

REPRESENTATIVE FOR PETITIONER:

Brent Robertson, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Meighen & Associates, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Diane Lynn and Brent Ernest Robertson,)	Petition No: 29-018-07-1-5-00104
)	
Petitioners,)	Parcel No: 1610270031002000
)	
v.)	
)	County: Hamilton
Hamilton County Assessor,)	Township: Clay
)	
Respondent.)	Assessment Year: 2007

Appeal from the Final Determination of the
Hamilton Property Tax Assessment Board of Appeals

January 26, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

1. The issue presented for consideration by the Board is whether the assessed value of the property exceeds its market value-in-use.

PROCEDURAL HISTORY

2. The Petitioners initiated their assessment appeal by filing a Request for Preliminary conference with the Hamilton County Assessor on January 17, 2008. The Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on May 29, 2008.
3. Pursuant to Indiana Code § 6-1.1-15-1, Diane Lynn and Brent Ernest Robertson (the Petitioners) filed a Form 131 Petition for Review of Assessment on June 11, 2008, petitioning the Board to conduct an administrative review of the above petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on October 28, 2009, in Noblesville, Indiana.¹
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Brent Robertson, Property owner
Tim Boston, the Petitioners' appraiser

¹ The hearing was originally scheduled for January 29, 2009. The Petitioners, however, sought a continuance of their hearing by letter dated November 25, 2008.

For the Respondent:

Debbie Folkerts, Hamilton County Assessor
Terry McAbee, Hamilton County Deputy Assessor

6. The Petitioners presented the following evidence:

Petitioner Exhibit 1 – Residential Appraisal Report prepared by Mr. Tim Boston, dated May 23, 2008.

7. The Respondent presented the following evidence:

Respondent Exhibit A – An aerial map and property record cards for 13142 Player Circle, 12711 Stanwich Place, and 12665 Plum Creek Boulevard, Carmel,

Respondent Exhibit B – An aerial map, a report showing the true tax value and sales price prepared by the Respondent and property record cards for 12805 Plum Creek Boulevard, 12707 Stanwich Place, Stanwich Place, 12733 Stanwich Place, 12811 Plum Creek Boulevard, 12744 Kiawah Drive, and 12726 Kiawah Drive, Carmel,

Respondent Exhibit C – The Respondent’s Parcel Characteristics Report by Neighborhood for neighborhood no. 233711,

Respondent Exhibit D – Website information on Dave Thompson Group Homes, dated April 6, 2009,

Respondent Exhibit E – Three website news articles: “Mold costing home builder big bucks” by Kevin Rader, WTHR Eyewitness News; “Mold Concerns, Allegations of Construction Defects at Issue” by Rafael Sanchez, The Indy Channel, posted May 17, 2004; and “Mold Changes Dream House Into Nightmare” posted by Susan Lillard, dated October 3, 2004.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing, dated October 5, 2009,

Board Exhibit C – Hearing sign-in sheet,

Board Exhibit D – Waiver of Notice, dated October 28, 2009.²

² The parties agreed to waive the thirty day minimum advance notice of hearing established by Indiana Code § 6-1.1-15-4.

9. The subject property is a 2,794 square foot single-family home on .23 of an acre located at 12805 Plum Creek Boulevard, Carmel, in Hamilton County.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2007, the PTABOA determined the assessed value of the property to be \$34,400 for the land and \$296,400 for the improvements, for a total assessed value of \$330,800.
12. For 2007, the Petitioners requested that their property be assessed for \$35,000 for the land and \$250,000 for the improvements, for a total assessed value of \$285,000.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, and (3) property tax exemptions, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. 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 Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. 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”).

16. 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 Insurance 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PETITIONERS’ CONTENTIONS

17. The Petitioners contend that the subject property is assessed in excess of its market value-in-use. *Robertson and Boston testimony*. In support of their position, the Petitioners submitted a residential appraisal report prepared by Tim Boston. *Petitioner Exhibit 1*. Mr. Boston is an Indiana Certified Residential Appraiser. *Id.* In his appraisal report, Mr. Boston estimated the property’s value to be \$285,000 as of March 1, 2007. *Id.*
18. In rebuttal, Mr. Robertson testified that his home, built by Dave Thompson, was also identified with a mold problem and required remedial work. *Robertson testimony*.

RESPONDENT’S CONTENTIONS

19. The Respondent contends the Petitioners’ property is correctly assessed based on its market value-in-use. *Meighen argument*. According to the Respondent’s witness, five comparable houses located in the Petitioners’ neighborhood sold in 2005 for \$315,000 to \$366,793. *McAbee testimony*. Mr. McAbee testified that the comparable properties were all one-story ranch homes that were similar to the subject property in living area and lot size. *McAbee testimony; Meighen argument*. Further, the properties were all located off the golf course like the Petitioners’ property and they were all built by Dave Thompson Homes. *McAbee testimony; Meighen argument*. According to Mr. McAbee, the average sales price of the comparable properties was \$145.76 per square foot, while the

Petitioners' property is assessed for only \$134.35 per square foot. *Id.* In support of this contention, the Respondent submitted an aerial map, property record cards and a comparable analysis. *Respondent Exhibit B.*

20. The Respondent further argues that the Petitioners' property is correctly assessed based on the assessments of comparable properties. *Meighen argument.* According to the Respondent's witness, neighboring properties were assessed for \$130.02 to \$136.93 per square foot, with an average of \$134.89 per square foot in 2007. *McAbee testimony.* Moreover, Mr. McAbee argues, the sales ratio study conducted by Hamilton County on the neighborhood shows that the assessment met the uniformity and equality standards as set forth by the International Association of Assessing Officers (IAAO) Standards. *McAbee testimony.* In support of this position, the Respondent submitted a copy of the Parcel Characteristics Report by Neighborhood Sales to Certified Ratio. *Respondent Exhibit C.* According to Mr. McAbee, the accuracy of the county's 2007 assessments were measured by comparing properties' assessments to their sales prices to determine the median ratio, coefficient of dispersion (COD) and price related differential (PRD) for a defined neighborhood in Hamilton County. *Id.*

21. Finally, the Respondent contends the Petitioners' appraisal is flawed and therefore should be given little weight. *Meighen argument.* Specifically, the Respondent's witness argues that the appraiser's first and third comparable sales are tract homes built by Trinity Homes, whereas the Petitioners' home is a semi-custom built home by Dave Thompson. *Respondent Exhibit D; McAbee testimony.* According to Mr. McAbee, Trinity homes in certain neighborhoods, including Plum Creek, had mold problems, which on average cost \$40,000 to \$70,000 per home to correct. *Respondent Exhibit E; McAbee testimony.* Moreover, Mr. McAbee argues, Comparable No. 1 is a two-story house while the Petitioner's home is a one-story ranch. *Respondent Exhibit A; McAbee testimony.*

ANALYSIS

22. 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). The appraisal profession traditionally has 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. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
23. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 2006). 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 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
24. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject 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.

25. Here, the Petitioners submitted an appraisal prepared by Tim Boston that estimated the value of the property to be \$285,000 as of March 1, 2007. *Petitioner Exhibit 1; Boston testimony*. Mr. Boston is an Indiana Certified Appraiser who attested that he prepared the Petitioners' appraisal in accordance with the Uniform Standards of Professional Appraisal Practices. (USPAP). *Id.* The appraiser used the sales comparison approach, using properties that sold during 2005 and 2006. *Id.* While generally the 2007 assessment is to reflect the value of the property as of January 1, 2006, pursuant to 50 IAC 21-3-3(a), "[f]or assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date." Thus, for the March 1, 2007, assessment date, local assessing officials use sales of properties occurring between January 1, 2005, and December 31, 2006. The Board finds that an appraisal using 2005 and 2006 sales in its sale comparison analysis to value the property as of March 1, 2007, must also have some probative value and therefore holds that the Petitioners raised a prima facie case that the subject property is over-assessed.³ *See Meridian Towers*, 805 N.E.2d at 479.
26. Once the Petitioners establish 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).
27. Here, the Respondent argues that the Petitioners' property is properly assessed based on neighboring properties that sold for \$315,000 to \$366,340 in 2005 and were assessed from \$130.02 to \$136.93 per square foot in 2007. *Respondent Exhibits B and C; McAbee testimony*. The Respondent's representative showed that the properties were all single

³ The appraiser testified that the appraised value is the correct value as of the effective date of the appraisal – March 1, 2007. The appraisal, however, notes that the appraiser reviewed 37 sales. *Petitioner Exhibit 1*. Thus, the Board infers that Mr. Boston specifically chose 2005 and 2006 sales to meet the statutory valuation date of January 1, 2006, as opposed to having used 2005 and 2006 sales because they were the only sales available.

story ranch homes, built by the same builder and located in the same community. Mr. McAbee, however, failed to value any differences between the properties.⁴ To rebut or impeach the Petitioners' case, a Respondent has the same burden to present probative evidence that the Petitioners face 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). Thus, while the Respondent's comparable sales may be some evidence of the market value-in-use of the Petitioners' property, it is insufficient to rebut the Petitioners' appraisal.

28. The Respondent also argued that the property's current assessment is supported by the county's assessment and sales ratio data. *Respondent Exhibits B and C; McAbee testimony*. According to Mr. McAbee, the assessment draws general validity from the fact that the assessments and sales ratio study of other properties are within an acceptable range. *Id.* The Respondent, however, provided no authority or substantial explanation for the conclusion that there is an "acceptable range" for establishing the assessed value of the property under appeal. The Board infers that the Respondent's position is based on the standards for evaluating the accuracy and uniformity of a mass appraisal for equalization purposes. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 20-21 (incorporated by reference at 50 IAC 2.3-1-2). However, that is an entirely different matter than proving the assessed value of the Petitioners' property is correct. Thus, while a ratio study may provide some evidence of the quality or accuracy of a county's assessment over-all, by itself it is not probative evidence that any individual assessment was accurate.

⁴ The Board notes that the Petitioners' appraiser only adjusted the difference in living area by \$20 per square foot in his comparable analysis. Mr. Boston made no other adjustments to his comparable properties. Therefore, it would have been fairly easy for the Respondent to have simply done the same.

29. Finally, the Respondent argues that the Board should give the Petitioners' appraisal little weight because it used properties built by another builder that might have been affected by mold. *Respondent Exhibits A, D and E; McAbee testimony*. While the Respondent identified some differences in the characteristics of those properties – like Mr. Boston's first comparable property is a two-story home instead of a one-story ranch or that the first and third comparable properties are tract homes not semi-custom built or that the sales price on two of comparables might be affected by the possibility of the homes having a mold problem – the Respondent failed to support these allegations with any substantial evidence. For example, the Respondent's evidence that some Trinity homes were infested by mold is not probative evidence that the two properties used as comparable sales in the Petitioners' appraisal were affected by mold. Further, the Respondent failed to establish or explain how the differences between the properties affect their market value-in-use. Conclusory statements that a property is "more valuable" or "less desirable" than another property do not constitute probative evidence. *See Long*, 821 N.E.2d at 470. Thus, the Respondent's evidence is not probative of the market value-in-use of the property under appeal.
30. To the extent the Respondent contends that the Petitioners' appraiser chose poor comparables or made inadequate adjustments to his comparable sales, the Board similarly finds these arguments unpersuasive. It is well within an appraiser's expertise to choose the sales he deems most comparable to the subject property and apply adjustments to those comparable properties to value the differences between them. Absent evidence to the contrary, the comparable properties chosen by the appraiser or the adjustments made by the appraiser in a USPAP-compliant appraisal are deemed reasonable.

SUMMARY OF FINAL DETERMINATION

31. The Petitioners raised a prima facie case that their property was over-valued. The Respondent failed to rebut or impeach the Petitioners' evidence. Thus, the Board finds in

favor of the Petitioners and holds that the market value-in-use of the subject property is \$285,000.

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

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination 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>.