

REPRESENTATIVE FOR PETITIONERS:

Dennis L. Cripe, Pro se

REPRESENTATIVE FOR RESPONDENT:

Rhonda R. Milner, Starke County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Dennis L. & Angela K. Cripe	)	Petition No.: 75-016-07-1-5-00001
	)	
Petitioners,	)	
	)	
v.	)	
	)	
Starke County Assessor	)	Parcel No: 75-03-11-204-102.000-009
	)	
Respondent.	)	
	)	
	)	County: Starke
	)	Township: Oregon
	)	Assessment Year: 2007

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

**October 15, 2009**

**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**

### **INTRODUCTION**

1. The Petitioners, Dennis and Angela Cripe, made claims challenging several aspects of their property's assessment, most of which simply attacked the assessor's methodology. Because the Petitioners did not offer any independent market value-in-use evidence to show that the assessment failed to accurately reflect the property's true tax value, they failed to make a prima facie case for relief.

### **PROCEDURAL HISTORY**

2. The Petitioners contested the subject property's March 1, 2007, assessment. On December 5, 2008, the Starke County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination upholding that assessment.
3. On January 8, 2009, the Petitioners filed a Form 131 petition with the Board. Because the Petitioners had failed to respond to the Board's notice about defects in their petition, the Board initially denied that petition. The Board, however, granted the Petitioners' request for rehearing and scheduled a hearing for August 9, 2009, which the Board's designated administrative law judge, Ellen Yuhan ("ALJ"), conducted.
4. The following people were sworn-in and testified at the hearing:  
For the Petitioners: Dennis L. Cripe, Taxpayer  
  
For the Respondent: Rhonda R. Milner, Starke County Assessor  
John Viveiros, Property Systems Co.
5. The Petitioners did not present any exhibits.
6. The Respondent presented the following exhibits:

- Respondent Exhibit 1 – Copy of letter from Starke County Assessor to Petitioners dated 8/19/08
- Respondent Exhibit 2 – Copy of letter from Dennis Cripe to Starke County Assessor dated 8/21/08
- Respondent Exhibit 3 – Copy of letter from Starke County Assessor to Petitioners dated 8/25/08
- Respondent Exhibit 4 – Notification of Final Assessment Determination-Form 115
- Respondent Exhibit 5 – Property record card for 75-03-11-204-102.000-009 (subject)
- Respondent Exhibit 6 – Property record card for 75-03-12-204-008.000-009
- Respondent Exhibit 7 – Property record card for 75-03-12-201-008.000-009
- Respondent Exhibit 8 – Property record card for 75-03-12-104-022.000-009
- Respondent Exhibit 9 – Property record card for 75-03-01-403-018.000-009
- Respondent Exhibit 10 – Property record card for 75-03-12-203-007-000-009
- Respondent Exhibit 11 – Sales disclosure for 75-03-12-204-008.000-009
- Respondent Exhibit 12 – Sales disclosure for 75-03-12-201-008.000-009
- Respondent Exhibit 13 – Sales disclosure for 75-03-12-104-022.000-009
- Respondent Exhibit 14 – Sales disclosure for 75-03-01-403-018.000-009
- Respondent Exhibit 15 – Sales disclosure for 75-03-12-203-007.000-009
- Respondent Exhibit 16 – Printed photograph of subject dwelling
- Respondent Exhibit 17 – Koontz Lake area parcel map
- Respondent Exhibit 18 – “Value/Sq. Ft. Living area analysis chart.”

7. 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
- Board Exhibit B – Final determination denying petition for failure to respond to defect notice
- Board Exhibit C – Request for re-hearing
- Board Exhibit D – Notice of Intent to Rehear Petition
- Board Exhibit E – Notice of hearing dated May 15, 2009
- Board Exhibit F – Sign-in sheet.

8. The subject property is a residential dwelling located at 10990 E. South Avenue, Walkerton, Indiana.

9. The ALJ did not conduct an on-site inspection of the subject property.
10. The PTABOA determined the assessed value of the subject property to be \$199,700 for the land and \$522,700 for the improvements, for a total assessment of \$722,400.
11. The Petitioners contend that the assessed value should be \$149,775 for the land and \$392,025 for the improvements, for a total assessment of \$541,800.

### **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 the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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. 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”).
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.

#### **PARTIES’ CONTENTIONS**

16. The Petitioners presented the following evidence and argument to support their claim for lowering the subject property’s assessment:
  - A. The subject house was assessed using a quality grade of B+1. That grade should have been lower. The Respondent’s own sales evidence includes houses with grades of C+1, C+2, and B. *Cripe testimony; Rep’t Ex. 18*. Also, the Petitioners built their house in 2002, but the assessor did not apply any depreciation to it. *Cripe testimony; Resp’t Ex. 5*.
  - B. The subject property’s land assessment is also inequitable. While other properties are assessed using a front-foot rate, the subject property is assessed on an acreage basis. And the site description on the subject property’s record card lists “all” utilities, while other properties’ record cards list only gas and electric. *Cripe testimony; Resp’t Exs. 5-10*. In addition, the subject property’s corner location may hurt its value. *Cripe testimony*.

- C. The Petitioners further contend that their house is “overbuilt” for Lake Koontz. *Cripe testimony; Resp’t Ex. 2*. This was the second house that they built on the lake, and they upgraded hoping to generate enhanced improvements of properties around the lake. It was a risk. *Id.* In any event, the subject property would not sell for the amount for which it is assessed. In Mr. Cripe’s opinion, it would be difficult to sell any house on Lake Koontz for more than \$300,000. While the Respondent offered evidence about a property that sold for \$440,000, that may be the highest price for which any property on Koontz Lake has ever sold. *Cripe testimony; Resp’t Ex. 15*.
17. The Respondent presented the following evidence and argument in support of the subject property’s assessment:
- A. The subject house’s B+1 grade is a reasonable and fair estimate based solely on an exterior inspection. In the mass-appraisal process, it is not uncommon for assessors to determine a house’s grade without inspecting its interior. Here, the PTABOA agreed to review the subject house’s grade factor if the Petitioners would allow an interior inspection. The Petitioners, however, declined. *Viveiros testimony; Resp’t Exs. 2, 4*.
- B. The Respondent agrees that the subject property was overbuilt for its neighborhood. But the assessor applied a 15% obsolescence factor to account for that. *Viveiros testimony; Resp’t Ex. 5*. The Respondent also acknowledged that the assessor did not apply any physical depreciation to the subject house. Mr. Viveiros, however, explained that the assessor could not apply physical depreciation because the cost tables used to assess the house were based on 1999 values. Those cost tables will not be updated until the next general reassessment. *Viveiros testimony*.
- C. Mr. Viveiros acknowledged that, due to the size of the subject house, it was not possible to perform a direct sales-comparison analysis without using

properties from other lakes located many miles away and with different levels of lakefront desirability. Nonetheless, he prepared a chart analyzing sales of five lakefront homes on Koonz Lake and compared each property's price-per-square-foot of living area to the subject property's assessment. He acknowledged that each sale price would need to be adjusted upward to account for various ways in which the property was inferior to the subject property, but he did not quantify those adjustments. *Viveiros testimony; Resp't Ex. 18.*

- D. The Respondent also contends that the subject property's land assessment was equitable. The assessor used two different methodologies in pricing land depending on whether a given parcel was part of a platted subdivision or was instead legally described as acreage. The assessor, however, made sure that the values were roughly equivalent. *Viveiros testimony.* Also, there were different neighborhoods on the lake, which the assessor analyzed separately. Those neighborhoods therefore have different base rates. *Id.*
- E. Finally, the assessor applied a 15% negative influence factor to account for the fact that the subject property had a higher building-to-land ratio than other neighborhood properties. That influence factor also accounts for the subject property being a corner lot with its house close to the road. *Viveiros testimony; Resp't Ex. 5.*

#### ANALYSIS

18. Indiana assesses real property based on its "true tax value," 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." 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison,

- and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).
19. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But 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 506 n.6. A taxpayer may also offer construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  20. By contrast, a taxpayer does not rebut the presumption that a property’s assessment is correct simply by contesting the methodology that the assessor used to compute it. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, by using the types of evidence described in the Manual, the taxpayer must show that the assessor’s methodology yielded an assessment that does not accurately reflect the property’s market value-in-use. *Id.* Strictly applying the Guidelines is not enough. *Id.*
  21. Here, the Petitioners did precisely what *Eckerling* prohibits. Rather than offering independent market value-in-use evidence, they simply contested the methodology used to assess the subject property. For example, they questioned the assessor’s decisions about the subject land’s base rate and the house’s quality grade and physical depreciation. Even if such an approach were permissible, the Petitioners did little to show that the assessor actually erred in applying the



Guidelines, much less what the property's assessment would be if those Guidelines had been correctly applied.

22. The Petitioners did at least point to two factors that might affect the subject property's market value-in-use. The parties agreed that the Petitioners overbuilt for the area and that the property's corner location might affect its value. But the Petitioners offered no probative evidence to quantify how those things affected the property's market value-in-use. At most, Mr. Cripe simply asserted that that it would be difficult to sell any house on Lake Koontz for more than \$300,000 and that the subject property would not sell for the amount for which it was assessed. Conclusory statements about a property's value, however, do not qualify as probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioners therefore failed to make a prima facie case.
23. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **CONCLUSION**

24. The Petitioners failed to make a prima facie case. The Board therefore finds for the Respondent.

#### **FINAL DETERMINATION**

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

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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>>