

REPRESENTATIVE FOR PETITIONER:

Ross Dick, Jr., property owner

REPRESENTATIVES FOR RESPONDENT:

Noble County:
Kim Miller, Noble County Assessor

Noble Township:
Karen L. Stewart, Noble Township Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ROSS DICK, JR.,)	
)	Petition for Review of Assessment,
Petitioner)	Form 131
)	
)	Petition No. 57-009-01-1-5-00001
v.)	
)	County: Noble
)	
NOBLE COUNTY PROPERTY)	Township: Noble
TAX ASSESSMENT BOARD)	
OF APPEALS, and NOBLE)	
TOWNSHIP ASSESSOR)	Parcel No. 03004010000
)	
Respondents)	Assessment Year: 2001
)	

Appeal from the Final Determination of the
Noble County Property Tax Assessment Board of Appeals

November 13, 2002

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

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

Issues

1. The issues presented for consideration by the Board were:

Issue 1 – *Whether the classification of the 8’ x 30’ concrete patio is correct.*

Issue 2 – *Whether the classification of the 4’ x 28’ canopy roof extension is correct.*

Issue 3 – *Whether the detached garage is being “double assessed” by the County.*

Issue 4 – *Whether the land value is excessive.*

Issue 5 – *Whether the dwelling value is overstated.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Ross Dick, Jr. (Petitioner) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on April 9, 2002. The Noble County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination was issued on September 28, 2001.

3. It should be noted, that Indiana Code § 6-1.1-15-3(c) states, “In order to obtain a review by the state board of tax commissioners under this section, the party must file a petition for review with the appropriate county auditor within thirty (30) days after notice of the county board of review’s action is given to the taxpayer.”¹ The PTABOA issued their determination six (6) and one half months prior to the Petitioner’s filing. Clearly the Petitioner’s filing of the Form 131 petition with the Board was beyond the allowable time limit.
4. However, on March 26, 2002, Kim Miller, Noble County Assessor on behalf of the Petitioner, sent a letter to the Board requesting that the Petitioner’s late-filed Form 131 petition be accepted by the Board and scheduled for hearing. Within Ms. Miller’s letter the County acknowledges and takes responsibility for the Petitioner not receiving the Notification of Final Assessment Determination (Form 115) from the PTABOA. Ms. Miller’s letter has been entered into the record and labeled as Board Exhibit D.
5. In lieu of the disclosure by Ms. Miller, the Board will accept the Petitioner’s filing of the Form 131 petition as being timely.

Hearing Facts and Other Matters of Record

6. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on October 1, 2002 at the Noble County Courthouse, Albion, Indiana before Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.
7. The subject property is a residence located at 5715 South Redbud Lane, Columbia City, Noble Township, Noble County.

¹ Reference to the SBTC was amended to the Indiana Board of Tax Review effective January 1, 2002.

8. At the hearing, the parties agreed the assessment date under appeal is as of the March 1, 2001 assessment date and the assessed values under appeal were:

Land: \$10,100 Improvements: \$46,100 Total: \$56,200

9. The ALJ did not conduct an on-site inspection of the subject property.

10. The following persons were present at the hearing:

For the Petitioner:

Ross Dick, Jr., property owner

For the Respondent:

Kim Miller, Assessor, Noble County

Karen L. Stewart, Deputy Assessor, Noble Township

11. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Ross Dick, Jr.

For the Respondent:

Kim Miller

Karen Stewart

12. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – Copies of the Petitioner's real estate tax statements for 1993 payable 1994, 1994 payable 1995, 1995 payable 1996, 1996 payable 1997, 1997 payable 1998, 1998 payable 1999, 1999 payable 2000, 2000 payable 2001, and 2001 payable 2002.

For the Respondent:

Respondent's Exhibit 1 – A photograph of the subject property.

Respondent's Exhibit 2 – A copy of the plat of Cedar Island subdivision.

Respondent's Exhibit 3 – Copies of the property record cards (PRC) for Larry Esterline, James Gibson, Timothy Brower and the Petitioner.

Respondent's Exhibit 4 – A copy of the Noble County Land Order for Noble Township and a copy of the summary report for Loon Lake.

For the Board:

Board's Exhibit A – Form 131, dated April 9, 2002 with the following attachments: a copy of the Petitioner's PRC, a copy of the Petitioner's response on the issues (four pages), a copy of the PTABOA minutes dated September 5, 2001, a copy of the Petitioner's PRCs for 1995, 1996, 1997, 1998, 1999, 2000, and 2001, a copy of the plat for Cedar Island subdivision, and PRCs for Timothy Brower, Carol Snyder, James Gibson, Larry Esterline, Ross Dick, Jr., and Max VanCamp.

Board's Exhibit B – Notice of Hearing on Petition (Form 117), dated August 23, 2002.

Board's Exhibit C – Subject PRC

Board's Exhibit D – A letter from Kim Miller, Noble County Assessor to the Board dated March 26, 2002.

Jurisdictional Framework

13. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
14. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

Indiana's Property Tax System

15. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, § 1.
16. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed “True Tax Value”. See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
17. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6 (C).
18. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property’s market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
19. The Indiana Supreme Court has said that the Indiana Constitution “does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
20. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in affect.

21. New assessment regulations have been promulgated, but are not in affect for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

Board Review and Petitioner's Burden

22. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board's decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
23. The petitioner must submit "probative evidence" that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ["Probative evidence" is evidence that serves to prove or disprove a fact.]
24. The petitioner has a burden to present more than just "de minimis" evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ["De minimis" means only a minimal amount.]
25. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. "Conclusory statements" are of no value to the Board in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). ["Conclusory statements" are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
26. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to

demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002).

27. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a “prima facie case” and, by a “preponderance of the evidence” proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind. Tax 1997). [A “prima facie case” is established when the petitioner has presented enough probative and material (i.e. relevant) evidence to the Board (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a “preponderance of the evidence” when the petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Discussion of the Issues

Issue 1: Whether the classification of the 8’ x 30’ concrete patio is correct

28. The Petitioner contends an 8’ x 30’ area between the garage apron and the house is a cement slab used to eliminate a water drainage problem.
29. The Respondents contends the 8’ x 30’ area is a concrete patio and is correctly assessed in accordance with 50 IAC 2.2-7-5.
30. The statutes and rule (s) applicable to this issue are:

Ind. Code § 6-1.1-9-1

It states in part: “If a county auditor, county treasurer, township assessor, county assessor, or county board of review believes that any taxable tangible property has been omitted from the assessment rolls or the tax duplicate for any year or years, the official or board shall give written notice under IC 6-1.1.3.20 or IC 6-1.1.4-22 of the assessment or increase in assessment.”

50 IAC 2.2-7-5 Exterior Features

“Residential dwellings may have exterior features such as a frame porch or concrete patio attached to the dwelling.”

50 IAC 2.2-7-8.1(e) “Schedule E Other Features”

“The application of Schedule E involves the identification of the feature and the selection of the most representative price based on the descriptive criteria given.”

50 IAC 2.2-7-11, Schedule E.2 – Exterior Features

Exterior Features pricing schedules based on 25 square foot intervals which Includes, but is not limited to, patios, stoops, porches and wood decks.

Ind. Code § 6-1.1-1-15 “Real property” is defined as follows:

- (1) land located with this state;
- (2) a building or fixture situated on land located with this state;
- (3) an appurtenance to land located with this state;
- (4) an estate in land located within this state, or an estate, right or privilege in mines located on or minerals, including but not limited to oil or gas, located in the land, if the estate, right, or privilege is distinct from the ownership of the surface of the land; and
- (5) notwithstanding IC 6-6-6-7, a riverboat licensed under the provisions of IC 4-33 for which the state board of tax commissioners shall prescribe standards to be used by township assessors.

31. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The area is 8' x 30', concrete, raised 4 ½ inches above the apron, sloped and attached to the front of the dwelling. *Dick testimony.*
 - b. A photograph shows chairs on the subject concrete area, indicating the Petitioner utilizes the area for other purposes. *Miller testimony & Respondent's Exhibit 1.*

Analysis of ISSUE 1

32. The Petitioner contends that an 8' x 30' concrete area should not be valued due to it having been installed to correct a water drainage problem.
33. The Respondents testified that the Petitioner is utilizing this area, as indicated in the photograph (Respondent's Exhibit 1), for other purposes other than water drainage.
34. Currently the subject area is being valued as an 8' x 30' (240 square foot) concrete patio per 50 IAC 2.2-7-11, Schedule E.2.
35. Though the Board's regulations do not define what a patio is, the Tax Court observes that, where specific words or phrases used in the statutes, regulations or documents are not defined, it will strive to give those words or phrases their plain, ordinary and usual meaning. *See Dalton Foundries, Inc. v. State Board of Tax Commissioners*, 653 N.E. 2d 548, 553 (Ind. Tax Ct. 1995).
36. A myriad of dictionaries and thesauri – both general and specialized – are available to assist the taxpayer in ferreting out a word or phrase's meaning. *See Precedent v. State Board of Tax Commissioners*, 659 N.E. 2d 701, 705 (Ind. Tax Ct. 1995).

37. *The American Heritage Dictionary of the English Language, Third Edition* defines patio as “an outdoor space for dining or recreation that adjoins a residence and is often paved”.
38. Other than the Petitioner’s conclusory statement that this cement slab’s only purpose was to alleviate a water problem, no other evidence or documentation is submitted by the Petitioner to support his position. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119 (Ind. Tax 1998).
39. As stated in ¶ 22 through 27 under State Review and Petitioner’s Burden, the Board’s decision is based on the evidence presented. That the petitioner has a burden to submit “probative evidence” (evidence to prove or disprove a fact) demonstrating the alleged error. That the petitioner must present more than minimal amounts of evidence to prove its position. That the petitioner must explain the connection between the evidence and the petitioner’s assertions for it to be considered material. That the petitioner must prove the assessment is incorrect and prove what it seeks is correct.
40. The Petitioner does not identify any similar properties in which such a concrete area, as that under review in this appeal, was not assessed as a concrete patio. In failing to do so, the Petitioner failed to show that the subject property might have been treated differently than other similarly situated properties.
41. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley*, 704 N.E. 2d at 1113 (Ind. Tax 1998).
42. For all reasons set forth above, the Petitioner failed to meet his burden on this issue. No change in the assessment is made as a result.

ISSUE 2: Whether the classification of the 4’ x 28’ canopy roof extension is correct

43. The County originally valued this area as a concrete patio (196 square feet) with a roof extension (196 square feet). The County later corrected the measurements of the roof

extension to 112 square feet. This correction made by the County is not reflected in the values under review agreed to by the parties in this appeal.

44. The Petitioner contends the 4' x 28' roof extension over the lakefront patio was included with the roof of the dwelling as part of the original assessment of the home.
45. The Respondent contends the roof extension was inadvertently omitted at the time of the 1995 reassessment and that this error was corrected for 2000 payable 2001 assessment. Also, that the roof extension is correctly assessed in accordance with 50 IAC 2.2-7-5.
46. The statutes and rule (s) applicable to this issue are:

Ind. Code § 6-1.1-9-1

It states in part, "If a township assessor, county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from the assessment rolls or the tax duplicate for any year or years, the official or board shall give written notice of the assessment or increase in assessment."

50 IAC 2.2-7-2

Base area is determined by measuring the exterior of the residential dwelling unit for each full or partial floor. Base area does not include measurements for exterior features such as porches and stoops.

50 IAC 2.2-7-7.1(a)

It states in part, in data collecting the dwelling, the assessor records the outside dimensions of the building sufficient to compute the gross square foot ground area and to identify all additions to the building such as porches, canopies, decks, and other exterior features.

50 IAC 2.2-7-8.1(e)

The application of Schedule E involves the identification of the feature and the selection of the most representative price based on the descriptive criteria given.

50 IAC 2.2-7-11, Schedule E.2 – Exterior Features

Exterior Features pricing schedules based on 25 square foot intervals.

47. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The parties agreed there is a 4' x 28' roof extension (rather than a 7' x 28') roof extension over the lakefront patio, constructed with the original dwelling.
 - b. The subject's PRCs, for 1995 through 1999, indicate the roof extension was not valued as part of the subject dwelling's assessment. *Board's Exhibit A-6.*
 - c. The 2000 PRC (payable 2001) shows that the County added the omitted roof extension per a site visit to the subject property. *Board's Exhibit A-6.*

Analysis of ISSUE 2

48. The Petitioner contends the roof extension over the lakefront patio is included as part of the original dwelling assessment and therefore should not be valued.
49. The Respondent contends the roof extension was omitted from the assessment until a site visit was made to the subject property in 2000 (Board's Exhibit A-1). The Respondent adds that the roof extension consists of that portion of the roof that exceeds a 2-foot overhang that goes all around the dwelling.
50. As stated in 50 IAC 2.2-7-2, the base area of a residential dwelling is determined by measuring the exterior of the subject dwelling unit for each full or partial floor. Base area does not include the measurements for exterior features such as porches and stoops.

51. At the hearing, the parties agreed that the “roof extension” measured 4’ x 28’ or 112 square feet but disagreed as to whether it should or should not be assessed.
52. Other than the Petitioner’s conclusory statement that the “roof extension” was included as part of the original assessment of the home, no other evidence or documentation is submitted by the Petitioner to support his position. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119 (Ind. Tax 1998).
53. As stated in ¶ 22 through 27 under State Review and Petitioner’s Burden, the Board’s decision is based on the evidence presented. That the petitioner has a burden to submit “probative evidence” (evidence to prove or disprove a fact) demonstrating the alleged error. That the petitioner must present more than minimal amounts of evidence to prove its position. That the petitioner must explain the connection between the evidence and the petitioner’s assertions for it to be considered material. That the petitioner must prove the assessment is incorrect and prove what it seeks is correct.
54. The Petitioner does not identify any similar properties in which roof extensions were valued in any other manner than a roof extension. In failing to do so, the Petitioner failed to show that the subject property might have been treated differently than other similarly situated properties.
55. “Allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error.” *Whitley*, 704 N.E. 2d at 1119 (Ind. Tax 1998).
56. As stated in ¶ 51, the parties agreed that the “roof extension” measured 4’ x 28’ or 112 square feet. This measurement is not reflected on the County PRC (Board’s Exhibit C) for the values under review in this appeal. Hence, it is determined to correct the roof extension pricing to reflect 112 square feet.
57. The agreement between the Petitioner and the Respondent is a decision among these parties and the Board will accept the agreement. The Board’s acceptance should not be

construed as a determination regarding the propriety of the size of the roof extension agreed to by the parties.

58. For all reasons set forth above, the Petitioner failed in his burden to show that the “roof extension” was part of the original assessment and therefore should not be valued. However, due to the fact that the parties agreed to the size of the roof extension, that change will be made accordingly. A change in the assessment is made as a result.

ISSUE 3: Whether the detached garage is being double assessed by the County

59. The detached garage under review is of frame construction, 32’ x 48’, 10’ high, in “average” condition, built in 1988 and graded “C”.
60. The Petitioner contends the detached garage, that was added to the assessment rolls by the County in 2001, was originally built in 1988 and has been reflected in the improvement value of the tax statements since the date of construction. The Petitioner further contends that by adding this garage to the assessment, it results in a double assessment of the improvement.
61. The Respondent contends the detached garage was omitted from the assessment rolls from 1995 through 1999, until a site visit to the property in 2000 and, that it is assessed in accordance with 50 IAC 2.2-9-6, Schedule G.1 – Residential Yard Improvements, Detached Garages.
62. The statutes and rule (s) applicable to this issue are:
- Ind. Code § 6-1.1-9-1**
- It states in part: “If a township assessor, county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from the assessment rolls or the tax duplicate for any year or years, the

official or board shall give written notice of the assessment or increase in assessment.”

50 IAC 2.2-9-2(a) Data collection

The pricing schedules for residential yard and agricultural improvements consist of either whole dollar or square foot unit values. These improvements generally are detached from the dwelling and are recorded and priced separately in the “Summary of Improvements” section of the property record card. These schedules are applied by identifying the item and selecting the most representative price based on the descriptive criteria given.

50 IAC 2.2-9-6, Schedule G.1 – Residential Yard Improvements, Detached Garages

Detached garages pricing schedule.

63. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The detached garage is wood frame, 32’ x 48’, 10 foot high, with a concrete floor and built in 1988. *Dick testimony.*
 - b. The detached garage is not reflected on the 1995 through 1999 PRCs. The assessed values reflected on the PRCs for 1995 through 1996 are land: \$3,370, improvements: \$12,570, totaling: \$15,940. *Board Exhibit A-6.*
 - c. The Petitioner’s 1995 through 1999 tax statements reflect a gross value (assessed values) for taxes as follows: land: \$3,370, improvements: \$12,570, totaling \$15,940. *Petitioner’s Exhibit 1*

Analysis of ISSUE 3

64. The Petitioner testified the detached garage added to the assessment rolls in 2001 by the County, was originally built in 1988 and has been reflected in the improvement value on the tax statements since the date of construction.
65. The Respondent testified the detached garage was omitted from the assessment rolls from 1995 through 1999, until a site visit to the subject property in 2000.
66. The County's PRCs for 1995 through 1999 (Board's Exhibit A-6) indicate that the subject property was assessed for a dwelling and attached garage with the following assessed values being determined: land \$3,370 and improvements \$12,570.
67. The Petitioner's tax statements for 1995 through 1999 indicate the gross value (assessed value) of the subject property, that real property taxes were based upon was: land \$3,370 and improvements \$12,570.
68. A comparison of the two (2) sets of documents shows that the detached garage was not included in the assessment of the subject property during the 1995 to 1999 time frame. The Petitioner's tax statements show that the assessed value of the subject property did not change from year to year. That the only change made each year to the Petitioner's assessment was in the amount of taxes to be paid, which was based on the annually adopted tax rate by Noble Township. See Petitioner's Exhibit 1.
69. Other than the Petitioner's conclusory statement that the detached garage was included within the subject property's assessment, no other evidence or documentation is submitted by the Petitioner to support his position. In fact, evidence that was submitted by the Petitioner supports the position held by the Respondent that the detached garage was not valued until a site inspection of the property in 2000.

70. For all reasons set forth above, the Petitioner failed to meet his burden on this issue. Accordingly, no change in the assessment is made as a result.

ISSUE 4: *Whether the land value is excessive*

71. The Petitioner contends that he is being assessed at a higher per square foot value for his land than his neighbors are for their land, thus resulting in an excessive land value.
72. The Respondent contends that the platted lots within the subject subdivision are being assessed on a \$65 per front foot basis based upon their amount of lake frontage. The Respondent further contends that the land is being assessed in accordance to 50 IAC 2.2-4.
73. The statutes and rule (s) applicable this issue are:

50 IAC 2.2-4-2

Determines the members of the county land valuation commission (commission) and that the commission shall establish base rates that reflect the January 1, 1991, value of residential, agricultural homesite, commercial and industrial land.

50 IAC 2.2-4-4, Land value maps & 50 IAC 2.2-4-5, Methods of evaluating sales information

These sections contain procedures to be used by the county land valuation commissions to establish land values.

50 IAC 2.2-4-6, Unit values

Unit values or base rates are units of measurement used in the assessment calculation process. The commission determines which of the four (4) types of unit values are appropriate for valuing the different types of land in the county - front foot, square foot, acreage, and site value.

50 IAC 2.2-4-6(a)(1) – Front foot value

Front foot value is a whole dollar amount applied to the most desirable frontage of a parcel. For a residential parcel on a lake, front footage along the lake is of primary importance. The front foot method is appropriate because the front footage of the parcel has the greatest influence on the land's value.

50 IAC 2.2-4-8, & -9 Platted lots

These sections contain procedures for assessing platted lots depths and effective frontages.

50 IAC 2.2-4-10, Platted lots; property record card calculations

Land data and computing the true tax value of each platted lot using the following terms: “land type”, “actual frontage”, “effective frontage”, “effective depth”, “depth factor”, “base rate”, “adjusted rate”, “extended value”, “influence factor”, “true tax value”, and “total true tax land value”.

50 IAC 2.2-4-11 Platted lots; front foot values

Steps to calculating the front foot values for each lot in a geographic area.

50 IAC 2.2-4-12, Platted lots; influence factors

When the commission establishes base rates for a geographic area, it establishes rates for the normal lot. Often there are conditions peculiar to certain lots within a geographic area that must be analyzed on an individual basis. These conditions require the assessor to make an adjustment to the value of the lot. This adjustment is an influence factor. An influence factor represents the composite effect that influences the value of certain lots within the boundaries of an entire geographic area.

74. Evidence and testimony considered particularly relevant to this determination include the following:

- a. The Noble County Land Valuation Order (Land Order) established the subject's area (Loon Lake) on a front foot basis of \$65 per front foot. *Respondent Exhibit 4.*
- b. A plat of the subject area indicates that the subject property, Larry Esterline's property and Jim Gibson's property have frontage on the lake. *Respondent Exhibit 2.*
- c. The PRCs for Larry Esterline, Jim Gibson and the subject properties indicate that these properties are located in the Cedar Island Subdivision and valued on a front foot basis. The property record card for the Timothy Brower property indicates that the property is located north of the subject property and is not within the Cedar Island Subdivision. Furthermore, the Brower property is assessed on a residential acreage basis. *Respondent's Exhibit 3.*

Analysis of ISSUE 4

75. The Petitioner argues that his price per square foot for his land is higher when compared to his neighbor's properties and therefore results in an excessive land value. The Petitioner determined that his land was valued at \$0.42 per square foot.
76. In support of his position, the Petitioner opines that Mr. Esterline's property is assessed at \$0.39 per square foot and Mr. Gibson's property is assessed at \$0.24 per square foot (see Board's Exhibit A). The Petitioner added, that Mr. Brower, who owns 1- $\frac{3}{4}$ acres of land, is valued on an acreage basis, which is inconsistent with the other property in the neighborhood.
77. Though the properties in question are valued on a front foot basis by the commission, the Petitioner makes his comparison based on his determination of the square footages of the lots. At no time does the Petitioner argue that the front foot value assigned by the Noble County Land Valuation Commission for Noble Township is incorrect. Instead the

Petitioner attempts to make an analysis based on an entirely different type of unit of measurement than was used by the commission.

78. 50 IAC 2.2-4-4(c) states, that the commission shall delineate general geographic areas, subdivisions, or neighborhoods based on characteristics that distinguish a particular geographic area, subdivision, or neighborhood from the surrounding area. The basis for delineation is things such as range of improvement values, zoning, restrictions on land use, and natural geographic features such as waterways, lakes, major roads or streets.
79. 50 IAC 2.2-4-6 describes the four (4) types of units of measurement used in the assessment of land – front foot, square foot, acreage, and site value. In the case at bar, the commission determined to use the front foot basis as the measure of value for the lots within this area (Cedar Island Subdivision).
80. Front foot value is a whole dollar amount applied to the most desirable frontage of a parcel. For a residential parcel on a lake, front footage along the lake is of primary importance. The front foot method is appropriate because the front footage of the parcel has the greatest influence on the land's value. 50 IAC 2.2-4-6(a)(1).
81. The use of a front foot basis to value land under review in this appeal does not mean that the lots are of equal size. It means the commission determined that the most desirable, most important and having the greatest influence to value for a particular lot, was not the size but that which the lot fronted. In the case at bar, it is that which fronts the lake.
82. Clearly, upon review of the PRCs the lots that the Petitioner deems comparable are not of the same size. The comparable properties presented by the Petitioner show that the properties are all being valued using a \$65 per front foot base rate (except for the Brower property) with Mr. Gibson's and the subject properties receiving negative influences factors for excess frontage and shape and size. The purported comparables vary in

amounts of actual frontage, effective frontage, effective depth and the depth factors applied. *See Board's Exhibit A & Respondent's Exhibit 3.*

83. For example Mr. Esterline's property indicates his lot has 43 feet and 63 feet of frontage, Mr. Gibson's lot has 53 feet, 96 feet, 321 feet, 44 feet and 39 feet of frontage, whereas the subject property has 60 feet, 48 feet and 55 feet of frontage. In addition, a review of Respondent's Exhibit 2 shows that lots fronting the lake vary from 27 feet to 143 feet in depth.
84. In addition, the Petitioner submitted Mr. Brower's property, valued on an acreage basis, as a comparable. It is the Petitioner contention that this lot shows an inconsistent pricing within the neighborhood.
85. Upon review of Mr. Brower's PRC it indicates the property is not platted within the Cedar Island Subdivision as the other lots are, and is being valued using rural residential acreage pricing as opposed to a front foot rate. Thus indicating that another section of the Land Order is in use for Mr. Brower's property.
86. It is not enough for the Petitioner to select what he would consider an appropriate analysis to value without explaining why such an analysis is correct or how the existing mode of valuation is incorrect. Comparing what one may pay in real property taxes to what another may pay is an acceptable method of comparison if all characteristics of the properties are identical. The Petitioner is required to present probative evidence that the purported comparable properties are, in fact, comparable to the subject property. The Petitioner's conclusory statements that the properties are comparable do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
87. The Petitioner did not present facts that demonstrated that the system prescribed by statute and regulations was not properly applied to the assessment against the subject property. *See Town of St. John V.*

88. For all reasons set forth above, the Petitioner failed to meet his burden regarding the land value. No change in the assessment is made as a result.

ISSUE 5: *Whether the dwelling value is overstated*

89. The Petitioner contends smaller homes are priced higher per square foot than larger homes. Therefore in comparing the subject dwelling to the neighbors' dwellings, the subject dwelling is excessive.
90. The Respondent contends that the subject dwelling is being assessed in accordance with 50 IAC 2.2-7.
91. The applicable rule (s) governing this issue are:
- 50 IAC 2.2-7**
- This section contains the procedure for data collection (measuring), grading and pricing of residential dwellings.
- 50 IAC 2.2-7-11**
- This section contains the reproduction cost schedules used to determine the reproduction costs for residential dwellings.
92. Evidence and testimony considered particularly relevant to this determination include the following:
- a. Based on the Petitioner's responses to questions asked by the ALJ, the Petitioner verified that the components of the dwelling (such as bathrooms, fireplaces, patios, and square footages) are accurate as shown or as corrected by the Assessor on the subject's PRC.
 - b. The Petitioner testified that the comparable properties submitted vary in square footage and are not identical to the subject.

Analysis of ISSUE 5

93. The Petitioner contends that smaller homes are priced higher per square foot than larger homes. The Petitioner concludes that upon comparison of the subject dwelling's value to that of neighbor's dwellings the subject dwelling's value is excessive.
94. The cost tables in the Regulation are at the heart of the true tax value's method for determining value. The cost schedules effective for the 1995 general reassessment reflect 1991 reproduction costs based on market information derived from *Marshall Valuation Service* price tables. 50 IAC 2.2, Forward at I; *Town of St. John III* at 373, n. 5.
95. When assessing a property the assessor must first record the physical characteristics of the building, second select the base prices based on the size of the dwelling, type of exterior walls, and number of story heights. Next adjust the dwelling for additional components such as fireplaces, air conditioning and exterior features. Then a grade and design factor is applied to determine the dwelling reproduction cost. Finally, physical depreciation based on the age and condition of the dwelling is applied to the reproduction cost to determine the true tax value dwelling. 50 IAC 2.2-7-7.1, -8.1, -9, -11.
96. During the hearing, the Petitioner and the ALJ reviewed the various features of the subject dwelling as shown on the PRC. The Petitioner testified that the physical features attributed to the subject dwelling, (such as patios, bathrooms, fireplaces, attached garage, etc.) were correct as shown on the PRC. A review of these features indicates that the assessment of the improvement was done in accordance with the procedures prescribed in 50 IAC 2.2-7.
97. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in assessment. However, the Petitioner did not identify properties that are similarly situated to the

property under appeal, as the comparable properties submitted varied in size (square footage), physical attributes (plumbing fixtures, exterior features, building configuration), year of construction, and grade factor applied. Therefore, the Petitioner did not establish disparate tax treatment between the subject and other similarly situated properties.

98. Other than the Petitioner making conclusory statements based on a comparison of dissimilar properties, no other evidence or documentation was submitted by the Petitioner to support his position. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
99. For all reasons set forth above, the Petitioner failed to meet his burden regarding this issue. No change in the assessment is made as a result.

Other Findings

100. At the hearing, the subject PRC was reviewed by the Petitioner and the ALJ for accuracy. Though the Petitioner testified that the dwellings measurements should be 28' x 50' (1,400 square feet) with the patio as an add-on (exterior feature) and not as a deduction from the square footage of the home, the Board will not use its discretion and make a change based on this admission. The square footage of the dwelling was not an issue listed on the Form 131 petition by the Petitioner. Therefore there is no change in the assessment as a result.

Summary of Final Determinations

Determination of Issue 1: *Whether the classification of the 8' x 30' concrete patio is correct*

101. No change in the assessment is made as a result of this issue.

Determination of Issue 2: Whether the classification of the 4' x 28' canopy roof extension is correct

102. The Petitioner failed in his burden to show that the “roof extension” was part of the original assessment and therefore should not be valued. However, due to the fact that the parties agreed to the size of the roof extension, that change will be made accordingly. A change in the assessment is made as a result.

Determination of Issue 3: Whether the detached garage is being double assessed by the County

103. The Petitioner failed in his burden to show that he was being double assessed as it pertained to a detached garage. No change in the assessment is made as a result of this issue.

Determination of Issue 4: Whether the land value is overstated

104. The Petitioner failed in his burden to show that the front foot base rate assigned to his land was incorrect. No change in the assessment is made as a result of this issue.

Determination of Issue 5: Whether the dwelling value is overstated

105. The Petitioner failed in his burden to show that the assessment of his dwelling did not follow the guidelines prescribed in 50 IAC 2.2. No change in the assessment is made as a result of this issue.

The above stated findings of fact and conclusions of law are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this _____ day of _____, 2002.

Chairman, 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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.