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

| | | |
|---|---|---|
| **Petition:** | **53-009-10-1-5-00167** | **53-009-11-1-5-00145** |
| | **53-009-12-1-5-00372** | **53-009-13-1-5-00059** |
| | **53-009-10-1-5-00168** | **53-009-11-1-5-00146** |
| | **53-009-12-1-5-00370** | **53-009-13-1-5-00058** |
| | **53-009-10-1-5-00166** | **53-009-11-1-5-00144** |
| | **53-009-12-1-5-00369** | **53-009-13-1-5-00056** |
| **Petitioner:** | **Leo and Catherine Pilachowski** | |
| **Respondent:** | **Monroe County Assessor** | |
| **Parcel:** | **53-08-03-200-014.000-009** | |
| | **53-08-03-200-004.000-009** | |
| | **53-08-03-200-021.000-009** | |
| **Assessment Year:** | **2010-2013** | |

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

### Procedural History

1. The Petitioners, Leo and Catherine Pilachowski, challenged the assessments of three contiguous parcels of land for the 2010 through 2013 assessment years, claiming a violation of Article X section 1 of the Indiana Constitution. The Monroe County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations upholding the assessments. The Pilachowskis then filed Form 131 petitions with the Board, electing to proceed under our rules for small claims.

2. On September 11, 2014, our designated Administrative Law Judge, Andrew Howell ("ALJ"), held a hearing on the Pilachowskis' petitions. Neither he nor the Board inspected the parcels.

3. Leo Pilachowski appeared *pro se*. Marilyn Meighen appeared as counsel for the Monroe County Assessor. Mr. Pilachowski, Wayne Johnson, and Ken Surface testified under oath.

4. The PTABOA determined the following assessments:

| | | |
|---|---|---|
| 2010: | $43,400 per parcel | Total: $130,200 |
| 2011: | $43,400 per parcel | Total: $130,200 |

2012: $51,600 per parcel Total: $154,800
2013: $51,600 per parcel Total: $154,800

5. The Pilachowskis sought an assessment of $32,000 per parcel or a total of $96,000 for each year.

**Record**

6. The record is made up of the following:

   a. A digital recording of the hearing,

   b. Exhibits:

| | |
|---|---|
| Petitioners' Ex. 1: | 2010 Form 115 determinations for subject parcels, |
| Petitioners' Ex. 2: | 2010 Form 131 petitions for subject parcels, |
| Petitioners' Ex. 3: | 2011 Form 115 determinations for subject parcels, |
| Petitioners' Ex. 4: | 2011 Form 131 petitions for subject parcels, |
| Petitioners' Ex. 5: | 2012 Form 115 determinations for subject parcels, |
| Petitioners' Ex. 6: | 2012 Form 131 petitions for subject parcels, |
| Petitioners' Ex. 7: | 2013 Form 115 determinations for subject parcels, |
| Petitioners' Ex. 8: | 2013 Form 131 petitions for subject parcels, |
| Petitioners' Ex. 9: | 2014 property record cards for subject parcels, |
| Petitioners' Ex. 10: | 2014 property record card for 2008 East 1st Street, |
| Petitioners' Ex. 11: | 2014 property record card for 831 South High Street, |
| Petitioners' Ex. 12: | 2014 property record card for 801 South Anita Street, |
| Petitioners' Ex. 13: | 2014 property record card for 2424 East Maxwell Lane, |
| Petitioners' Ex. 14: | 2006 property record card for 2424 East Maxwell Lane, |
| Petitioners' Ex. 15: | 2014 property record card for 2124 East Woodstock Place, |
| Petitioners' Ex. 16: | Article 10 of Indiana Constitution, |
| Petitioners' Ex. 17: | *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), |
| Petitioners' Ex. 18: | *Elliott v. Dunning*, Cause No. 49T10-0812-TA-69 (Ind. Tax Ct. Dec. 23, 2009) |
| Petitioners' Ex. 19: | *Lakes of the Four Seasons Prop. Owners' Ass'n v. Dep't of Local Gov't Fin.*, 875 N.E.2d 833 (Ind. Tax Ct. 2007) |
| Petitioners' Ex. 20: | 2012 e-mail from Ken Surface, |
| Petitioners' Ex. 21: | 2014 e-mail from Ken Surface, |
| Petitioners' Ex. 22: | Assessment comparison, |
| Petitioners' Ex. 23: | Front footage rate comparison, |
| Petitioners' Ex. 24: | Map of Windermere area, |
| Petitioners' Ex. 25: | Map of subject area, |
| Petitioners' Ex. 26: | Spreadsheet with information about various public projects, |
| Petitioners' Ex. 27: | Pictures of traffic, |
| Petitioners' Ex. 28: | Excerpt from 2011 Real Property Assessment Guidelines, |

Petitioners' Ex. 29: List of petition and parcel numbers under appeal,
Petitioners' Ex. 30: Case summary.

Respondent's Ex. A: 2012 property record card for parcel 53-08-03-200-004.000-009,
Respondent's Ex. B: 2011 property record card for parcel 53-08-03-200-014.000-009,
Respondent's Ex. C: 2012 property record card for parcel 53-08-03-200-021.000-009,
Respondent's Ex. D: Appraisal Report of subject property prepared by Wayne Johnson.

Board Ex. A: Form 131 petitions,
Board Ex. B: Hearing notices,
Board Ex. C: Hearing sign-in sheet.

c. These Findings and Conclusions and all other orders and filings.

## Objections

### A. The Pilachowskis' objections

7. The Pilachowskis objected to the Assessor citing to decisions from the Board and the Indiana Tax court. According to Mr. Pilachowski, the Assessor did not provide the Pilachowskis with copies of those decisions or otherwise notify them that she intended rely on the decisions despite the fact that Mr. Pilachowski had requested copies of the Assessor's evidence in advance of the hearing. The ALJ overruled the objection. We uphold his ruling. While parties sometimes provide copies of Board or Tax Court decisions as a courtesy and even label them as exhibits, those decisions are argument, not evidence.

### B. The Assessor's objections

8. The Assessor objected to Petitioners' Exhibits 12, 13, 14, 22, 23, and 26 on grounds that the Pilachowskis did not provide them to the Assessor in advance of the hearing as required by 52 IAC 3-1-5. The Pilachowskis had requested the Assessor's exhibits, which the Assessor claimed triggered a duty by the Pilchowskis to exchange their own exhibits as well. For support, the Assessor pointed to our decision in *Paul and Glenda Kropp v. Porter County Assessor*, (Ind. Bd. Tax Rev. Jan. 18, 2013). The ALJ took the objection under advisement. We now overrule the objection.

9. Our pre-hearing exchange rule for small claims provides: "*If requested* not later than ten (10) business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small

claims hearing." 52 IAC 3-1-5(d). In *Kropp* we found one party's request for evidence triggered a duty by all parties to exchange evidence. We now come to a different conclusion. The small claims rules are intended to make hearings "expeditious and just." 52 IAC 3-1-5(a)(1). Our interpretation in *Kropp* creates a trap for unsuspecting litigants that we now wish to eliminate. While the language of 52 IAC 3-1-5(d) is somewhat ambiguous, we take this opportunity to reiterate our long-standing rule (*Kropp* aside) that if a party wants to be provided with the opposing party's evidence in advance of a small claims proceeding, she must request it. We therefore overrule the Assessor's objection.

10. We also note that the record is unclear whether the Assessor relied on *Kropp* when she decided not to request copies of the Pilachowskis' exhibits. In any case, she ultimately suffered no prejudice. As explained below, the exhibits to which she objected ultimately do not affect our determination.

11. The Assessor further objected to Petitioners' Exhibit 26, which appears to be a spreadsheet summarizing cost estimates for various public projects and action taken on those projects, on hearsay grounds. Mr. Pilachowski responded that the exhibit was being offered to show the bid for building a sidewalk along Marilyn Street and that he had testified about those costs at the PTABOA hearing.

12. We overrule the Assessor's objection. It is not clear which of the projects referenced on the spreadsheet involved the Marilyn Street sidewalk or exactly where any of the information came from. In any case, the Pilachowskis offered the exhibit for the truth of one of the matters allegedly asserted—how much someone anticipated it would cost to build a sidewalk on Marilyn. It therefore appears to be hearsay. *See* Ind. Evidence Rule 801(c) (defining hearsay as a statement not made by the declarant while testifying at the trial or hearing and offered to prove the truth of the matter asserted). Our procedural rules allow us to admit hearsay with the caveat that if it is objected to and does not fall within a generally recognized exception to the hearsay rule, it cannot form the sole basis for our determination. *See* 52 IAC 3-1-5(b). In any event, we ultimately do not rely on the exhibit, or on Mr. Pilachowski's related testimony, in reaching our determination.[1]

## Burden of Proof

13. Generally, the taxpayer has the burden to prove that an 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).

14. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for

[1]Given the lack of clarity regarding which, if any, of the entries relates to the estimated cost for building a sidewalk on Marilyn Street, we might have sustained an objection as to the document's relevance.

the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase …." I.C. § 6-1.1-15-17.2(d).

15. This case is unique in that the Pilachowskis solely challenge the assessment on the grounds of uniformity and equality rather than valuation. The burden-shifting statute does not apply to challenges based on the lack of uniformity and equality in assessments. *See Thorsness v. Porter County Assessor*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014). In *Thorsness*, the taxpayer sought an adjustment to his assessment based on what he described as a lack of uniformity and equality and argued that the assessor had the burden of proof under Ind. Code § 6-1.1-15-1(p), a predecessor to the current burden-shifting statute. The Tax Court disagreed, explaining,

> [T]he burden-shifting rule contained in Indiana Code § 6-1.1-15-1(p) (*and its progeny*) applies only to valuation challenges, not to uniform and equal constitutional challenges for the following reasons.
>
> The language of Indiana Code § 6-1.1-15-1(p) is clear and unambiguous and the Court will not expand or contract its meaning by reading into it language that is not there. *See Kohl's Dep't Stores, Inc. v. Indiana Dep't of State Revenue*, 822 N.E.2d 297, 300 (Ind. Tax Ct. 2005). Indiana Code § 6-1.1-15-1(p) clearly states that when an assessment increases by more than 5% from one year to the next, an assessor "has the burden of proving that <u>the assessment is correct</u>." I.C. § 6-1.1-15-1(p) (emphasis added). In Indiana, a property's assessment is the value placed on the property that reflects its market value-in-use (i.e., its market value)…. Thus, the burden-shifting rule does not apply unless the claim is that a property's assessment does not reflect its market value-in-use….[B]y claiming that his assessment lacks uniformity and equality, the remedy Thorsness seeks is not one of "correctness," but is, in effect, one of "incorrectness."

*Thorsness*, 3 N.E.3d at 52-53 (emphasis indicated by italics added). For these reasons, the Assessor does not have the burden to prove that the assessments were equal and uniform.

16. Because the Assessor seeks to increase the valuation, the Assessor has the burden of proving each property's market value-in-use is higher than the current assessment. As discussed below, the Assessor has met its burden and presented probative evidence of the values of the properties. Any further analysis of the burden-shifting statute, under these circumstances, is moot.

## Summary of the Parties' Contentions

17. The Pilachowskis' case:

a. According to the Pilachowskis, assessments in Monroe County violate Article X, section 1 of the Indiana Constitution because they are not uniform and equal. *Pilachowski argument.*

b. Mr. Pilachowski calculated a ratio of assessment-to-sale price for each of the five properties that the Assessor's appraiser, Mr. Johnson, used in his sales-comparison analysis. For 2013, the three properties outside the subject parcels' neighborhood were assessed at 17%, 32%, and 73% of their time-adjusted sales prices, while the two properties from the neighborhood were assessed at 79% and 99% of their time-adjusted sales prices. *Pilachowski testimony and argument; Pet'rs Ex. 22.*

c. Mr. Pilachoski believes that the subject parcels should be assessed the same as a nearby property owned by Mary Penrod. That property consists of three lots, which were previously assessed as separate tax parcels, but which were combined in 2011. According to Mr. Pilachowski, the Penrod lots are identical in size to the subject parcels.[2] They are also similarly situated, except that the Penrod lots are not located on a major street.

d. The Penrod lots previously had the same assessment as the subject parcels. At the request of Ms. Penrod or her representative, the Assessor reduced Ms. Penrod's assessment on grounds that there was no street access to the lower lots. According to Mr. Pilachowski, those lots may still be accessed through a right-of-way and a sidewalk. Mr. Pilachowski also testified that the Penrod lots have an additional negative influence factor, although he did not identify what that factor represented. In Mr. Pilachowski's view, lowering Ms. Penrod's assessment without doing the same for the subject parcels created a lack of uniformity and equality. *Pilachowski testimony and argument; Pet'rs Ex. 10.*

e. Two other properties from the neighborhood similarly illustrate the lack of uniformity. A property across the street owned by Michael and Nancy Fields is smaller than the subject parcels but has a higher land assessment. Another property across the street owned by Fred and Cindy Prall was previously assessed based on the amount of its frontage, but was later assessed based on its total acreage. This changed the property's value, because in some years the Assessor made changes to the front foot ratio without making corresponding changes to the acreage ratio. *Pilachowski testimony and argument; Pet'rs Ex. 11-12.*

[2] According to the property record cards, each subject parcel is 60' x 156'. *Pet'rs Ex. 9*. That translates to 28,080 square feet for all three parcels. The Penrod property is 156' x 178', or 27,788 square feet. *See Pet'rs Ex. 10*. In addition, the Penrod property has only 156 feet of frontage, while the subject parcels have a combined 180 feet of frontage. *See Pet'rs Exs. 9-10.*

f. The Pilachowskis offered the following e-mail from Ken Surface to a representative from the Assessor's office to show that the Assessor did not follow the 2011 Assessment Guidelines in determining base rates for the subject parcels' neighborhood:

> There were no vacant sales in this neighborhood. The land rate was changed based upon increasing the uniformity with surrounding neighborhoods and for the purpose of lowering the extremely high neighborhood factor. Prior to the change the neighborhood factor was 1.7 and now I believe it to be 1.55. The increase of the land rate was decrease (sic) the disparity in the land to building ratio.
>
> With only 47 parcels out of the total 438 assigned to this neighborhood, the vacant land values were not taken into consideration as there were no vacant sales.
>
> High neighborhood factors can cause many problems, thus it is important to assign a more appropriate land to building ratio and based upon a mass appraising system, this is what was done.

*Pet'rs Ex. 20*.

g. Lowering the neighborhood factor causes vacant land and properties with less expensive improvements to be assessed at a comparatively higher rate than properties with more expensive improvements. That methodology is not the normal procedure outlined in the Guidelines and it was not uniformly applied to all neighborhoods. *Pilachowski testimony and argument.*

h. There is also little uniformity in land rates between neighborhoods. In Windermere East, land rates were doubled for 2014, although empty lots were given a 50% negative influence factor in accordance with the Guidelines. There were no sales to support doubling the rate; the Assessor did it to bring the neighborhood in line with surrounding neighborhoods. Similarly, the subject parcels' combined assessment is three times higher than the land assessment for a nearby property in Woodcrest that is three times the subject parcels' combined size. Values may even out when one looks at the total assessments for land and improvements, but that does not work for vacant land. *Pilachowski testimony and argument; Pet'rs Exs. 23- 24.*

i. The Assessor fine-tunes neighborhood maps so that the county's ratio studies meet required standards. But she does not follow the Guidelines in doing so. For example, in 2006, a property owned by William and Patsy Forney was switched from Woodstock to Windermere, but a three-foot strip was left in Woodstock. According to the Pilachowskis, the Assessor re-draws neighborhoods and changes

land values to make assessments fit her ratio studies. *Pilachowski testimony and argument; Pet'rs Ex. 14.*

j. The Assessor's methodology produces unjust and inconsistent results. In some instances, the Assessor has recognized that fact and given appropriate negative influence factors. If the subject parcels were given the same negative influence factors as the Penrod and Prall properties, or vacant properties in Windermere East, their assessments would decrease to $32,000 per parcel, or $96,000 total. *Pilachowski testimony and argument.*

k. Although the Assessor sought to use Mr. Johnson's appraisal to justify increasing the assessments, Mr. Johnson did not account for appropriate negative influence factors allowed by the Guidelines, such as the lack of a sidewalk along one side of the parcels, the need for utility hookups, and unusual traffic. The subject parcels have unusual traffic caused by what Mr. Pilachowski described as a "school drop-off" and nearby development. Similarly, it would cost just under $50,000 to build a sidewalk along the parcels. According to Mr. Pilachowski, that was a quarter of the bid for building a sidewalk along Marilyn street that was approximately four times longer than what the Pilachowskis would need. *Pilachowski testimony; Pet'rs Exs. 26-27*

18. The Assessor's case:

a. The Pilachowskis did not meet their burden of proving a lack of uniformity and equality. The proper way to do so is through a ratio study comparing the ratio of market values-in-use to assessed value for a statistically significant sample of properties. The Pilachowskis did not do that. *Meighen argument*.

b. Although Mr. Pilachowski took issue with how the Assessor drew neighborhood lines, neighborhoods can be defined by a number of factors, such as development characteristics, the average age of improvements, lot size, and geographic considerations. The point is to have homogeneous neighborhoods. *Surface testimony.*

c. The Penrod lots were given a negative influence factor because the city closed the road on one side of the property, changing what formerly was a street into a sidewalk. That made the southern two lots inaccessible to anybody but the user of the third lot. *Surface testimony.*

d. The neighborhood factor is a sales-based ratio used to bring assessments of improved properties in line with market value. All the land base rates in the subject neighborhood were the same. *Surface testimony.*

e. Mr. Johnson, a certified appraiser with an MAI designation, appraised the subject parcels. He certified that he prepared his appraisal in conformance with the

Uniform Standards of Professional Appraisal Practice ("USPAP"). He estimated the following values as of the relevant valuation dates for the Pilachowskis' appeals:

| Valuation Date | Per Parcel | Total |
|---|---|---|
| March 1, 2010 | $58,000 | $174,000 |
| March 1, 2011 | $59,000 | $177,000 |
| March 1, 2012 | $60,000 | $180,000 |
| March 1, 2013 | $61,000 | $183,000 |

*Johnson testimony; Resp't Ex. D at 75-76.*

f. Mr. Johnson relied on the sales-comparison approach to value. He found sales of five properties that he believed were very comparable to the subject parcels. He adjusted each sale price to account for relevant ways in which the property differed from the subject parcels. As a further check, he also looked at sales involving lots of one acre or less from the 47401 zip code. They sold for an average of $62,489, with a median of $65,000, which Johnson believed lent support to his conclusions. *Johnson testimony; Resp't Ex. D at 59-75.*

## Analysis

19. The Pilachowskis primarily claim that they are entitled to have their assessments lowered because assessments in the county violate Article X section 1(a) of the Indiana Constitution. That clause, commonly known as the Property Taxation Clause, directs the General Assembly to "provide, by law, for a uniform and equal rate of property assessment and taxation and … prescribe regulations to secure a just valuation for taxation of all property…." IND. CONST. art. X § 1(a); *see also, Thorsness*, 3 N.E.3d at 51. The Pilachowskis failed to make a prima facie case for the relief they seek.

20. *In Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), the Tax Court addressed the meaning of the Property Taxation Clause in the context of Indiana's current assessment system. As the Court explained, before the switch to our current system, true tax value was determined under Indiana's own assessment regulations and bore no relation to any external, objectively verifiable measurement standard. *Westfield Golf, 859 N.E.2d at 398*. Properties within the same neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id*.

21. That changed under the new system, which incorporates market value-in-use as its external, objectively verifiable benchmark. The focus shifted from examining how assessment regulations were applied to examining whether a property's assessed value actually reflects that external benchmark. *Id*. at 399. Thus, "'the end result—a uniform and equal rate of assessment—is required, but there is no requirement of uniform

procedure to arrive at that rate.'" *Id*. (*quoting State ex. re. Att'y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1250 (Ind. 2005) (emphasis in original). In a footnote, the Court explained that one method for proving a lack of uniformity and equality is to present assessment ratio studies, comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id*. at n. 3. The taxpayer in *Westfield Golf* lost its uniformity-and-equality claim because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id*.

22. Much of the Pilachowskis' evidence suffers from the same shortcomings as the taxpayer's evidence in *Westfield Golf*—it focuses on the methodology used to compute assessments rather than on whether the methodology yielded an unequal rate of assessment.[3] Indeed, the Pilachowskis offered little evidence to show the actual market value-in-use for many of the properties they focused on, including their own.

23. The Pilachowskis, however, did offer evidence comparing the 2013 assessment level for five properties, claiming that those properties were assessed between 17% and 99% of their market values-in-use. Examining ratios of assessments to sales is one component of a ratio study. But the Pilachowskis offered nothing to show that they considered a statistically valid sample or met any of the other requirements necessary for a ratio study to reveal meaningful information about assessment levels within a taxing district or appropriate stratum. *See generally*, *Thorsness*, 3 N.E.3d at 53-54 (explaining that under the standard for ratio studies published by the International Association of Assessing Officers and adopted by the Department of Local Government Finance, a ratio study must be based on data that has been appropriately stratified and statistically analyzed).

24. The Pilachowskis apparently seek to distinguish *Westfield Golf* and *Thorsness* by pointing to language in those cases indicating that offering ratio studies is "one" way to prove a uniformity-and-equality claim. They cite to two tax court decisions—*Elliot v. Dunning*, Cause No. 49T10-0812-TA-69 (Ind. Tax Ct. 2009) and *Lakes of the Four Seasons Prop. Owners Ass'n v. Dep't of Local Gov't Fin*., 875 N.E.2d 833 (Ind. Tax Ct. 2007)—for the proposition that a taxpayer may also make such a claim by showing that assessments were determined using different methodologies, or that the assessor's methodology resulted in widespread results that are un-reconcilable, unjust, or absurd.

[3] Mr. Surface's e-mail is ambiguous. Mr. Pilachowski interpreted it as meaning that base rates in the subject neighborhood were arbitrarily increased in order to make the county's ratio studies meet required parameters of uniformity between neighborhoods. The e-mail may also be interpreted more benignly to mean that the high neighborhood factor simply triggered a re-examination of how land values in the neighborhood were originally extracted out of improved sales. Mr. Surface did not shed much light on the question in his testimony. Mr. Pilachowski's interpretation, if correct, is troubling. But it would not entitle the Pilachowskis to the relief they seek.

*Pilachowski argument*; *Pet'rs Exs. 19-20*. Neither decision involved a uniformity-and-equality claim.[4]

25. Thus, the Pilachowskis failed to show that they were entitled to have their assessments reduced based on a lack of uniformity and equality. Our analysis continues, however, because the Assessor has asked us to increase the assessments. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) ("When a taxpayer elects to challenge its assessment, it assumes a certain degree of risk, as resolution of a property tax appeal may lead to an increase in assessment.").

26. For support, the Assessor offered a USPAP-compliant appraisal from Mr. Johnson, an MAI appraiser. He used the sales-comparison approach—a generally accepted valuation approach—to form his opinions. As the Tax Court has explained, a USPAP-compliant market-value-in-use appraisal can be compelling evidence of a property's true tax value. *See Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6. (Ind. Tax Ct. 2005). Mr. Johnson's appraisal therefore creates a prima facie case for increasing the assessments.

27. The Pilachowskis did little to impeach or rebut Mr. Johnson's appraisal. Mr. Pilachowski claimed that Mr. Johnson ignored influence factors allowed by the 2011 Real Property Assessment Guidelines. That claim misses the point. Influence factors are closely tied to the mass-appraisal process where assessors use per-unit rates (such as dollars-per-front-foot or per-acre) to value all the properties in an assessment neighborhood. Those rates are for the neighborhood's base lot. There may be conditions peculiar to specific lots that are not reflected in the base lot. The adjustments Assessors make to account for those conditions are called influence factors. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 43.

28. By contrast, when a fee appraiser like Mr. Johnson uses the sales-comparison approach to estimate an individual property's value, he does not value the property by reference to a base lot. He instead compares each property in his analysis to the property being appraised in terms of all relevant characteristics that affect value and adjusts the comparable properties' sale prices to account for any relevant differences. The availability of influence factors under the Guidelines is therefore largely irrelevant.

29. The Pilachowskis also pointed to the assessments for a few properties that Mr. Pilachowski claimed were similar to the subject parcels. A party may introduce assessments of comparable properties to prove the market value-in-use of a residential property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. I.C. § 6-1.1-15-

[4] *Elliot* is designated as not for publication. Under the Tax Court's rules, such decisions may not be regarded as precedent or cited before any court except to establish the defenses of res judicata, collateral estoppel, or law of the case. See Ind. Tax Ct. R. 17 (2015) and prior versions.

18(c)(1). But whether the properties are comparable must be determined using generally accepted appraisal and assessment practices. *Id*.

30. Mr. Pilachowski did little to show that his comparison complied with generally accepted appraisal or assessment practices. He did not account for relevant differences, such as the difference in access and frontage between the subject parcels and the Penrod property. *See Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers failed to make a prima facie case, in part, because they failed to explain how any relevant differences between their property and purportedly comparable properties affected market value-in-use). In any case, his assessment comparison was far less persuasive than Mr. Johnson's appraisal. Thus, the Assessor proved that the parcels were assessed for less than their market values-in-use. The assessments must be adjusted accordingly.

## Conclusion

31. The Pilachowskis failed to make a prima facie case for relief based upon a lack of uniformity and equality in assessments. The Assessor requested that each parcel's assessment be increased, and successfully proved her case through a USPAP-compliant appraisal.

## FINAL DETERMINATION

32. The Board orders that the appealed assessments be increased to the following values:

| Year | Per Parcel | Total |
|---|---|---|
| 2010 | $58,000 | $174,000 |
| 2011 | $59,000 | $177,000 |
| 2012 | $60,000 | $180,000 |
| 2013 | $61,000 | $183,000 |

ISSUED: February 6, 2015

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.