

REPRESENTATIVE FOR PETITIONER:

Rabon Sullivan, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Robert W. Metz, Lake County Deputy Assessor

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                       |   |                  |                          |
|-----------------------|---|------------------|--------------------------|
| Rabon Sullivan,       | ) | Petition No.:    | 45-001-07-1-5-00012      |
|                       | ) |                  |                          |
| Petitioner,           | ) |                  |                          |
|                       | ) | Parcel No.:      | 45-08-31-227-002.000-001 |
| v.                    | ) |                  |                          |
|                       | ) |                  |                          |
| Lake County Assessor, | ) | County:          | Lake                     |
|                       | ) |                  |                          |
| Respondent.           | ) | Assessment Year: | 2007                     |

---

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

---

**May 6, 2013**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has 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 Petitioner's property was over-valued for the 2007 assessment year.

### **PROCEDURAL HISTORY**

2. The Petitioner initiated his 2007 assessment appeal by filing a request for a preliminary conference in September of 2007.<sup>1</sup> The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its assessment determination on February 9, 2012.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on March 19, 2012, petitioning the Board to conduct an administrative review of the property's 2007 through 2011 assessments. The Board only addresses the Petitioner's 2007 appeal in this Final Determination, however, because the 2007 appeal was the only appeal noticed by the Board and the only year addressed at the administrative hearing.

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

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Ellen Yuhan, held a hearing on March 4, 2013, in Crown Point, Indiana.
5. The following persons were sworn in at the hearing:  
For the Petitioner:  
Rabon Sullivan, property owner,

---

<sup>1</sup> According to a letter from the Calumet Township Assessor's Office dated September 28, 2007, the Petitioner timely filed his appeal for the subject property. The Petitioner also submitted a Form 130 for the 2008 assessment year; however, neither a Form 115 nor a Form 131 was filed for the 2008 assessment year.

For the Respondent:

Robert W. Metz, Lake County Deputy Assessor.

6. The Petitioner did not present any exhibits at the hearing; however, Mr. Sullivan requested that all of the attachments to his Form 131 petition be entered into evidence. As a result, the following attachments are entered into evidence: Notice of Stipulated Agreement and Order of Dismissal for the 2002 assessment year dated April 18, 2005; Appraisal Report of vacant land located at 3225 45<sup>th</sup> Street, Gary, Indiana, as of May 4, 2011; Form 115 Notification of Final Assessment Determination for the 2007 assessment year dated February 9, 2012; letter from Margot Miller with the Lake County PTABOA dated January 24, 2012; screen shot of “MLS Readouts”; Form 130 Petition for Review of Assessment for the 2008 assessment year; letter from the Calumet Township Assessor’s Office dated September 28, 2007; and a notice of hearing from the Calumet Township Assessor’s Office.
7. The Respondent presented the following exhibits:
  - Respondent Exhibit A – Sales report generated from “iDox” for “Neighborhood 102 for 2005,”
  - Respondent Exhibit B – Sales report from Greater North-West Indiana Board of Realtors concerning vacant land.
8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
  - Board Exhibit A – Form 131 Petition with attachments,
  - Board Exhibit B – Notice of Hearing, dated January 11, 2013,
  - Board Exhibit C – Hearing sign-in sheet.
9. The subject property is a vacant residential lot located at 3225 West 45<sup>th</sup> Avenue, in Gary, Indiana.
10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2007, the Lake County PTABOA determined the assessed value of the land to be \$15,400.
12. For 2007, the Petitioner contends the assessed value of the land should be \$5,000.

### **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, (3) property tax exemptions, and (4) property tax credits 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.

### **PARTIES' CONTENTIONS**

14. The Petitioner contends that the assessed value of his property was over-stated for the 2007 assessment year. The Petitioner presented the following evidence in support of his contention:

- A. The Petitioner contends that his property was over-assessed in 2007 based on its appraised value. *Sullivan argument*. In support of this contention, the Petitioner presented an appraisal report prepared by Thomas J. Serratore, an Indiana certified residential appraiser, which was completed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Attachment to Board Exhibit A*. According to the appraisal, the subject property was valued at \$5,000 as of May 4, 2011, using the sales comparison approach to value. *Id.* Mr. Sullivan states that he had an earlier appraisal completed on the subject property that valued it at \$7,000, but he no longer has a copy of this appraisal. *Sullivan testimony*. According to Mr.

Sullivan, this has been an ongoing process ever since the State re-evaluated the subject property in 2005. *Id.*

B. The Petitioner testified that he has spoken to four different realtors, each of which informed him they would not be able to sell his property for its assessed value. *Sullivan testimony.* According to Mr. Sullivan, he would not be able to sell the property “for more than \$5,000 or \$6,000.” *Id.* Further, Mr. Sullivan argues he “can’t even get anybody to go out there and put up a for sale sign.” *Id.*

C. Mr. Sullivan further contends that his property is negatively affected by other circumstances as well. *Sullivan testimony.* Mr. Sullivan testified that the size of his property has decreased because the county took a portion of the land to widen the street. *Id.* Further, Mr. Sullivan stated that there is a commercial parcel where a church is located on the east side of his property. *Id.* According to Mr. Sullivan, when the church was built, the ground was raised; so “you can never build anything there in the situation it’s in, unless you fill all this in for about half of that thing.” *Id.* Finally, Mr. Sullivan argues that his property is not located in a good neighborhood. *Id.*

15. The Respondent contends that the subject property is assessed correctly. The Respondent presented the following evidence in support of the assessment:

A. The Respondent’s representative, Mr. Metz, contends that sales of similar properties support the subject property’s assessed value. *Metz testimony.* In support of this contention, the Respondent’s representative presented a list of sales in “neighborhood 102” and a vacant land sales report from the Multiple Listing Service (MLS). *Respondent Exhibits A and B.* According to Mr. Metz, the subject property’s assessed value falls within the neighborhood range and, in fact, the sales show that the property’s 2006 assessed value may have been too low. *Metz testimony.*

- B. Mr. Metz contends that the Petitioner's appraisal offers sales that are outside of the relevant time period, and the appraisal's valuation date of May 4, 2011, is too far removed because the assessment year on appeal is 2007. *Metz testimony*.
- C. Mr. Metz argues that if the characteristics of the property changed because the state took part of the parcel, the Petitioner needed to inform the assessor's office. *Metz argument*. According to Mr. Metz, the state does not always record its deeds; so the assessor's office has no way of knowing that the property has changed. *Id.* Mr. Metz conceded that such changes could have impacted the value of the subject property. *Id.*

### **BURDEN OF PROOF**

16. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong 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). Pursuant to Indiana Code § 6-1.1-15-17.2, however, the burden of proof shifts to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. In the present case, the parties agreed that the subject property's assessment increased from \$14,200 in 2006 to \$15,400 in 2007, representing an increase of 8.45%. The Respondent, therefore, has the burden of proving the property's 2007 assessment was correct. To the extent that Mr. Sullivan seeks an assessment below the previous year's level, however, Mr. Sullivan has the burden of proof.

### **ANALYSIS**

17. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines 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.” MANUAL at 2. Thus, a party’s evidence in a tax appeal must be consistent with that standard. *Id.* A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) will often be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

18. Regardless of the method used to prove a property’s value, each 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.
  
19. Here, the Respondent’s representative contends that the subject property was properly valued for 2007 based on the sales of comparable properties. *Respondent Exhibits A and B*. In making this argument, Mr. Metz essentially relies on a sales comparison approach to establish the market value-in-use of the property. *See* MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”) In order to effectively use the sales comparison approach as evidence in a property assessment appeal however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

20. In support of his contention, Mr. Metz submitted “iDox sales information” for properties in Griffith, Merrillville and Gary that sold in 2005. Mr. Metz also presented MLS sales information for sales in Gary and Griffith that occurred in 2005 and 2006. Mr. Metz testified that the subject property was valued in the range of these sales. Mr. Metz, however, made no attempt to show how the properties were similar or how the properties differed; he only showed that they were all vacant land sales. But whether properties are similar enough to be considered “comparable” depends on a number of factors including the size, shape, topography, accessibility and use of the properties. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972) (“One need only examine the multitudinous factors which make separate tracts of land similar or dissimilar to realize that the variation in the character of land is limitless. No two tracts of land are identical”). And in fact, the sales presented by the Respondent’s representative ranged from \$100 to \$155,000 – which suggests that the properties differed substantially. The Board, therefore, finds that the Respondent failed to raise a prima facie case that the Petitioner’s property was correctly valued for the 2007 assessment year.
21. Because the Respondent failed to raise a prima facie case, the property’s 2007 assessment must be reduced to the previous year’s assessed value of \$14,200 under Indiana Code § 6-1.1-15-17.2. The Petitioner, however, requested an assessed value of \$5,000 for the 2007 assessment year. As explained above, the Petitioner has the burden of proving that he is entitled to any additional reduction. The Board therefore turns to Mr. Sullivan’s evidence.
22. The Petitioner contends that the subject property’s value for the 2007 assessment year should have been \$5,000. *Sullivan testimony*. In support of this contention, Mr. Sullivan submitted an appraisal prepared by Thomas J. Serratore that estimated the value of the property to be \$5,000 as of May 4, 2011. *Attachment to Board Exhibit A*. The appraiser attested that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Id.* An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property’s assessment is incorrect. *See Meridian Towers*, 805 N.E.2d at 479.



Here, however, the appraisal valued the Petitioner's property more than five years after the relevant valuation date. Neither the appraiser, nor Mr. Sullivan, attempted to explain how the appraisal related to the subject property's market value-in-use as of January 1, 2006. The appraisal therefore lacks probative value. *See Long* 821 N.E.2d at 471 (holding that an appraisal that estimated a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

23. Mr. Sullivan also contends that several issues negatively affect his property's value. According to Mr. Sullivan, his property is smaller now than it had previously been because the government took a portion of it in order to widen the road. Mr. Sullivan, however, did not present any evidence indicating when the government took a portion of his property; nor did he present any evidence that the taking affected the use of the remainder of the property.
24. Mr. Sullivan also contends that the construction of a church on an adjacent lot negatively affected his property because his land is now lower than the church property and it would require fill in order to build on it. Further, Mr. Sullivan contends the subject property's neighborhood is in decline. But while Mr. Sullivan testified these conditions "negatively impacted" the market value of the property under appeal, he presented little evidence of the property's market value-in-use as of the March 1, 2007, assessment date.
25. Finally, Mr. Sullivan presented a settlement agreement with the Department of Local Government Finance for the March 1, 2002, assessment date, valuing the subject property at \$5,000. However, that agreement is not probative evidence that future assessments should be \$5,000 for the property. First, each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.* More importantly, the 2002 value was based on an agreement reached with the Department of Local Government Finance settling the Petitioner's 2002 appeal. Indiana's Supreme Court has held that

“[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount.” *Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). The strong policy justification for denying settlements precedential effect in a property tax case is that allowing parties to use the settlement would have a chilling effect on the incentive of the parties to resolve cases outside of the courtroom. *Id.* at 1228. Thus, the Petitioner failed to prove that his assessment for the March 1, 2007, assessment year should be based on its negotiated 2002 assessed value.

### CONCLUSION

26. The Respondent failed to raise a prima facie case that the subject property was correctly assessed for the March 1, 2007, assessment year. Therefore, the March 1, 2007, assessment for the Petitioner’s property must be returned to the previous year’s level of \$14,200. The Petitioner, however, failed to show that the property’s 2007 value should be any lower than the previous year’s value.

### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the property’s March 1, 2007, assessed value should be reduced to \$14,200.

---

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 under 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 Indiana 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/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.