

REPRESENTATIVE FOR PETITIONER:
Carl L. Peters, Peters & Steel, LLC

REPRESENTATIVE FOR RESPONDENT:
John C. Slatten, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Charles E. and Ethel L. Madden)	Petition Nos.: 49-801-02-1-5-07175
)	49-801-04-1-5-00995
)	
Petitioners,)	
)	Parcel No.: 8023056
v.)	
)	
Marion County Assessor,)	County: Marion
)	Township: Washington
)	
Respondent.)	Assessment Years: 2002 and 2004

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

November 14, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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 values of the Petitioners' land were over-stated for the 2002 and 2004 assessment years.

PROCEDURAL HISTORY

2. The Petitioners initiated their 2002 assessment appeal by filing a Form 130 Petition with the Marion County Property Tax Assessment Board of Appeals (the PTABOA) on September 2, 2003. The Petitioners filed their Form 130 with the PTABOA for the 2004 tax year on January 27, 2005. The PTABOA issued its assessment determination for 2002 on March 18, 2005, and its determination for 2004 on October 27, 2006.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed a Form 131 Petition for Review of Assessment with the Board on April 15, 2005, for the 2002 assessment and on November 22, 2006, for the 2004 assessment, petitioning the Board to conduct an administrative review of the property's 2002 and 2004 assessments.

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), Carol Comer, held a hearing on August 22, 2011, in Indianapolis, Indiana.
5. The following persons were sworn at the hearing:
For the Petitioner:
Charles E. Madden, Taxpayer,

For the Respondent:

Gregory Farris, Field Data Specialist and certified residential appraiser.

6. The Petitioners presented the following exhibits:
 - Petitioner Exhibit 1 – Property record card for the subject property,
 - Petitioner Exhibit 2 – Revised property card for the subject property,¹
 - Petitioner Exhibit 3 – Plat drawing.

7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Property record card for the subject property,
 - Respondent Exhibit 2 – Comparable sales analysis and supporting documentation.²

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 Petitions,
 - Board Exhibit B – Notices of Hearing-Reschedule, dated July 14, 2011,
 - Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a house located at 5111 North Illinois Street, Indianapolis, in Marion County.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2002, the PTABOA determined the assessed value of the Petitioners' property to be \$81,200 for the land and \$225,000 for the improvements, for a total assessed value of \$306,200. For 2004, the PTABOA determined the assessed value of the property to be \$92,200 for the land and \$225,000 for the improvements, for a total assessed value of \$317,200.

¹ The Respondent's counsel objected to Petitioner Exhibit 2 because the Petitioners had not exchanged any exhibits or summaries of witness testimony as required by 52 IAC 2-7-1. Because the property record card is a record from the Respondent's office, the ALJ admitted Petitioner Exhibit 2 over objection.

² The Petitioner's counsel objected to Respondent Exhibit 2 because there was no evidence of the interior amenities of the comparable sales or anyone to cross-examine as to those amenities. Because this objection goes to the weight of the evidence, rather than its admissibility, the ALJ admitted Respondent Exhibit 2 over objection.

12. The Petitioners contend the property's land value should be \$50,000 for both the 2002 and the 2004 assessment years. The Petitioners are not contesting the assessed value of the improvements for either year.

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; or (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.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving 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).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
16. 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 Ins. Co. v. Maley*,

803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PARTIES' CONTENTIONS

17. The Petitioners contend that the assessed value of their land was over-stated for the 2002 and 2004 assessment years. The Petitioners presented the following evidence in support of their contentions:
 - A. The Petitioners' counsel argues that the assessor has the burden of proof in these matters because the value of the Petitioners' land increased more than 5% between the 2002 and 2004 assessments. *Peters argument*. According to Mr. Peters, the land's assessed value increased 13.5% between 2002 and 2004 and therefore the burden in these matter shifted to the Respondent under the new law. *Id.*
 - B. The Petitioners' counsel also argues that the land on the Petitioners' property was assessed in excess of its market value-in-use for the 2002 and 2004 assessment years. *Peters argument*. According to Mr. Madden, he has lived in the area since 1931. *Madden testimony*. Based on his knowledge of the neighborhood and his experience with the Meridian Street Foundation, Mr. Madden estimated that the value of his land was \$50,000 for both assessment years. *Id.*
 - C. In addition, the Petitioners' counsel argues that the property was over-valued based on the assessed value of the land on a similar parcel. *Peters argument*. Mr. Madden testified that he researched property records and, in doing so, discovered that the property located at 7444 North Pennsylvania Street was assessed for only \$36,900. *Madden testimony*. According to Mr. Madden, the Pennsylvania Street property is located in a nicer area than the subject property. *Id.* Further, the Pennsylvania Street lot measures .6645 acres, which is slightly larger than the Petitioners' property. *Id.*

D. Finally, the Petitioners' counsel argues that the property was over-valued based on the characteristics of the Petitioners' house and their neighborhood. *Peters argument*. According to Mr. Madden the Petitioners' house was originally constructed as a duplex. *Madden testimony*. When the Petitioners purchased the property in 1967, Mr. Madden testified, they converted it into a single-family residence. *Id.* Mr. Madden also testified that there are no sidewalks on the subject property's side of Illinois Street. *Id.*

18. The Respondent contends that the subject property was under-assessed in 2002 and 2004. The Respondent presented the following evidence in support of the assessments:

A. The Respondent's counsel argues that the burden of proof remains on the Petitioners in these matters. *Slatten argument*. According to the Respondent's witness, the property record cards show that the property's assessed valued increased between 2002 and 2004 because a previously omitted 25 foot strip of land was added to the parcel. *Farris testimony; Petitioner Exhibits 1 and 2*. Mr. Farris testified that the Petitioners' property's property record card shows that .564 acres was assessed for \$81,200 in 2002, but .73 acres, which includes an additional 25 feet strip of land, was assessed in 2004.³ *Id.*

B. The Respondent's counsel further argues that the Petitioners' property was, in fact, under-assessed for the 2002 and 2004 assessment years. *Slatten argument*. In support of his argument, Mr. Slatten presented a sales analysis and Multiple Listing Service (MLS) information for comparable properties in the area. *Respondent Exhibit 2*. According to the Respondent's witness, Mr. Farris, he found three sales within two blocks of the subject property that occurred during the time frame for the 2002 and 2004 appeals. *Farris testimony*. Mr. Farris testified that he made adjustments to the comparable sales for the differences in the age of the structure, the size of the lot,

³ The PTABOA actually explains the increase on the Form 115 for 2004, which states, "The Assessor, upon doing review for the 2002 appeal, discovered the parcel had not been entirely accounted for in its valuation. A 25' strip of land erroneously had not been assessed. When adding the assessment, as valued by the Land Order, the land value was increased from \$81,200 to \$92,200. A Form 11 was issued reflecting the increase and this appeal was filed."

the living space of the house, the size of the garage, the number of fireplaces in the house, and the size of the basement in each of the properties. *Id.* Based on the adjusted sales, Mr. Farris testified, he determined the market value-in-use of the subject property was \$395,000 as of January 1, 1999 – the valuation date for the March 1, 2002, and March 1, 2004, assessment dates. *Id.*

- C. In addition, the Respondent argues that the Petitioners' land was also under-assessed. *Slatten argument.* The Respondent's witness testified that lot sales within the neighborhood were difficult to find going back to 1999. *Farris testimony.* According to Mr. Farris, he was only able to find one sale of vacant land that closed on December 15, 1999, for \$262,880. *Id.; Respondent Exhibit 2.* Mr. Farris testified that the comparable property was in a superior neighborhood than the subject property, but was slightly smaller than the Petitioners' lot. *Id.* Based on that sale, Mr. Farris testified, he estimated the Petitioners' land value to be closer to \$100,000. *Id.*

ANALYSIS

19. The Petitioner's counsel first argues that the assessor has the burden of proof because the assessed value of the land increased by more than five percent over the preceding assessment date. *Peters argument.* Mr. Peters refers to Indiana Code § 6-1.1-15-17, which states, "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." This statute was effective July 1, 2011.

20. Here, however, the Petitioners failed to offer any evidence of the property's 2001 assessment to compare to the property's 2002 assessment. Similarly, the Petitioners failed to offer any evidence of the property's 2003 assessment to compare to the 2004 assessment. Therefore, there is no evidence in the record that the value of the property increased more than 5% between the assessment years. Even if the Board assumed that the property's 2003 assessment was the same as the property's 2002 assessment, there is undisputed evidence in the record that the parcel in 2004 incorporated an additional 25 feet of land that had been previously omitted from the Petitioners' assessment. Therefore, the property at issue in the Petitioners' 2004 appeal is not the same as the property at issue in their 2002 appeal. Thus, the Board holds that the burden of proof remains on the Petitioners in these matters.
21. 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.
22. A property's assessment under the Guidelines is presumed to accurately reflect the property's 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 suffice. *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 any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

23. Regardless of the method used to rebut an 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. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2002, and March 1, 2004, assessment dates, the valuation date was January 1, 1999. MANUAL at 8.
24. The Petitioners contend that the land on their property was over-valued for the 2002 and 2004 assessment years. According to Mr. Madden, based on his knowledge of the area and his work on the Meridian Street Foundation, he estimates that the Petitioners' parcel was only worth about \$50,000 for 2002 and 2004. However, the Petitioners presented no evidence in support of Mr. Madden's contention. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the testimony. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
25. The Petitioners also contend that their lot was assessed for less than a larger lot located in a nicer neighborhood.⁴ However, the Indiana Tax Court rejected this argument as insufficient to show an error in assessment in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the property's assessed value does not accurately reflect the

⁴ The Board notes that the Petitioners provided no documentation of the assessed value of the purportedly comparable property. Thus the Board cannot determine how the property is comparable to the Petitioners' property or how the purportedly comparable property was assessed.

property's market value-in-use. *Id.* Like the Petitioner in *Westfield Golf*, the Petitioners here only argue that the method of the Petitioners' assessment was not uniform. This argument fails to raise a prima facie case that any error was made in their property's assessment.

26. Finally, the Petitioners contend that their property's value is lower than other properties' values because their house was converted from a duplex to a single-family home and because there are no sidewalks on the Petitioners' side of Illinois Street. Generally, land values in a given neighborhood are determined by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 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. The Petitioners, however, have the burden to produce both "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Thus, while the property's conversion of a double into a single family home and the neighborhood's lack of sidewalks may be relevant to the issue of whether a negative influence factor should apply here, the Petitioners failed to show how these conditions would impact the market value of the subject property. *See Talesnick*, 756 N.E.2d at 1108
27. Further, even if the Petitioners' had shown that an influence factor should have been applied to their property, the Petitioners failed to show that the property's assessment did not accurately reflect the property's market value-in-use. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current

assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly.” The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).

28. The Board therefore finds that the Petitioners failed to raise a prima facie case that their property was assessed in error in either 2002 or 2004. Where a taxpayer has not supported his 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

29. The Petitioners failed to raise a prima facie case that their property was over-valued for either the 2002 or the 2004 assessment years. 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 assessed values of the Petitioners’ property should not be changed for the 2002 and the 2004 assessment years.

ISSUED: _____

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>