

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

**Petitions #s:** 46-022-02-1-5-00009  
46-022-03-1-5-00057  
**Petitioner:** Raymond A. Cupples  
**Respondent:** Michigan Township Assessor (LaPorte County)  
**Parcel #:** 42-01-21-306-008  
**Assessment Year:** 2002 and 2003

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 Petitioner initiated assessment appeals with the LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated January 14, 2004, for the March 1, 2002, assessment date and August 25, 2004, for the March 1, 2003, assessment date.
2. The Petitioner received notices of the decisions of the PTABOA on September 8, 2004, for the 2002 assessment year and on May 19, 2005, for the 2003 assessment year.
3. The Petitioner filed appeals to the Board by filing Form 131s with the county assessor on October 7, 2004, for the 2002 assessment year and on May 23, 2005, for the 2003 assessment year. The Petitioner elected to have these cases heard in small claims.
4. The Board issued notices of hearings to the parties dated May 19, 2006, for both petitions.
5. The Board held an administrative hearing, for both petitions, on July 24, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Raymond Cupples, Property Owner
  - b) For Respondent: Terry Beckinger, Michigan County Assessor  
Carol McDaniel, County Assessor and PTABOA Member

Marilyn Meighen, attorney, was also present and acted as counsel for both the Michigan Township Assessor and LaPorte County.

### Facts

7. The property consists of a single-family residence on a 40 foot by 65 foot lot, located at 609 Colfax Avenue, Michigan City, Michigan Township, in LaPorte County, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed values of the property to be \$27,700 for the land and \$55,300 for the improvements, for a total assessed value of \$83,000 for the March 1, 2002, assessment date and \$102,200 for the land and \$42,600 for the improvements, for a total assessed value of \$144,800 for the March 1, 2003, assessment date.
10. The Petitioner requested assessments of \$2,900 for the land and \$27,100 for the improvements, for a total assessed value of \$30,000 for both the March 1, 2002, and March 1, 2003, assessment dates.

### Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
  - a. The Petitioner contends that the assessed values exceed the market values in use of the property. *Cupples testimony*. In support of this contention, the Petitioner testified that the assessed value of the land increased from \$2,900 in 2001 to \$27,700 in 2002 and to \$102,200 in 2003. *Id.*
  - b. The Petitioner also testified that the lot size is 40 feet by 65 feet with approximately 1,629 square feet not covered by the house. *Cupples testimony; Petitioner Exhibits 1A, 1B, 8, 9, 10 and 11*. According to the Petitioner, he cannot obtain a permit to build on the lot because it is too small and thus the lot is unbuildable. *Cupples testimony; Petitioner Exhibits 4 and 1A*.
  - c. The Petitioner further contends that the condition of the dwelling is poor due to the fact that it has been vacant since 1999, has a roof that leaks, a basement that leaks, cracked windows, no furnace, no water heater, broken pipes, no fixtures, no water, and no heat. *See Petitioner Exhibit 1*. In support of this contention, the Petitioner submitted evidence showing that the water has not been turned on since 1999 and that there is no gas meter at the property. *Petitioner Exhibits 3 and 7*.
12. Summary of Respondent's contentions in support of the assessment:
  - a. The Respondent contends that the burden of proof is with the taxpayer to submit probative evidence that the assessed value is wrong. *Meighen argument*. According to the Respondent, information as to the amount of dirt to plant flowers or a dispute

with a neighbor over a sewer line is not probative evidence of value. *Id.* Thus, the Respondent argues, the taxpayer has not met the legal standard of probative evidence in this case. *Id.*

- b. The Respondent further contends that the property is correctly assessed based on a comparable sale. *Meighen argument.* According to the Respondent, a property located at 115 N. Lake Avenue sold in an arms-length transaction on July 30, 1999, for \$255,000. *Beckinger testimony; Respondent Exhibits B, C and D.* The Respondent contends that the size of the properties' lots is similar because the lot at 115 N. Lake Avenue is 47.5 feet by 48 feet and the subject property's lot is 48 feet by 65 feet.<sup>1</sup> *Beckinger testimony; Petitioner Exhibit 1.* The Respondent also contends the date of construction of the properties, size of the house and view of the lake are similar. *Id.* According to the Respondent, the comparable was constructed in 1924 and the subject property was constructed in 1941. *Id.* Further, the area of the comparable dwelling is 1,144 square feet and the subject house has 1,066 square feet. Finally, the comparable is located further from Lake Michigan than the subject property. *Beckinger testimony.*

### **Record**

13. The official record for this matter is made up of the following:

- a. The Petition,
- b. The tape recording of the hearing labeled BTR #6151,
- c. Exhibits:

Petitioner Exhibit 1 – Petitioner's letter explaining contentions,  
Petitioner Exhibit 1A – Plat of survey for subject property,  
Petitioner Exhibit 1B – Site plan of subject dwelling,  
Petitioner Exhibit 3 – Water utility history,  
Petitioner Exhibit 4 – Department of Planning and Inspection letter dated 2/1/93,  
Petitioner Exhibit 5 – Form 131 Petition for 2002,  
Petitioner Exhibit 6 – Form 131 Petition for 2003,  
Petitioner Exhibit 7 – Exterior photograph of missing gas meter,  
Petitioner Exhibit 8 – Exterior photographs of subject property,  
Petitioner Exhibit 9 – Exterior photographs of subject property,  
Petitioner Exhibit 10 – Exterior photographs of subject property,  
Petitioner Exhibit 11 – Exterior photographs of subject property,

Respondent Exhibit 1 – Subject property record card (PRC),  
Respondent Exhibit 2 – PRC for 115 N. Lake,  
Respondent Exhibit 3 – Sales disclosure for 115 N. Lake dated July 1999,

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<sup>1</sup> The comparable's property record card actually shows the lot size to be 47.5 feet by 105 feet, but this information does not dramatically alter the testimony of Mr. Beckinger.

Respondent Exhibit 4 – Map,  
Respondent Exhibit 5 – *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764  
(Ind. Tax Ct. 2006),

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Notice of Appearance for Marilyn Meighen,  
Board Exhibit D – 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
  - a. The Petitioner contends that the assessed value of the property exceeds its market value and that the correct assessments for the property should be \$30,000 for the March 1, 2002, assessment year and March 1, 2003, assessment year. *Cupples testimony*. According to the Petitioner, the condition of the dwelling is poor and the property's lot size and lack of access to the Lake Michigan limits the property's value. *Id.*; *Petitioner Exhibit 1*.

### Condition

- b. The Petitioner contends that the house is in “poor” condition. *Cupples testimony; Petitioner Exhibit 1*. According to the Petitioner, the dwelling has been vacant since 1999. *Id.* In a hand written account of the property’s condition, the Petitioner argues that the roof leaks, the basement leaks, the windows are cracked, and there is no furnace or water heater. *Id.* Further, the property has broken pipes, no fixtures, no water, and no heat. *Id.* The Petitioner also submitted a water bill from 1999 and a picture showing that there is no gas meter at the property. *Petitioner Exhibits 3 and 7*.
- c. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5*, (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* Presently, the dwelling is assessed as an “average” dwelling. *Respondent Exhibit 1*. A property of “average” condition has “normal wear and tear” for the neighborhood. *Id.* at Chap. 3, pg. 60. In an “average” dwelling, “there are typically minor repairs that are needed along with some refinishing.” *Id.* A condition rating of “poor” indicates that “definite deterioration is obvious in the structure. It is definitely undesirable or barely usable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.” *Id.*
- d. While the Petitioner makes a good start here, the Petitioner has submitted insufficient evidence to raise a prima facie case that the subject property’s condition rating is in error. In support of his contentions, the Petitioner submits only a single picture showing that the gas meter has been removed and a water bill showing that the water has not been paid since 1999. Vacancy alone, however, is not enough to show that the property has diminished in value. *Damon Corporation v. Indiana State Board of Tax Commissioners*, 738 N.E.2d 1102 (Ind. Tax 2000), *see also Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax 1995). Further, the Petitioner’s assertions regarding the roof and basement leaks, the broken pipes and lack of fixtures is unsupported by probative evidence. The Petitioner’s Exhibit 1 is not an Affidavit or any form of sworn statement. He also failed to testify to these matters under oath. Further, the Petitioner failed to submit photographs, property inspection reports, or repair estimates to substantiate his claims. Without more, the

Petitioner's claims are conclusory and of no value to the Board in making its determination.<sup>2</sup> *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).

### *Influence Factor*

- e. The Petitioner also contends that the lot is unbuildable because of its size and that his view of Lake Michigan and his ability to walk to the beach are obstructed by the houses around the subject property. *Cupples testimony*. In support of these contentions, the Petitioner submitted photographs showing the proximity of neighboring homes and a letter from the City of Michigan City, Department of Planning and Inspection. See *Petitioner Exhibit 4*. The letter, dated February 1, 1993, states that the 44 foot plus/minus by 65 foot size of the lot was substandard, and that the minimum size lot is 50 foot frontage by 100 feet deep, or 5,000 square feet of buildable area.<sup>3</sup> *Id.*
  
- f. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed 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). Properties often possess peculiar attributes, however, that do not allow them to be lumped 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 for characteristics of a particular parcel of land that are peculiar to that parcel."

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<sup>2</sup> The Board does not agree with the Respondent, however, that had the Petitioner raised a prima facie case regarding the condition of his property that the Board would have to reject the Petitioner's claims because he has not shown the market value of the property. While we acknowledge that the Indiana Tax Court in *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006) has held that simply raising an argument for a strict application of the GUIDELINES is insufficient to rebut the presumption that the assessment is correct and has determined that a Petitioner must present market evidence to show that an assessment is not a reasonable measure of the property's true tax value, condition is an assessment measure that has a specific value. To hold that a Petitioner must prove not only that the condition rating is incorrect, but what the market value of the condition adjustment would be, places an undue burden on the Petitioner. This is particularly true for low income homeowners, who appear *pro se* seeking to show that their home is in poor condition and that their assessment does not fairly reflect the value of their property. To rule that a homeowner can only succeed in an appeal if the homeowner presents market evidence, which is difficult to prove without an appraisal prepared by a certified appraiser, effectively precludes review for many homeowners because of the cost of an appraisal. Such an interpretation would deny many taxpayers a meaningful review of what may, in fact, be an unfair assessment for such a homeowner. Taken to its extreme, this argument would preclude a Petitioner from proving any error in its assessment. For example, if a homeowner appeals on the basis that his lot was assessed for 2 acres but only has a half acre of property or that her house was assessed as having two bathrooms, yet only has a single bathroom. It unduly burdens the property owner's right to an accurate assessment under the GUIDELINES to require the property owner to purchase an appraisal to correct such obvious errors in the details of the assessment that can be overlooked by our mass appraisal system. We do not believe that the Indiana Tax Court in *Eckerling* intended such a result.

<sup>3</sup> The letter cautions, however, that "this office does not have the power to give a definitive answer as to whether this is a buildable lot considering its non-conforming status." *Id.*

GUIDELINES, glossary at 10. The Petitioner has 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).

- g. While the property's size or access to the Lake may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value-in-use of the subject property, or show the actual market value of the property. *See Talesnick*, 756 N.E.2d at 1108. Thus, even if the Petitioner sufficiently proved that it could not further develop the property, the Petitioner has failed to raise a prima facie case that the subject property is over-valued based on its size or limited access to Lake Michigan.<sup>4</sup>
- h. Where a Petitioner fails to meet its burden of presenting a prima facie case, the Respondent's duty to rebut Petitioner's evidence was not triggered. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998) (stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence).

### Conclusion

- 16. The Petitioner failed to raise a prima facie case. 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 change.

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

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review

<sup>4</sup> The Petitioner also complained that the value of his land increased from \$2,900 in 2001 to \$29,000 in 2002 to \$102,000 in 2003. *Cupples testimony*. This, however, is not probative of an error in assessment. 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)). The Petitioner must show us that 2002 and 2003 tax years' assessments are incorrect. Evidence as to the property's assessment in earlier tax years is insufficient to show an error here. *See, Id.*

**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](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>.