

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No.:** 45-001-09-1-5-00001  
**Petitioner:** Lake County Trust Company/FBO Bruce A. Parisi  
**Respondent:** Lake County Assessor  
**Parcel No.:** 45-08-29-015.000-003  
**Assessment Year:** 2009

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated its 2009 assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 Petition for Review of Assessment by Local Assessing Official on December 3, 2010.
2. According to a letter submitted by the Petitioner's representative, Bruce A. Parisi, dated September 2, 2011, the Lake County PTABOA failed to hold a hearing on the Petitioner's appeal within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")
3. The Petitioner filed an appeal to the Board by filing a Form 131 Petition for Review of Assessment on September 6, 2011. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.") The Petitioner elected to have its appeal heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 30, 2012.
5. The Board held an administrative hearing on October 29, 2012, before the duly appointed Administrative Law Judge (the ALJ) Tom Martindale.
6. The following persons were present and sworn in at hearing:

For Petitioner: Bruce A. Parisi, Petitioner's representative,

For Respondent: Robert W. Metz, Lake County Assessor's representative,  
Danny Cruz, Residential Supervisor, Calumet Township.

### Facts

7. The subject property is an unimproved lot located at 3703 Marshall Place, in Gary, Indiana.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2009 the subject property was assessed for \$19,300.00.
10. The Petitioner contends the subject property should be assessed at \$9,000.00.

### Parties' Contentions

11. Summary of the Petitioner's contentions in support of the alleged errors in its property's assessment:
  - a. The Petitioner's representative, Mr. Parisi, contends that the subject property was over-assessed for 2009 based on its appraised value. *Parisi testimony*. In support of this contention, Mr. Parisi presented an appraisal report by a certified Indiana appraiser, Michael R. Falcone,<sup>1</sup> prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.*; *Petitioner Exhibit 2C*. In Mr. Falcone's report, he estimated the value of the subject property to be \$9,000.00 as of November 17, 2010. *Id.* Mr. Parisi testified that the comparable sales used in the appraisal all occurred in the year of the appeal or prior to the date under appeal. *Parisi testimony*. Furthermore, Mr. Parisi contends that it is a common practice to make the effective date of a report the date the report is issued. *Id.*
  - b. Mr. Parisi also testified that, in his opinion, the unimproved lot is not buildable. *Parisi testimony*. Mr. Parisi argued that the assessment on the subject property was inaccurate because it did not reflect the property's actual market value. *Id.*
  - c. Finally, Mr. Parisi argues that he receives no economic enjoyment from the property and the taxes on the subject property have become a burden. *Parisi testimony*. According to Mr. Parisi, he considered abandoning the property because it was taxed at a 3% rate. *Parisi testimony*. Mr. Parisi testified that he consulted with the Calumet Township Assessor's Office in regards to changing the classification of the subject property to "unimproved acreage." *Id.* However, Mr. Parisi testified, he was told it

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<sup>1</sup> On page 5 of the Petitioner's appraisal, it states that Michael R. Falcone's State Certificate expired June 30, 2010. While this may have been a typographical error, on its face, the appraisal appears to have been prepared *after* the appraiser's certification expired. However, because this issue was not raised by Respondent's representative, the Board will not assign any weight to this fact.

would not be feasible because he would have to withdraw the subject property from its subdivision. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent's representative, Mr. Metz, contends that the Petitioner's appraisal has a valuation date of November 17, 2010, while the assessment year under appeal is 2009. *Metz testimony.* According to Mr. Metz, the comparable sales that were used in the Petitioner's appraisal ranged from 2006 to 2009. *Id.* Mr. Cruz argues that because the appraisal date is November 17, 2010, the appraisal would only be good for a 2010 assessment. *Cruz testimony.*
  - b. Mr. Cruz also argues that the Petitioner's property was valued higher in 2008 than it was in 2009; however, the Petitioner withdrew its 2008 appeal and continued with its 2009 appeal. *Cruz testimony.* According to Mr. Cruz, the "state" granted everyone a 2% drop in their assessment from what it was in 2008. *Id.* But the Petitioner did not pursue an appeal of the property's 2008 assessment. *Id.*

### **Record**

13. The official record for this matter is made up of the following:

- a. Petitioner's Form 131 petition,
- b. A digital recording of the hearing labeled Bruce Parisi,
- c. Exhibits:

Petitioner Exhibit 1A – Form 131 – Petition to the Indiana Board of Tax Review, dated August 29, 2011,

Petitioner Exhibit 1B – Transmittal letter for the Form 131, dated September 2, 2011,

Petitioner Exhibit 1C – Form 53569 – Lake County Indiana Tax Statement for the subject property, prior to its consolidation with the Petitioner's adjacent parcel,

Petitioner Exhibit 2A – Form 130 – Petition for Review of Assessment by Local Assessing Official, dated December 2, 2010,

Petitioner Exhibit 2B – Transmittal letter for the Form 130 dated December 3, 2010,

Petitioner Exhibit 2C – Real property appraisal, dated November 17, 2010,

Petitioner Exhibit 3A – Notice of scheduled meeting with the Calumet Township Assessor, dated September 15, 2011,

Petitioner Exhibit 3B – Disposition of meeting with Calumet Township Assessor, dated September 30, 2011,

Petitioner Exhibit 4A – Petitioner's authority to represent Lake County Land Trust #5202,

The Respondent did not present any exhibits.

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Hearing sign-in sheet,  
Board Exhibit C – Notice of hearing, dated August 30, 2012,

d. These Findings and Conclusions.

### **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.<sup>2</sup> 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.

Here, no evidence was submitted at the hearing to show the previous year's assessed value for the subject property; however, both parties agreed that the burden remained with the Petitioner because the previous year's assessment was "roughly the same."

### **Analysis**

15. The Petitioner raised a prima facie case that its property was over-valued for the March 1, 2009, assessment. The Board reached this conclusion for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as "the market value-in-use of a property for its

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<sup>2</sup> 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.

- 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 (2009)). Evidence in a tax appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. See *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
- b. Regardless of the method used to rebut an assessment’s presumed accuracy, a party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3 (2009).
- c. Here, the Petitioner offered an appraisal signed by Michael R. Falcone that estimated the value of the Petitioner’s property to be \$9,000.00 as of November 17, 2010. *Petitioner exhibit 2C*. Mr. Falcone is an Indiana certified appraiser who attested that he prepared the Petitioner’s appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. *Id.* The report shows that the appraiser applied the sales comparison approach in estimating the property’s value.<sup>3</sup> *Id.*
- d. While generally the 2009 assessment is to reflect the value of a property as of January 1, 2008, pursuant to 50 IAC 21-3-3(a), “For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date.” According to the appraisal offered by the Petitioner: “An extensive search for sales of vacant land in the area over the past several years was conducted, and it was found that the market has been stagnant with very limited sales activity.” *Petitioner Exhibit 2C*. In fact, the appraiser noted: “The properties used in the sales comparison are the most recent, proximate and best available. There are no Date of Sale/Time adjustments because the market has been stagnant and there is insufficient data to suggest a positive or negative adjustment.” *Id.* Thus, the Board finds that the Petitioner’s November 17, 2010, appraisal has sufficient probative value to raise a prima facie case that its property was over-valued for the March 1, 2009, assessment.
- e. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. See *American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner’s

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<sup>3</sup> The Petitioner’s appraisal consisted of three comparable sales and one current listing. Mr. Falcone noted in his appraisal that “comparable sales are typically better indicators of value than listings, but the listing is a good indicator of value being located on Marshall Place.”

case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005). Here the Respondent argued that the valuation date on the Petitioner's appraisal was November 17, 2010; while the assessment year under appeal is 2009. However, as the Board found above, because the appraiser used properties that "were the most recent, proximate and the best available," and made no time adjustments to those sales because the market was "stagnant," the Petitioner's appraisal was sufficient to raise a prima facie case that its property was over-valued.

- f. The Respondent presented no valuation evidence of its own. The Board therefore finds that the Respondent failed to rebut or impeach the Petitioner's evidence.

### **Conclusion**

- 18. The Petitioner raised a prima facie case that its property was over-valued. The Respondent failed to rebut or impeach the Petitioner's evidence. The Board finds in favor of the Petitioner and holds that the assessed value of the Petitioner's property is \$9,000.00 for the March 1, 2009, assessment date.

### **Final Determination**

In accordance with the above findings and conclusions, the Board finds in favor of the Petitioner and determines that the assessed value of the Petitioner's property should be changed.

ISSUED:        January 3, 2013

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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>.