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

Petition Nos.: **76-011-06-1-5-00104 & 76-011-06-1-5-00104A**
Petitioner: **Karen and David McKeeman**
Respondent: **Steuben County Assessor**
Parcel Nos.: **76-06-10-220-211.000-011 & 76-06-10-220-212.000-011**
Assessment Year: **2006**

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

Procedural History

1. Karen and David McKeeman[1] contested the March 1, 2006 assessments for the subject parcels. On January 2, 2009, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations denying the McKeemans relief.

2. The McKeemans then filed Form 131 petitions with the Steuben County Assessor.[2] Where a property under appeal is assessed for less than $1 million, the Form 131 petition calls for a petitioner to check one of two boxes to indicate whether the petitioner accepts the Board's small claims procedures or instead wishes to opt out of those procedures. The McKeemans checked both boxes. Given that ambiguity and the default assumption that eligible appeals will be heard under the Board's small claims procedures, the Board sent a hearing notice to the parties indicating that the appeals would proceed as small claims. *See Board Ex. C; see also,* 52 IAC 3-1-2 and -3 (providing for eligible appeals to be heard under small claims procedures unless the petitioner opts out or either party files timely written notice to transfer the case out of small claims). Neither party filed written notice to transfer the case out of small claims.

3. On October 7, 2010, the Board held a hearing through its Administrative Law Judge, Patti Kindler ("ALJ").

[1] The record is unclear as to who owns the subject parcels. On the Form 131 petitions, David McKeeman listed himself both as Ms. McKeeman's authorized representative and as the property's co-owner. For purposes of this appeal, the Board will treat both Mr. and Ms. McKeeman as parties.

[2] To initiate an appeal, a party must file a Form 131 petition with the Board at its central office in Indianapolis. *See* Ind. Code § 6-1.1-15-3(d); 52 IAC 2-4-2. The McKeemans filed their Form 131 petitions with the Steuben County Assessor instead of the Board. When Mr. McKeeman called the Board to ask why it had not scheduled hearings, the Board found that it did not have the McKeemans' petitions on file. Because the McKeemans showed that they timely filed the Form 131 petition with the Assessor, the Board scheduled a hearing.

4. The following people were sworn in:
    a) Karen McKeeman,
    David McKeeman

    b) Marcia Seevers, Steuben County Deputy Assessor
    Phyl Olinger, certified tax representative

Facts

5. The subject parcels are located on Lake James at 40 Ln 280 and 60 Ln 280, in Angola, Indiana.

6. Neither the Board nor the ALJ inspected the subject parcels.

7. The PTABOA determined the following values for the two parcels:

    Parcel 76-06-10-220-211.000-011:
    Land: $146,400 Improvements: $196,200 Total: $342,600

    Parcel 76-06-10-220-212.000-011:
    Land: $146,400 Improvements: $0 Total: $146,400.

8. The McKeemans did not contest the improvement assessment for either parcel. At the Board's hearing, Mr. McKeeman asked for a land assessment of $62,341 for each parcel.

Parties' Contentions

9. Summary of the McKeemans' evidence and arguments:

    a) The subject parcels are lots 8 and 9 in an area of Lake James known as Paltytown. The road off which the parcels are located is unpaved. The subject parcels are also steep—they slope 21 feet in the first 35 feet from the road. *Id.; Pet'r Ex. 6 at 3.* On the valuation date, there were four rentals located just a few doors from the subject parcels. Similarly, nearby properties that would violate current building codes had they not been grandfathered in create a fire hazard that raises insurance premiums. *D. McKeeman testimony; Pet'r Ex. 6 at 5-6.* Also, as discussed below, the parcels are located near Lake James Christian Assembly, the largest business on the lake. *D. McKeeman testimony; Pet'r Ex. 1 at 3; Pet'r Ex. 6 at 7-10; Pet'r Ex. 8 at 3-8.*

    b) Local officials did not follow relevant statutes and administrative rules when they drew the neighborhood boundaries for Paltytown. The Real Property Assessment Guidelines for 2002 say that neighborhoods should consist of substantially similar properties unencumbered by manmade structures that disrupt cohesiveness.[3] Paltytown's 53 lots are not homogenous. Some lots are quite deep while others are

[3] Mr. McKeeman identified Petitioner's Exhibit 9 as excerpts from the 2002 Real Property Assessment Manual. Those excerpts, however, appear to be from the Real Property Assessment Guidelines for 2002 – Version A.

short, and some are rectangular while others are pie-shaped. *D. McKeeman testimony; Pet'r Ex. 8 at 6.* Lot widths vary from 30 feet to 70 feet, and depths range from 100 feet to 427 feet. *D. McKeeman testimony; Pet'r Ex. 12 at 1.* The lots also vary in topography, building density, the ability to house a garage, and use. *D. McKeeman testimony; Pet'r Ex.6, at 2-5; Pet'r Exs. 7, 10; Pet'r Ex. 12 at 1.* Some lots are located on unpaved roads, have improvements that violate code and setback provisions, or are rental or commercial properties. *Id.*

c) Similarly, Paltytown is not cohesive. Lake James Christian Assembly, which dominates 75% of Paltytown's geographic area, bisects the neighborhood. *D. McKeeman testimony; Pet'r Ex. 1 at 3; Pet'r Ex. 6 at 7-10; Pet'r Ex. 8 at 3-8.* The Christian Assembly houses up to 380 campers per week during the summer and has year-round activities that create traffic congestion and noise problems affecting the subject parcels and other nearby residents. *Id.* In fact, two neighborhood properties listed for sale at various times in the past four years have failed to sell because of the Christian Assembly's presence. *D. McKeeman testimony; Pet'r Ex. 6 at 8.*

d) Thus, for purposes of determining land base rates, Paltytown should have been divided into three separate homogenous neighborhoods. At a minimum, the Assessor should have applied a range of base rates or influence factors to account for variations between the lots. *D. McKeeman testimony; Pet'r Ex. 6.*

e) The Assessor, however, simply used the same base rate to value all lakefront land within Paltytown. Thus, the subject parcels were valued the same as larger, level lots in superior locations. *D. McKeeman testimony.* Both statutes and the Guidelines require assessing officials to maintain equity through cross-township reviews. *D. McKeeman testimony; Pet'r Ex. 9.* The Assessor disregarded those requirements. *Id.* Also, using front footage as the pricing unit disadvantages the subject parcels because they are only 31-feet wide. *D. McKeeman testimony.*

f) To make matters worse, the Assessor arbitrarily applied influence factors ranging from 10% to 90% throughout the Lake James area, which resulted in millions of dollars of tax relief for the favored properties. *D. McKeeman testimony; Pet'r Ex. 1 at 4; Pet'r Ex. 10.* The Guidelines provide codes for recognized influence factors and require assessors to list those codes on a property's record card. *Id.* Because Steuben County's record cards do not include those codes, there is no way to tell why a particular influence factor has been given. *Id.* The Assessor granted influence factors to properties that were grouped around businesses or institutions; but the properties located near the Christian Assembly, did not receive any influence factors. *D. McKeeman testimony; Pet'r Ex. 10.*

g) The notices of final determination issued by the Steuben County PTABOA were similarly unhelpful; they contained only the words "no change." *D. McKeeman testimony; Pet'r Exs. 4-5.* The PTABOA did not address any of the issues raised by the McKeemans, offer any guidance, or show that it had inspected the subject parcels. *Id.*

h) To show that the parcels were actually worth far less than their assessments, Mr. McKeeman identified 11 lots[4] that sold in seven transactions. *D. McKeeman testimony; Pet'r Ex. 1.* The following is a chart summarizing comparative information that Mr. McKeeman provided for each of those sales. *See Pet'r Exs. 1, 8, 11; McKeeman testimony*.

Sale No.	Lots	Dimensions	Use, road, topography	Sale Date	Sale Price	Land Value	Front Foot Price
Subject Parcels	**40 Ln 280 60 Ln 280**	**31' x 102' 31' x 100'**	**Residential, unpaved, rolling**	**N/A**	**N/A**	**N/A**	**N/A**
1	5040 N.–300 W	95' x 450'	Residential, paved, rolling	7/13/04	$350,000	$300,300	$3,161
2	100 Ln 280 120 Ln 280 75 Ln 280 (back lot)	38' x 105' 31' x 112' 50' x 50'	2 lots rental, 1 lot business; 2 lots unpaved, 1 paved; 2 rolling 1 level	3/3/05	$365,500	$219,400 (lake front lots)	$3,179 $3,179
3	75 Ln 280	50' x 50'	Residential, paved, level	10/2/06	$65,000	$43,800	**Excluded**
4	140 Ln 280 160 Ln 280	30' x 117' 30' x 121'	Rental, unpaved, rolling	10/3/06	$209,000	$135,500	$2,251 $2,251
5	15 Ln 280A	31' x 106'	Residential, unpaved, rolling	3/8/00	$225,000	$173,300	$5,590
6	75 Ln 310A (Front and rear lots)	70' x 175' 70' x 25'	Residential, paved, level	6/21/06	$485,000	$404,700	**Excluded**
7	2840 Bayview) Kemmery Island	15' x 638' 100' x 100'	Residential-vacant, paved, level; residential, swampy	9/14/04	$234,000	$199,300	$2,533 $1,510

i) Where improvements were included in a sale, Mr. McKeeman abstracted a land value by subtracting the improvements' assessed values from the total sale price. *D. McKeeman testimony; Pet'r Ex. 1 at 1-2; Pet'r Ex. 8 at 9-27.* Sale no. 2, which Mr. McKeeman listed as a three-parcel sale, actually included four parcels. *D. McKeeman testimony; Pet'r Ex. 1.* The county did not combine the two parcels that now comprise 75 Ln 280 until October 2006, when Grandview Homes sold two "pony" lots to Mr. Meyer. *Id.* While Grandview Homes tore down the improvements after buying the four lots, the Assessor could not have known Grandview's intentions at the time Grandview bought the lots in 2005. *D. McKeeman testimony.* Thus, Mr. McKeeman felt that it was appropriate to subtract the assessed value of the improvements. Also, the lots were owned by a woman who had been declared

[4] In the charts that Mr. McKeeman included in Petitioner's Exhibit 1, he listed only 10 separate lots. But Mr. McKeeman explained that when the parcel now known as 75 Ln 280 sold as part of a multiple-parcel transaction with 100 Ln 280 and 120 Ln 280, it had actually been two separate lots. *See McKeeman testimony; Pet'r Ex. 11 at 2*. Those two lots were later combined and sold as one parcel in 2006. *Id*.

incompetent, and a judge had ordered the lots to be sold together with the business that was conducted on the lots. *Id.* Thus, Mr. McKeeman felt that he was generous when he only subtracted the improvement value from the $365,000 sale price and did not subtract anything for the ongoing business or furnishings. *Id.*

j) Mr. McKeeman ultimately excluded two sales—nos. 3 and 6— from his front foot calculation because they involved lots that were not comparable to the subject parcels. Sale no. 3 involved an off-water garage lot, and the lot from sale no. 6 benefitted from superior water access and frontage on both a channel and the lake. *D. McKeeman testimony; Pet'r Ex. 1 at 2; Pet'r Ex. 8 at 2, 15, 23-24.* Mr. McKeeman determined the sale-prices per front foot for the remaining eight parcels, which ranged from $1,610 to $5,590. The average price was $2,969 per front foot. *D. McKeeman testimony; Pet'r Ex. 1 at 2; Pet'r Ex. 9 at 27.*

k) Mr. McKeeman then "rationalize[ed]" differences between subject parcels and the comparable properties in order to determine what he felt was a "realistic" value for the subject parcels. *D. McKeeman testimony; Pet'r Ex. 12 at 2-3.* To quantify the effect of a lot's capability of housing a garage, Mr. McKeeman relied on sale no. 3 from his analysis—the off-water garage lot. The abstracted land value from that sale came to $842 per front foot. *Id.* Next, relying on information from the Steuben County Highway Department, Mr. McKeeman determined that it cost $116 per foot to pave a dirt road. After deducting those two values from the average abstracted land value for the five non-excluded sales in his analysis, Mr. McKeeman arrived at a price of $2011 per front foot, which translated to $62,341 for each of the subject parcels. *Id.*

l) Although Ms. Olinger pointed to her own purportedly comparable sales, that evidence was not persuasive. For example, Ms. Olinger pointed to an October 3, 2006 sale of 140 Ln 280 and 160 Ln 280. *D. McKeeman testimony; referring to Resp't Ex. 12 at 1-2.* But she used $295,000 as the sale price, when the two properties actually sold for only $209,000. *Id.* The confusion may have stemmed from the fact that the record card for 140 Ln 280 listed two different sale prices on October 3, 2006. *D. McKeeman testimony; Pet'r Ex. 8 at 18.* Mr. McKeeman used the second sale, which was for $209,000, as sale no. 4 in his own analysis. *Id.; Pet'r Ex. 1*.

m) The Assessor also relied on the sale of 75 Ln 310A, one of the sales that Mr. McKeeman affirmatively excluded from his calculations because it had access to both the lake and a channel. *D. McKeeman testimony; Resp't Ex. 10 at 10; Pet'r Exs. 1, 8, 11*. Also, while the Ms. Olinger claimed that Mr. McKeeman should not have used properties outside Paltytown in his analysis, 75 Ln 310A was not in Paltytown either. *Id.* And Ms. Olinger used her superior knowledge in introducing two properties sold by the Christian Assembly. Data on that sale was not available to taxpayers online. *Id.*

10. Summary of the Assessor's evidence and arguments:

a) Mr. McKeeman's sales-comparison analysis contains errors. *Olinger testimony; Resp't Ex. 2 at 2.* Grandview Homes, the buyer in Mr. McKeeman's sale no. 2, bought the three parcels intending to tear them down and build new ones. *Id; Resp't Ex. 10.* So Mr. McKeeman should not have subtracted the improvements' assessments in abstracting a land value from that sale. Similarly, Mr. McKeeman erred in calculating the front foot value for his sale no. 4; he listed the value as $2,251, but it was actually $4,005.[5] *Olinger testimony; Resp't Ex. 2 at 2.* Lastly, Mr. McKeeman's sale no. 7 involved lots on Kemmery Island, which is outside the subject parcels' defined assessment neighborhood. *Id.* In fact, only one of Mr. McKeeman's purportedly comparable sales was located in the subject parcels' assessment neighborhood. *Olinger testimony; Resp't Ex. 2 at 3; Resp't Ex. 11.* And the McKeemans' own evidence shows that base rates vary between neighborhoods. *Olinger testimony; Pet'r Ex. 7.*

b) The Guidelines explain how to value a platted lot based on the lot's effective frontage and effective depth. *Olinger testimony; Resp't Ex. 2 at 2; Resp't Ex. 6 at 1-3.* The subject lots have actual frontage of 31 feet, but the rear of each lot is actually 40 feet. That translates to an effective frontage of 34 feet for each parcel. *Id.* The Guidelines direct assessors to multiply a lot's effective frontage—not its actual frontage—by the adjusted base rate. *Id.*

c) To further support the subject parcels' assessments, Ms. Olinger pointed to three sales from Paltytown, all of which occurred in 2004-2005. *Olinger testimony; Resp't Exs. 2 at 3; Resp't Ex. 9.* The Christian Assembly bought the first property, which consisted of two lakefront lots, for $240,000. *Olinger testimony; Resp't Ex. 2 at 3; Resp't Ex. 10 at 1-3.* After abstracting the portion of the sale price attributable to land, that sale indicated a base rate of $3,607 per front foot. *Id.* The Elbrechts bought the second property, which consisted of two lakefront lots and one off-water lot, for $365,500. That sale price equated to an abstracted land value of $4,958 per front foot. *Olinger testimony; Resp't Ex. 2 at 3; Resp't Ex. 10 at 4-8.*[6] Adam Smith bought the third property, a single waterfront lot located at 75 Ln 310A (Mr. McKeeman's sale no. 6), for $485,000, which equated to an abstracted land value of $5,781 per front foot. *Olinger testimony; Resp't Exs. 2 at 3; Resp't Ex. 10 at 9-10.*

d) Mr. McKeeman claimed that the subject parcels should receive negative influence factors for topography, under-improvement, size, and traffic flow. *Olinger testimony.* But the sales of three properties located in the subject parcels' immediate neighborhood indicate otherwise. Two lots—140 Ln 280 and 160 Ln 280—sold

[5] The difference stemmed from Ms. Olinger's use of a sale price of $295,000 instead of $209,000 and the two lots' effective frontages instead of their actual frontages.

[6] There is considerable doubt that the Elbrecht sale occurred in 2005 or that it involved two lakefront lots. Instead, it appears that the Elbrechts bought one lakefront lot—100 Ln 280—in October 2006 for $511,500. *See Resp't Ex. 12.* The lot previously had been part of the transaction in which Grandview Homes bought three lots for $365,000 on March 1, 2005. *See Resp't Ex. 12.* Ms. Olinger appears to have confused the two sales.

together for $295,000 on October 3, 2006, which indicated an abstracted land value of $4,005 per front foot. *Olinger testimony; Resp't Ex. 12 at 1 & 2.* The Banes bought 120 Ln 280 for $500,000 on September 6, 2006, which indicated an abstracted land value of $12,833 per front foot. *Olinger testimony; Resp't Ex. 12 at 3.* Finally, the Elbrechts bought 100 Ln 280 for $511,500 on October 13, 2006, for an abstracted land value of $11,240 per front foot. *Olinger testimony; Resp't Ex. 12 at 4.* While those sales all occurred more than a year after the January 1, 2005 valuation date at issue in the McKeemans' appeals, they still negate Mr. McKeeman's claims.

e) The Assessor valued the subject parcels using cost schedules, market-derived trending factors, and ratio studies. *Olinger testimony.* The Assessor has shown that she correctly valued the subject parcels using market evidence and the 2006 "land order." *Id.*

Record

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

a) The Form 131 petitions,

b) A digital recording of the hearing,

c) Exhibits:

Petitioner's Exhibit 1: McKeeman Presentation (4 pgs.),
Petitioner's Exhibit 2: Form 131 for parcel 76-06-10-220-211.000-011,
Petitioner's Exhibit 3: Form 131 for parcel 76-06-10-220-212.000-011,
Petitioner's Exhibit 4: Form 115 for parcel 76-06-10-220-211.000-011,
Petitioner's Exhibit 5: Form 115 for parcel 76-06-10-220-212.000-011,
Petitioner's Exhibit 6: Lake James Park Neighborhood Composition (10 pgs.),
Petitioner's Exhibit 7: Base Rate Comparisons (2 pgs.),
Petitioner's Exhibit 8: Maps, Photos, Property Data Cards (27 pgs.)
Petitioner's Exhibit 9: RPAM Relevant Excerpts (8 pgs.),
Petitioner's Exhibit 10: Lake James Examples of Influence Factors (8 pgs.),
Petitioner's Exhibit 11: Market Data (5 pgs.),
Petitioner's Exhibit 12: Rationalization of Comparable Data (3 pgs.),
Petitioner's Exhibit 13: Steuben County PTABOA Findings (7 pgs.),

Respondent Exhibit 1: Respondent's exhibit cover sheet,
Respondent Exhibit 2: Steuben County Assessor Summary of Testimony (4pgs),
Respondent Exhibit 3: Power of attorney certification attached to power of attorney,
Respondent Exhibit 4: Subject 2006 Property Record Card: lot 9 (76-06-10-220-212.000-011),
Respondent Exhibit 5: Subject 2006 Property Record Card lot 8 (76-06-10-220-211.000-011),

Respondent Exhibit 6: Copy of pages from 2002 Real Property Assessment Guidelines – Version A (3 pgs.),
Respondent Exhibit 7: Copy of GIS map of subject parcels,
Respondent Exhibit 8: Copy Steuben County Land Order for Paltytown,
Respondent Exhibit 9: Copy of GIS map subject neighborhood with 3 sales

Respondent Exhibit 10: Copy of Sales Disclosures and corresponding Property Record Cards (10 pgs.),
Respondent Exhibit 11: Copy of GIS map with 2 Petitioner's comparables identified,
Respondent Exhibit 12: Copy of Property Record Cards of 2006 sales Transactions (4 pgs.),
Respondent Exhibit 13: Copy of page from IAAO Property Assessment Valuation
Respondent Exhibit 14, Respondent Signature and Attestation Sheet

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,

d) These Findings and Conclusions.

Analysis

Objection

12. Mr. McKeeman objected to all of the Assessor's exhibits on grounds that the Assessor did not provide the McKeemans with copies of those exhibits at least five days before the Board's hearing. The Board overrules Mr. McKeeman's objection.

13. There is no prehearing discovery in small claims appeals, except as provided in 52 IAC 3-1-5(d). *See* 52 IAC 3-1-5(c). And 52 IAC 3-1-5(d) provides: "*If requested by any party*, the parties shall provide to all other parties copies of any documentary evidence . . . at least five (5) business days before the small claims hearing." 52 IAC 3-1-5(d)(emphasis added). Thus, to have triggered the Assessor's duty to provide copies of her exhibits in advance of the hearing, the McKeemans needed to request those exhibits.

14. Ms. Olinger and Ms. Seever denied having received a request for the Assessor's documentary evidence. Ms. Seevers, however, did say (1) that she received information from Mr. McKeeman, (2) that she jotted down his phone number, and (3) that she and Mr. McKeeman discussed some of his evidence. *Seever testimony*. In response, Mr. McKeeman testified:

> Well, I will say this. I brought it in. I went over it with her. She said I am going to have to sit down and put together the story. I guess I need to get busy because she was overwhelmed by the volume of the information that I gave her. At that point I said – I don't remember did I say are you going

> to send it to me, but I certainly was saying . . .I said do you have my home address? I said do you have my cell phone, my home phone number? I said I will give you my cell phone number and I said I will be back before the hearing. If that isn't requesting evidence, I don't know what is. She said she didn't have it – I couldn't request it on that day. She said I have to sit down and prepare it, and so my next question is do you have my address? I told her I am presenting the evidence as required five days, more than five days before the hearing because I'm gonna be out of town five days before the hearing….There was no way that she could have miscomprehended why I was bringing [it] in and giving it to her. I expect her as an official of the assessor's office to know the rules of the court.

D. McKeeman testimony.

15. Contrary to what Mr. McKeeman believes, there was a way that he could have been clearer—he could have simply asked Ms. Seevers to provide copies of the Assessor's documentary evidence at least five business days before the Board's hearing. And he could have done so in writing, which would have eliminated any question about what was actually said. Instead, the Board is left with Mr. McKeeman's testimony about what, at best, was an ambiguous request. Ms. Seevers easily could have interpreted Mr. McKeeman's statements as an invitation to respond to what he had presented to her rather than as a request for copies of what the Assessor intended to offer at the hearing. The Board therefore construes the ambiguity against Mr. McKeeman, the party who created it.

16. Also, as Ms. Seevers pointed out, the Assessor offered at least some of the documents purely to rebut the McKeemans' evidence. For example, Respondent's Exhibit 10 contains a sales disclosure form for three of the parcels that Mr. McKeeman used in his analysis. Even if requested, a party does not have to provide the other parties with its exhibits until five business days before the hearing. Thus, applying 52 IAC 3-1-5(d)'s requirements to evidence offered purely for rebuttal could make compliance with that rule virtually impossible. For example, if a taxpayer provides an assessor with the taxpayer's exhibits exactly five business days before a hearing, the assessor would have no time to determine what, if any, rebuttal exhibits are needed. The Board, however, need not reach that question because it overrules Mr. McKeeman's objection on grounds that he did not clearly request copies of the Assessor's documentary evidence.

Burden of Proof

17. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and specifically what the 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). In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington 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"). Once the taxpayer makes a prima facie case, the burden shifts to the respondent to impeach or rebut the taxpayer'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. Nonetheless, the taxpayer maintains the burden of persuasion. *See Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995) ("Although the [taxpayer's] burden of proof does not shift, the duty of going forward with evidence may shift several times.").

The McKeemans' Case

18. The McKeemans failed to prove that the subject parcels were inaccurately assessed. The Board reaches this conclusion for the following reasons:

A. Generally, assessments are presumed to be accurate unless rebutted with market value-in-use evidence.

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 current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2 (2006)). Appraisers traditionally have used three methods to determine a property's value: the cost, sales-comparison, and income approaches. *Id*. at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

b) A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5*; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 ("USPAP") often will suffice. *Id.; Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

c) By contrast, a taxpayer cannot rebut an assessment's presumed accuracy simply by contesting the methodology that the assessor used to compute it. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that did not accurately reflect the property's market value-in-use. *Id*. Strictly applying the Guidelines does not suffice; rather, the taxpayer should offer the types of market-value-in-use evidence contemplated by the Manual. *Id*.

d) Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the appealed 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 March 1, 2006 assessments, that valuation date was January 1, 2005. 50 IAC 21-3-3 (2006).

B. The McKeemans' evidence

e) The McKeemans claims can be divided into three main categories: (1) assessing officials erred in drawing neighborhood boundaries and failed to provide adequate information to taxpayers, (2) the subject parcels were assessed for more than their market values; and (3) the subject parcels were assessed inequitably compared to other parcels around Lake James.

1. Alleged errors and omissions of assessing officials

f) Mr. McKeeman's testimony about online assessment information failing to include codes for influence factors and the lack of explanation on the PTABOA's Form 115 determinations do not address the fundamental issue in these appeals—whether the subject parcels were accurately assessed. As to the latter claim, the Board also notes that its proceedings are *de novo*. Thus, in deciding an appeal, the Board does not review the PTABOA's reasoning or lack thereof.

g) Similarly, the McKeemans' claim that assessing officials erred in drawing neighborhood boundaries amounts to little more than an attack on the methodology used to compute the subject parcels' assessments. Indeed, Mr. McKeeman based his claim on what he argued was the Assessor's failure to properly apply the Guidelines. As the Tax Court held in *Eckerling*, however, strictly applying the Guidelines does not suffice to rebut an assessment's presumed accuracy. A party should instead offer the types of market value-in-use evidence contemplated by the Manual. That being said, the McKeemans did offer at least some market-based evidence. It is to that evidence that the Board now turns.

2. The McKeemans' comparative sales data

h) Mr. McKeeman pointed to seven sales involving what he claimed were 11 parcels of land. Sale prices for properties that are comparable to a property under appeal may be probative of the appealed property's market value-in-use. Indeed, the sales-comparison approach to value assumes that potential buyers value a property based on what it would cost them to buy an equally desirable property. MANUAL at 13. In order to use the sales-comparison approach as evidence in a property assessment appeal, however, a party must show that the properties being examined are comparable to each other. Conclusory statements that two properties are "similar" or "comparable" to each other are not probative. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party must identify the subject

property's relevant characteristics and explain how those characteristics compare to each purportedly comparable property's characteristics. *Id.* at 471. Similarly, the party must explain how any differences between the properties affect their relative market values-in-use. *Long,* 821 N.E.2d at 470-71.

i) With that guidance in mind, the Board turns to Mr. McKeeman's analysis. Mr. McKeeman himself excluded two of his seven sales—nos. 3 and 6—because they involved parcels that were not sufficiently comparable to the subject parcels. The Board therefore need not consider those sales.

j) Two other sales—nos. 2, 4—had unique facts associated with the sales transactions for which Mr. McKeeman did not adequately account. Although Mr. McKeeman testified that sale no. 2 actually involved four lots, the sales disclosure form lists only three parcels. *Resp't Ex. 10 at 4-5.* And the buyer, Grandview Homes, LLC, bought the lots intending to tear down the existing buildings. While Mr. McKeeman protested that the Assessor could not have known Grandview's intention at the time of the sale, that is not the point. The relevant question is whether the sale price included consideration for the existing buildings, and the record supports the inference that it did not. Grandview tore down the existing buildings, built houses, and re-sold the lots in 2006. Thus, Mr. McKeeman should not have subtracted the improvements' assessments when extracting the portion of the sale price attributable to the land because the entire sale price was attributable to the land.

k) Mr. McKeeman countered that he had actually underestimated the sale price because a judge had ordered the owner to sell both the lots and the business[7] operated on the lots. Thus, argued Mr. McKeeman, the sale price actually included going concern value. The McKeemans, however, did not offer anything to support Mr. McKeeman's hearsay testimony. And the facts do not bear his theory out. Rather than continuing to operate the existing business, Grandview tore down the improvements, built new houses, and re-sold the lots. In any event, Mr. McKeeman's testimony that the sale was ordered by a court creates at least some doubt about whether the sale price was a reliable indicator of the property's market value-in-use. And the McKeemans offered no details about the sale, or about how the property was marketed leading up to the sale, that would dispel those doubts.

l) Similar questions surround sale no. 4. First, the Board notes that the sale occurred more than 1½ years after the January 1, 2005, valuation date at issue in these appeals. In addressing that issue, Mr. McKeeman explained that non-teardown lots in Paltytown had only appreciated by 1% per year. He based that conclusion on two sales of 15 Ln 280A. *Pet'r Ex. 11 at 2; see also, Pet'r Ex. 8 at 22*. The first sale was for $225,000 on March 8, 2000 and the second was for $255,000 on December 5, 2007. *Id.* While that is a relatively shaky explanation, the Board notes that the Assessor did not specifically dispute Mr. McKeeman's claims about the rate of market appreciation in Paltytown. In fact, Ms. Olinger also relied on sales from 2006.

[7] There may have been more than one business operated on the lots. In his testimony, Mr. McKeeman sometimes used the term "business" in the singular. Other times, he referred to two businesses.

Thus, the Board accepts Mr. McKeeman's evidence as at least some explanation as to how sales that occurred before and after January 1, 2005 related to the subject parcels' value as of that valuation date.

m) But Sale No. 4 suffers from a more significant problem. Mr. McKeeman used a sale price of $209,000, which he took from data that he downloaded from the Assessor's website. Indeed, the Assessor's data lists an October 3, 2006 sale by warranty deed from Robert A & Karyl D Penix to Brad & Carol Sue Gardner for $209,000. *Pet'r Ex. at 18, 20*. The Assessor's data, however, also lists an October 3, 2006 sale by quitclaim deed from Robert A. and Karyl D. Penix to Robert Arlin Penix. And that sale was for $295,000. *Id*. Mr. McKeeman chose the lower-priced sale because it was the second one listed. *D. McKeeman testimony*. Without more information about the circumstances of those two sales, the Board gives little weight to either sale price as a reliable indicator of the subject parcels' market value-in-use.

n) Sale no. 7 also lacks probative value, but for reasons unrelated to the sale transaction. Mr. McKeeman's method for extracting front foot rates for the two lots involved in sale no. 7 went beyond anything that the Board can reasonably assume complied with generally accepted appraisal principles. After abstracting a total land value by subtracting the assessed value of the island lot's improvements from the sale price, Mr. McKeeman simply allocated that total land value between the two lots by assigning the shore lot the same value for which it was assessed. Granted, both Mr. McKeeman and Ms. Olinger extracted land values from sale prices by subtracting the assessed value of improvements without showing that such a methodology complies with generally accepted appraisal principles. At least nobody was disputing the assessed values of the improvements. That is not true where land assessments are concerned. Indeed, Mr. McKeeman claimed land assessments around Lake James were inconsistent and arbitrary. That hardly justifies using one of those assessments in allocating a sale price between two lots.

o) Mr. McKeeman's unsupported allocation of the abstracted land value between the two lots is significant. Of the two lots involved in the sale, only the shore lot is even arguably comparable to the subject parcels. Thus, if the sale is to be considered probative of the subject parcels' market value-in-use, reliable information about how much of the sale price was attributable to the shore lot is essential.

p) That leaves sale nos. 1 and 5, which sold for abstracted land values of $3,161 and $5,590 per front foot, respectively.[8] Mr. McKeeman explained how those two properties compared to the subject parcels with regard to at least some characteristics that likely affected the properties' relative market values. Thus, he compared the properties' sizes, and to some extent, their topographies. On the other hand, he did little to address how the two properties compared to the subject parcels in terms of their shapes and their relative locations on the lake. And Mr. McKeeman did little to qualitatively or quantitatively adjust the sale prices to account for relevant ways in

[8] Actually, using 1% annual-appreciation rate, sale no. 5's abstracted land value would be almost 5% higher as of January 1, 2005.

which the comparable properties differed from the subject parcels. At best, Mr. McKeeman quantified what he believed was the effect on market value of not having a paved road or a lot capable of housing a garage. Even assuming that his quantifications reflect how the market values those differences, 15 Ln 280A (sale no. 5) was situated on an unpaved road and did not have a garage. Yet it sold for an abstracted front foot price far above what the subject parcels were assessed for.

q) The Board therefore gives no weight to Mr. McKeeman's sales-comparison analysis. Even if the Board were to find that Mr. McKeeman's sales data at least tended to show that the subject parcels were assessed too high, the Assessor offered evidence to successfully rebut that data. Specifically, the Assessor pointed to sales of two parcels from Paltytown that had abstracted land values far above the subject parcels' assessments. Thus, 120 Ln 280, which had 31 feet of lake frontage, sold for $500,000 on September 6, 2006, and 100 Ln 280, which had 38 feet of lake frontage, sold for $511,500 on October 13, 2006. Those were two of the lots that Grandview bought in the multi-parcel sale from 2005 (Mr. McKeeman's sale no. 2) and then re-sold in separate transactions.

r) The Board recognizes that Ms. Olinger overstated her case in determining abstracted front foot values of $12,033 and $11,240 for those two properties. Ms. Olinger used the March 1, 2006 assessments for the two houses, which were $118,000 and $115,000, respectively. But those improvement values were artificially low because the houses had not been completed as of the March 1, 2006 assessment date. When they were completed, the houses were assessed for $158,300 and $155,300. *Resp't Ex. 12*. But even when one uses the full values of the completed houses, the abstracted land value from each sale still exceeds $9,000 per front foot.

s) Mr. McKeeman also took issue with the fact that the two sales followed the earlier multi-parcel sale to Grandview Homes, which had torn down the then-existing improvements. But the Board sees no logic in that argument. The sales were no different from any other improved sale. And they were better than the 2006 sale on which Mr. McKeeman relied (sale no. 4). Unlike Mr. McKeeman's sale, Ms. Olinger's sales did not involve any confusion about the sale price. Plus, Ms. Olinger's sales were located very close to the subject parcels and therefore likely suffered form at least some of the same external factors that Mr. McKeeman claimed made the subject parcels less valuable.

3. Uniformity and equality of assessments

t) Finally, Mr. McKeeman repeatedly referred to the assessments around Lake James as inequitable. He mainly argued that the subject parcels were assessed using a higher base rate than what other purportedly comparable properties sold for. From a uniformity and equality perspective, however, the real question is whether the subject parcels were assessed at a comparatively greater percentage of their true tax value than other properties. *See Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399, (Ind. Tax Ct. 2007) (finding that the taxpayer failed

to prove a lack of uniformity and equality where it did not show the market value-in-use of its own property or of any purportedly comparable properties). As already discussed, the McKeemans did not show what the subject parcels' market value-in-use actually was. Similarly, while they offered sales and assessment information for a handful of other properties, some of which were assessed for more than their sale prices and others of which were assessed for less, the McKeemans did not show that it was a statistically reliable sample from which to draw any conclusions about the common level of assessment around Lake James. On these facts, the McKeemans did not prove a claim for relief based on a lack of uniformity and equality in assessments.

Conclusion

19. For the reasons set forth above, the McKeemans did not prove that the subject parcels' assessments should be reduced. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

ISSUED: _____

_____
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>