

REPRESENTATIVE FOR PETITIONER:
Bruce Huntington, Attorney with Botkin & Hall

REPRESENTATIVES FOR RESPONDENT:
Terrance Wozniak, Attorney for Penn Township and St Joseph County PTABOA,
Greg Bock, Penn Township Assessor,
Kevin Klaybor, PTABOA Member,
David Wesolowski, PTABOA Member,
Dennis Dillman, PTABOA Member,
Ross Portolese, PTABOA Member.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Donald & Leslie Kelly)	Petition Nos.: 71-023-02-1-4-00891
)	71-023-02-1-4-00890
Petitioners,)	
)	Parcel Nos.: 16-1212-8533
v.)	16-1212-8531
)	
Greg Bock)	County: St. Joseph
Penn Township Assessor)	Township: Penn
Respondent.)	Assessment Year: 2002

Appeal from the Final Determination of
St. Joseph County Property Tax Assessment Board of Appeals

July 31, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having 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 was whether the assessed values of the subject parcels exceed their market value in use.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Donald and Leslie Kelly filed Form 131 Petitions for Review of Assessment on May 7, 2004, petitioning the Board to conduct an administrative review of the above petitions. The St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) issued its determinations on April 9, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Debra Eads, held a hearing on February 23, 2006, in South Bend, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Donald Kelly, Property Owner,
Rosemary Mandrici, Portage Township Assessor,

For the Respondent:

Greg Bock, Penn Township Assessor,
Kevin Klaybor, PTABOA Member,
David Wesolowski, PTABOA Member,
Dennis Dillman, PTABOA Member,
Ross Portolese, PTABOA Member.

Ralph Wolf, PTABOA Member, observed the hearing and was not sworn in.

5. The following exhibits were presented for the Petitioners:

Petitioner Exhibit 1 – Appraisal reports for the two parcels
Petitioner Exhibit 2 – Warranty deed for the subject property dated 10-31-00
Petitioner Exhibit 4 – Copy of an aerial photo of the subject area
Petitioner Exhibit 5 – Narrative relative to the subject property
Petitioner Exhibit 6 – Letter from the department of public works to the
Petitioners.

There was no Petitioner Exhibit 3 submitted.

6. The following exhibits were presented for the Respondent:

Respondent Exhibit 6 – Sales disclosure dated August 22, 2001, for a neighboring property.

The Respondent did not submit exhibits identified as numbers 1 through 5.

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

Board Exhibit A – The 131 Petition,
Board Exhibit B – Notice of Hearing dated December 2, 2005,
Board Exhibit C – Hearing Sign in sheet,
Board Exhibit D – Notice of Appearance for Bruce Huntington,
Board Exhibit E – Subpoena for Rosemary Mandrici,
Board Exhibit F – Subpoena for Gregory Bock,
Board Exhibit G – Subpoena for David Wesolowski,
Board Exhibit H – Subpoena for Susan Al-Abbas,
Board Exhibit I – Subpoena for Cynthia Bodle.

8. The subject properties are two vacant tracts of land with limited access located at the intersection of Ironwood and Lincolnway West in Mishawaka.

9. The ALJ did not conduct an on-site inspection of the properties.

10. For 2002, the PTABOA determined the assessed values of the properties to be \$11,600 for land for parcel #16-1212-8533 (Lot 4) and \$23,500 for land for parcel #16-1212-8531 (Lots 2 and 3). There are no improvements on the properties.

11. For 2002, the Petitioners contend the total assessed value of the properties should be \$1,500.

JURISDICTIONAL FRAMEWORK

12. 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

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 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).
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. Wash. 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”).
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 evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Whether the assessed values of the subject parcels exceed their market value in use.

16. The Petitioners contend that the subject parcels are assessed in excess of the sale price paid by the Petitioners when the property was purchased from St. Joseph County.
17. The Respondent considers the assessment established for the subject property to be the appropriate value on the assessment date.
18. Subpoenas were issued on behalf of the Petitioners for the appearance of Rosemary Mandrici, Portage Township Assessor; Gregory Bock, Penn Township Assessor; David Wesolowski, St. Joseph County Assessor and PTABOA Member; Susan Al-Abbas, St. Joseph County Engineer; and Cynthia Bodle, St. Joseph County Commissioner. Ms. Al-Abbas and Ms. Bodle had been excused and Ms. Mandrici, Mr. Bock and Mr. Wesolowski were present at the hearing.
19. The Petitioners presented the following evidence and testimony in regard to this issue:
 - A. The Petitioner testified that the subject parcels were created by accretion due to the relocation and renovation of the intersection of Ironwood Drive and Lincolnway West. *Huntington argument*. According to the Petitioner, St. Joseph County commissioned an appraisal of the subject property because it was considered excess land by the county. *Mandrici testimony*. The appraised value of the land was determined to be \$1,500 in September 1998. *Petitioner Exhibit 1A*. The Petitioner argues that property sold by the County must be appraised and must be sold at market value pursuant to statute. *Mandrici testimony*. Thus, the Petitioner concludes, the County's appraisal establishes the value of the property. *Id.*

- B. Further, the Petitioners testified, they purchased the subject property in October 2000 for the appraised market value.¹ *Huntington argument and Petitioner Exhibit 2*. According to the Petitioners, they acquired the subject property as an investment and had no other anticipated use for the property. *Id.*
- C. The Petitioners argue that a retaining wall runs the full length of the Lincolnway West frontage of the subject property. *Huntington argument and Petitioner Exhibit 4*. According to the Petitioners, the retaining wall completely restricts the access to the property from Lincolnway West. *Id.* Further, the Petitioners contend, St. Joseph County has an easement for utilities and maintenance of the retaining wall. *Petitioner Exhibit 6*. The limited access to the property and the easement for maintenance of the retaining wall severely limits its use. *Id.*
- D. The Petitioners also argue that the subject property is landlocked. *Id.* According to the Petitioners, the subject property has very limited access because of the Ironwood Drive underpass. *Bock testimony*. Primary access to the subject property is through the adjoining parcel that is also owned by the Petitioner. *Id.* The Petitioners argue, however, that the fact that the Petitioner owns the adjoining property is not relevant to the value of the subject property. *Huntington argument*.
- E. In response to the Respondent's arguments, the Petitioner contends that the "sales comparison" presented by the Respondent is not comparable to the subject property. The Petitioners contend that American Partners LP property was purchased at a premium with the intent of constructing a pharmacy at that location. According to the Petitioners, after American Partners chose not to construct the pharmacy, American Partners attempted to sell the property at an auction. According to the Petitioners, the highest bid for the property was \$130,000 which was rejected by American Partners. *Kelly testimony*.

¹ Petitioner Exhibit 1B relates to a parcel of land in Portage Township that is not a part of these proceedings. The purchase price of the properties was \$1,700 reflecting the \$1,500 appraisal of the properties at issue in this matter and the \$200 appraised value of the Portage Township parcel.

- F. Finally, the Petitioners argue, the Petitioners purchased the subject property from St. Joseph County at the market value determined in the appraisal commissioned by the county. *Huntington summary*. Contrary to the Respondent’s argument, the Petitioners contend, there is no evidence on the record to suggest that the market value of the subject property has increased since its purchase, even considering the assemblage with other property owned by the Petitioner. *Id.*
20. The Respondent presented the following evidence and testimony in regard to this issue:
- A. The Respondent argues that the appraisal of the subject property was not in the possession of the assessor at the time the assessment was determined. *Bock testimony; Petitioner Exhibit 1A*. The Respondent further argues that the appraisal is not a reasonable estimate of the value of the property. According to the Respondent, the appraisal commissioned by the county established a market value for the property for any prospective buyer. *Wozniak summary*. The fact that the property was purchased by a contiguous landowner increased the relative market value of the subject because the limited access is no longer an issue. *Id.*
- B. Similarly, the Respondent contends that the sale of the subject property is not a reasonable estimate of value due to the fact that the seller of the property was a government entity. *Bock testimony*. According to the Respondent, the final total value of multiple parcels can exceed the sum of their individual values due to a real estate development term know as “assemblage.” *Dillman testimony*. The Respondent argues that the fact that the same individual who owns the adjoining land currently owns the subject property can account for the assessed value of the subject parcel exceeding the appraised value and/or the purchase price. *Id.*
- C. Finally, the Respondent contends that the sale of a neighboring property supports the assessed value. According to the Respondent, the subject property is located at the southeast corner of Ironwood Drive and Lincolnway West. *Huntington argument; Petitioners Exhibit 4*. The Respondent argues that the property on the northeast

corner of the same intersection sold to American Partners LP on August 22, 2001 for \$ 415,000. *Bock testimony*.

Petitioners' Prima Facie Case

21. The Petitioners contend that the assessed value of the subject properties is excessive compared to the appraised and sale value of the lots. In support of this contention, the Petitioners submitted an appraisal for the subject properties valuing the properties for \$1,500 as of September 3, 1998, and a warranty deed for the purchase of the properties dated October 31, 2000. *Petitioner Exhibit 1A*.

23. Real property in Indiana is assessed on the basis of its “true tax value”. See I.C. 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 2 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter “MANUAL”). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).

24. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*

25. Here, the Petitioners submitted an appraisal for the subject properties. *Petitioner Exhibit 1A*. The appraisal established the value of the property to be \$1,500 on September 3, 1998. *Id.* The Petitioners presented the testimony of Ms. Mandrici, who testified that property sold by the County must be appraised and must be sold for market value.

Mandrici testimony. Further, the Petitioners purchased the subject property for the appraised amount on October 31, 2000. *Petitioner Exhibit 3.* While, the appraisal is an “Excess Real Property Appraisal Report” and is limited in comparison to more traditional fee appraisals, it was prepared by a licensed general appraiser with the Member of the Appraisal Institute (MAI) designation. Further, the appraised value is supported by the later sale of the property for \$1,500. Thus, the appraisal constitutes a prima facie case that the properties are over-valued.

The Respondent’s Case

26. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent alleges that the properties were sold as a means to return the property to the tax rolls quickly. *Bock testimony.* The Board, however, is not persuaded by the Respondent’s attempts to disavow the appraisal. The appraisal was prepared for a County department and the sale of the properties to the Petitioners occurred pursuant to rules requiring that the sale of government property be at market value. Thus, we must conclude that the appraised value and the sale value represented the market value of the subject properties at the time of the appraisal and sale.

27. The Respondent also argues that the appraised and sale values do not reflect the value of the subject properties because the Petitioners own the adjoining lots and that, through “assemblage” of those lots, the value of the properties are increased. The Respondent, however, presented no evidence of the impact of the Petitioners’ ownership of contiguous lots on the market value of the subject properties. Thus, while we are not convinced that the value of the properties is the \$1,500 appraised or sale price, the Respondent’s “conclusory statements” that the properties are worth more are insufficient to rebut the Petitioners’ case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) (“In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Rassel’s calculations. Rather, he merely asked

open-ended questions or made conclusory statements.”). The Respondent must have presented probative evidence of the market value of the subject properties based upon the Petitioners’ ownership of adjoining lots to rebut the Petitioners’ case.

28. Further, the Respondent contends that a “comparable” sale shows that the assessed value of the properties is correct. In support of this contention, the Respondent submitted a sales disclosure for a neighboring property that indicates that the property sold for \$415,000 on August 22, 2001. *Respondent Exhibit 6*. To rebut or impeach Petitioner’s case, however, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), “the Court has frequently reminded taxpayers that statements that another property ‘is similar’ or ‘is comparable’ are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case.” 836 N.E.2d at 1082 (citations omitted). Here, the Respondent presented no evidence regarding the size, shape or topography of the properties. Although the Respondent alleges that properties are “similar,” Mr. Bock admitted that the properties were not comparable based on the increased access and visibility of the alleged “comparable” property. Thus, the Respondent’s “comparable” sale evidence is insufficient to rebut Petitioners’ case.
29. Finally, the Respondent alleges that the subject properties were correctly assessed and that the appraised value does not reflect the properties’ market value. In order to carry its burden, however, the Respondent must do more than merely assert that it assessed the property correctly. See *Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.d2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case).

30. The Board, therefore, finds that the Respondent failed to show that the appraisal or the actions taken by the appraiser were not within the standards set by USPAP or that they were outside standard appraisal practices. Further, the Respondent failed to show that the properties actually increased in value based on the Petitioners' ownership of contiguous parcels. Thus, the Board must find in favor of the Petitioners and hold that the value of the subject properties is \$1,500 on the basis of the appraisal and sale.²

SUMMARY OF FINAL DETERMINATION

Whether the assessed values of the subject parcels exceed their market value in use.

31. The Petitioners presented an appraisal by a certified general appraiser and a MAI. This appraisal valued both parcels as of September 1998 for \$1,500. The Petitioners made a prima facie case that the assessed value of the subject property exceeds its market value in use. The Respondent failed to rebut the Petitioners' evidence. Thus, the Board finds in favor of the Petitioners.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

² While the evidence presented regarding the existence of the retaining wall and the properties' limited access could also be construed to be an argument for a negative influence factor to be applied to the subject properties, the Board finds the issue of value to be determinative in this case.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.