Holsapple testimony; Pet'rs Ex. 73*. The closing agent, however, did not want to redo the closing statement and insisted on using the $120,000 price from the purchase agreement. So that is what was listed on the disclosure form. *Holsapple testimony*. Also, the old sales-disclosure forms did not have a space for deducting the amount paid for points. The new forms allow for that. *Id.*; *Pet'rs Ex. 85*.

d. The Petitioners had identified errors on the subject property's record card, which the Respondent agreed to correct. But when the Petitioners got their tax bill, their taxes had not changed. *Holsapple testimony*.

20. Summary of the Respondents' contentions:

a. The subject property has some value to the Petitioners that is close to the $120,000 that they paid for it. *Surface argument*. That $120,000 sale price is the "most indicative" of the property's value as opposed to a gross rent multiplier calculated from other properties. *Surface testimony.* Although Mr. Holsapple claimed that the Petitioners paid only $110,600 for the property, the purchase agreement, settlement statement, and disclosure form all show a $120,000 sale price. *Meighen argument; Resp't Ex. 1; Pet'rs Exs. 73, 78.* And Ms. Holsapple verified under the penalty of perjury that the information on the disclosure form was true and correct. *Meighen argument; Resp't Ex. 1; Pet'rs Ex. 78*. While the Petitioners now claim that amounts for personal property and points should be deducted from the stated sale price, the form that Ms. Holsapple signed had spaces to identify personal property included in the sale and to deduct points paid by the seller. Ms. Holsapple left both those spaces blank. *Id*.

b. Mr. Jansen's appraisal is unacceptable for three reasons. First, Mr. Jansen estimated the subject property's value as of March 1, 2006. But the valuation dates for the 2006 and 2007 assessments were January 1, 2005, and January 1, 2006. *Surface testimony.* Second, two properties referenced under Mr. Jansen's addendum for expired listings sold for $66,588.24 per unit and $70,437.50 per unit, respectively. *Surface testimony; Pet'rs Exs. 45c, 45d.* Because the subject property has two units, those per-unit sale prices extrapolate to more than $130,000 and $140,000 for the subject property. *Id*. Finally, despite the fact that Mr. Jansen used other sales from 2003 in his sales-comparison analysis, he ignored the December 30, 2003, sale involving the subject property. *Surface testimony*.

c. Contrary to Mr. Holsapple's claims, the Respondent made all agreed changes to the subject property's record card. *Sharp testimony*. While the Petitioners' taxes may have increased, that increase was not caused by any failure to make changes to the property's record card. *Id.*

ANALYSIS

21. 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 a 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). In conducting mass appraisals, assessors normally use the Real Property Assessment Guidelines for 2002-Version A. And a property's market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate. *Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006). To rebut that presumption, a taxpayer may use relevant evidence that is consistent with the Manual's definition of true tax value, such as actual construction costs, market-value-in-use appraisals, sales information regarding the subject property or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.* at 678*; see also* MANUAL at 5.

22. By contrast, a taxpayer cannot rebut an assessment's presumed accuracy simply by contesting the methodology that the assessor used to compute it. *Eckerling*, 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that did not accurately reflect the property's market value-in-use. *Id*. Strictly applying the Guidelines does not suffice; rather, the taxpayer must offer the types of market-value-in-use evidence contemplated by the Manual. *Id*.

23. Regardless of the method used to rebut the 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. 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, 2006, and March 1, 2007, assessments, those valuation dates were January 1, 2005, and January 1, 2006, respectively. 50 IAC 21-3-3.

A. **Based on Mr. Jansen's appraisal report, the Petitioners made a prima facie case.**

24. The Board first addresses the Petitioners' claim that, in calculating the neighborhood factor used to assess the subject property, the Respondent improperly relied on sales of single-family homes, instead of duplexes. That claim simply attacks the Respondent's methodology without doing anything to show that the assessment failed to accurately measure the subject property's market value-in-use. As the Tax Court explained in *Eckerling*, such an attack does not suffice to rebut an assessment's presumed accuracy.

25. Regardless, the Petitioners did not show that the Respondent erred in looking at single-family-home sales to calculate a neighborhood factor. The Petitioners based their argument on a faulty premise. They wrongly assumed that assessors use neighborhood factors as part of a sales-comparison analysis to determine one property's value by looking to the sale prices for comparable properties. A neighborhood factor, however, is designed to adjust each property's cost-based assessment to reflect value-influencing factors prevailing in that property's assessment neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, App. B at 8. Thus, a neighborhood factor attempts to account for things such as the neighborhood's physical, economic, governmental, and social characteristics. *Id*. Assessors calculate a neighborhood factor by identifying sales from an assessing neighborhood, allocating those sales between land and improvements, and dividing the aggregate sale price attributable to improvements by the depreciated cost of those improvements under the Guidelines' cost tables. *Id. at 8-9.* Here, the single-family-home sales to which the Petitioners took exception all occurred within the subject property's assessing neighborhood. Thus, the Respondent did not err by using those sales to calculate the neighborhood factor that it applied to the subject property.

26. The Petitioners, however, did offer some market-value-in-use evidence to rebut the presumption that the subject property was accurately assessed. Mr. Jansen, a certified residential appraiser, estimated the subject property's market value at $89,000. He applied two generally recognized appraisal methods—the sales-comparison and income approaches. And he certified that he formed his opinion and prepared his appraisal report

in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'rs Ex. 8*.

27. Notably, Mr. Jansen estimated the subject property's value as of March 1, 2006, rather than as of the two valuation dates relevant to this case—January 1, 2005, and January 1, 2006. Nonetheless, Mr. Jansen's appraisal report implicitly explains how his estimate relates to the subject property's value as of those relevant valuation dates. Based on a paired-sales analysis, Mr. Jansen adjusted the sale prices for seven of his nine comparable properties to reflect time-related appreciation through March 1, 2006. Those seven sales occurred between February 2003 and January 2005. *Pet'rs Exs. 5-8*. Mr. Jansen, however, did not believe that market data supported making time-related adjustments to the sale prices for the two comparable properties that sold in August 2005 and December 2005. *Id*. Thus, Mr. Jansen implicitly found little or no time-related appreciation between the January 1, 2005, and January 1, 2006, valuation dates and the March 1, 2006, valuation date used in his appraisal.

28. Thus, based on Mr. Jansen's appraisal report, the Petitioners made a prima facie case that the subject property's 2006 and 2007 assessments were incorrect.

B. By showing that Mr. Jansen ignored the December 30, 2003, sale involving the subject property, the Respondent impeached Mr. Jansen's valuation opinion

29. The burden therefore shifted to the Respondent to impeach or rebut Mr. Jansen's valuation opinion. The Respondent's attacked Mr. Jansen's opinion on three main grounds—(1) that Mr. Jansen estimated the property's value as of March 1, 2006, rather than the relevant valuation dates for the 2006 and 2007 assessments; (2) that he ignored two expired listings for properties with per-unit sale prices that actually support the subject property's assessments; and (3) that he ignored the subject property's December 30, 2003, sale despite using other sales from 2003 as comparable properties in his sales-comparison analysis.

30. The Board has already discussed the Respondent's first point. Although Mr. Jansen estimated the subject property's value as of March 1, 2006, his appraisal contains sufficient information to explain how that estimate related to the property's value as of the earlier relevant valuation dates. The Respondent's second point is similarly unpersuasive. While two properties referenced in Mr. Jansen's addendum for expired listings had per-unit sale prices that, if applied to the subject property's two units, would equal or closely approximate the subject property's assessments, Mr. Jansen did not rely on those sales. Both of those properties contained multiple duplexes, and the Respondent did not explain why they were more comparable to the subject property than the properties that Mr. Jansen relied on in his sales-comparison analysis.

31. But the Respondent's last point—that Mr. Jansen ignored a sale involving the subject property from less than 1 ½ years before his appraisal's valuation date—is well taken. In a given assignment, an appraiser arguably might view such a sale as too old to be useful. For example, while Mr. Jansen's appraisal form called for him to identify whether the subject property had previously sold, it referenced only sales that occurred within the last 12 months. *Pet'rs Ex. 5.* Mr. Jansen, however, used even older sales in his sales-comparison analysis. For example, comparable properties #6 - #9 all sold between February 1, 2003 and November 6, 2003. *Pet'rs Exs. 6-7.* Had the price from the sale involving the subject property been closer to Mr. Jansen's value estimate, ignoring that sale while relying on even older sales might not have been as big a problem. But Mr. Jansen estimated the subject property's value at $31,000 below the December 30, 2003 sale price.

32. Mr. Jansen might have had good reasons for ignoring the December 30, 2003, sale involving the subject property. But he neither explained those reasons in his appraisal report nor testified at the Board's hearing. Under those circumstances, Mr. Jansen's ultimate valuation opinion is too unreliable to be given any probative weight.

C. The subject property should be assessed for no more than the December 30, 2003, sale price trended to the relevant valuation dates for the 2006 and 2007 assessments.

33. Nonetheless, Mr. Surface testified that that the property's value to the Petitioners around the $120,000 that they paid for it and described that sale price as the being the "most indicative" of the property's value. The Board commends Mr. Surface for his candor, given that the sale price is actually less than the property's assessments. And the Board finds that the sale demonstrates that the subject property is assessed for more than its true tax value.

34. True, like Mr. Jansen's appraisal, the sale price addresses the property's value at a time other than the relevant January 1, 2005, and January 1, 2006, valuation dates. But by adjusting his comparable properties' sale prices to reflect time-related appreciation, Mr. Jansen supplied evidence for the Board to determine how the December 30, 2003, sale price related to the subject property's value as of those relevant valuation dates. Mr. Jansen increased the gross sale price of comparable #9 in his appraisal by 2.4% (rounded) to account for time-related appreciation between November 6, 2003, and March 1, 2006. Given Mr. Jansen's decision not to adjust prices from sales that occurred in August 2005 and later, that 2.4% adjustment to comparable #9 includes appreciation through, at most, August 2005. While that does not precisely relate to the valuation dates for either the 2006 or 2007 assessments, it is close to both. The Board therefore finds that the December 30, 2003, sale price equates to $122,900[6] as of the relevant valuation dates.

35. At first blush, it may seem incongruous to rely on Mr. Jansen's appraisal to explain how the December 30, 2003, sale price relates to the subject property's value as of the relevant valuation dates while finding Mr. Jansen's ultimate value conclusion unreliable. But the flaw that made Mr. Jansen's ultimate valuation opinion unreliable as evidence of the subject property's true tax value was unconnected to how he calculated time-related appreciation. Mr. Jansen explained his methodology for making time-related adjustments and the Board finds no reason to doubt his methodology or the data upon which he relied. Also, while the Respondent pointed to the fact that Mr. Jansen appraised the subject

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[6] That represents a 2.4% increase from the $120,000 sale price ($120,000 x .024 = $2,880 (rounded to $2,900) and $120,000 + $2,900 = $122,900).

property as of a date other than January 1, 2005, or January 1, 2006, she did not specifically contest the time-related appreciation adjustments in Mr. Jansen's sales-comparison analysis. The Respondent and her chief witness were experienced in the assessment field, and the Respondent was represented by counsel. Thus, if the Respondent doubted Mr. Jansen's methodology, she could have impeached or rebutted his appraisal on those grounds.[7]

36. Of course, the trended value of $122,900 is based on a starting point of $120,000, as reflected in the sales disclosure and purchase agreement. And Mr. Holsapple claims that the Petitioners actually paid only $110,600. After considering Mr. Holsapple's claims, however, the Board finds that $120,000 was the correct price for the property as it existed on the assessment dates in question.

37. According to Mr. Holsapple, the contract price included $2,000 for personal property, which should not be included in the subject property's real estate assessment. Similarly, Mr. Holsapple felt that the costs for repairing water and termite damage ($5,017.50) and his broker's fee ($2,400) should be deducted from the contract price. He also said that the contract price included points.

38. Mr. Holsapple correctly reasoned that the value of personal property should not be included in the subject property's assessment. But he offered no details about the personal property that he claimed was included in the sale other than to say that it was worth $2,000. And the sales disclosure, which Mr. Holsapple certified under the penalties of perjury, contradicts Mr. Holsapple's testimony. Although the form includes a space to show the value of any personal property included in the sale, Mr. Holsapple left that space blank. *Resp't Ex. 1; Pet'rs Ex. 78*.

39. The Board likewise rejects Mr. Holsapple's claim that his broker's fee should have been deducted from the property's contract sale price. The seller agreed to pay a 5% brokerage fee to Mr. Holsapple and the seller's listing agent. Presumably, the seller

[7] Mr. Holsapple, by contrast, appeared *pro se* and was less likely to be able to explain Mr. Jansen's methodology.

would have paid the same 5% even if the Petitioners had used a different broker or no broker at all. The payment simply would have gone to different people. The Petitioners offered no evidence to show that the payment to Mr. Holsapple represented a negotiated offset of, or reduction to, the $120,000 sale price listed in the purchase agreement.

40. Mr. Holsapple's claim that an amount for points should have been deducted from the purchase price also fails. While Mr. Holsapple did not define what he meant by points, the Board assumes that he was referring to an amount paid to the Petitioners' lender in exchange for a lower interest rate. In a given case, seller-paid points might be viewed as an offset lowering a purchase agreement's stated sale price. In fact, the disclosure form signed by Ms. Holsapple contemplates deducting seller-paid points in calculating a property's net sale price. *See Pet'rs Ex. 78; Resp't Ex. 1*. But Ms. Holsapple did not list any seller-paid points on the sales disclosure form, nor did Mr. Holsapple testify that the seller paid points. In fact, Mr. Holsapple did not even say what amount was paid for points and he did not include a point-related deduction in calculating what he said was the property's actual sale price. *See Holsapple testimony; see also Pet'rs Ex. 73*.

41. Mr. Holsapple's claimed $5,017.50 deduction for water and termite damage presents a more interesting question. As the Respondent pointed out, the disclosure form lists the sale price as $120,000 and says nothing about that deduction. On the other hand, the settlement statement deducts a $5,017.50 "Inspection Allowance" from the gross amount that was due from the Petitioners at closing. *Pet'rs Ex. 73*. Under the purchase agreement, the Petitioners reserved the right to have the property inspected and to terminate the agreement if the seller refused to remedy an unsatisfactory inspection report. *Pet'rs Ex. 70*. And the Petitioners offered both a pre-closing inspection report identifying visible termite damage and pre-closing repair estimates for repairing termite and water damage. *Pet'rs Exs. 76-77*. Thus, the Board infers that the seller gave the Petitioners a credit against the originally negotiated purchase price for the estimated cost of repairing water and termite damage.

42. But the inquiry does not end there. The subject property was assessed as it physically existed on the March 1, 2006, and March 1, 2007, assessment dates. Mr. Holsapple did not say whether that the Petitioners repaired the water and termite damage. But given the nature of that damage and the fact that the Petitioners got repair estimates before closing, the Board infers that they repaired the damage before March 1, 2006. Thus, while the actual sale price was $5,017.50 less than the $120,000 listed in the purchase agreement and sales disclosure, that difference was offset by the property's improved condition on the assessment dates. Ordinarily the Board would be leery of assuming that the costs of repair necessarily increased the property's market value-in-use dollar-for-dollar. But the small amount at issue here makes that inference both reasonable and practical.

43. In truth, the subject property's true tax value may be lower than $122,900. Although neither party pointed to that fact, the December 30, 2003, sale involved a larger parcel that included 3.53 acres of land in an adjacent tract. That adjacent tract is assessed under parcel 004-06900-00 for $1,000. *See Pet'rs Ex. 78 (sales disclosure statement listing both parcel numbers); Pet'rs Ex. 64 (property record card for adjacent parcel)*[8]*; Pet'rs Ex. 63 (Form 115 determination for parcel 004-06900-00)*. Unfortunately, the parties offered no evidence that would allow the Board to determine the relative contributions of each parcel to the overall property's sale price. Certainly, though, the subject property's contribution was no more than 100%. And the full sale price is still less than the subject property's assessments for both 2006 and 2007. The Board therefore orders that the subject property's March 1, 2006, and March 1, 2007, assessments be reduced to $122,900.

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[8] That may differ from the deed granted by the seller to the Petitioners, which describes the total area as 4.96 acres excepting a portion conveyed to the State by an earlier warranty deed. *See Pet'rs Ex. 72*.

SUMMARY OF FINAL DETERMINATION

44. While the Petitioners offered an appraisal to support their claim that the subject property should be assessed for only $89,000, the appraiser ignored an earlier sale involving the subject property. The Board therefore finds the appraiser's ultimate valuation opinion too unreliable to be probative of the subject property's true tax value. Nonetheless, the Board finds that the property should not be assessed for any more than $122,900—the earlier sale price trended to reflect a value as of the valuation dates for the 2006 and 2007 assessment years. The Board therefore orders that the subject property's 2006 and 2007 assessments be lowered to $122,900.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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.