

REPRESENTATIVE FOR PETITIONER:

Mary E. Walters, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Lisa M. Downey, White County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mary E. Walters,	)	Petition No.:	91-021-06-1-5-00070
)		
Petitioner,)		
	)	Parcel No.:	021-29640-00
v.)		
	)	County:	White
White County Assessor,	)	Township:	Union
)		
Respondent.	)	Assessment Year:	2006 ¹

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

March 11, 2011

FINAL DETERMINATION

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

¹ The Petition purports to appeal both the property's 2005 and 2006 assessments. However the Petitioner's Application for a Deduction on Assessment on Rehabilitated Property – Form 322 shows Ms. Walters requested the deduction effective for March 1, 2006, and the Form 115, Notification of Final Assessment Determination, shows that the PTABOA acted upon the Form 322 for the March 1, 2006, assessment date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board is whether the Petitioner's property is entitled to a deduction from the property's assessed value as a "rehabilitated residential property" pursuant to Indiana Code § 6-1.1-12-18 or Indiana Code § 6-1.1-12-22.

Procedural History

2. The Petitioner, Mary E. Walters, filed a Form 322, Application for a Deduction on Assessment on Rehabilitated Property, with the White County Auditor on April 20, 2005. The White County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on April 4, 2008. The Petitioner filed a Form 131 petition with the Board to conduct an administrative review of the PTABOA's decision on May 5, 2008.²

Hearing Facts and Other Matters of Record

3. The Board held an administrative hearing on December 2, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Mary E. Walters, property owner
Charles W. Heiny, White County Deputy Auditor

² The Petitioner elected to have her case heard according to the Board's small claim procedures.

For the Respondent:

Lisa M. Downey, White County Assessor

5. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1 – Indiana Code § 6-1.1-12-18 through § 6-1.1-12-25.5,

Petitioner Exhibit 2 – Application for a Deduction on Assessment on Rehabilitated Property – Form 322, dated April 20, 2005,

Petitioner Exhibit 3 – The subject property’s 1989 property record card,

Petitioner Exhibit 4 – Indiana Historic Sites and Structures Inventory for White County,

Petitioner Exhibit 5 – Repair receipts,

Petitioner Exhibit 6 – Eleven photographs of the house on appeal,

Petitioner Exhibit 7 – Letter from Brandt Hershman, State Senator, District 7, to Bob Wente, Commissioner, Indiana Board of Tax Review, dated November 17, 2010.

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1 – The subject property’s 2004 and 2005 property record cards,

Respondent Exhibit 2 – The subject property’s 2006 property record card,

Respondent Exhibit 3 – Application for a Deduction on Assessment on Rehabilitated Property – Form 322, dated April 20, 2005.

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

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing on Petition,

Board Exhibit C – Hearing sign-in sheet.

8. The subject property is a two-family house with a detached garage located at 210 South Bluff Street, Monticello, in Union Township, White County.³

³ The County’s 2006 property record card shows the property is assessed as a single-family residence with a detached garage. *Respondent Exhibit 2*.

9. The ALJ did not conduct an on-site inspection of the property.
10. For 2006, the PTABOA determined the assessed value of the property to be \$23,700 for the land and \$56,100 for the improvements, for a total assessed value of \$79,800.
11. The Petitioner did not request a change in assessed value on her Form 131. Ms. Walters contends her primary issue is that she should be granted a deduction from her property's assessed value in the amount of \$33,700 for rehabilitating her property.

Jurisdictional Framework

12. The Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the 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 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 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).
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. 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”).

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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Petitioner’s Contentions

16. The Petitioner contends her property qualifies as a rehabilitated property and therefore the property is entitled to a deduction from its assessment pursuant to Indiana Code § 6-1.1-12-18 and § 6-1.1-12-22. *Walters testimony*. According to a letter submitted by the Petitioner, Ms. Walters argues, Senator Brandt Hershman supports her application for the rehabilitation deduction.⁴ *Walters testimony; Petitioner Exhibit 7*.
17. Ms. Walters argues that, according to Indiana Codes § 6-1.1-12-18 and § 6-1.1-12-22, to qualify for the rehabilitation deduction a property must meet certain criteria. *Walters testimony; Petitioner Exhibit 1*. For example, she contends, prior to rehabilitation, the assessed value of the improvements for a two-family house cannot exceed \$49,920. *Id.* Also, the property must be at least 50 years old at the time of rehabilitation. *Id.*
18. Ms. Walters testified that the property under appeal is a two-family residence constructed in 1900. *Walters testimony; Petitioner Exhibits 3 and 4*. According to Ms. Walters, she began rehabilitation on the property in 2000 and continued through 2005. *Walters testimony*. At the time the renovations were started, Ms. Walters argues, the assessed

⁴ The Board notes, however, that Senator Hershman’s letter addresses the Petitioner’s property located at 318 South Main Street, but does not mention the property under appeal at 210 South Bluff Street. *Petitioner Exhibit 7*.

value of the property was \$34,900 as reflected on the property's March 1, 1989, property record card.⁵ *Id.*; *Petitioner Exhibit 3*.

19. Ms. Walters testified that she spent \$30,623.80 renovating the property. *Walters testimony*. In support of this contention, Ms. Walters submitted pictures of the renovations and receipts for the repairs. *Petitioner Exhibits 5 and 6*. According to Ms. Walters, some of the repairs she made to the property included removing seven layers of wallpaper from the walls, adding a new roof, replacing the siding and storm windows, adding ceiling and wall insulation, adding a new full bathroom, replacing the water system to remove the lead pipes, and rewiring and increasing the electrical service from 60 amps to 100 amps. *Walters testimony*. The kitchens were also renovated with new cabinets, garbage disposals, dishwashers and a range and a washer and dryer hook-up downstairs. *Id.* Ms. Walters testified that she added a garage to the property in 1982. *Id.*
20. The Petitioner's witness, Mr. Heiny, the White County Deputy Auditor, testified that the Petitioner's Form 322 was the first filing under Indiana Code § 6-1.1-12-18 or Indiana Code § 6-1.1-12-22 that the Auditor's office ever received. *Heiny testimony*. According to Mr. Heiny, he has discouraged people from filing for the rehabilitation deduction in the past because normally the assessor does not change the assessed value of a person's property when they remodel or replace the roof or windows. *Id.*
21. In response to the Respondent's arguments, Ms. Walters contends that "trending" is not mentioned in Indiana Code § 6-1.1-12-18 or Indiana Code § 6-1.1-12-22 and therefore it should not be considered as the reason for increasing the assessed value of the property under appeal. *Walters testimony*.

⁵Ms. Walters also submitted a copy of her Form 322 which states the assessment prior to the rehabilitation on her property was \$35,700. *Petitioner Exhibit 2*.

Respondent's Contentions

22. The Respondent contends that the Petitioner is not entitled to a rehabilitation deduction on the subject property's assessment because the property's assessment was not increased based on her rehabilitation work on the house. *Downey testimony*. Ms. Downey argues that under Indiana Code § 6-1.1-12-18 or Indiana Code § 6-1.1-12-22, if the assessed value of a residential property is increased because it has been rehabilitated, the property owner may apply for a deduction. *Id.* According to Ms. Downey, however, the property's 2005 and 2006 property record cards show the house was assessed as a D+2 grade structure in poor condition for both years. *Downey testimony; Respondent Exhibits 1 and 2*. In fact, Ms. Downey argues, the grade and condition of the structure still have not been changed. *Id.*
23. Ms. Downey argues that the Petitioner's assessed value increased between March 1, 2005, and March 1, 2006, because assessors are required to trend property values every year. *Downey testimony*. In support of this contention, the Respondent submitted the Petitioner's property's 2005 and 2006 property record cards. *Respondent Exhibits 1 and 2*. According to Ms. Downey, the only change reflected on the property record cards is a market adjustment which increased from 100% in 2005 to 115% in 2006. *Id.* Ms. Downey argues that, because the Petitioner's assessed value was not increased due to any rehabilitation of the property, the property does not qualify for the deduction. *Id.*
24. Finally, Ms. Downey argues that the Petitioner cannot compare her 1989 assessed value to her 2005 assessed value because for the March 1, 2002, general reassessment all properties were valued using updated cost and depreciation schedules. *Downey testimony*. Thus, Ms. Downey argues, the Petitioner would have seen a dramatic increase in her assessed value between 1989 and March 1, 2002, regardless of whether she rehabilitated the property because of the statewide mandated general reassessment of properties. *Downey testimony*. According to Ms. Downey, the county actually lowered the grade and condition on the Petitioner's house in 2002. *Downey testimony*.

Analysis of the Issue

25. Indiana Code § 6-1.1-12-18(a) states that “[i]f the assessed value of residential real property described in subsection (d) is increased because it has been rehabilitated, the owner may have deducted from the assessed value of the property an amount not to exceed the lesser of: (1) the total increase in assessed value resulting from the rehabilitation; or (2) eighteen thousand seven hundred twenty dollars (\$18,720) per rehabilitated dwelling unit.”⁶ Indiana Code § 6-1.1-12-18(a). According to Indiana Code § 6-1.1-12-18(d), “[t]he deduction provided by this section applies only for the rehabilitation of residential real property which is located within this state and which is described in one (1) of the following classifications: ... (2) a two (2) family dwelling if before rehabilitation the assessed value (excluding any exemptions or deductions) of the improvements does not exceed forty-nine thousand nine hundred twenty dollars (\$49,920)...” Indiana Code § 6-1.1-12-18(d).
26. Similarly, Indiana Code § 6-1.1-12-22(a) states that “[i]f the assessed value of property is increased because it has been rehabilitated and the owner has paid at least ten thousand (\$10,000) for the rehabilitation, the owner is entitled to have deducted from the assessed value of the property an amount equal to fifty percent (50%) of the increase in assessed value resulting from the rehabilitation. The owner is entitled to this deduction annually for a five (5) year period. However, the maximum deduction which a property owner may receive under this section for a particular year is: (1) one hundred twenty-four thousand eight hundred dollars (\$124,800) for a single family dwelling unit; or (2) three hundred thousand dollars (\$300,000) for any other type of property.” Indiana Code § 6-1.1-12-22(a). “[T]he term “property” means a building or structure which was erected at least fifty (50) years before the date of application for the deduction...” Indiana Code § 6-1.1-12-22(b). However, the term “property” does “not include land.” *Id.*

⁶ Indiana Code § 6-1.1-12-18(b) states “for the purpose of the section, the term “rehabilitation” means significant repairs, replacements, or improvements to an existing structure which are intended to increase the livability, utility, safety, or value of the property under rules adopted by the department of local government finance.” Indiana Code § 6-1.1-12-18(b).

27. Here, Ms. Walters argues that she meets the criteria set forth by Indiana Codes § 6-1.1-12-18 and Indiana Code § 6-1.1-12-22 to receive a rehabilitation deduction on her residential property. *Walters testimony*. Ms. Walters testified that the house under appeal was constructed in 1900. *Walters testimony; Petitioner Exhibits 3 and 4*. Ms. Walter further testified that she started rehabilitating the property in 2000 and that her renovations continued through 2005, costing \$30,623.80. *Walters testimony; Petitioner Exhibit 5*. At the time the renovations were started, Ms. Walters argues, the assessed value of the property was \$34,900. *Walters testimony; Petitioner Exhibit 3*.
28. The Respondent, however, testified that the county only increased the Petitioner's assessed value between March 1, 2005, and March 1, 2006, because assessors were required to trend property values starting with the March 1, 2006, assessment. *Downey testimony; Respondent Exhibits 1 and 2*. According to Ms. Downey, the house's grade and condition were not changed to reflect any rehabilitation on the property. *Downey testimony*.
29. Thus, the Petitioner's case rests solely on the issue of whether the increase in the assessed value of the Petitioner's property was the result of the Petitioner's efforts to rehabilitate the property. The Board finds that it was not. Here, the Petitioner's evidence shows that the house was assessed in fair condition in 1989. *Petitioner Exhibit 3*. Rather than the condition of the house improving after renovation, the Respondent's evidence shows that the condition of the house was actually *lowered* some time between 1989 and 2005. *Respondent Exhibit 1*. In fact, the house has been assessed as a D+2 grade structure in poor condition since at least 1996. *Respondent Exhibit 2*. Thus, the Board finds that the Assessor did not increase the assessed value of the property "because it has been rehabilitated." *See* Indiana Code § 6-1.1-12-18.
30. To the contrary, the evidence suggests that the property's assessed value increased due to the changes in cost schedules resulting from the March 1, 2002, general reassessment and the annual trending that began in 2006. Ms. Walters argues that "trending" is not

mentioned in Indiana Code § 6-1.1-12-18 and therefore it should not be considered as the reason for increasing the assessed value of the property. *Walters testimony*. The legislature, however, specifically expressed its intent that the assessed value of real property be adjusted annually. Under Indiana Code § 6-1.1-4-4.5, beginning in 2006 and each year thereafter, assessors are required to adjust or “trend” property values every year to account for changes in property values since the last general reassessment occurred. Failing to adjust the Petitioner’s property value would frustrate the intent of the legislature to provide for uniform and equal assessments with a more current valuation date. *See* Indiana Code § 6-1.1-4-4.5.

31. Neither Indiana Code § 6-1.1-12-18, nor Indiana Code § 6-1.1-12-22, state that the assessed value of rehabilitated property can never be changed. The statutes merely state that the rehabilitation deduction applies *if* the assessed value of a property is increased due to the property being rehabilitated. Here, there is no evidence that the Assessor changed the property’s assessment to reflect its rehabilitated state between 2005 and 2006. In fact, the Respondent contends the grade and condition of the structure still have not been changed.
32. The Petitioner may apply for the rehabilitation deduction when the Assessor changes the grade or condition of the house to reflect the changes made to the structure by Ms. Walters, if the property meets the assessed value limitation and the Petitioner properly files for the deduction at that time. To date, however, the Board finds that the county has not assessed the Petitioner’s property to reflect Ms. Walters’ extensive rehabilitation of the house. Therefore, no rehabilitation deduction applies to the Petitioner’s property for the March 1, 2006, assessment date.

Summary of Final Determination

33. The Petitioner failed to raise a prima facie case that her property is entitled to receive a rehabilitation deduction for the March 1, 2006, assessment date. The Board therefore finds in favor of the Respondent.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date 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>.