REPRESENTATIVES FOR PETITIONER:
Christopher J. McElwee, Attorney and Petitioner

REPRESENTATIVE FOR RESPONDENT:
John Slatten, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

CHRISTOPHER J. McELWEE and CHRISTINA E. HALE,	)	Petition Nos.: 49-800-07-3-5-00095 49-800-07-1-5-01873
Petitioners,	)	Parcel No.: 8060208
v.	)	County: Marion
MARION COUNTY ASSESSOR,	)	Township: Washington
Respondent.	)	Assessment Year: 2007

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

Sept 7, 2012

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:

ISSUES

1. Did Respondent prove that the 2007 assessed value determined by the PTABOA is not an accurate market value-in-use for the subject property when compared to other similar properties? [1]

[1] At the previous hearing held on March 22, 2011, Petitioner McElwee and Respondent Assessor agreed with the PTABOA's final determination, which resulted in a total assessed value of $355,000 for 2007. At the July 17, 2012 hearing, however, Respondent disputed the PTABOA's final determination, while Petitioner McElwee was still in agreement with the $355,000 valuation.

2. Did Petitioners prove that they should not be responsible for the subject property's 2007 taxes, because they did not own the property on the date of the assessment?

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The subject property is a single-family residence located at 5718 Toad Hollow Lane in Indianapolis. Petitioners purchased the property on April 30, 2008, and therefore, did not own the property on March 1, 2007. *McElwee testimony*.

4. Petitioners Christopher J. McElwee and Christina E. Hale filed a Form 133 Petition for Correction of an Error to contest whether they should be responsible for the subject property's 2007 taxes payable in 2008. Form 133 petitions, under Ind. Code § 6-1.1-15-12, are limited to objective errors. The Petitioners also filed a Form 130 Petition to contest the 2007 assessed value of the subject property.

5. On May 25, 2010, the PTABOA determined the 2007 assessed value to be $62,800 for land and $292,200 for improvements, for a total assessed value of $355,000. Petitioners timely filed a Form 131 Petition with the Board. The Board has jurisdiction over the appeal under Ind. Codes §§ 6-1.1-15 and 6-1.5-4-1. Although Petitioners initially requested a total assessed value of $337,150 on the Form 131 Petition, Petitioners do not now dispute the PTABOA final determination of $355,000.

6. On April 6, 2011, the PTABOA denied the Petitioners' Form 133 Petition for Correction of an Error, stating that the County Treasurer has jurisdiction as to who is responsible for taxes.

7. Petitioner McElwee filed an Amended Form 131 Petition on March 16, 2011. The Board will not approve an amended appeal filed fewer than 15 days before the hearing unless the opposing party agrees. 52 IAC 2-5-2. Respondent objected to the Amended 131 Petition. Therefore, the amended Form 131 Petition will not be considered as evidence in this case. The change made to the Amended Petition, however, was insignificant as only one sentence was removed from the original.

8. A hearing was previously held on March 22, 2011, before Paul Stultz, an Administrative Law Judge designated by the Board. Since the Form 133 Petition had not yet been ruled upon at that time, the Board continued the hearing.

9. A hearing was held on July 17, 2012, before Jaime S. Harris, the designated Administrative Law Judge ("ALJ") authorized by the Board. Neither the Board nor the ALJ inspected the subject property.

10. Petitioner Christopher J. McElwee and Certified Residential Appraiser John Gregory Farris were sworn as witnesses.

11. Petitioner McElwee submitted the following exhibits:

Petitioner Exhibit 1:	Form 131: Petition to the Indiana Board of Review for Review of Assessment with attachments,
Petitioner Exhibit 2:	Appraisal of subject property, 5718 Toad Hollow Lane (Dated April 3, 2008),
Petitioner Exhibit 3:	Settlement Statement for sale of Subject Property,
Petitioner Exhibit 4:	Indictment and Plea Agreement in Cause No. 1:08-CR-0018-LJM-KPF, *United States of America v. Beverly Ross and Donella Locke*,
Petitioner Exhibit 5:	Petition for Bankruptcy belonging to Donald Thurman, Jr.,
Petitioner Exhibit 6:	2007-pay-2008 Property Tax Notice for Subject Property,
Petitioner Exhibit 7:	2007-pay-2008 Reconciliation Tax Bill dated June 12, 2009,
Petitioner Exhibit 8:	2008-pay-2009 Property Tax Notice for Subject Property,
Petitioner Exhibit 9:	Emails exchanged between Marion County Assessor's Office, Petitioners, and PTABOA Hearing Examiner,
Petitioner Exhibit 10:	Realtor Listings of Subject Property and comparables with accompanying photographs,
Petitioner Exhibit 11:	Tax Bill Detail from DLGF website,
Petitioner Exhibit 12:	2006 – 2008 Price Analysis Reports and Trend Charts. (Respondent's objection to this exhibit was sustained. See discussion regarding objections.)

12. The Assessor submitted the following exhibits:

Respondent Exhibit 1:	2008 Property Record Card for Subject Property,
Respondent Exhibit 2:	Aerial photograph of Subject Property,
Respondent Exhibit 3:	Permit information regarding Subject Property,
Respondent Exhibit 4:	Comparable sale documentation,
Respondent Exhibit 5:	Listings of Subject Property and photographs,
Respondent Exhibit 6:	Form 115's for Subject Property.

13. The Board recognizes the following additional items as part of the record of proceedings:

    Board Exhibit A: Form 131 petition and attachments,
    Board Exhibit B: Form 133 Petition and attachments,
    Board Exhibit C: Notice of Hearing,
    Board Exhibit D: Hearing Sign-in Sheet.

OBJECTIONS

14. Respondent objected to Petitioner Exhibit 12, because Petitioner McElwee failed to provide copies of said documentary evidence prior to the hearing. McElwee did not dispute this fact.

15. For plenary hearings, the Board's procedural rules require a party to the appeal to provide the other parties with a list of witnesses and exhibits that are to be introduced at the hearing at least fifteen business days before the hearing. 52 IAC 2-7-1(b)(2). Copies of documentary evidence must be exchanged at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). Failure to comply with these requirements can be grounds to exclude evidence. 52 IAC 2-7-1(f). The purpose of the requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. Respondent's objection is sustained. Petitioner Exhibit 12 will not be considered any further in determining the outcome of this case.

16. Petitioner McElwee objected to the following evidence:

    a. Respondent Exhibit 6, because it was not the proper and final Form 115 Notification from the PTABOA hearing;

    b. Farris' testimony regarding who built the subject property and the cost of construction, because it contains inadmissible hearsay;

    c. Farris' testimony about a phone conversation he had with Jim Farrell, a Realty Executives employee, because it contains inadmissible hearsay; and

    d. Farris' testimony regarding PTABOA Hearing Officer Robert Agnew and how it was unlikely that he had been an appraiser.

17. As stated above, the PTABOA established an assessed value of $355,000 for the subject property. The PTABOA issued consecutive Form 115's in arriving at the assessed value. The fact that the correct and final Form 115 Notification was issued on April 6, 2011, is not a

reason to keep the other Form 115 from coming in as evidence. Petitioner McElwee's objection is overruled.

18. According to Petitioner McElwee, Mr. Farris' testimony regarding the subject property's building costs and the identification of its builder is testimony about documents that are not a part of the record. Respondent argued that said information is part of the public record, and the sources used to obtain the information are documents which anyone could acquire. Petitioner McElwee's objection to Farris' testimony regarding the subject property's construction costs and builder identification is overruled.

19. Petitioner McElwee's objection to the phone conversation Farris had with Jim Farrell was sustained at the hearing. This decision shall remain unchanged.

20. Petitioner McElwee objected to Farris' testimony that PTABOA Hearing Officer Robert Agnew was likely never an appraiser, because Mr. Agnew was not present to verify this fact. The objection goes more to the weight of the evidence rather than to its admissibility. The Board therefore denies the Petitioner's objection even though this kind of testimony lacks any probative value.

ADMINISTRATIVE REVIEW AND THE PARTIES' BURDENS

21. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a 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). Nevertheless, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17.2 and in some cases it shifts the burden of proof:

> 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.

22. The Parties agreed that the 2007 assessed value is more than 5% greater than the 2006 assessment. The Parties disagreed, however, on whether the property assessed in 2007 is the same property as that assessed in 2006. If not the same property, Ind. Code § 6-1.1-15-17.2 does not apply.

23. Petitioner McElwee claimed the burden shifts to the assessor as the assessed value increased from $67,000 in 2006 to $580,000 in 2007. The improvements were built in 2004, but had been omitted from the assessed value of the subject property until the 2007-pay-2008 assessment. McElwee argued that the improvements were present on the subject property when the assessment was completed in 2006, so it was the same property. If treated as the same property, the burden would shift to the assessor. *McElwee argument*.

24. The burden should not shift under Ind. Code § 6-1.1-15-17.2, because the subject property was not the same as the preceding assessment which had omitted the improvements. *Slatten argument*.

25. The property record card reveals the improvements were not included in the 2006 assessment. *Resp't Ex. 1*. Respondent corrected that error in 2007. The 2007 assessment, which included the improvements, is not for the same property as the 2006 assessment. Therefore, the Board concludes that the 2006 and 2007 assessments are not for the same property and Ind. Code § 6-1.1-15-17.2 does not shift the burden to the Respondent.

26. Regardless of whether Ind. Code § 6-1.1-15-17.2 applies, and even if the Assessor is not the Petitioner, if the Assessor attempts to claim that the assessed value should be anything over the value determined by the PTABOA, then the Assessor, and not Petitioner, must prove that the PTABOA's assessment is incorrect.

27. If Respondent makes a prima facie case, the burden will then shift to the Petitioners to offer evidence to rebut or impeach Respondent'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.

28. The second issue is whether the Petitioners are responsible for paying the 2007 taxes on the subject property. As Petitioners are contesting the responsibility for the property taxes, the Petitioners must prove that they are not the party responsible for the 2007 property taxes.

SUMMARY OF THE RESPONDENT'S CASE REGARDING ASSESSMENT VALUE

29. Respondent contends that the PTABOA's assessed value is too low. Several types of evidence were submitted in order to demonstrate what the Respondent believes to be the correct assessed value. This included the use of the cost approach, sales comparison approach, evidence of a previous sale of the subject property, and allegations attempting to impeach the credibility of Petitioners' appraisal. *Slatten argument.*

30. The home on the subject property was built in 2004 by Estridge Homes for $580,737. By means of the cost approach as of the January 1, 2006 valuation date, the subject property's assessed values would be $200,000 for the land, between $525,000 and $535,000 for the improvements, for a total assessed value of approximately $700,000. *Farris Testimony.*

31. The sales comparison approach results in a total assessed value of approximately $465,000 for the subject property. After making certain adjustments for characteristics such as age and lot size, the following are the approximate 2007 sale prices of two comparable properties which are located on the same street as the subject property:
    a. 5702 Toad Hollow Lane has an adjusted sale price of $436,400; and
    b. 5726 Toad Hollow Lane has an adjusted sale price of $476,100.

    Farris Testimony and Resp't Ex. 4.

32. While more weight was placed on the sales comparison approach, the cost approach and sales comparison approaches were both used in order to arrive at a proposed assessed value of $456,000 for the subject property for 2007. *Farris Testimony*.

33. Respondent argues that the PTABOA should not have decreased the original 2007 assessment value. After hearing evidence of a fraud scheme involving the prior sale of the

subject property, the PTABOA reduced the original assessment value from $515,800 to $355,000. *Slatten argument.*

34. Petitioner McElwee presented a certified appraisal to support the PTABOA's valuation of $355,000. Mr. Farris claims that this appraisal does not conform to the Uniform Standards of Professional Appraisal Practice (USPAP) and was only performed by a licensed residential appraiser. He was concerned with the low price per square foot, the less than ideal comparable used, and the referral to the subject property as a two-story on a slab concrete foundation instead of a ranch style with a walk out basement. USPAP "Standard 2-1(a) basically states that the appraiser is to clearly and accurately set forth the appraisal in a manner that will not be misleading." Standard Rule 2-1(b) states that the appraisal "contains sufficient information to enable the intended users of the appraisal to understand the report properly." *Farris Testimony.*

35. Respondent claimed that the Petitioners' purchase price is not a true indication of the market value-in-use of the subject property because it was likely purchased from a bank. Respondent based this argument on the fact that Kate Flock is listed as the selling agent, and she typically deals with bank owned properties. *Farris Testimony and Pet'rs Ex. 10*.

SUMMARY OF THE PETITIONERS' CASE REGARDING ASSESSMENT VALUE

36. The PTABOA's final determination of $355,000 should not be changed.

37. On April 3, 2008, a certified appraisal that valued the subject property at $355,000 was completed. On April 30, 2008, Petitioners paid $355,000 for the subject property evidenced by the Settlement Statement and deed. *Pet'rs Ex. 2 and 3*.

38. A prior sale of the subject property for $604,000 is not a good indication of the actual market value-in-use of the subject property. Petitioner presented evidence related to a court proceeding that was brought against certain individuals and involved the purportedly fraudulent sale of the subject property. *McElwee Testimony, Pet'rs Ex. 4 and Resp't. Ex. 5.*

39. Petitioner McElwee presented evidence supporting the mortgage fraud involving the subject property by the use of Donald Thurman's Petition for Bankruptcy. The property had been vacant for some time when purchased by Petitioners. Mr. Thurman likely never made a payment on the property, so the bank foreclosed on it fairly quickly. The listing price of the subject property rapidly decreased after it was put back on the market in January 2008 until the Petitioners purchased it in April 2008. *McElwee Testimony and Pet'rs Ex. 5*.

40. The first tax bill that Petitioners received for 2007-pay-2008 was based on an assessed value of $62,800. It represented the land only and was dated June 3, 2008. Subsequently, however, a Reconciliation Bill was issued on June 12, 2009. It decreased the assessed value of the land to $62,300, while increasing the value of the improvements from zero to $515,800 for a total assessed value of $578,100. Petitioners then initiated an appeal to the PTABOA claiming that this value was too high. The PTABOA lowered the value to $355,000.[2] This value had not been contested until the July 17, 2012 Hearing. *McElwee Testimony, Pet'rs Ex. 6, and Pet'rs Ex. 7*.

41. Petitioner McElwee presented a listing, including the sales history, for the subject property. It was listed for $399,900 and sold to Petitioners for $355,000. Although listed as the selling agent, Kate Flock was actually the Petitioners' realtor and buyer's agent. When Petitioners purchased the property, it had two bedrooms, three bathrooms, an unfinished basement, deck, attached two car garage, and .75 acres of wooded land. The main level is 2250 square feet, the basement is 1150 square feet, for a total of 3400 square feet. The house does not have a second floor. Rain had previously leaked through the chimney causing significant drywall damage to the master bedroom and family room. Petitioner McElwee replaced the chimney cap after purchasing the home and added a third bedroom in the basement. *McElwee Testimony*.

[2] The 2008 assessment decreased the total assessed value to $391,000. Because the value should have been $355,000, several emails were exchanged between Petitioner McElwee, Joseph O'Connor, Melissa Bailey, and Robert Agnew in an attempt to correct the mistake. An auditor's correction on the Tax Notice totaling $326.36 essentially reduced the tax to a total assessed value of $355,000. Ms. Bailey was in charge of the preliminary dispute with the assessor's office before the appeal went to the PTABOA and also represented the county at the PTABOA Hearing. *Pet'rs Ex. 8 and Pet'rs Ex. 9*.

42. Petitioner McElwee provided information concerning six comparable properties located in close proximity to the subject property. Below are the sale prices of those comparables and notable differences between them and the subject property.

    a. 5759 Rolling Ridge Road sold for $339,900 on August 31, 2006. The size of the home on this comparable is significantly larger than the subject property, while the lot is a little smaller (.55 acres).

    b. 3505 E. 56th Street sold for $315,000 on October 25, 2006. This comparable has more square footage while the size of the lot is a little smaller (.6 acres). Also, this comparable is on lake-front property.

    c. 4524 Dickson Road sold for $284,500 on July 17, 2006. This comparable has more square footage than the subject property.

    d. 5782 N. Rolling Pines Court sold for $265,000 on April 14, 2006. This comparable is approximately the same square footage as the subject property, but has a three car garage.

    e. 5726 Toad Hollow Lane sold for $467,600 on June 1, 2005. This comparable consists of 2.86 acres of land, likely valued at $200,000 alone. The value was obtained by using the county's land value per acre which was used for the subject property ($62,300 for .75 acres). The price difference is likely attributed to this additional acreage. This home has more square footage, a finished basement, and a three car garage.

    f. 5702 Toad Hollow Lane sold for $445,900 on March 1, 2005. This comparable has three floors, approximately 800 more square feet, three car garage, three bedrooms, home theatre, in ground pool, and three decks. The 2007 Property Tax Bill for this property shows a total assessment value of $443,700.

    McElwee Testimony, Pet'rs Ex. 10 and Pet'rs Ex. 11.

43. The valuation evidence offered by Respondent is not reliable. Mr. Farris' inspection of the property consisted of a mere drive-by. He did not personally inspect the comparables about which he testified. Also, Mr. Farris has no personal knowledge of whether a bank owned the property. *Farris cross-examination.*

SUMMARY OF PETITIONERS' CASE REGARDING RESPONSIBILTY FOR TAXES

44. Petitioners should not be taxed on the subject property for 2007, because they did not own said property until April 30, 2008. Donald Thurman, Jr. or Brandon Morris, and not the

Petitioners, was the owner of the subject property on March1, 2007. Therefore, the 2007 property taxes were improperly billed to Petitioners. *McElwee testimony*.

45. Pursuant to I.C. 6-1.1-4-1, property shall be assessed to the person liable for taxes under I.C. 6-1.1-2-4. Pursuant to I.C. 6-1.1-2-4, the owner of any real property on the assessment date for a year is liable for taxes imposed for that year on the property. *McElwee testimony*.

46. Petitioner McElwee contends that the 2007 property taxes, as they pertain to Petitioners, were illegal as a matter of law. The home was built in 2004, but the county did not assess it until after Petitioners purchased the property in 2008. Due to this fact, the county first assessed the improvements for 2007 pursuant to I.C. 6-1.1-9-1. According to McElwee, if a township assessor, county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from or undervalued on the assessment date for any year or years, it can give notice of an increase in the assessment. A taxpayer should not be responsible for increased taxes on property due to the county's failure to timely assess the subject property. Also according to McElwee, I.C. 6-1.1-9-4(b) states that as to a bona fide purchaser, no lien attaches for any taxes which result from an assessment or increase in assessed value for any period before the purchase of the property. This is what occurred here. *McElwee testimony*.

47. Until purchasing the property, the Petitioners were unable to file for a mortgage deduction or homestead deduction. The 2007 property taxes were paid by the Petitioners' mortgage company, but the Petitioners had to reimburse the mortgage company. Even if the mortgage company had failed to pay these taxes, a lien could not attach to the subject property because the taxes at issue occurred before the Petitioners owned the property. *McElwee testimony*.

48. Property values assigned in a general assessment are carried forward from year to year until the next general reassessment. When no changes occur to the property to affect its general reassessment value, that value must be carried forward until the next general reassessment. *K.P. Oil, Inc. v. Madison County Assessor, 818 NE2d 1006 (Ind. Tax Ct. 2004).* No changes occurred to the property between 2006 and 2007.

SUMMARY OF THE ASSESSOR'S CASE REGARDING RESPONSIBILITY OF TAXES

49. Instead of focusing on the responsibility for the entire 2007 property taxes, the Respondent focused specifically on the assessed value of the improvements. The value of the improvements was added before the 2007 assessment was certified. Therefore, the Assessor could not go back as the improvements were a part of the original assessment. Out of fairness and equity, the Petitioners were on notice that the 2007 assessment would be higher than in 2006 due to the addition of the improvements. *Slatten argument.*

50. I.C. 6-1.1-9 only applies if the assessor seeks to increase a prior year's assessment or adds an assessment that was omitted from the assessment rolls. The Assessor's inclusion of the improvements in the subject property for 2007-pay-2008 was part of creating an assessment roll in the first place, so there was no looking backward. Therefore, I.C. 6-1.1-9 does not apply. *McElwee Cross-Examination and Petr's Ex. 9.*

ANALYSIS OF ASSESSMENT VALUE

51. Real property is assessed 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 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). Three methods are generally used to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. The majority of assessing officials utilize the cost approach method as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

52. Taxpayers can effectively prove that property values established by an assessor are inaccurate by presenting a market value-in-use appraisal which conforms to USPAP. *Kooshtard Property VI, LLC v. White River Township Assessor,* 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Construction costs, sales information for the subject or comparable properties, and other information compiled according to generally accepted appraisal principles can also be offered as evidence to demonstrate the actual value of property. MANUAL at 5.

53. A party must explain how its evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *See 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 NE2d 466, 471 (Ind. Tax Ct 2005). Otherwise, the evidence lacks probative value. *Id.*

54. The Respondent did not provide sufficient evidence to support the contention that the PTABOA determination was too low.

55. Respondent used the cost approach and sales comparison approach to try to prove that the assessed value should be increased from the PTABOA's determination of $355,000. Respondent submitted a relatively small amount of documentation on two purportedly comparable properties. Respondent was responsible for explaining to the Board the characteristics of the subject property, how those characteristics compared to those of the supposedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). Respondent failed to do so.

56. Petitioner McElwee presented an appraisal which was prepared by a residential appraiser approximately four months after the required valuation date. The appraisal is certified and appears to conform to generally accepted appraisal principles.

57. While Respondent's appraiser, John Farris, claimed that the Petitioners' appraisal did not conform to USPAP, his argument was not supported by the evidence. Farris, who had only driven by the subject property, argued that the appraisal included a price per square foot which was too low, and it referred to the property as a two story on a slab as opposed to a ranch style home with a walk out basement. These conclusory statements do not demonstrate what the actual 2007 market value-in-use should be and do not constitute probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

58. After considering all of the evidence, the Board is convinced that the prior sale was not a good indication of the actual value of the subject property and should not be used in determining the assessed value at issue. That scheme to sell the property for $604,000 far

exceeded the property's actual market value-in-use. The surrounding circumstances for that sale seriously undermine its credibility as an indicator of real market value.

59. Respondent's speculation that Petitioners purchased the subject property from a bank is not probative. Mr. Farris admitted that he has no personal knowledge that a bank owned the property, but the Petitioners' realtor typically deals with bank foreclosure sales. Even if this is an accurate statement, it does not prove that the subject property was purchased from a bank thereby making the sale price lower than market value-in-use. There is no credible proof of this contention.

60. Although, Petitioner McElwee did not develop the sales comparison approach in an effective manner, Respondent failed to make a prima facie case to support a higher assessment. Therefore, the Petitioner was not required to defend the PTABOA's value. The Board finds in favor of the Petitioner regarding Respondent's claims.

RESPONSIBILITY OF 2007 PROPERTY TAXES

61. Responsibility for property taxes is governed by Indiana Statute. "The owner of any real property on the assessment date of a year is liable for the taxes imposed for that year on the property…" I.C. § 6-1.1-2-4. "When a person other than the owner pays any property taxes, as required by this section, that person may recover the amount paid from the owner, unless the parties have agreed to other terms in a contract." *Id*.

62. Property taxes are a lien on the property and attach on the assessment date. The sale and purchase of the property does not affect the lien. I.C. § 6-1.1-22-13(a). Due to the delay between assessment and billing as well as the possibility of a having a lien on the property, parties frequently assign responsibility for the tax liability within the purchase agreement. *Van Prooyen Builders, Inc. v. Lambert*, 907 N.E.2d 1032 (Ind. Ct. App. 2009).

63. Regardless of whether or not Petitioners owned the subject property on the assessment date, the purchase of the property by Petitioners did not affect the tax lien that attached when the

2007- pay-2008 taxes were not paid in a timely manner. While Petitioners may have a possible claim against the prior owner of the property, this is not an issue for the Board.

64. Petitioner McElwee argued that I.C. 6-1.1-9-1 and I.C. 6-1.1-9-4(b) apply, and therefore no lien should have attached to the subject property. Those statutes state the following:

> **IC 6-1.1-9-1**
> If a township assessor (if any), county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from or undervalued on the assessment rolls or the tax duplicate for any year or years, the official or board shall give written notice …of the assessment or increase in assessment.
>
> **IC 6-1.1-9-4(b)**
> With respect to real property which is owned by a bona fide purchaser without knowledge, no lien attaches for any property taxes which result from an assessment or an increase in assessed value, made under this chapter for any period before his purchase of the property.

65. While I.C. 6-1.1-9-1 appears to be directly applicable to this case because the assessor increased the prior year's assessment and added the house that had been omitted from the previous assessment, I.C. 6-1.1-9-4(b) pertains only to bona fide purchasers *without knowledge*. McElwee left out the language regarding knowledge when explaining the application of this statute to his case. McElwee admitted that he was aware that the home itself had not been assessed and had even called the township assessor's office about this very fact. He claimed he was told that he would not be responsible if changes were made. Regardless of what he was told, the language of I.C. 6-1.1-9-4(b) is clear.

66. Petitioner McElwee's argument regarding his inability to file for a mortgage or homestead deduction is irrelevant. The Petitioners would not have been entitled to either the homestead standard deduction or the mortgage deduction for the 2007-pay-2008 period. During that time, the Indiana Code provided certain homeowners with a homestead credit against their property tax liabilities**.** I.C. §6-1.1-20.9-2(a) (2007) (repealed 2008). Homeowners who qualified for the homestead credit could also reduce their property tax liability through application of the homestead standard deduction. I.C. §6-1.1-12-37 (2007) (amended 2008). The mortgage deduction was also available for homeowners who had mortgages. I.C §6-1.1-

12-1 (2007) (amended 2008). In order to be entitled to these deductions, taxpayers had to establish that they came within the specific statutory provisions which allowed them**.** *Indiana Dep't of State Revenue v. Estate of Daugherty*, 938 N.E.2d 315, 320 (Ind**.** Tax Ct. 2010). To qualify for the homestead credit and homestead standard deduction, Petitioners must have owned the property on the March 1, 2007, assessment date. I.C. §6-1.1-20.9-2(a); I.C. §6-1.1-12-37. As the evidence shows, Petitioners did not own the home at that time, and were therefore ineligible to receive the homestead credit and the homestead standard deduction. *Fuller v. Cass County Assessor*, 957 N.E.2d 711 (Ind. Tax Ct. 2011). Petitioners' eligibility for the mortgage deduction depended on whether they could establish that they had a mortgage and whether they filed the required application for the deduction on or before October 15, 2007. I.C. §6-1.1-12-2(a); Pub.L. No. 1-2008, §8; 2008 Ind. Acts 1, 11-12. Petitioners did not have a mortgage on the property and could not have complied with the October 15, 2007, application deadline, because Petitioners did not purchase the home until after that deadline. *Fuller v. Cass County Assessor*, 957 N.E.2d 711 (Ind. Tax Ct. 2011).

67. Petitioner McElwee also relied on an Indiana Tax Court case holding that assessment values must be carried forward to the next general assessment if no changes had occurred to the property. *K.P. Oil, Inc. v. Madison Township Assessor*, 818 NE2d 1006 (Ind. Tax Ct. 2004).

68. In *K.P. Oil*, the Tax Court addressed an interim assessment in the absence of any changes. K.P. Oil originally appealed from the 1995 general reassessment of its property because the assessor had valued its land using a base rate of $900 per front foot. K.P. Oil claimed the land was unplatted, and consequently should have been assessed at $24,750 per acre. On that appeal, the State Board of Tax Commissioners found that the land was not platted and it should have been assessed for no more than $24,750 per acre. *K.P. Oil*, 818 N.E.2d at 1007. The assessor was prevented from seeking judicial review. Following that determination, the PTABOA reassessed K.P. Oil's land in 1999, again using a rate of $900 per front foot because the lot actually was platted. *Id*. On review, the Tax Court stated, "assessing officials may reassess real property between general reassessments in order to reflect changes to the property itself or in the use of the property that may increase or decrease the assessment value…. However, when no changes occur to the property to affect its general reassessment value, that value must be carried forward until the next general reassessment." *K.P. Oil*, 818

N.E.2d at 1008 (citations omitted). The Tax Court held that the value from the 1995 assessment should carry forward, rather than upholding the PTABOA's interim reassessment. *Id*. at 1009.

69. *K.P. Oil* must be read narrowly in light of statutory authority for assessors to increase assessments in interim years between general reassessments. Ind. Code § 6-1.1-9-1 provides the authority to conduct an interim reassessment. *See Lakeview Country Club v. State Bd. of Tax Comm'rs*, 565 N.E.2d 392, 397 (Ind. Tax Ct. 1991). In *Lakeview*, the Tax Court recognized that Ind. Code § 6-1.1-9-1 authorizes local assessing officials to increase assessments for undervalued real property between general reassessments. Moreover, it did so where there had been no change to the use or zoning of the property and where the purported basis for the change was that the property had been undervalued in the prior general reassessment. The Tax Court did not address or disavow its statements in *Lakeview* when it decided *K.P. Oil*, nor did it address Ind. Code §6-1.1-9-1. Accordingly, the Board does not read *K.P. Oil* to preclude a local assessor from increasing a real property assessment in years between general reassessments where the assessor believes that such property has been undervalued.

70. Each tax year stands alone. If an assessing official were bound to the value determined during a general reassessment, then evidence of that property's assessment in a general reassessment year would be probative of its value in subsequent years. The Tax Court, however, has determined that evidence of an assessment in one tax year is not probative of its true tax value in a different tax year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs,* 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs,* 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). The Petitioner's argument that the assessments in question cannot be changed between general reassessments does not square with precedent that each year stands alone.

71. Prior to 2002, the assessed value of real property in Indiana had no relation to any external, objectively verifiable standard of measure. Beginning in 2002, however, Indiana's property tax assessment system began to incorporate market value-in-use. This new system of assessment acknowledges that market trends affect the assessed value of real property.

Charwood LLC v. Bartholomew County Assessor, 906 N.E.2d 946 (Ind. Tax Ct. 2009). Petitioners' case pertains to a 2007 assessment and consequently the "carry forward" rule from *K.P. Oil, Inc.* no longer applies.

72. Petitioners failed to make a prima facie case to support the argument that they are not responsible for the 2007-pay-2008 taxes. Therefore, the burden did not shift to Respondent to prove Petitioners were the responsible party. The Board finds in favor of the Respondent regarding Petitioners' claims.

SUMMARY OF FINAL DETERMINATION

73. The Respondent failed to prove that the PTABOA assessment should be changed.

74. The Petitioners are responsible for the 2007-pay -2008 property taxes.

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

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
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>.