

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition Number:** 62-010-07-1-5-00005  
**Petitioners:** Darryl and Pat Irvin  
**Respondent:** Perry County Assessor  
**Parcel No.:** 62-08-12-200-023.000-010  
**Assessment Year:** 2007

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

**PROCEDURAL HISTORY**

1. The Petitioners initiated an assessment appeal with the Perry County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated August 11, 2008.
2. The PTABOA issued notice of its decision on February 17, 2009.
3. The Petitioners filed a Form 131 petition with the Board on March 10, 2009, and an amended Form 131 to correct a defect in the original Petition on March 23, 2009. The Petitioners elected to have their case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 4, 2010.
5. The Board scheduled an administrative hearing on August 17, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at the hearing:
  - a. For Petitioners: Darryl Irvin, Petitioner
  - b. For Respondent: Mendy Ward, Perry County Assessor

**FACTS**

7. The property at issue is an improved residential parcel located along the Ohio River on Magnet Valley Road, Perry County, Magnet, Indiana.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$61,800 for the land and \$63,300 for the improvements, for a total assessed value of \$125,100.
10. The Petitioners requested an assessed value of \$25,000 for the land and \$45,000 for the improvements, for a total assessed value of \$70,000.

### ISSUES

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
  - a. The Petitioners contend their property's 2007 assessed value is over-stated because their assessment increased during a period of time when property values were falling. *Irvin argument.* According to Mr. Irvin, the Petitioners purchased their lot in 1997 for \$25,000 and built the cabin for approximately \$45,000. *Id.* Yet, the assessed value of the Petitioners' property increased from \$13,100 for the land and \$60,100 for the improvements for a total value of \$73,200 in 2006, to \$61,800 for the land and \$63,300 for the improvements for a total value of \$125,100 in 2007. *Id.; Petitioners Exhibit 1.* Mr. Irvin admits, however, as a realtor he recognizes that riverfront property has increased in value. *Irvin testimony.*
  - b. The Petitioners also contend their land is over-assessed based on the assessed value of neighboring properties. *Irvin argument.* According to Mr. Irvin, half of the Petitioners' lot is in the flood zone and the Petitioners were not permitted to build on the river-side of the lot. *Id.* In addition, Mr. Irvin argues, their property is located on a dusty gravel road next to a hotel and office building. *Id.* Mr. Irvin argues that despite the fact that each lot is different, all of the lots in his neighborhood are assessed at the same rate. *Id.* Further, lots located just outside of his neighborhood, yet still located on the Ohio River, are assessed for far less per acre than the Petitioners' property. *Id.; Petitioners Exhibit 11.*
  - c. Similarly, the Petitioners contend their cabin is over-valued based on the assessed value of other properties. *Irvin argument.* According to Mr. Irvin, because of a problem with drainage on the property, the Petitioners were only permitted to construct a one-bedroom cabin. *Id.* Other property owners were allowed to build much larger structures, Mr. Irvin argues, but they are being assessed less for those cabins than the Petitioners are being assessed for their cabin. *Id.* For example, Mr. Irvin testified, Lot 19 that adjoins his property has a cabin with a walk out basement, yet the cabin is only assessed for \$56,000. *Id.; Petitioners Exhibit 7 and 8.* Similarly, Lot 21 has two large structures, a cabin and an office building, but the two structures together are only assessed for \$91,900. *Id.* Likewise, Mr. Irvin argues, Lots 31 and 32 each have multiple structures on the lots, but when the assessed values

of the structures are divided by the number of structures on the lot, the assessed values of each individual cabin is lower than the Petitioners' cabin despite the fact that the neighboring properties' cabins are larger and often newer than the Petitioners' cabin. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent contends that the Petitioner's 2007 assessment is correct based on the property's market value-in-use. *Ward testimony.* The assessor testified that the difference between the Petitioners' property's 2006 assessment and its 2007 assessment was because the method of assessing properties went from the cost approach to market value-in-use. *Id.* According to Ms. Ward, the 2007 assessment year is based on a January 1, 2006, valuation resulting from the examination of sales occurring in 2005 and 2006. *Id.; Respondent Exhibit 1.*
  - b. The Respondent also contends that Petitioners' land assessment is correct. *Ward argument.* According to Ms. Ward, each lot in the Petitioners' neighborhood was assessed similarly on a per-acre basis. *Id.; Respondent Exhibit 2.* Ms. Ward argues that the county acknowledged the impact of the river's erosion on the Petitioners' property by applying a negative forty percent influence factor on the 1.4 acres of excess residential land located adjacent to the river. *Ward testimony; Respondent Exhibit 4.*

#### **RECORD**

13. The official record for this matter is made up of the following:
- a. The Petition and all other submitted documents.
  - b. The digital recording of the hearing.
  - c. Exhibits:
    - Petitioner Exhibit 1 – Copy of a tax bill for the subject property showing the property's 2006 and 2007 assessments and the amount of taxes due,
    - Petitioner Exhibit 2 – Copy of the Form 130 Petition to the Perry County PTABOA for 2007,
    - Petitioner Exhibit 3 – Copy of the Form 115 notice of final assessment from the PTABOA,
    - Petitioner Exhibit 4 – Copy of the Form 131 Petition to the Board for 2007 for the subject property,
    - Petitioner Exhibit 5 - Copy of the Form 130 petition to the Perry County PTABOA for 2009,
    - Petitioner Exhibit 6 – Hand drawn sketch of the subject parcel,

Petitioner Exhibit 7 – Plat map of the Petitioners’ neighborhood with hand written notations,  
Petitioner Exhibit 8 – List of parcels with land and improvement assessments,  
Petitioner Exhibit 9 – Internet data concerning rental properties on nearby parcels,  
Petitioner Exhibit 10 – Internet data concerning rental properties on nearby parcels,  
Petitioner Exhibit 11 – Handwritten list of parcels and assessments from the river-front area in Derby, Indiana,

Respondent Exhibit 1 – Copy of the sales database used in computing the 2007 ratio study for the Petitioners’ neighborhood,  
Respondent Exhibit 2 – Copy of the plat map with notations showing sales used in the 2007 assessment,  
Respondent Exhibit 3 – Copy of an aerial photograph of the Petitioners’ neighborhood,  
Respondent Exhibit 4 – Copy of the property record card for the subject property,

Board Exhibit A – Form 131 Petition and related attachments,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

#### ANALYSIS

14. The most applicable governing cases are:
- a. 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).
  - b. 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”).
  - c. 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.

15. The Petitioners failed to raise a prima facie case for a reduction in their property's assessed value. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines "true tax value" 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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally used three methods to determine a property's market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
  - b. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c. Regardless of the method used to rebut an assessment's presumption of accuracy, a 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.
  - d. Here, the Petitioners first contend that their property is over-valued based on the assessed values of other properties in their neighborhood. *Irvin testimony*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
  - e. To the extent the assessed values of the Petitioners' neighboring properties can be seen as some evidence of their property's market value-in-use, the Board finds that

the Petitioners similarly failed to raise a prima facie case their property's assessment was in error. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.* Mr. Irvin, however, only presented assessment information for nearby properties and compared the size of the cabins and whether the lots could be improved on the riverside. This falls far short of the burden to prove the properties' comparability in order to be evidence of the subject property's market value-in-use.

- f. The Petitioners also contend their property is over-valued based on the increase in assessed value between 2006 and 2007. *Irvin argument*. However, 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)) ("Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.") Therefore, regardless of how much the property's assessment increased between tax years, the Petitioners needed to show that their property was assessed in excess of its market value-in-use for the tax year at issue. Because the Petitioners failed to present probative evidence of their property's market value-in-use for the March 1, 2007, assessment year, the Petitioners failed to raise a prima facie case their assessment was in error.<sup>1</sup>
- g. Finally, the Petitioners argue that their property's land value is incorrect because of the lot's building restrictions and location in a flood plain. *Irvin argument*. In addition, Mr. Irvin argues that the development of rental properties similar to commercial hotel operations and the resulting traffic in the area decrease the value of their property. *Id.*
- h. Land values in a given neighborhood are generally determined by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account

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<sup>1</sup> While Mr. Irvin testified that the Petitioners purchased their lot in 1997 for \$25,000 and built the cabin for \$45,000 in 2000, the Petitioners' construction cost evidence is too far removed from the January 1, 2006, valuation date to provide sufficient evidence of the property's market value-in-use for the March 1, 2007, assessment. *See Long*, 821 N.E.2d at 471.

for characteristics of a particular parcel of land that are peculiar to that parcel.” GUIDELINES, glossary at 10. The Petitioners have the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." See *Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). While the Petitioners contend that three quarters of their lot could not be developed because it was in the flood zone and that they were limited to a one-bedroom cabin because of septic limitations, the Petitioners failed to provide a survey of the lot. Nor did the Petitioners provide evidence from any board or agency restricting their cabin size. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Most importantly, the Petitioners failed to present any market-based evidence to quantify the effect of the septic limitations or the impact of rental properties located near the subject property.<sup>2</sup>

- i. Where a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### CONCLUSION

16. The Petitioners failed to raise a prima facie case that their property is over-valued. The Board finds in favor of the Respondent.

#### FINAL DETERMINATION

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

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

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<sup>2</sup> The Board notes that the county acknowledged the property's erosion issues by applying a negative forty percent influence factor on portions of the land.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- 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>.