REPRESENTATIVE FOR PETITIONERS:
Ronald E. Milliken, Pro Se

REPRESENTATIVE FOR RESPONDENT:
Frank J. Agostino, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

RONALD E. & CHRISTINE M. MILLIKEN,	)	Petition No.: 71-029-06-1-4-00197
Petitioners,	)	Parcel: 21-1057-1118
v.	)	County: St. Joseph
ST. JOSEPH COUNTY ASSESSOR,	)	Township: Warren
Respondent.	)	Assessment Year: 2006

Appeal from the Final Determination of
St. Joseph County Property Tax Assessment Board of Appeals

December 16, 2008

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE AND SHORT ANSWER

1. Ronald and Christine Milliken challenged their property's assessment mainly because they disagreed with the methodology used to assess it and because a neighboring property was assessed more favorably. But they did not offer any probative market-based evidence to show that their property was assessed for more than its market value-in-use. We therefore uphold its assessment.

PROCEDURAL HISTORY

2. On July 23, 2007, the Millikens filed their appeal with the Assessor. On September 7, 2007, the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination upholding the assessment. The Millikens disagreed with the PTABOA's determination, and on October 5, 2007, filed a Form 131. We have jurisdiction over the Millikens' appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On August 20, 2008, we held an administrative hearing through our Administrative Law Judge, Jennifer Bippus ("ALJ"). Neither we nor the ALJ inspected the Millikens' property.

4. Frank J. Agostino appeared as counsel for the Assessor. The following people were sworn and presented testimony at the hearing:

Ronald E. Milliken

For the Assessor:

David Wesolowski, St. Joseph County Assessor
Kevin Klaybor, St. Joseph County PTABOA
Dennis Dillman, St. Joseph County PTABOA
Ralph Wolfe, St. Joseph County PTABOA

5. The Millikens offered the following exhibits:

Petitioners Exhibit 1: Compact disc containing digital recording of PTABOA hearing
Petitioners Exhibit 2: "Audio Transcript Highlights"
Petitioners Exhibit 3: Property record card for "Bob's 19th Hole"
Petitioners Exhibit 4: Newspaper article about the sale of land

6. At the hearing, Mr. Milliken played a slideshow of photographs on a laptop computer. He said that electronic copies of those photographs were on the compact disc that he offered as Petitioners Exhibit 1. Because that disc did not contain any photographs, we issued an order directing the Millikens to submit a compact disc with those photographs if they wanted us to consider them in making our decision. Our order also directed the Millikens to serve a copy of the disc on the Assessor so that the Assessor could object if it contained photographs that were not actually shown at the hearing. The Millikens provided a disc with a slideshow of photographs and the Assessor did not object**.** We therefore incorporate the disc containing that slideshow into the record as Petitioners Exhibit 5.

7. The Assessor offered the following exhibits:[1]

Respondent Exhibit 1: Form 130 petition
Respondent Exhibit 3: Form 115 final determination
Respondent Exhibit 4: Form 131 petition
Respondent Exhibit 5: "PTABOA Record of Hearing"
Respondent Exhibit 6: Property record card for the Millikens' property
Respondent Exhibit 9: PTABOA checklist
Respondent Exhibit 10: July 2, 2007 letter from Ron Milliken to Mike Nemes

8. We recognize the following additional items as part of the record of proceedings:

Board Exhibit A – Form 131 petition
Board Exhibit B – Notice of hearing dated July 3, 2008
Board Exhibit C – Notice of Appearance for Frank J. Agostino

[1] The Assessor did not offer exhibits 2, 7, or 8, although he provided copies of those exhibits in the packet submitted to the ALJ.

Board Exhibit D –Notice of County Assessor's Appearance as Additional Party[2]

Board Exhibit E – Hearing sign-in sheet
Board Exhibit F – Order for Taxpayers to Submit Compact Disc with Copies of Photographs Offered at Hearing
Board Exhibit G – Notice of Unsolicited Filing

9. The Millikens' property is located at 26552 US-20, South Bend.

10. The PTABOA assigned the following values to the property:
Land: $24,400 Improvements: $43,400 Total: $67,800.

11. The Millikens request the following assessment:
Land: $24,400 Improvements: $0 Total: $24,400

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and 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).

13. 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").

[2] Apparently believing that the Warren Township Assessor was the proper party to defend the assessment, the St. Joseph County Assessor filed a notice of intent to appear as an additional party under a former version of Ind. Code § 6-1.1-15-4. That statute was amended in 2007. P.L. 219-2007 § 40. For appeals where a property tax assessment board of appeals issued its decision after June 30, 2007, however, the County Assessor is the proper party to defend the assessment. Ind. Code § 6-1.1-15-3(b) (2007); P.L. 219-2007 § 156(c). Because the PTABOA issued its determination on September 7, 2007, the St. Joseph County Assessor is the respondent in this case.

14. If the taxpayer establishes a prima facie case, the burden shifts to the assessing official to offer evidence 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.

OBJECTIONS

15. Mr. Milliken objected to Mr. Agostino's appearance as the Assessor's counsel, arguing that the Assessor failed to give the Millikens advance notice that Mr. Agostino would "testify and submit evidence." *Milliken objection*. Mr. Milliken pointed to 52 IAC 2-7-1(b), which requires a party to give copies of documentary evidence and summaries of testimony to all other parties at least five business days before a hearing, and to give a list of witnesses and exhibits to all other parties at least 15 days before a hearing. Mr. Milliken similarly objected to Mr. Agostino asking questions on cross examination, arguing that the lack of advance notice about those questions left him with inadequate time to prepare answers. *Milliken objections*.

16. We overrule Mr. Milliken's objections. The requirements of 52 IAC 2-7-1(b) apply to evidence that parties anticipate offering at hearing. Mr. Agostino, however, did not testify. While the questions that Mr. Agostino asked on cross-examination may have been designed to elicit testimony, they were not testimony themselves.

17. Mr. Milliken also objected to Mr. Dillman's testimony, claiming that Mr. Dillman was prejudiced in this matter. Once again, we overrule Mr. Milliken's objection. First, he offered no evidence that Mr. Dillman was biased. Even if Mr. Dillman was biased, that bias would go to the weight to be given to his testimony, not to its admissibility.

18. The Assessor objected to Petitioners' Exhibit 2, which Mr. Milliken identified an audio transcript containing highlights of the PTABOA hearing. According to the Assessor, that exhibit contained Mr. Milliken's opinions and conclusions in addition to facts.

19. We overrule the Assessor's objection. While the exhibit's label is misleading—it is a summary rather than a verbatim transcript of the PTABOA proceedings—we do not believe that the misleading label creates an undue risk of confusion. Because Mr. Milliken also offered an actual recording of the hearing, Petitioners Exhibit 2 merely serves as a guide for locating what Mr. Milliken claimed were relevant portions of that hearing. And the fact that the exhibit contains argument does not change our position. Mr. Milliken was representing himself and had the right to argue the evidence. True, he should have confined his argument to his opening and closing statements. But neither we nor the ALJ were confused by Mr. Milliken including portions of his argument in Petitioners Exhibit 2.

20. The Assessor similarly objected to Mr. Milliken's attempts to characterize the township assessor's testimony at the PTABOA hearing. Once again, the Assessor argued that Mr. Milliken should not have been restricted to testifying to facts rather than being allowed to offer conclusions and opinions. We overrule the Assessor's objections for the same reasons explained above—we can separate Mr. Milliken's testimony from his argument.

ANALYSIS

Parties' Contentions

A. The Millikens' Contentions

21. The Millikens agree with the value assigned to their land but argue that their building was in such poor condition that it had no value. In fact, they claim that the building actually detracted from the land's value. *Milliken testimony and argument*.

22. The Millikens' building was constructed in the early 1900s, and it was originally used as a dance hall. *Milliken testimony.* In the 1930s, it was sawed in half, moved to a different location a block away, and reassembled. *Id.* Then, in the 1940s, it was converted into a grocery store. *Id.* At one point, the Millikens planned to lease the property to a couple

that was going to use it as a restaurant, but the couple backed out. *Id.* Currently, the Millikens do not use the property. *Id.* They have been trying to tear the building down and salvage what they can. *Id.*

23. The Millikens disagree with the methodology that the Warren Township Assessor used in computing their property's assessment. The township assessor said that he compared the Millikens' property to a neighboring property—"Bob's 19th Hole." *Milliken testimony; Pet'rs Exs. 1-2.* But Bob's 19th Hole is a million-dollar-plus business. And it has a remodeled building that is in much better condition than the Millikens' building. *Milliken testimony*. Yet Bob's 19th Hole is assessed for only $41,600. *Id.; Pet'r Ex. 3*. When Mr. Milliken pointed those facts out to the trustee assessor, he agreed. *Milliken testimony*. In reality, the trustee assessor valued properties by simply asking owners what they would sell their properties for. That is arbitrary and capricious; assessments should be based on market value-in use, not market value-in-exchange. *Milliken argument*.

24. While the Assessor now claims that the Millikens' land is under-assessed, the City of Mishawaka sold "a little less than an acre of land to Iron-Works for $25,000." *Milliken testimony; Pet'rs Ex. 4.* That sale occurred in early 2007. *Milliken testimony.*

25. Finally, the Millikens claim that the township assessor arbitrarily used a 12% "trending factor" in determining their property's 2006 assessment. That factor is not supported by any evidence; the township assessor used it because the Assessor required him to do so. *Milliken testimony*. The township assessor did not apply that same trending factor to Bob's 19th Hole. *Id*.; *Pet'r Ex. 3*.

B. The Assessor's Contentions

26. The Assessor used the cost approach and market evidence to compute values for the 2002 general reassessment. *Wesolowski testimony.* For trending and reassessment, he used market evidence. *Id.* He based the 12% trending factor on comparable sales in Warren

Township, and applied that factor uniformly. *Id.* There are no errors on the Millikens' property record card. *Id.*

27. Mr. Dillman, a member of the PTABOA and one of the Assessor's witnesses, agreed that the Millikens' building had little or no value. *Dillman testimony.* But he added that the Millikens' land was grossly undervalued. He thought that the land was worth approximately $150,000. *Id.* Thus, he felt that the property's assessment as a whole was actually a little low. *Id*. Mr. Dillman also believed that Bob's 19th Hole was undervalued. *Id*.

Discussion

28. 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 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, sales-comparison and income approaches. *Id*. at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

29. 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. *P/A Builders & Developers, LLC,* 842 N.E.2d 899 (Ind. Tax 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 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.

30. By contrast, a taxpayer does not rebut an assessment's presumption of 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 does not accurately reflect its property's market value-in-use. *Id.*

31. The Millikens contend that their building is actually worthless. And one of the Assessor's witnesses, Mr. Dillman, agreed. But Mr. Dillman maintained that the property as a whole was still worth more than its $67,800 assessment.

32. Indiana's assessment scheme is ultimately concerned with a property's value as a whole. Thus, even if we were to view Mr. Dillman's testimony as a concession of sorts by the Assessor, that concession did not relieve the Millikens of their burden of proof. We therefore turn to whether the Millikens offered sufficient market-based evidence to rebut the presumption that their property's assessment as a whole accurately reflected its market value-in-use.

33. The Millikens offered little market-based evidence. They instead relied mainly on a digital recording of the PTABOA's hearing to contest the methodology that the Warren Township Assessor used to compute their property's assessment. But that type of methodology-based argument is precisely what the Tax Court rejected in *Eckerling*.

34. Mr. Milliken did point to one piece of evidence derived from the market—the City of Mishawaka's sale of an almost-one-acre parcel of land for $25,000. In doing so, he correctly recognized that one can estimate a property's market value by comparing it to similar properties that have sold in the marketplace. Indeed, that is precisely what the sales-comparison approach does. *See* MANUAL at 13-14. Mr. Milliken, however, did not follow the sales-comparison approach's basic requirements.

35. The sales-comparison approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute property already existing in the market place. *Id.* A person applying that approach must first identify comparable properties that have sold. *Id.* He then "considers and compares all possible differences between the comparable properties and the subject property that could affect value," using objectively verifiable evidence to determine which items actually affect value in the marketplace. *Id.* The contributory values of those items are then quantified and used to adjust the sale prices of the comparable properties. *Id.*

36. Thus, to use a sales-comparison analysis as evidence in an assessment appeal, the party offering that analysis must show that the properties upon which it is based are comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. When comparing land, those characteristics include things like use, location, size, topography, and accessibility. *See Blackbird Farms Apartments, LP v. Dept' of Local Gov't Fin.*, 765 N.E.2d 711, 714-15(Ind. Tax Ct. 2002). Similarly, the party offering the sales-comparison analysis must explain how any differences between the properties affect their relative market values-in-use. *Id.*

37. Other than its size, Mr. Milliken did not show how the property sold by the City of Mishawaka compared to the Millikens' property. He likewise failed to adjust the city property's sale price to reflect any relevant differences between it and the Millikens' property. Finally, the city sold the property in 2007. That was more than two years after January 1, 2005—the valuation date for the March 1, 2006, assessment. Thus, Mr. Milliken needed to explain how that sale price related to the value of the Millikens' property as of January 1, 2005. *See Long* 821 N.E.2d at 471(holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal

from a 2002 assessment because the taxpayers failed to explain how it related to the property's value as of the relevant valuation date).

38. Mr. Milliken also argued that the Millikens' property should not be assessed for more than Bob's 19th Hole, which supports a going business. That may be true. But it begs the question of whether the Millikens' property was assessed for too much or Bob's 19th Hole was assessed for too little.

39 That does not mean that a taxpayer lacks any remedy when his property is assessed for more than other more valuable properties are assessed for. Indiana's constitution and statutes require uniform and equal assessments. IND. CONST. ART. 10 § 1; Ind. Code § 6-1.1-2-2. And the Indiana Supreme Court has recognized that a taxpayer may seek an adjustment to his property's assessment on grounds that his taxes are higher than they would have been had other properties been properly assessed. *Dep't of Local Gov't Fin. v. Commonwealth Edison, Co*. 820 N.E.2d 1222, 1226-27 (Ind. 2005).

40. The Millikens, however, did not make a case for relief on those grounds. Because *Commonwealth Edison* arose under Indiana's pre-2002 assessment system, the Court did not describe the contours of an individual taxpayer's right to an equalization adjustment under our current market value-in-use system. For example, the Court did not address what types of statistical comparisons might be relevant or what levels of disparity might merit an adjustment.[3] And it did not did not specify how broadly the analysis must sweep— whether a taxpayer must make class-wide or township-wide comparisons, or if he may confine his analysis to smaller groupings, such as individual neighborhoods. But we are confident that the required analysis must involve more than one other property. Thus, the mere fact that the Millikens' property may have been over-assessed compared to Bob's 19th Hole does not entitle them to relief.

[3] The Indiana Tax Court has said that one approach involves presenting assessment ratio studies. *Westfield Golf Practice Center, LLC*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007).

SUMMARY OF FINAL DETERMINATION

41. The Millikens did not make a prima facie case that their property's assessment was incorrect. We therefore find for the Assessor.

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

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- 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