

REPRESENTATIVE FOR RESPONDENT:  
Marilyn S. Meighen, Meighen & Associates, P.C.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Jeffrey C. and Deborah Schleutker, )	Petition No: 29-005-06-1-5-00035
)	
Petitioners )	Parcel No: 1410250300008000
)	
v. )	
)	County: Hamilton
Hamilton County Assessor, )	Township: Delaware
)	
Respondent. )	Assessment Year: 2006

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

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**July 29, 2008**

**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. Pursuant to Ind. Code § 6-1.1-15-1, Jeffrey C. and Deborah L. Schleutker (Petitioners) filed a Form 131 Petition for Review of Assessment on December 19, 2007, petitioning the Board to conduct an administrative review of the above petition. The Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on November 28, 2007.

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. 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 Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on May 14, 2008, in Noblesville, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Jeffrey C. Schleutker, owner

For the Respondent:

Debbie Folkerts, Hamilton County Assessor

Chad Miller, Director of Real Estate, Delaware Township

5. The Petitioners presented the following evidence:

Petitioner Exhibit 1 – Allstate Insurance Company Deluxe Plus Homeowners Policy Declarations, dated December 22, 2006, to December 22, 2007,

Petitioner Exhibit 2 – Allstate Insurance Company Deluxe Plus Homeowners Policy Declarations, dated December 22, 2005, to December 22, 2006,

Petitioner Exhibit 3 – Zenith Appraisals' Mission Statement, Introduction, Biography and Qualification, Shannon Madden's

Residential Appraiser License, and E & O Insurance issued by General Star National Insurance Company,  
Petitioner Exhibit 4 – Letter from Shannon Madden, Zenith Appraisals to Jeffrey Schleutker, dated April 21, 2008,  
Petitioner Exhibit 5 – Qualifications of Shannon Madden,  
Petitioner Exhibit 6 – Appraisal of Real Property prepared by Zenith Appraisals, dated May 23, 2007.

6. The Respondent presented the following evidence:

Respondent Exhibit 1 – Sales Disclosure Form for Parcel No. 14-11-30-00-00-027.000, dated January 21, 2005,  
Respondent Exhibit 2 – Property record cards for Parcel Nos. 1410250300018000 and 1410250300015000 and a Sales Disclosure Form for the properties, dated February 28, 2006,  
Respondent Exhibit 3 – Property record cards for Parcel Nos. 1411300000034000, 1411300000035000 and 1411300000036000 and a Sales Disclosure Form for the properties, dated September 29, 2004,  
Respondent Exhibit 4 – Plat map and aerial map of the neighborhood,  
Respondent Exhibit 5 – Multiple listing sheet for 7410 East 106<sup>th</sup> Street, Fishers, Indiana, dated November 13, 2006,  
Respondent Exhibit 6 – Property record card and multiple listing sheet for 7902 East 126<sup>th</sup> Street, Fishers, Indiana, dated March 15, 2007,  
Respondent Exhibit 7 – Property record card and multiple listing sheet for 8100 East 126<sup>th</sup> Street, Fishers, Indiana, dated March 28, 2007,  
Respondent Exhibit 8 – Property record card and multiple listing sheet for 8410 East 126<sup>th</sup> Street, Fishers, Indiana, dated June 1, 2005.

7. 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 March 13, 2008,  
Board Exhibit C – Hearing sign-in sheet,

8. The subject property is a 2,808 square foot single-family home on 3.911 acres located at 8000 East 126<sup>th</sup> Street, Fishers, Delaware Township in Hamilton County.

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

10. For 2006, the PTABOA determined the assessed value of the property to be \$108,300 for the land and \$265,300 for the improvements, for a total assessed value of \$373,600.
11. For 2006, the Petitioners requested that the property be assessed for \$100,000 for the land and \$235,000 for the improvements, for a total assessed value of \$335,000.

### **JURISDICTIONAL FRAMEWORK**

12. 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 Ind. 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**

13. 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 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. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*,

803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

### PETITIONERS' CONTENTIONS

16. The Petitioners contend that the subject property is assessed in excess of its market value-in-use. *Schleutker testimony*. According to the Petitioners, the property is worth no more than \$335,000. *Id*. In support of their position, the Petitioners submitted an appraisal and homeowner's insurance information. *Petitioner Exhibits 1, 2 and 6*.
17. The Petitioners first submitted an appraisal report prepared by Shannon Madden of Zenith Appraisals, LLC. *Petitioner Exhibit 6*. Ms. Madden is an Indiana Licensed Residential Appraiser. *Petitioner Exhibit 3*. Using the sales comparable method of valuation, Ms. Madden estimated the market value-in-use of the subject property at \$340,000 as of May 23, 2007. *Schleutker testimony; Petitioner Exhibit 6*. In addition, although Ms. Madden did not perform a cost approach valuation, the appraiser determined the value of the land to be \$100,000. *Id*.
18. The Petitioners also presented their homeowner's insurance policy declarations as evidence their property is over-valued. *Petitioner Exhibits 1 and 2*. According to the Petitioners, the declarations show that their home was insured for an estimated replacement cost of \$226,000, as of December 22, 2005, and \$235,000, as of December 22, 2006. *Id*. The Petitioners argue that adding the dwelling's estimated replacement cost for 2006 of \$226,000, to the \$108,300 assessed value assigned to the land by the Township Assessor results in a value of \$334,300. *Schleutker testimony*. Similarly, if the appraisal's land value of \$100,000 is added to the 2006 estimated replacement cost of \$226,000, the value of the subject property is \$326,000. *Id*. Thus, the Petitioners conclude, their requested value of \$335,000 is a fair value for the assessment year of 2006. *Id*.

## RESPONDENT'S CONTENTIONS

19. The Respondent contends the subject property is valued correctly based on the sales of comparable properties. *Meighen argument*. In support of its assessment, the Respondent presented information on a comparable property located at 8410 126<sup>th</sup> Street. *Respondent Exhibit 8; Miller testimony; Meighen argument*. According to the Respondent, the comparable property is located on four acres, which is only slightly larger than the Petitioners' 3.91 acres. *Id.* The house on the comparable property is a 2,258 square foot dwelling with an attached garage, a utility shed and a detached garage. *Id.* The subject property is 2,943 sq.ft. with a three car attached garage. *Id.* Finally, the comparable property is 16 years older than the subject property. *Id.* Thus, the Respondent contends, the subject property is comparable to, if not slightly better, than the property at 8410 126<sup>th</sup> Street. *Meighen argument*. The comparable property sold on June 15, 2005, for \$400,000 and again on November 7, 2007, for \$430,000. *Respondent Exhibit 8*. Therefore, the Respondent argues, the subject property's \$373,600 assessment is fair. *Meighen argument*.
20. In addition, the Respondent submitted two sales of nearby properties that sold around the time of the Petitioners' appraisal, to show that the subject property's assessment is a reasonable reflection of the property's market value in use. *Meighen argument*. The Respondent's first comparable property is a 1,744 sq.ft. house and utility shed located on 2.417 acres that sold for \$253,000, or \$145 per square foot on March 20, 2007. *Respondent Exhibit 6; Miller testimony*. The second property is a 2,080 sq.ft. house on 2.1 acres that sold for \$308,650, or \$148 per square foot on April 19, 2007. *Respondent Exhibit 7; Miller testimony*. Thus, the Respondent concludes, the subject property's assessment of \$133 per square foot is reasonable. *Id.*
21. The Respondent further argues that the Petitioners' valuation evidence is not probative of the property's value. *Meighen argument*. According to the Respondent, the Petitioners' appraisal and insurance declarations are outside the statutory valuation date of January 1, 2005, for the 2006 tax year. *Id.* The Respondent contends that the Indiana Tax Court in

*Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005) and *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90 (Ind. Tax Ct. 2006), clearly stated that a person has to present evidence of the property's value on the valuation date or, where evidence is presented outside the valuation date, the person has to submit probative evidence that trends the property value back to the valuation date. *Id.* The Respondent argues that the Petitioners have not offered any evidence to show how their 2007 appraisal or 2006 insurance declarations relate to or reflect the property's market value-in-use as of January 1, 2005. *Id.*

22. In addition, the Respondent argues, the Petitioners' appraisal is not credible evidence. *Meighen argument.* According to the Respondent, the Zenith appraisal and supplemental letter dated April 21, 2008, contradict each other. *Meighen argument.* For example, the letter details the importance of an interior inspection, but the appraisal has no interior photographs and lists the sources of data as the assessor and exterior inspections. *Miller testimony; Id.* Similarly, the letter states that the property lacked maintenance, however, in the appraisal there is no mention of any such problems. *Id.* Also, the Respondent argues, comparable sale number one in the Zenith appraisal was an estate sale and the photograph clearly shows it is not a ranch style home. *Respondent Exhibit 5; Miller testimony; Meighen argument.*
  
23. Finally, the Respondent argues, the appraiser's adjustments are unsupported and not reliable. *Meighen argument.* According to the Respondent, the appraiser used five comparable sales with lots ranging from 1.44 acres to 3.91 acres in size. *Petitioner Exhibit 6.* The Petitioners' appraiser applied an adjustment of \$5,000 to \$7,500 to the comparable properties which is approximately \$2,500 per acre. *Miller testimony; Meighen argument.* The Respondent argues, however, that sales disclosures show that land in the area was selling from approximately \$24,844 to \$72,500 per acre in 2004 and 2005. *Respondent Exhibits 1 and 2.* In 2008, close to the time of the appraisal, land was selling from \$60,559 to \$103,333 per acre. *Respondent Exhibits 2 and 3.* Therefore, the

Respondent contends, the appraiser's adjustment to the comparable land in the appraisal is inadequate. *Id.*

#### ANALYSIS

24. Real property is assessed based on its "true tax value," which means "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, for the property." Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual's definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Regardless of the method used to show a property's market value-in-use, however, a 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Petitioners who present evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of January 1, 2005. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  
25. Here, the Petitioners submitted an appraisal prepared by an Indiana licensed appraiser valuing the property at \$340,000 as of May 23, 2007. *Petitioner Exhibit 6*. The appraiser attested that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices. *Id.* The Petitioners' appraisal, however, is substantially removed from the January 1, 2005, valuation date. The Petitioners did not present any evidence that valued the property as of the statutory valuation date as required by *Long*. Nor did they present any evidence of how their May 23, 2007, appraised value related to the January 1, 2005, valuation date. Thus, the Petitioners failed to raise a prima facie case that the property's assessed value is in error.

26. In addition, the Petitioners argue that their 2006 and 2007 homeowner’s insurance policy declarations on the subject dwelling, when added to the township’s assessed value for the land, support their requested value. *Schleutker testimony*. The insurance documents, dated December 22, 2005, and December 22, 2006, are similarly removed from the statutory valuation date of January 1, 2005. More importantly, while the insurance renewal declarations estimate the replacement cost of the improvements, they do not explain how the estimates were calculated. *Petitioner Exhibits 1 and 2*. The insurance renewal declarations therefore amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998). In fact, the declarations caution that the estimates may not be accurate. According to the policies, the limits “may not provide sufficient coverage in the event of a loss.” *Petitioner Exhibit 1*. The Petitioners therefore failed to present probative evidence in support of their contentions.
27. Where a petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221 – 1222 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

28. The Petitioner failed to establish a prima facie case. The Board finds in favor of the Respondent.

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

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

\_\_\_\_\_  
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>.**