

REPRESENTATIVE FOR PETITIONER:
Anthony Lach, Representative of the Trust

REPRESENTATIVE FOR RESPONDENT:
Jon Snyder, Porter County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lach Living Trust,)	Petition No.:	64-005-10-1-5-00007
)		
Petitioner,)	Parcel No.:	64-07-22-126-006.000-005
)		
v.)		
)		
Porter County Assessor,)	County:	Porter
)		
Respondent.)	Assessment Year:	2010

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

August 29, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioner's property was over-stated for the 2010 assessment year.

PROCEDURAL HISTORY

2. The Petitioner's representative initiated the Petitioner's 2010 assessment appeal by filing a Form 130, Petition for Review of Assessment to the Property Tax Assessment Board of Appeals, on October 21, 2011. The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination on December 2, 2011.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner's representative filed a Form 131 Petition for Review of Assessment on January 6, 2012, petitioning the Board to conduct an administrative review of the property's 2010 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on July 18, 2012, in Valparaiso, Indiana.
5. The following persons were sworn at the hearing:
 - For the Petitioner:
 - Anthony Lach, Representative of the Trust,
 - For the Respondent:
 - Jon M. Snyder, Porter County Assessor,
 - Jean Swanson, Deputy Assessor, Porter County.

6. The Petitioner presented the following exhibits:

- Petitioner Exhibit A1-4 – Newspaper articles regarding the decline in home values,
- Petitioner Exhibit B1-21 – Photographs of properties on 900 North,
- Petitioner Exhibit C1-11 – Property record cards for the Respondent’s comparable properties; the property record card for the subject property; a copy of an excerpt from the Case-Schiller report; letter to Mr. Wszolek; definition of market value; listing information and photographs of an adjacent property,
- Petitioner Exhibit D1-18 – Form 130 for 2008; Form 114 for 2008; Form 11 for 2010; Form 114 for 2010; Form 11 for 2011; Form 130 for 2010; Form 115 for 2008; Form 130 for 2011; Form 115 for 2008; Form 115 for 2010; Form 130 dated December 20, 2011.

7. The Respondent presented the following exhibits:

- Respondent Exhibit 1 – Property record card for the subject property,
- Respondent Exhibit 2 – Photograph of the Petitioner’s property,
- Respondent Exhibit 3 – Overview of comparable properties,
- Respondent Exhibit 4 – Property record card for Parcel No. 05-000037800,
- Respondent Exhibit 5 – Property record card for Parcel No. 06-000121612,
- Respondent Exhibit 6 – Property record card for Parcel No. 23-000022125,
- Respondent Exhibit 7 – Property record card for Parcel No. 05-000000146,
- Respondent Exhibit 8 – Aerial view of the Petitioner’s property,
- Respondent Exhibit 9 – Aerial view of the property behind the Petitioner’s house,
- Respondent Exhibit 10 – Aerial view of the ditch behind the Petitioner’s property.

8. The following additional items 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, dated May 18, 2012,
- Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a single-family residence located at 442 East 900 North, Porter County, in Valparaiso, Indiana.

10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2010, the PTABOA determined the assessed value of the property to be \$35,600 for the land, and \$155,100 for the improvements, for a total assessed value of \$190,700.
12. The Petitioner contends the assessed value of its property should be \$30,600 for the land, and \$135,100 for the improvements, for a total assessed value of \$165,700.

JURISDICTIONAL FRAMEWORK

13. 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, (3) property tax exemptions, and (4) property tax credits, 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.

PARTIES' CONTENTIONS

14. The Petitioner contends that the assessed value of its property was over-stated for the 2010 assessment year. The Petitioner presented the following evidence in support of its contentions:

- A. The Petitioner's representative contends that the county erred in increasing the property's assessed value between 2008 and 2011 because property values had generally declined during that time period. *Lach testimony*. In support of this contention, Mr. Lach presented articles from national publications and local newspapers. *Petitioner Exhibits A1-A4*. According to Mr. Lach, the *USA Today* reported that home prices had their largest year-over-year drop on record as the median price of an existing home in October of 2008 fell 11.3% from a year before.

Lach testimony; Petitioner Exhibit A1. Similarly, Mr. Lach testified, the *Standard Poor/Case-Schiller Index Release* showed that, from the beginning of the downturn in 2006 to 2009, the median price of an existing home fell nationwide by 30%. *Id.* According to Mr. Lach, local newspapers report that home sales in Northwest Indiana have likewise fallen. *Lach testimony; Petitioner Exhibit A4.* For example, the *Chesterton Tribune* reported that 2010 was the fifth consecutive year of declines in home sales in the area and that the median price had dropped another 14%. *Id.*

- B. The Petitioner's representative also contends that the Petitioner's property was over-valued for 2010 based on sales of comparable properties. *Lach testimony.* According to Mr. Lach, homes in the same neighborhood as the subject property have been selling for considerably less than their listing prices or are not selling at all. *Id.* Mr. Lach testified that realtors told the owner of 446 East 900 North that he would not be able to get \$170,000 for his property.¹ *Id.; Petitioner Exhibit B14.* Moreover, the property located at 450 East 900 North listed for \$198,000 and sold for \$165,000 after ten months on the market. *Lach testimony.* According to Mr. Lach, the house at 450 East 900 North is 900 square feet larger than the subject property and has a larger lot. *Id.* Similarly, Mr. Lach testified, 438 East 900 North was originally listed for \$210,000, but the owner dropped the price to \$189,900 and finally sold it for \$185,000. *Lach testimony; Petitioner Exhibit C8.* According to Mr. Lach, the house at 438 East 900 North is 10% larger than the subject property, has a large deck, a pool, and many amenities that the subject property does not have, yet it sold for less than the subject property's assessment. *Id.* Another property at 462 East 900 North has been on the market for almost a year. *Id.; Petitioner Exhibit B13.* In addition, Mr. Lach testified, a vacant house to the west of the subject property has been on the market for six years and two lots have been for sale for ten years. *Lach testimony; Petitioner Exhibits B15-B17.*

¹ Ms. Swanson objected to Mr. Lach's testimony as hearsay evidence. The ALJ over-ruled her objection. "Hearsay evidence...may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence (1) is properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence." 52 IAC 2-7-3.

- C. The Petitioner’s representative further contends that the condition of properties in the neighborhood negatively impacts the market value of the Petitioner’s property. *Lach testimony*. According to Mr. Lach, there are homes that are not well-maintained in the neighborhood and homes that have junk cars parked on their lots. *Id.*; *Petitioner Exhibits B6-B13*. In addition, Mr. Lach contends, there is a trailer park near the subject property and modular homes in the neighborhood, which do not bring value to the neighborhood. *Id.*
- D. Similarly, the Petitioner’s representative contends that other factors affect the value of the subject property. *Lach testimony*. For example, Mr. Lach testified, there are two vacant lots behind the property that flood from winter until April or May. *Id.*; *Petitioner Exhibits B16 and B17*. In addition, vehicles are parked in the lots behind the subject property that detracts from the value of the property. *Lach testimony*; *Petitioner Exhibits B18-B20*. Moreover, Mr. Lach contends, high-tension wires located behind the property impact the salability of the Petitioner’s house and the overall value of homes in the area. *Id.*
- E. Finally, the Petitioner’s representative contends the Respondent’s “comparable” properties are not comparable to the Petitioner’s property. *Lach testimony*. According to Mr. Lach, the properties are not in the same neighborhood or zip code as the subject property. *Id.* In support of this contention, the Petitioner’s representative submitted property record cards for three properties. *Petitioner Exhibits C1-C3*. Mr. Lach contends that the subject property should be compared with houses on County Road 900, like he offered, and not homes that are two or three miles away. *Id.*
15. The Respondent contends that the 2010 assessed value of the Petitioner’s property was correct. The Respondent presented the following evidence in support of the assessment:

- A. The Respondent contends that the Petitioner's property was correctly assessed based on comparable sales. *Swanson testimony*. In support of this contention, the Respondent submitted property record cards and sale prices for four comparable properties. *Respondent Exhibits 4-7*. According to Ms. Swanson, the county has consistently tried to compare the Petitioner's property with other similar ranch-style houses located in Jackson Township or in the Duneland School District. *Swanson testimony*. Ms. Swanson testified that her comparable properties have houses that are similar in age to the Petitioner's house and have a similar number of bedrooms and bathrooms, and are located on similar sized lots. *Id.*; *Respondent Exhibit 3*. Moreover, she argues, the properties all sold during the relevant time frame for the 2010 assessment. *Id.*
- B. The Respondent further contends that the Petitioner's house is not comparable to the properties that Mr. Lach submitted. *Swanson testimony*; *Respondent Exhibit 2*. According to Ms. Swanson, the Petitioner's property is on a county road where there is a large variation in the types of homes that have been built over the years. *Id.* For example, Ms. Swanson testified, some of the Petitioner's comparable properties are modular homes or two-story homes that are not comparable to a ranch-style house like the Petitioner's property. *Swanson testimony*; *Petitioner Exhibits B12 through B15*. Ms. Swanson also argues that Mr. Lach failed to identify the characteristics of the subject property and explain how those characteristics compare to the properties he presented as "comparable." *Swanson testimony*. In addition, she argues, Mr. Lach did not establish or explain how any differences between the properties affect the market value of the subject property. *Id.* Likewise, Ms. Swanson argues, Mr. Lach failed to provide any market evidence to quantify the effect that vacant homes have on the market value-in-use of the Petitioner's property and provided nothing to show that the property's 2010 assessment was incorrect. *Id.*
- C. Finally, the Respondent admits that there are high-tension wires behind the Petitioner's property, but, she argues, they are 438 feet from the corner of the subject property. *Swanson testimony*; *Respondent Exhibit 8*. Ms. Swanson also contends that

aerial photographs of the Petitioner's property show the subdivision behind him and there are no parked vehicles or anything that detracts from the property's value.

Swanson testimony; Respondent Exhibits 8 and 9.

BURDEN OF PROOF

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.² That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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. In this case, the parties agreed that the assessed value of the Petitioner's property did not increase from 2009 to 2010. The Petitioner, therefore, has the burden of proving the property's 2010 assessment was incorrect.

² HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

ANALYSIS

16. The 2002 Real Property Assessment Manual defines “true tax value” 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 at 2 (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. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
17. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 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 often will be probative. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
18. Here, the Petitioner’s representative argues that the Petitioner’s property was assessed too high based on the sale prices of homes in the neighborhood. For example, Mr. Lach testified, a larger property with more amenities sold for less than the subject property’s assessed value. 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 being examined. *Long*, 821 N.E.2d at 470. Instead, the

party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, the Petitioner's representative argues that, based on two sale prices, the subject property was over-assessed. However, Mr. Lach made little attempt to compare the properties. He merely testified, for example, that the property that sold for \$165,000 was "larger" than subject property and had "custom tiling." Similarly, he testified that the property that sold for \$189,000 had a pool and a wrap-around deck, and amenities such as Corian counters, oak floors, new carpeting and energy efficient appliances. While Mr. Lach presented some evidence of the comparability of the two neighboring properties to the subject property, his evidence falls short of the burden to prove that the subject property's assessment was incorrect.

19. The Petitioner's representative also contends that the property was over-assessed because its value is adversely affected by the high-tension lines and lots that flood in the spring, and modular homes, vacant properties and parked cars in the neighborhood. Generally, land values in a given neighborhood are developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Board of Tax Commissioners*, 693 N.E.2d 657, 659 fn. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. A Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and quantification of that influence factor." *See Talesnick v. State Board of Tax Commissioners*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). While the Petitioner's representative testified these conditions "negatively impact" the market value of the property under appeal, he presented little evidence of the property's market value-in-use. The Petitioner therefore failed to raise a prima facie case that its property's assessment was too high in 2010.

20. Finally, Mr. Lach contends that the Petitioner's property was over-valued based on a "general decline" in property values. In support of this contention, he presented excerpts from several articles regarding the decline in real estate values nationwide. Mr. Lach also submitted an excerpt from an article published in the *Chesterton Tribune* on March 23, 2011, a portion of an undated article from *The Times*, two paragraphs titled "Real Estate Outlook" and two paragraphs from a news article of unknown origin. While the rules of evidence generally do not apply in the Boards hearings, the Board requires some evidence of the accuracy and credibility of the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Here Mr. Lach did not write the articles. Nor was the author present. Mr. Lach submitted no evidence regarding the credibility of the data relied upon by the articles' authors or the accuracy of the conclusions drawn from the articles. Most importantly, unless the Petitioner has established the market value of its property at an earlier date, evidence showing a general decline in property values does little to establish the property's market value-in-use for 2010. Therefore, the Board finds the Petitioner's argument to be insufficient to support a change in the property's assessed value for 2010.
21. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

22. The Petitioner failed to raise a prima facie case that its property's 2010 assessment was incorrect. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the property's 2010 assessed value should not be changed.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>