

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

**Petition No.:** 91-013-07-1-5-00002  
**Petitioners:** Merle L. and Pamela A. Peterson  
**Respondent:** White County Assessor  
**Parcel No.:** 010-30940-00  
**Assessment Year:** 2007

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

**Procedural History**

1. The Petitioners initiated an assessment appeal with the White County Property Tax Assessment Board of Appeals (the PTABOA) by written document on May 14, 2008.
2. The PTABOA issued notice of its decision on August 28, 2009.
3. The Petitioners filed a Form 131 petition with the Board on October 4, 2009. The Petitioners elected to have their case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 16, 2010.
5. The Board held an administrative hearing on December 2, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioners: Merle L. Peterson, Property Owner
  - b. For Respondent: Scott Potts, County Representative

**Facts**

7. The subject property is a 1,704 square foot single family residence and a detached garage located at 5007 North Canyon Loop, Monticello, Monon Township, in White County.

8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2007, the PTABOA determined the assessed value to be \$139,300 for land and \$133,600 for the improvements, for a total assessed value of \$272,900.
10. The Petitioners requested an assessed value of \$114,750 for the land and \$110,250 for the improvements, for a total assessed value of \$225,000.

### Issue

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
  - a. The Petitioners contend that the Respondent assessed their property for more than its market value-in-use. *Peterson testimony*. According to Mr. Peterson, the property's value is \$225,000 based on an appraisal. *Peterson testimony*. In support of this position, the Petitioners submitted four pages from an appraisal report prepared by Becky M. Patty, MBP Appraisals, Inc.<sup>1</sup> *Petitioners Exhibit 1*. Ms. Patty is an Indiana Certified Appraiser. *Id.* In her appraisal report, Ms. Patty estimated the property's value to be \$225,000 as of August 31, 2007. *Id.*
  - b. Mr. Peterson contends the Petitioners appealed their property's March 1, 2006, assessment and the Board reduced the property's assessment to \$225,000 on the basis of the property's appraised value. *Peterson testimony; Petitioners Exhibit 4*. According to Mr. Peterson, the August 31, 2007, appraisal also proves the property's 2007 assessment is incorrect. *Peterson testimony*.
  - c. In response to the Respondent's case, Mr. Peterson contends the property located at 5011 North Canyon Loop has more lake frontage and the house is larger than the subject property. *Peterson testimony*. Therefore, Mr. Peterson argues, the Respondent's comparable property would have a higher market value than the Petitioners' property. *Peterson testimony*.
12. Summary of the Respondent's contentions in support of the assessment:
  - a. The Respondent's representative argues that the Petitioners' appraisal suffers from major flaws and should be given little weight. *Potts testimony*. Mr. Potts contends the appraiser incorrectly described the subject property as having a

---

<sup>1</sup> The Board noted in its August 27, 2009, determination that while the Petitioners only submitted four pages of their appraisal as an exhibit in that case, the entire appraisal was attached to their Petition. Because the Petitioners included all of the valuation information and the appraiser's certification in the case at bar and because the Board previously found the appraisal to be valid, the Board will not reject the Petitioners' appraisal here because they failed to include the maps and pictures that were attached. The Board cautions the Petitioners, however, that they need to present full and accurate copies of their evidence in any future hearing.

swimming pool, being located in a suburban area and being on a public water system. *Potts testimony*. Further, he argues, the appraiser did not address the fact that her first comparable sale was an estate sale and in foreclosure at the time of the sale. *Respondent Exhibit B; Potts testimony*. In addition, Mr. Potts argues, the appraiser inadequately addressed the ages of the comparable houses and failed to discuss how the locations of the comparable properties are similar to the subject property's location. *Potts testimony*. Specifically, Mr. Potts contends that the appraiser's comparable houses are 51, 68 and 87 years old respectively, but the appraiser showed an effective age of five years for all of the properties without any type of explanation in the appraisal.<sup>2</sup> *Potts testimony*. Similarly, Mr. Potts argues, the appraiser did not explain why she used comparable properties located over a mile from the subject property when the house next door to the Petitioners' property sold in 2006. *Id.* According to Mr. Potts, the appraiser failed to clearly disclose any assumptions or hypothetical conditions in her appraisal report which, he contends, violates Standard 2-1(c) of the Uniform Standards of Professional Appraisal Practice (USPAP).<sup>3</sup> *Id.; Respondent Exhibit D.*

- b. The Respondent also contends the property's assessment is correct based on the property's market value-in-use. *Potts testimony*. In support of this contention, the Respondent submitted a sales disclosure form for the property located at 5011 North Canyon Loop. *Potts testimony; Respondent Exhibit A*. According to Mr. Potts, the house, which sold for \$261,900 on June 30, 2006, is closer in age and location to the property under appeal than the appraiser's comparable properties. *Potts testimony*. Because a property's location on the lake affects the overall value of the property, Mr. Potts argues, the property located next door to the Petitioners' property is a better indicator of the subject property's value than the properties used by the Petitioners' appraiser in her appraisal report. *Id.*

### **Record**

13. The official record for this matter is made up of the following:
  - a. The Form 131 petition and related attachments.
  - b. The digital recording of the hearing.

---

<sup>2</sup> Mr. Potts testified that the multiple listing sheet (MLS) for the appraiser's comparable property located at 6237 North McKinley shows the house was built in 1959. *Potts testimony; Respondent Exhibit C*. Mr. Potts argues this clearly shows the Petitioners' appraiser made the assumption that the property has an effective age of five years, but she failed to disclose this assumption in her appraisal. *Potts testimony*.

<sup>3</sup> USPAP Standards Rule 2-1(C) states "each written or oral real property appraisal report must... clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment." *Respondent Exhibit D; citing The Appraisal Foundation USPAP 2008-2009 Edition*.

c. Exhibits:

Petitioners Exhibit 1 –	Four pages from a Uniform Residential Appraisal Report, prepared by Becky M. Patty, MBP Appraisals, Inc. dated September 4, 2007,
Petitioners Exhibit 2 –	Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
Petitioners Exhibit 3 –	Petition to the County Property Tax Assessment Board of Appeals for Review of Assessment – Form 130,
Petitioners Exhibit 4 –	The Board’s Final Determination in <i>Peterson v. White County Assessor</i> , Petition No. 91-013-06-1-5-00089 (August 27, 2009),
Petitioners Exhibit 5 –	Notice of Assessment of Land and Structures – Form 11 R/A,
Petitioners Exhibit 6 –	Property record card for the Petitioners’ property,
Petitioners Exhibit 7 –	Notification of Final Assessment Determination – Form 115,
Respondent Exhibit A –	The sales disclosure form for 5011 North Canyon Loop, Monticello,
Respondent Exhibit B –	The sales disclosure form for 3130 East McKinley Drive, Monon,
Respondent Exhibit C –	Listing for 6237 North McKinley, Monticello,
Respondent Exhibit D –	Uniform Standards of Professional Appraisal Practice, Standard 2: Real Property Appraisal Reporting,
Board Exhibit A –	Form 131 petition with attachments,
Board Exhibit B –	Notice of Hearing,
Board Exhibit C –	Hearing sign-in sheet.

d. These Findings and Conclusions.

**Analysis**

14. The most applicable governing cases are:

- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is

incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township 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).

- b. 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. Washington Township 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”).
  - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners provided sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal practices. *MANUAL* at 5.

- c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. Here, the Petitioners presented an appraisal that concluded the value of their property was \$225,000 as of August 31, 2007. *Peterson testimony; Petitioners Exhibit 1*. The appraiser certified her appraisal was prepared according to the Uniform Standards of Professional Appraisal Practices (USPAP). *Petitioners Exhibit 1*. Further, in *Peterson v. White County Assessor*, Petition No. 91-013-06-1-5-00089 (August 27, 2009), the Petitioners presented "Real Estate Market Snapshots" to show that the average sale prices of homes continued to increase from 2005 through 2007. *Petitioners Exhibit 4*. The Board, in that case, held that "the Petitioners presented some evidence that the value of the property as of January 1, 2005, would be no more than the property's appraised value as of August 31, 2007." *Id.* The same analysis would hold true for the January 1, 2006, valuation date for the March 1, 2007, assessment. Thus, the Board finds that the Petitioners raised a prima facie case that their property was over-assessed for the 2007 assessment year.
- e. Once the taxpayer establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- f. Here, the Respondent contends that the Board should give little weight to the Petitioners' appraisal because one of the appraiser's comparable properties was a foreclosure sale and the appraiser failed to adjust for the age of the comparable homes and their locations. *Potts testimony*. As in its determination on the property's 2006 assessment, however, the Board finds this argument unpersuasive. The appraiser certified that "the comparables used in this report were considered to be the most comparable at this time and the best indicators of the value of the subject property." Further, Ms. Patty noted both the actual age of her comparable properties and the effective age that she determined for each of the houses in her analysis. While Mr. Potts claims that Ms. Patty violated USPAP standards because she did not explain why she estimated the effective age of each house to be five years, she clearly disclosed that assumption in her report. Because it is well within an appraiser's expertise to choose the sales he or she

deems most comparable to the property under appeal and apply adjustments to those comparable properties to value the differences between them, the Board will not reject the Petitioners' evidence merely because the Respondent contends different adjustments should have been made or that better sales may have been available.

- g. Mr. Potts argues, however, that he presented new evidence in this appeal that he did not present the Petitioners' 2006 assessment appeal. Here, he contends the appraiser mischaracterized the Petitioners' property as "suburban", stated it had public water and identified the property as having a pool. *Potts testimony*. While Mr. Potts is correct that the appraiser characterized the Petitioners' property in this manner, there is no evidence that these misstatements impacted the estimate of the property's value. Ms. Patty did not adjust her comparable properties for a rural or suburban location. *Petitioners Exhibit 1*. Nor did she adjust the properties for the existence or absence of a swimming pool. *Id.* Therefore, while Mr. Potts may have called into question the appraiser's attention to detail, he did not rebut the value that she estimated for the Petitioners' property.
- h. Mr. Potts also argues that the Petitioners' property is properly assessed based on the sale of a neighboring property. *Potts testimony*. According to the Respondent's representative, the house located next door to the Petitioners' property sold for \$261,900 in June of 2006. *Id.*; *Respondent Exhibit A*. To rebut or impeach a Petitioner's case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. ... These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted). Because Mr. Potts failed to show how the properties were comparable to each other and failed to value the differences between the properties, the Respondent's sales comparable evidence fails to rebut the Petitioner's appraisal. Moreover, Mr. Peterson testified that the neighboring house was larger and had more lake frontage than the Petitioners' property. The Respondent's representative did not dispute this testimony. Thus, contrary to Mr. Potts' contention that the neighboring sale supported the assessment, the Respondent's evidence shows a larger house with more lake frontage sold for more than \$10,000 less than the Petitioners' property's assessed value – which supports a finding that the Petitioners' property is over-valued.
- i. The Board finds that the weight of the evidence supports the Petitioner's 2007 appraised value. The Board therefore holds that the value of the subject property for the March 1, 2007, assessment date is \$225,000.

### **Conclusion**

16. The Petitioners raised a prima facie case that their property was over-valued. The Respondent failed to present sufficient evidence to impeach the Petitioners' case. Thus, the Board finds in favor of the Petitioners and holds that the market value-in-use of the subject property for the March 1, 2007, assessment date is \$225,000.<sup>4</sup>

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioners' property should be changed.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
Chairman,  
Indiana Board of Tax Review

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review

\_\_\_\_\_  
<sup>4</sup> The Board notes that its holding does not reflect a finding that a Board-determined value cannot be trended the following year. The Board only holds that the evidence shows the property's value is no greater than its 2007 appraised value. No evidence was submitted by either party to determine how the property's value might have changed due to trending between the 2006 and 2007 assessment dates.

## IMPORTANT NOTICE

- APPEAL RIGHTS -

**You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html>.**