

REPRESENTATIVE FOR PETITIONERS:

Bradley Hasler, Attorney

REPRESENTATIVE FOR RESPONDENT:

Catherine Lane, Knox County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Terry M. and Valerie A. Brown,	)	Petition Nos.: 42-006-09-1-5-00001
	)	42-006-10-1-5-00001
Petitioners,	)	42-006-11-1-5-00001
	)	
	)	Parcel No.: 42-15-17-100-016.000-006
v.	)	
	)	County: Knox
	)	
Knox County Assessor,	)	Township: Johnson
	)	
Respondent.	)	Assessment Years: 2009, 2010, and 2011

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

May 27, 2015

**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:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **INTRODUCTION**

1. Did the Petitioners prove that their Notification of Final Assessment Determination (Form 115) issued by the Knox County Property Tax Assessment Board of Appeals (PTABOA) for the 2009 assessment year violated Ind. Code § 6-1.1-9-4(a)? Additionally, did the Petitioners prove that the subject property was overvalued for the 2010 and 2011 assessment years?

### **PROCEDURAL HISTORY**

2. The Petitioners initiated their 2011 assessment appeal by filing a Petition for Review of Assessment by Local Assessing Official (Form 130) on May 17, 2012. The PTABOA held a hearing to review the petition on October 11, 2012. In addition to reviewing the 2011 appeal, the PTABOA unilaterally elected to review the 2009 and 2010 assessments. On October 29, 2012, the PTABOA issued its determinations for 2009, 2010, and 2011. On December 12, 2012, the Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board for all three years.
3. On January 15, 2015, the Board's Administrative Law Judge (ALJ), Jacob Robinson, held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. The following people were sworn as witnesses and testified at the hearing:  
For the Petitioners: Valerie A. Brown.  
For the Respondent: Catherine Lane, Knox County Assessor.<sup>1</sup>

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<sup>1</sup> Amy Conner, Knox County Deputy Assessor, was sworn, but did not testify.

5. The Petitioners submitted the following exhibits:
  - Petitioner Exhibit 1: Subject Property Record Card (PRC),
  - Petitioner Exhibit 2: Summary Appraisal by Kenneth C. Snider with an effective date of August 22, 2012, (Snider Appraisal),
  - Petitioner Exhibit 3: Form 131 Petition for 2011,
  - Petitioner Exhibit 4: Invoice from Graber Post Buildings, Inc. dated October 22, 2008,
  - Petitioner Exhibit 5: Form 131 Petition for 2009,
  - Petitioner Exhibit 6: Form 131 Petition for 2010.
  
6. The Respondent did not submit any exhibits.
  
7. The following additional items are recognized as part of the record:
  - Board Exhibit A: Form 131 petitions with attachments,
  - Board Exhibit B: Hearing notices dated November 26, 2014,
  - Board Exhibit C: Hearing sign-in sheet,
  - Board Exhibit D: Notice of appearance for Bradley D. Hasler, Jeffrey T. Bennett, and Bailey Roese,
  - Board Exhibit E: Amended notice of appearance for Bradley D. Hasler, Jeffrey T. Bennett, Bruce A. Smith, and Bailey Roese.
  
8. The property under appeal is a single family residence located at 29 W. Cottonwood Lane in Vincennes.
  
9. The PTABOA determined the following assessed values:
 

2009:	Land: \$38,500	Improvements: \$155,700	Total: \$194,200
2010:	Land: \$38,500	Improvements: \$250,800	Total: \$289,300
2011:	Land: \$38,500	Improvements: \$261,500	Total: \$300,000
  
10. The Petitioners requested the 2009 assessed value be restored to the original total assessment of \$143,800. Further, the Petitioners requested the 2010 and 2011 assessed values be reduced to a total assessment of \$265,000 for each year.

## JURISDICTIONAL FRAMEWORK

11. The 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 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.

## PETITIONERS' CONTENTIONS

12. Although the Petitioners only filed a Form 130 for 2011, the PTABOA addressed the 2009 and 2010 assessment years as well. The 2009 Form 115 issued by the PTABOA was not timely. Indiana Code § 6-1.1-9-4(a) requires notice of a change to be issued within three years after the assessment date. The 2009 Form 115 was mailed by the PTABOA on October 29, 2012. This was the first notice that the Petitioners received indicating that a change had been made to their 2009 assessment. Prior to the change, the 2009 assessment was \$143,800. The PTABOA increased their 2009 assessment to \$194,200. *Hasler Argument; Brown Testimony; Pet'r Ex. 1, 5.*
13. The Petitioners also contend the subject property's 2010 and 2011 assessments are too high.<sup>2</sup> The Petitioners purchased the property "in 1995 or 1996" for \$125,000, and utilize it as their primary residence.<sup>3</sup> There have been no improvements made to the main residence. However, the Petitioners did add a pool house that was "completed in May of 2010." *Brown Testimony.*

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<sup>2</sup> The Petitioners did not raise an issue concerning the notice requirements under Ind. Code § 6-1.1-9-1 for the 2010 assessment. The Board will not make the case for a petitioner. The Board bases its decision on the evidence presented and the issues raised during the hearing. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).

<sup>3</sup> Petitioners' Exhibit 2 includes a copy of the Petitioners' Warranty Deed, dated May 7, 1993, and recorded on May 10, 1993.

14. The Petitioners added the pool house to store pool supplies and to have a place for guests to stay. The Petitioners presented an invoice for the pool house, which indicates the “shell” was built for a total cost of \$44,857. The Petitioners finished the “shell” by putting in drywall, kitchen cabinets, bathrooms, windows and painting the interior. Mrs. Brown estimates the total expenditure for the pool house was around “\$55,000 to \$60,000.” *Brown Testimony; Pet’r Ex. 4.*
  
15. The factors leading Mrs. Brown to believe the 2010 and 2011 assessed values were too high include the following: The main residence was built in 1946, it was built on a concrete slab, it still has original kitchen cabinets and linoleum, the area above the garage has no duct work and only has baseboard heat and a window air conditioning unit, and the electrical wiring is old. Because of these issues, Mrs. Brown believes that a potential buyer would want to add extensive updates to the home. *Brown Testimony.*
  
16. In an effort to prove the subject property is over assessed for 2010 and 2011 the Petitioners presented a summary appraisal by Kenneth Snider. Mr. Snider’s summary appraisal was prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP). Mr. Snider valued the property at \$265,000 as of August 22, 2012. The Petitioners requested Mr. Snider perform the appraisal for the purposes of contesting the property’s assessment. Mrs. Brown testified that she is “generally aware” of the value of her property and the properties in the surrounding area. Originally, Mrs. Brown believed Mr. Snider’s opinion of value was too high because it is an older home and it is in pretty rough shape, but she now “believes it to be a fair value.” *Brown Testimony; Pet’r Ex. 2.*
  
17. Mrs. Brown ultimately requested the 2010 and 2011 assessed values be reduced to \$265,000, as indicated by Mr. Snider’s appraisal. However, she believes the property was worth less than \$265,000 on the March 1, 2011, assessment date because there would have been “some appreciation from 2011 to 2012.” Further, the March 1, 2010, value should be less than \$265,000 for the same reason. *Brown Testimony; Pet’r Ex. 2, 3, 6.*

## RESPONDENT'S CONTENTIONS

18. The subject property is correctly assessed. This appeal resulted from the 2011 assessment notice received by the Petitioners. In 2011, the property's assessment increased from \$143,900 to \$310,200. The increase was a result of a field inspection conducted by the county. A field agent was sent to the property to do an inspection because there were changes on the property record card. The field agent noticed a pool house was added, along with a pool and a detached garage. These items were previously unaccounted for. *Lane Testimony.*
  
19. At the PTABOA hearing, the Petitioners indicated the pool house was not completed in 2009. The Petitioners stated they began building the pool house "around 2009", but it was not completed until "later." Thus, the PTABOA adjusted the assessments for 2009, 2010, and 2011 to account for the structures that had not previously been accounted for. The pool house was not included in the 2009 assessment, but it was added to the assessment as partially complete in 2010 and fully complete in 2011. *Lane Testimony.*
  
20. The values assigned to the pool house are fair. The Respondent maintains that the assessments are "not that far off" from the value indicated on the Petitioners' appraisal. However, the appraisal is a "little bit low." The PTABOA properly went back "a few years" and picked up items not previously assessed. If a permit had been obtained for the pool house, then the Respondent would have been able to pick the addition up at that time. The Respondent had no way of determining the completion dates without the Petitioners' information. Any changes made by the PTABOA were based on the Petitioners' testimony. *Lane Testimony.*

## BURDEN OF PROOF

21. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

22. First, Indiana Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
23. Second, Indiana Code section 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and is applicable to all appeals pending before the Board.
24. Here, neither party made any argument concerning the burden of proof.<sup>4</sup> In fact, when the ALJ asked the parties if anyone had any arguments about the burden of proof, the Petitioners’ counsel stated “None from the Petitioner, your honor.” Based on the evidence presented, the Board concludes that the 2009, 2010, and 2011 assessments involve structural improvements not considered in the assessments for the prior tax years. Thus, the burden-shifting provisions are inapplicable under Ind. Code § 6-1.1-15-17.2(c) which provides:

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<sup>4</sup> Again, the Board will not make the case for a party. The Board bases its decision on the evidence presented and the issues raised during the hearing. *Whitley*, 704 N.E.2d at 1119.

(c) This section does not apply to an assessment if the assessment that is the subject of the review or appeal is based on:  
(1) *structural improvements*;  
(2) zoning; or  
(3) uses;  
that were not considered in the assessment for the prior tax year.

Ind. Code § 6-1.1-15-17.2(c) (emphasis added).

Consequently, the burden of proof rests with the Petitioners for all three years under appeal.

### ANALYSIS

25. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
26. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2009 assessment year, the valuation date was January 1, 2008. 50 IAC 21-3-3. For the 2010 and 2011 assessment years, the valuation dates were March 1, 2010, and March 1, 2011, respectively. Ind. Code § 6-1.1-4-4.5(f).



27. As discussed above, the Petitioners bear the burden of proving that the subject property's 2009, 2010, and 2011 assessments are incorrect. In support of their contention that the change to the 2009 assessment was invalid, the Petitioners presented evidence and testimony regarding the timing of the PTABOA determination for 2009. In support of their contention that the subject property was over-assessed for 2010 and 2011, the Petitioners presented testimony and a summary appraisal to prove its value. The Petitioners requested that the 2009 assessed value be returned to \$143,800. The Petitioners further requested the 2010 and 2011 assessments be reduced to \$265,000.

### **2009 Appeal**

28. The Petitioners contend that they were not provided timely notice of the change to their 2009 assessment. While Ind. Code § 6-1.1-9 generally allows an assessing official or PTABOA to assess omitted or undervalued property for any year or years, that power is limited by Ind. Code § 6-1.1-9-4(a) which states:

(a) Real property may be assessed, or its assessed value increased, for a prior year under this chapter only if the notice required by section 1 of this chapter is given *within three (3) years after the assessment date for that prior year.*

Ind. Code § 6-1.1-9-4(a) (emphasis added).

29. Here, the PTABOA unilaterally elected to change the 2009 assessment and issued a Form 115 for the March 1, 2009, assessment date. In order for the Form 115 to have been timely under Ind. Code § 6-1.1-9-4(a), the PTABOA was required to issue it on or before March 1, 2012. However, as confirmed by the Respondent, the Form 115 was mailed to the Petitioners on October 29, 2012. Further, the Petitioners' uncontroverted testimony also established that this was the first notice they received indicating a change to their 2009 assessment. Therefore, the Board finds that the Petitioners have established that the change to their 2009 assessment was not imposed in conformity with the requirements of Ind. Code § 6-1.1-9-4(a).

30. The Respondent failed to offer any evidence challenging the Petitioners' claim that the Form 115 was untimely under Ind. Code § 6-1.1-9-4(a). In fact, the Respondent's testimony concerning when the Form 115 was mailed confirms that the notice was untimely. Therefore, the Board finds the Petitioners are entitled to have the 2009 assessment restored to the original assessment of \$143,800.

### **2010 and 2011 Appeals**

31. Turning to the 2010 and 2011 assessments, the Petitioners offered a summary appraisal valuing the property at \$265,000 as of August 22, 2012. The summary appraisal was completed by Mr. Snider, an Indiana certified general appraiser. The appraisal was prepared in conformity with USPAP. An appraisal, completed in conformance with USPAP is often the most effective method to rebut the presumption that an assessment is correct. *O'Donnell*, 854 N.E.2d at 94; *Kooshtard Prop. VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). On its face, the Snider Appraisal appears to be substantial, probative evidence supporting the Petitioners' claim for an assessment of \$265,000. However, on closer inspection, the appraisal reveals several serious flaws that undermine its probative value.
32. As part of making a prima facie case, "it is the taxpayer's duty to walk the [Indiana Board and this] Court through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (quoting *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). The Petitioners failed to do this. Mr. Snider states that he estimated the value by applying the sales comparison approach. His appraisal is actually a "Restricted Summary Appraisal Letter." Thus, it does not include any documentation relating to the comparable properties Mr. Snider selected. Further, it does not even include a summary of the data he relied on for his analysis.
33. More troubling still, the evidence fails to explain how Mr. Snider used his data to arrive at a value of \$265,000. In his appraisal letter, Mr. Snider admits as much, stating:

“Warning is made to the reader of this letter that the documentation and *analysis upon which the final value estimate is predicted* is contained in the files of the appraiser and the letter may not be understood without file data.” *Pet’r Ex. 2* (emphasis added).

Further, Mr. Snider was not present at the hearing to explain his analysis or any of the underlying decisions regarding his selection of comparable properties. These factors negatively impact the credibility of Mr. Snider’s opinion of value.

34. Furthermore, Mr. Snider valued the property as of August 22, 2012. The valuation dates for the 2010 and 2011 appeals were March 1, 2010, and March 1, 2011, respectively. Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471. Here, Mr. Snider failed to make any attempt to relate his indicated value to the relevant valuation dates. Because the effective date is more than a year removed from the relevant valuation dates and was not properly trended back to those dates, it lacks the analysis required by *Long*.
35. Mrs. Brown did make an attempt to relate the summary appraisal to the relevant valuation dates by testifying that she “believes” the property was worth less than \$265,000 on both March 1, 2010, and March 1, 2011. As part of her testimony she also stated that the property “would have appreciated over that time period.” A property owner’s testimony concerning the value of her property “will carry probative force if it is based upon facts and not speculation.” *Lakes of the Four Seasons Prop. Owners’ Ass’n v. Dep’t of Local Gov’t Fin.*, 875 N.E.2d 833, 836 (Ind. Tax Ct. 2007) (citations omitted). However, Mrs. Brown failed to provide probative evidence to substantiate her opinion. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley*, 704 N.E.2d at 1119. Therefore, the Board finds that the Petitioners’ summary appraisal is not probative evidence of the property’s market value-in-use for the 2010 and 2011 assessments.
36. For the above mentioned reasons, the Petitioners failed to make a prima facie case that the subject property was overvalued for 2010 and 2011. Where Petitioners have not

supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E. 2d 1215, 1221-22 (Ind. Tax Ct. 2003).

#### SUMMARY OF FINAL DETERMINATION

37. The Petitioners made a prima facie case that the increase to the 2009 assessment was invalid. The Respondent failed to rebut the Petitioners' evidence. Thus, the Petitioners are entitled to have their 2009 assessment restored to the original assessment of \$143,800. However, the Petitioners failed to make a prima facie case that their 2010 and 2011 assessments were incorrect. Accordingly, the Board finds for the Respondent for the 2010 and 2011 assessment years.

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

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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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.