

REPRESENTATIVE FOR PETITIONERS:

Edward R. McCrocklin, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Dan Spiker, Deputy Township Assessor

Anne Beth Brown, Deputy Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Edward R. and Michele A.	)	Petition No.:	49-400-02-1-5-03295
McCrocklin,	)	Parcel:	4015453
)		
Petitioners,)		
)		
v.)		
	)	County:	Marion
Lawrence Township Assessor,	)	Township:	Lawrence
	)	Assessment Year:	2002
Respondent.)		

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

May 27, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts, evidence, and claims presented by both parties in this case. Having considered the issues, the Board now enters the findings of fact and conclusions of law that follow.

ISSUES

Issue 1: *Is the effective front footage correct?*

Issue 2: *Is the influence factor correct?*

Issue 3: *Is the square footage correct?*

Issue 4: *Is the air conditioning valued correctly?*

Issue 5: *Is the plumbing valued correctly?*

Issue 6: *Are the exterior features assessed correctly?*

Issue 7: *Is the depreciation computed correctly?*

Issue 8: *Is the neighborhood rating correct?*

PROCEDURAL HISTORY

1. Pursuant to Ind. Code § 6-1.1-15-3, Petitioners filed a Form 131 petitioning the Board to conduct an administrative review of their assessment. The Form 131 was filed on March 31, 2004. The determination of the Marion County Property Tax Assessment Board of Appeals (PTABOA) was issued on March 26, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Paul Stultz, the Administrative Law Judge designated by the Board, held the hearing on September 28, 2004.
3. The following persons were sworn and presented testimony at the hearing:
 - Edward R. McCrocklin, property owner,
 - Dan Spiker, Deputy Township Assessor,
 - Anne Beth Brown, Deputy Township Assessor.
4. The following exhibits were presented:
 - Petitioners Exhibit 1 – Worksheet showing the proposed corrected assessment,
 - Petitioners Exhibit 2 – Plat map of the subject property,
 - Petitioners Exhibit 3 – Six exterior photographs of the subject property,

Petitioners Exhibit 4 – Four elevation drawings of the subject property,
Petitioners Exhibit 5 – Three floor plan drawings of the subject property,
Respondent Exhibit 1 – Plat map of subject property,
Respondent Exhibit 2 – Property Record Card (PRC) and photograph of the
subject property,
Respondent Exhibit 3 – Four sets of PRCs, photographs, and sale disclosure forms
for four comparable properties,
Board Exhibit A – The 131 Petition,
Board Exhibit B – Notice of Hearing.

5. The subject property is a dwelling located at 6616 Marmont Circle, Indianapolis. The location is in Lawrence Township, Marion County.
6. The Administrative Law Judge did not conduct an on-site inspection of the subject property.
7. The PTABOA determined the assessed value of the property is:
Land \$29,200 Improvements \$175,500 Total \$204,700.
8. Petitioners contend the assessed value of the property should be:
Land \$23,200 Improvements \$146,200 Total \$169,400.

JURISDICTIONAL FRAMEWORK

9. 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

10. 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).
11. 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 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”).
12. 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.

CONTENTIONS

13. Petitioners presented the following in regard to front footage:
 - a. The land is currently assessed at \$29,200. Petitioners contend the land should be assessed at \$23,200. *McCrocklin testimony; Petitioners Exhibit 1.*
 - b. The property was assessed with an effective front footage of 101 feet. Petitioners contend the effective front footage should be 91 feet. *McCrocklin testimony; Petitioners Exhibit 1.*
 - c. Petitioners contend that Marion County zoning requirements mandate a minimum frontage of 72 feet plus 19 feet aggregate for a total of 91 feet. *McCrocklin testimony; Petitioners Exhibit 1.*
 - d. Petitioners presented a plat map indicating the actual frontage of the parcel is 43.4 feet. *McCrocklin testimony; Petitioners Exhibit 2.*

14. Respondent presented the following in regard to front footage:
- a. The subject is a pie shape lot. The local officials used the example in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter GUIDELINES) to determine the effective front footage. *Spiker testimony.*
 - b. Marion County officials received permission from the State to use a 30 percent multiplier for the 2002 assessment, which is advantageous to the taxpayer. The example in the Guidelines calls for using a 35 percent multiplier. *Spiker testimony.*
 - c. The following calculation was used to compute the effective front footage: 235 feet (rear dimension) – 43 feet (actual frontage) = 192 feet x 30 percent = 58 feet + 43 feet (actual frontage) = 101 effective front footage. *Spiker testimony.*
15. Petitioners presented the following in regard to the influence factor issue:
- a. The parcel received a negative influence factor in the amount of 15 percent. Petitioners contend that the negative influence factor should be 25 percent. *McCrocklin testimony; Petitioners Exhibit 1.*
 - b. The property is located on a cul-de-sac. *McCrocklin testimony.*
 - c. The property has experienced occasional flooding. The parcel has 15 feet of creek and 55 feet of unusable hillside. *McCrocklin testimony.*
 - d. Petitioners would calculate the influence factor as follows: Topography and drainage 213 – 40 feet of unusable hillside – 15 feet unusable creek bank = 26 percent. *Petitioners Exhibit 1.*
16. Respondent presented the following in regard to the influence factor issue:
- a. All parcels in the subdivision received a 15 percent negative influence factor during the process of equalizing values with those of neighboring Washington Township. *Spiker testimony.*
 - b. Typically, being on a cul-de-sac property is considered a positive factor. It is not cause for a negative influence factor. *Spiker testimony.*

17. Petitioners presented the following in regard to square footage:
- a. The first floor and basement were each assessed for 1,372 square feet. Petitioners contend the correct square footage of the first floor and basement should be 1,296 square feet. The first floor and basement dimensions are currently assessed as 28 feet x 49 feet. Petitioners contend the correct dimensions should be 27 feet x 48 feet for each floor. The garage dimensions are currently assessed as 23 feet x 26 feet. Petitioners contend the correct dimensions should be 22 feet x 25 feet.
McCrocklin testimony.
 - b. The first floor, basement, and garage are constructed of veneered stone.
McCrocklin testimony.
 - c. Petitioners contend the square footage for the first floor, basement, and garage are measured incorrectly because brick and stone add six inches more in each direction than vinyl or frame siding that should not be assessed. *McCrocklin testimony.*
18. Respondent presented the following in regard to square footage:
- a. There is no basis to reduce the measurements because of the thickness of the stone. The costs in the Guidelines account for any variations in thickness of building materials. *Spiker testimony.*
 - b. All dimensions are rounded to the nearest foot. Sometimes this means rounding up and sometimes it means rounding down. *Spiker testimony.*
19. Petitioners presented the following in regard to the air conditioning issue:
- a. The air conditioning is currently assessed at \$3,600. *McCrocklin testimony.*
 - b. Petitioners asserted the property has 3,116 square feet for a value of \$3,200 according to the Guidelines. *McCrocklin testimony.*
 - c. Petitioners replaced the air conditioning system in 2003 and 2004 for \$2,700. Therefore, the correct value for the air conditioning, adjusted to the 1999 valuation date, should be \$2,000. *McCrocklin testimony.*

20. Respondent presented the following in regard to the air conditioning issue:
 - a. The amount spent on air conditioning can range from \$2,000 to \$6,000 due to the numerous choices of type and quality of air conditioning. *Spiker testimony.*
 - b. The Guidelines value for air conditioning is an average cost, not what an individual might actually have spent. *Spiker testimony.*

21. Petitioners presented the following in regard to plumbing pricing:
 - a. The value for extra plumbing should be \$350 per fixture and not \$700 per fixture. *McCrocklin testimony.*
 - b. The rate should be \$350 per fixture because the original plumbing cost is included in the first floor of the home. The cost for additional fixtures should be nominal. *McCrocklin testimony.*

22. Respondent did not specifically address the plumbing issue.

23. Petitioners presented the following in regard to exterior features:
 - a. The exterior features should be assessed at \$1,815. They are currently assessed at \$5,900 for the enclosed frame porch and \$200 for the concrete patio. *McCrocklin testimony; Respondent Exhibit 2.*
 - b. The enclosed frame porch should be assessed for \$1,700. The structure is 30 years old and in fair condition. *McCrocklin testimony.*
 - c. Similarly, the concrete patio is 30 years old and in very poor condition. Petitioners claim the value should be \$45. *McCrocklin testimony.*

24. Respondent presented the following in regard to exterior features:
 - a. The condition of the patio was appropriately considered in the current assessment. *Spiker testimony.*
 - b. The enclosed frame porch must be assessed as a total entity. The concrete used in the porch cannot be assessed separately. *Spiker testimony.*

25. Petitioners presented the following in regard to depreciation:
 - a. The actual age should be computed by subtracting the year of construction from the assessment date, March 1, 2002. *McCrocklin testimony*.
 - b. The actual age is 38 years and the related depreciation percentage should be 24 percent rather than 26 percent. *McCrocklin testimony*.
26. Respondent did not specifically address depreciation.
27. Petitioners presented the following in regard to the neighborhood factor:
 - a. The current neighborhood rating is 110. Petitioners contend the correct neighborhood rating should be 102.
 - b. Petitioners identified three surrounding neighborhoods that each has a neighborhood rating of 102.
28. Respondent did not specifically address the neighborhood factor.
29. Although not offered in response to any specific issue, Respondent presented evidence (PRC, photograph, and sale disclosure form) of four allegedly comparable properties located on the same street as the subject property. *Respondent Exhibit 3*. The assessed values range from \$175,600 to \$212,000. Factored to the 1999 valuation date, the sale prices of those properties are \$218,360, \$180,353, \$189,400, and \$204,200. Petitioners' total assessment is currently \$204,700. Respondent asserted this market data establishes the overall value of the property is correct. *Spiker testimony; Respondent Exhibit 3*.

ANALYSIS

30. In the absence of more credible market value data, the Guidelines are the best indication of true tax value in this appeal. The Guidelines, however, must be properly implemented to arrive at an accurate assessment.

31. Petitioners presented no market data to establish that the total overall assessment of the property is incorrect. Furthermore, Petitioners acknowledged on the Form 131 petition that their property is not valued higher than comparable properties. Instead, Petitioners asserted several errors existed in the method and pricing used to assess the property.

Is the effective front footage correct?

32. Effective frontage is defined as “[t]he amount of frontage, expressed in linear feet, to which the unit land value is applied.” GUIDELINES, glossary at 7. There are instructions for determining the effective frontage of a cul-de-sac lot. GUIDELINES, ch. 2 at 50.
33. Petitioners did not contend the methodology used by Respondent varies from the instructions. Instead, the Petitioners contend the correct determination of the effective frontage should be based on zoning restrictions. Petitioners presented no authority in support of this contention. Petitioners’ conclusory assumption on this matter is not persuasive. Absent better evidence, the method established in the Guidelines must be followed. *See Deer Creek Developers, Ltd. v. Dep’t of Local Gov’t Fin.*, 769 N.E.2d 259, 267 (Ind. Tax 2002); *See also Bulkmatic Transport Co. v. Dep’t of State Revenue*, 691 N.E.2d 1371, 1375 (Ind. Tax Ct. 1998) (rejecting a taxpayer’s argument where it was unsupported by any authority). Petitioner’s unsubstantiated conclusions about how to determine front footage do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
34. Petitioners presented no market evidence to establish the current assessed value of the land is incorrect.
35. Accordingly, Petitioners failed to make a prima facie case of error concerning this issue.

Is the influence factor correct?

36. An influence factor is “[a] multiplier that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. It may be positive or negative and is expressed as a percentage.” GUIDELINES, glossary at 10.
37. To prevail on an influence factor issue, the taxpayer must present probative evidence that would support an application of a negative influence factor and a quantification of that influence factor. *Phelps Dodge v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1099, 1106 (Ind. Tax 1999).
38. The parcel received a negative influence factor of 15 percent, but Petitioners contend the negative influence factor should be 25 percent.
39. Respondent allowed a negative influence factor. The parties are in agreement that characteristics to support the application of a negative influence factor are present on the parcel. Nevertheless, Petitioners must also prove what the correct influence factor should be. In an attempt to quantify the amount of the negative influence factor, Petitioners presented the following calculation: Topography and drainage 213 – 40 feet of unusable hillside – 15 feet unusable creek bank = 26 percent.
40. Assuming, *arguendo*, that Petitioners measurements are correct does not establish a quantification. Petitioners’ calculation merely established that 26 percent of the area is negatively impacted to some degree by topography and drainage. This calculation provides no probative evidence about the extent of impact these features might have on the market value of the land.
41. Petitioners failed to quantify any negative influence that exists. Accordingly, the Petitioners failed to make a prima facie case of error concerning this issue.

Is the square footage of the first floor, basement, and garage correct?

42. The first floor and basement dimensions are each currently assessed as 28 feet x 49 feet for a total of 1,372 square feet. Petitioners contend the correct dimensions should be 27 feet x 48 feet for a total of 1,296 square feet. The garage dimensions are currently assessed as 23 feet x 26 feet. Petitioners contend the correct dimensions should be 22 feet x 25 feet.
43. To determine the base area of the dwelling unit, an assessor must measure the exterior of each full or partial floor. GUIDELINES, ch. 3 at 9. Petitioners did not claim or prove that the assessment failed to follow this methodology. Instead, Petitioners contend the measurements are overstated because the exteriors are stone veneer. Petitioners asserted this feature adds approximately six inches to each dimension. Petitioners did not contend or prove that they measured the structure to support their claim that the current dimensions are incorrect. Petitioner's unsubstantiated conclusions about the methodology for these measurements do not constitute probative evidence. *Whitley Products*, 704 N.E.2d at 1119.
44. Petitioners did not present probative evidence that the current exterior dimensions of the first floor, basement, and garage are incorrect. Accordingly, Petitioners failed to make a prima facie case of error regarding those measurements.

Is the air conditioning valued correctly?

45. The air conditioning is currently assessed at \$3,600. Petitioners asserted the property has 3,116 square feet for a value of \$3,200. This difference is attributable to Petitioners' claim that the square footage is measured incorrectly. That argument was considered and denied. For the same reasons, the argument about different measurements does not support any change for the air conditioning value.

46. “The calculation of True Tax Value under this rule uses the cost tables included in this guidelines to calculate ‘replacement cost new’ for the improvements on all classes of property. The cost tables have been developed from objectively verifiable data by drawing cost information from publications of Marshall & Swift, L. P.” GUIDELINES, intro. at 1. There is no evidence that the local assessors failed to determine the value for the air conditioning adjustment using the base price components and adjustments schedule. Rather, Petitioners opine that they should not do so.
47. Petitioners contend the actual cost of their air conditioning system should be used rather than the value from the cost tables. They replaced the air conditioning system in 2003 and 2004 for \$2,700 and propose to use that value as a starting point. Adjusting the amount to 1999 values would allegedly result in a value of \$2,000. There is no probative evidence to support that conclusion. Such unsubstantiated conclusions have no probative value. *Whitley Products*, 704 N.E.2d at 1119.
48. Petitioners presented no legal or assessing authority in support of their contention that actual costs should be substituted for the values specified in the Guidelines. The Petitioners’ conclusory assumption on this matter is not persuasive. *See Deer Creek Developers*, 769 N.E.2d at 267; *Bulkmatic*, 691 N.E.2d at 1375.
49. Accordingly, Petitioners failed to make a prima facie case of error.

Is the plumbing priced correctly?

50. Petitioners contend the value for extra plumbing should be \$350 per fixture and not \$700 per fixture as in the existing assessment.
51. Interior feature adjustments are specified for base price components and adjustments, plumbing and built-ins, and fireplaces. GUIDELINES, ch. 3 at 43. The adjustment for plumbing is described in schedule D, which indicates \$700 should be added for each

fixture over five per unit. *Id.*, app. C at 7. There is no evidence that additional plumbing fixtures in the home were not assessed using those instructions.

52. Again, Petitioners presented no legal or assessing authority in support of their contention that an alternative cost of the plumbing may be substituted for the specified value for each additional plumbing fixture. A conclusory opinion on this matter does not constitute probative evidence. *See Deer Creek Developers*, 769 N.E.2d at 267; *Bulkmatic*, 691 N.E.2d at 1375.
53. Further, Petitioners failed to explain the manner in which they determined the cost of plumbing fixtures should be \$350 per fixture. Petitioner's unsubstantiated conclusions concerning the value of plumbing fixtures do not constitute probative evidence. *Whitley Products*, 704 N.E.2d at 1119.
54. The Petitioners have presented no probative evidence concerning this issue. They failed to make a prima facie case of error.

Are the exterior features assessed correctly?

55. Petitioners contend the exterior features should be assessed at \$1,815. They are currently assessed at \$5,900 (the enclosed frame porch) and \$200 (the concrete patio). Petitioners contend the enclosed frame porch should be assessed for \$1,700. Petitioners concluded the current amount should be reduced because the structure is 30 years old and only in fair condition. Similarly, Petitioners contend the concrete patio is 30 years old and in very poor condition. They claim its value should be \$45.
56. Condition is a "rating assigned each structure that reflects its effective age in the market." GUIDELINES, app. B at 5. To establish the condition rating, a party may offer evidence of anything that bears on the amount of physical deterioration suffered by a particular improvement, including specific examples of the physical deterioration. *Phelps Dodge*, 705 N.E.2d at 1104.

57. The Petitioners presented no specific examples of physical deterioration to support their contention that the current condition ratings are in error. Petitioner's unsubstantiated conclusions about condition do not constitute probative evidence. *Whitley Products*, 704 N.E.2d at 1119.
58. Accordingly, Petitioners failed to make a prima facie case of error.

Is the home's depreciation computed correctly?

59. The home has depreciation computed to the valuation date of January 1, 1999. Petitioners contend the actual age should be computed by subtracting the year of construction from March 1, 2002, the assessment date. This would result in an actual age of 38 years for the subject property and change the related depreciation percentage from 24 percent to 26 percent.
60. The depreciation date is March 1, 1999. GUIDELINES, glossary at 5. The chronological age of a structure is the number of years that have elapsed since the building was completed up to the depreciation date. GUIDELINES, app. B at 5.
61. Once again, Petitioners presented no legal or assessing authority in support of their contention. Petitioners simply opined that depreciation should be calculated based on the age as of March 1, 2002, rather than as of March 1, 1999.
62. Petitioners' conclusory assumption on this matter does not constitute probative evidence. *See Deer Creek Developers*, 769 N.E.2d at 267; *Bulkmatic*, 691 N.E.2d at 1375.
63. Accordingly, Petitioners failed to make a prima facie case concerning this issue.

Is the neighborhood factor correct?

64. A neighborhood is a "geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics." GUIDELINES, glossary at 14.
65. "The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services, and utilities. It also takes in to [sic] account the economic characteristics such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size." *Id.*, app. B at 8. The neighborhood factor is determined "based upon an analysis of residential properties that have sold within the neighborhood." *Id.*
66. Petitioners contend the subject property's neighborhood factor should be 102 percent, rather than the 110 percent. In support of their position, Petitioners identified three surrounding neighborhoods that received a neighborhood factor of 102 percent.
67. Mere proximity, however, does not establish that the neighborhoods are comparable. Petitioners presented no comparison of amenities, land use, economic and social trends, and housing characteristics to establish how their neighborhood is comparable to the surrounding neighborhoods. GUIDELINES, glossary at 14; *see Goodhost, L.L.C. v. Dep't of Local Gov't Fin.*, 786 N.E.2d 813 (Ind. Tax 2003) ("Properties that are literally across the street from each other can receive different assessments under a land order.")
68. Similarly, Petitioners presented no evidence or analysis of sales that occurred, either in their neighborhood or in the purported comparable neighborhoods. There is no probative evidence regarding any error with the neighborhood factor for the subject property. Petitioners' unsubstantiated conclusions do not constitute such evidence. *Whitley Products*, 704 N.E.2d at 1119.

69. Accordingly, Petitioners failed to make a prima facie case of error concerning the neighborhood factor issue.
70. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

71. The Petitioners did not present a prima facie case that the assessment is incorrect on any point. There is no change in the assessment as a result of this appeal.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

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. 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.