

REPRESENTATIVE FOR PETITIONERS:  
John William Davis, Jr., Davis & Roose

REPRESENTATIVE FOR RESPONDENT:  
Beth Henkel, Attorney

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Antonia K. Whitney,	)	Petition No.:	20-026-09-1-5-00130
	)		
Petitioner,	)		
	)	Parcel No.:	20-02-35-377-024.000-026
v.	)		
	)		
Elkhart County Assessor,	)	County:	Elkhart
	)		
Respondent.	)	Assessment Year:	2009

---

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

---

**February 28, 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 2009 assessment year.

### **PROCEDURAL HISTORY**

2. The Petitioner initiated her 2009 assessment appeal by filing a Form 130, Taxpayer's Notice to Initiate an Appeal, on May 20, 2010. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its assessment determination on July 11, 2011.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on August 22, 2011, petitioning the Board to conduct an administrative review of the property's 2009 assessment.

### **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 (the ALJ), Ellen Yuhan, held a hearing on December 5, 2012, in Goshen, Indiana.
5. The following persons were sworn at the hearing:<sup>1</sup>

For the Respondent:

Cathy Searcy, Elkhart County Assessor,  
Peggy L. Fisher, Appraiser.

---

<sup>1</sup> Only the Petitioner's attorney appeared at hearing. Neither the taxpayer, nor any witnesses on her behalf, was present.

6. The Petitioner presented the following exhibits:<sup>2</sup>

- Petitioner Exhibit C-1 – Property Assessment Detail Report for 23652 Greenleaf Boulevard,
- Petitioner Exhibit C-2 – Property Assessment Detail Report for 23630 Greenleaf Boulevard,
- Petitioner Exhibit C-3 – Property Assessment Detail Report for 23576 Greenleaf Boulevard,
- Petitioner Exhibit C-4 – Property Assessment Detail Report for 23542 Greenleaf Boulevard,
- Petitioner Exhibit C-5 – Property Assessment Detail Report for 23528 Greenleaf Boulevard,
- Petitioner Exhibit K – Affidavit of Antonia K. Whitney,
- Petitioner Exhibit L – Interrogatories dated August 30, 2011, addressed to Cathy Searcy,
- Petitioner Exhibit M – Interrogatories dated October 18, 2011, addressed to Cathy Searcy,
- Petitioner Exhibit N – Requests for Admission dated October 18, 2011, addressed to Cathy Searcy,
- Petitioner Exhibit O – Requests for Production dated October 18, 2011, addressed to Cathy Searcy,
- Petitioner Exhibit P – “Toward a Better Understanding of Value-in-Use in Property Tax Appraisals,” *Journal of Property Tax Management*, Vol. 8, Issue 3 (Winter 1997).<sup>3</sup>

7. The Respondent presented the following exhibits:

- Respondent Exhibit 1 – Property record cards for the subject property,
- Respondent Exhibit 2 – Form 131 Petition,
- Respondent Exhibit 3 – Appraisal of the subject property, dated December 30, 2011, prepared by Peggy L. Fisher,
- Respondent Exhibit 4 – Real Property Assessment Manual, pages 1 through 5,
- Respondent Exhibit 5 – Aerial map of the subject property.

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,

---

<sup>2</sup> After the hearing, the Petitioner’s attorney submitted property record cards in place of the Property Assessment Detail Reports submitted as Petitioner Exhibits C-1 through C-5.

<sup>3</sup> Petitioner’s counsel contends that Exhibit P was not an exhibit, but submitted it as argument. Also, as argument, Petitioner’s counsel prepared three tables with calculations of variances between land and improvements for the Petitioner’s neighbors.

Board Exhibit B – Notice of Hearing, Reschedule, dated October 16, 2012,  
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a single-family residence located at 23592 Greenleaf Boulevard, in Elkhart, Indiana.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2009, the PTABOA determined the assessed value of the Petitioner’s property to be \$326,600 for the land and \$71,100 for the improvements, for a total assessed value of \$397,700.
12. At the hearing, the Petitioner’s counsel argued the assessed value should be \$190,000 for the land and \$71,000 for the improvements, for a total assessed value of \$261,000.

#### **OBJECTIONS**

13. The Respondent’s counsel objected to Petitioner Exhibit K, the Affidavit of Antonia K. Whitney, on the ground that it is hearsay. Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) does not fall within a recognized exception to the hearsay rule, the resulting determination may not be solely based upon the hearsay evidence. 52 IAC 2-7-3. Therefore, the Judge admitted Petitioner Exhibit K over objection.

#### **JURISDICTIONAL FRAMEWORK**

14. 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**

15. The Petitioner contends that the assessed value of the Petitioner's property was overstated for the 2009 assessment year. The Petitioner presented the following evidence in support of her contention:
  - A. The Petitioner's counsel argues that the subject property was over-valued in 2009 based on its market value-in-use. *Davis argument*. According to Mr. Davis, the intention to use a property for a purpose other than its highest and best use should be taken into consideration in determining the property's market value-in-use under Indiana law. *Davis argument*. While the Manual applies this concept to farming, Mr. Davis argues, it could extend to a person, such as Ms. Whitney, who was living on the waterfront when it had marginal value and continued to reside in her minimal house rather than sell the property to be torn down and rebuilt as a "McMansion." *Id.*
  - B. Mr. Davis contends that, generally speaking, aside from river front properties, land values in residential neighborhoods are 20% of the value of the properties. *Davis argument*. According to Mr. Davis, if you take the average of the ratio of land to improvements, the land value for the subject property would be about \$143,389. *Id.*; *Petitioner Exhibits C-1 through C-5, Calculations of land to improvement ratios.*
  - C. Finally, Mr. Davis argues that the assessor valued the Petitioner's house at \$71,100 and the appraiser valued the house at \$138,000. *Davis argument*. Similarly the assessor's land value was \$326,600 and the appraiser's land value was \$190,000. *Id.* Mr. Davis argues that the value of the Petitioner's property should be a combination

of the \$190,000 land value from the appraisal and the assessor's improvement value of \$71,100. *Id.*

15. The Respondent contends that the property's appraised value of \$328,000 is the property's proper value for the 2009 assessment. The Respondent presented the following evidence in support of the assessment:
  - A. The Respondent's counsel argues that the property's assessed value should be \$328,000 based its appraised value. *Henkel argument.* In support of this argument, the Respondent submitted an appraisal prepared by Peggy L. Fisher, a certified residential appraiser, who valued the property as of January 1, 2008. *Respondent Exhibit 3.* Ms. Fisher testified that she prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Fisher testimony.*
  - B. The appraiser testified that for her sales comparison approach, she used five sales of waterfront properties that occurred between January 1, 2007, and December 12, 2008. *Fisher testimony; Respondent Exhibit 3.* According to Ms. Fisher, the comparable properties were close in age and size to the subject property. *Fisher testimony.* Ms. Fisher also testified that she used a front foot value for the price of the land, because waterfront property tends to be purchased based on how much frontage is on the water. *Fisher testimony.* The two comparable properties on the Greenleaf side of the river were adjusted at \$2,000 per front foot and the three properties on the opposite side of the river were adjusted at \$1,250 per front foot. *Id.*
  - C. In her cost approach, Ms. Fisher estimated the site value at \$190,000 based on that same \$2,000 per front foot value. *Fisher testimony; Respondent Exhibit 3.* According to Ms. Fisher, she estimated the depreciated cost of the improvements to be \$138,454. *Id.* Ms. Fisher testified that she assumed the property was on well and septic because it was not in the city. *Id.* However, Ms. Fisher admitted that she was only able to do an exterior inspection of the property. *Id.*

- D. In response to cross examination, Ms. Fisher testified that she did not know how the assessor arrived at the improvement total of \$71,100 and could not offer an opinion as to the reasons for the difference. *Fisher testimony*. Similarly, Ms. Fisher testified that she was unaware of the condition or grades used on the assessor's property record card. *Id.*
- E. The Assessor, Ms. Searcy, contends that, after the township assessor's offices were eliminated by law, the county conducted studies of waterfront properties. *Searcy testimony*. According to Ms. Searcy, the studies indicated that waterfront land was undervalued; while the structures tended to be overvalued. *Id.* As a result of this study, Ms. Searcy testified, the front foot price on the waterfront properties increased and the county applied the increase to all of the waterfront properties in an effort to have uniform and equitable assessments. *Id.*
- F. In response to the Petitioner's case, Ms. Searcy argues that the statement "in markets where owners are motivated by non-market factors such as the maintenance of a farming lifestyle even in the fact of a higher value for some other purpose, true tax value will not equal market value" refers to farming and would not apply to another type of property. *Searcy testimony*. According to Ms. Searcy, farm land is assessed differently than residential, commercial or industrial land because it has its own set rate and is not valued at market value. *Id.* Similarly, the Respondent's attorney, Ms. Henkel argues that the Respondent presented a number of comparable sales that were for residential purposes and the Manual states that in markets where there are regular exchanges, so that ask and offer prices converge, true tax value will equal value-in-exchange. *Henkel argument*. Further, Ms. Henkel argues that establishing a land to building ratio might apply when assessing a platted subdivision, but the subject property has a metes and bounds description. *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 was 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. Here, the parties agreed that the Petitioner's property's assessment increased from \$258,500 in 2008 to \$397,700 in 2009, which represents an increase of 53.85%. The Assessor, therefore, has the burden of proving the assessment was correct.

## 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 USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (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 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, 2009, assessment, the valuation date is January 1, 2008. 50 IAC 21-3-3.

19. Here, the Respondent presented an appraisal prepared by a licensed certified appraiser who testified that she prepared the appraisal in accordance with USPAP. The appraiser estimated the value of the property to be \$328,000 as of January 1, 2008 – which is the proper valuation date for the March 1, 2009, assessment date. An appraisal prepared according to USPAP will often be probative of a property’s value. *See Kooshtard Property VI, LLC*, 836 N.E.2d at 506 n.6. The Respondent, therefore, raised a prima facie case that the subject property’s value was \$328,000 for the 2009 assessment year.
  
20. Once the Respondent established a prima facie case, the burden shifted to the Petitioner. The Petitioner’s counsel argued that the Petitioner’s use of the property was motivated by non-market factors, similar to a farming lifestyle, because she continued to use it for her minimal house, rather than sell the property. The Petitioner’s counsel relies upon an excerpt from the 2002 Real Property Assessment Manual which states, “In markets in which sales are not representative of utilities, either because the utility derived is higher than indicated sale prices, or in markets where owners are motivated by non-market factors, such as the maintenance of a farming lifestyle even in the face of a higher value use for some other purpose, true tax value will not equal value in exchange.” MANUAL at 2. The Manual, however, continues with “In markets where there are regular exchanges, so that ask and offer prices converge, true tax value will equal value in exchange, except for owner occupied housing units, where true tax value will be equal to the value in exchange.” MANUAL at 2.
  
21. The Petitioner’s property is an owner-occupied property. The evidence shows that the Petitioner’s house is located in a market with regular exchanges of property and that buyers and sellers use their properties for the same residential use. However, even if the Board accepted Petitioner’s counsel’s argument that the Petitioner may be motivated by non-market factors, the Petitioner failed to show what effect the Petitioner’s motivation would have on the market value of the property. A Petitioner fails to sufficiently rebut

the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).

22. The Petitioner’s counsel also submitted several calculations for neighboring properties showing the ratio of assessed land value land to assessed improvement value, the ratio of the assessed value of the improvements to the assessed value of the land, and the ratio of the assessed value of the land to the total assessed value. Mr. Davis calculated the average land to improvement ratio and applied that ratio to the subject property, which resulted in a land value of \$143,389. However, the Petitioner’s counsel presented no authority that recognized this as an acceptable method of appraising or assessing residential properties, or, in fact, any property.
  
23. To the extent that the Petitioner was attempting to establish that the assessor assessed the subject property differently than she assessed comparable properties, this argument also fails. Pursuant to Indiana Code § 6-1.1-15-18(c), “To accurately determine market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district...” Ind. Code § 6-1.1-15-18. “The determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices.” Indiana Code § 6-1.1-15-18. Here, however, the property record cards in evidence show that the land was assessed at the same base rate per front foot for the subject property and for the five neighboring properties. Moreover, the improvements on the five neighboring properties varied widely in size, age and amenities and the Petitioner made no attempt to show how the properties were comparable to the subject

property. Thus, the Petitioner failed to rebut the Respondent's prima facie case with evidence relating to the assessed values of other properties in the area.

#### **CONCLUSION**

24. The Petitioner's property's 2009 assessed value increased by more than 5% over the property's 2008 value and therefore the assessor bore the burden of proving the property's 2009 assessment was correct. The Respondent raised a prima facie case that the property's assessed value should be \$328,000 for the March 1, 2009, assessment date. The Petitioner failed to rebut the Respondent's case. The Board therefore finds in favor of the Respondent and holds that the value of the subject property for the March 1, 2009, assessment was \$328,000.

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property should be lowered to \$328,000 for the March 1, 2009, assessment.

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

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>.