

REPRESENTATIVE FOR PETITIONER:

Mary E. Walters, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Lisa M. Downey, White County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mary E. Walters,	)	Petition No.:	91-021-06-1-5-00071
)		
Petitioner,)		
	)	Parcel No.:	021-05390-00
v.)		
	)	County:	White
White County Assessor,	)	Township:	Union
)		
Respondent.	)	Assessment Year:	2006 ¹

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

March 11, 2011

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:

¹ The Petition purports to appeal both the property's 2005 and 2006 assessments. However the Petitioner's Application for a Deduction on Assessment on Rehabilitated Property – Form 322 shows Ms. Walters requested the deduction effective for March 1, 2006 and the Form 115, Notification of Final Assessment Determination shows that the PTABOA acted upon the Form 322 for the March 1, 2006, assessment date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board is whether the Petitioner's property is entitled to a deduction from the property's assessed value as a "rehabilitated residential property" pursuant to Indiana Code § 6-1.1-12-22.

Procedural History

2. The Petitioner, Mary E. Walters, filed a Form 322, Application for a Deduction on Assessment on Rehabilitated Property, with the White County Auditor on April 20, 2005. The White County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on April 4, 2008. The Petitioner filed a Form 131 petition with the Board to conduct an administrative review of the PTABOA's decision on May 5, 2008.²

Hearing Facts and Other Matters of Record

1. The Board held an administrative hearing on December 2, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
2. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Mary E. Walters, property owner
Charles W. Heiny, White County Deputy Auditor

For the Respondent:

Lisa M. Downey, White County Assessor

² The Petitioner elected to have her case heard according to the Board's small claim procedures.

3. The Petitioner submitted the following exhibits:

- Petitioner Exhibit 1 – Indiana Code § 6-1.1-12-18 through § 6-1.1-12-25.5,
- Petitioner Exhibit 2 – Application for a Deduction on Assessment on Rehabilitated Property – Form 322A, dated April 20, 2005,
- Petitioner Exhibit 3 – Notice of Assessment to Land and Improvements – Form 11, dated September 17, 1990, and Tax receipt for 1993 payable 1994,
- Petitioner Exhibit 4 – Indiana Historic Sites and Structures Inventory for White County,
- Petitioner Exhibit 5 – Repair receipts,
- Petitioner Exhibit 6 – Twenty-one photographs of the Petitioner’s house,
- Petitioner Exhibit 7 – Two photographs of 102 South Bluff Street,
- Petitioner Exhibit 8 – Letter from Brandt Hershman, State Senator, District 7, to Bob Wente, Commissioner, Indiana Board of Tax Review, dated November 17, 2010.

4. The Respondent submitted the following exhibits:

- Respondent Exhibit 1 – Subject property’s 2002 – 2005 property record card,
- Respondent Exhibit 2 – Subject property’s 2006 property record card.

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

- Board Exhibit A – Form 131 petition with attachments,
- Board Exhibit B – Notice of Hearing on Petition,
- Board Exhibit C – Hearing sign-in sheet.

6. The subject property is a single-family residence with a detached garage located at 318 South Main Street, Monticello, in Union Township, White County.

7. The ALJ did not conduct an on-site inspection of the property.

8. For 2006, the PTABOA determined the assessed value of the property to be \$23,700 for the land and \$165,600 for the improvements, for a total assessed value of \$189,300.
9. The Petitioner did not request a change in assessed value. Ms. Walters contends her primary issue is that she should be granted a deduction from her property's assessed value in the amount of \$46,600 for rehabilitating her property.

Jurisdictional Framework

10. The Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions 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.

Administrative Review and Petitioner's Burden

11. 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).
12. 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”).

13. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Petitioner's Contentions

14. The Petitioner contends her property qualifies as a rehabilitated property and therefore is entitled to a deduction on assessment pursuant to Indiana Code § 6-1.1-12-22. *Walters testimony*. According to a letter submitted by the Petitioner, Ms. Walters argues, Senator Brandt Hershman supports her application for the rehabilitation deduction. *Walters testimony; Petitioner Exhibit 8*.
15. Ms. Walters testified that the property under appeal is a single-family home constructed in 1905. *Walters testimony; Petitioner Exhibit 4*. According to Ms. Walters, she began rehabilitation on the property in 1989 and the renovations continued through 2000 with the exception of a furnace, which was replaced in 2004. *Walters testimony*. At the time the renovations were started, Ms. Walters argues, the assessed value of her property was \$10,030, reflecting a true tax value of \$30,100.³ *Id.*; *Petitioner Exhibit 3*.
16. Ms. Walters testified that she spent \$71,233.53 renovating the property. *Walters testimony*. In support of this contention, Ms. Walters submitted pictures of the renovations and receipts for the repairs. *Petitioner Exhibits 5 and 6*. According to Ms. Walters, some of the repairs on the property included building a garage, adding a new furnace, adding a sunroom, new siding and storm windows, replacing the plumbing, and renovating two full bathrooms and one half bathroom, adding custom bathroom and kitchen cabinets, rewiring the home with 200 amp service, refinishing the woodwork and repairing the foundation. *Walters testimony; Board Exhibit A*.

³The parties agreed that properties were assessed at one-third of their true tax value in 1990. Ms. Walters also submitted a copy of her Form 322A which states the assessment prior to the rehabilitation on her property was \$30,100. *Petitioner Exhibit 2*.

17. Ms. Walters argues that a community is recognized by maintaining the older properties in its town. *Walters testimony*. To illustrate what happens when a property is not rehabilitated, Ms. Walters submitted two photographs of an older home located at 102 South Bluff Street. *Id; Petitioner Exhibit 7*. Ms. Walters argues that if she had not rehabilitated her property it would be in the same condition as 102 South Bluff Street. *Walters testimony*.
18. In response to the Respondent's arguments, Ms. Walters contends that "trending" is not mentioned in Indiana Code § 6-1.1-12-18 and therefore it should not be considered as the reason for increasing the assessed value of the property under appeal. *Walters testimony*.

Respondent's Contentions

19. The Respondent contends that the Petitioner is not entitled to a rehabilitation deduction. *Downey testimony*. Ms. Downey testified that Indiana Code § 6-1.1-12-22 states that if the assessed value of the residential property is increased because it has been rehabilitated and the owner has paid at least \$10,000 in rehabilitation, then the property owner is entitled to a deduction. *Id*. According to Ms. Downey, however, the Petitioner's property's assessed value increased between March 1, 2005, and March 1, 2006, because assessors are required to trend property values every year. *Id*. In support of this contention the Respondent submitted the 2005 and 2006 property record cards. *Respondent Exhibits 1 and 2*.
20. Ms. Downey testified that the 2005 and 2006 property record cards show the house was assessed as a B grade structure in good condition. *Downey testimony; Respondent Exhibits 1 and 2*. According to Ms. Downey, the only change reflected on the property record cards is the market adjustment which increased from 100% in 2005 to 115% in 2006. *Id*. Ms. Downey argues that, because the Petitioner's assessed value was not

increased due to any rehabilitation of the property, it does not qualify for the deduction. *Id.*

21. Finally, Ms. Downey testified that for the March 1, 2002, general reassessment all properties were valued using updated cost and depreciation schedules. *Downey testimony.* Ms. Downey testified that during the 2002 assessment, the Petitioner's house was lowered from a B+1 to a B grade and the condition rating was raised from fair to good, which would have resulted in an assessed value of \$112,600. *Id.* Therefore, she argues, the difference between the property's 2005 assessment of \$132,300 and its 2002 assessment of \$112,600 would have been \$19,700. *Id.* According to Ms. Downey, if the Petitioner was entitled to the rehabilitation deduction, her deduction would have only been 50% of \$19,700 or \$9,850. *Id.* However, Ms. Downey argues that in order for the Petitioner to be eligible for the rehabilitation deduction she was required to file for the deduction at the time her assessment was increased in 2002. *Id.* Because she did not file in 2002, Ms. Downey argues, the Petitioner is not eligible for the deduction. *Id.*

Analysis of the Issue

22. Indiana Code § 6-1.1-12-22(a) states that “[i]f the assessed value of property is increased because it has been rehabilitated and the owner has paid at least ten thousand (\$10,000) for the rehabilitation, the owner is entitled to have deducted from the assessed value of the property an amount equal to fifty percent (50%) of the increase in assessed value resulting from the rehabilitation. The owner is entitled to this deduction annually for a five (5) year period. However, the maximum deduction which a property owner may receive under this section for a particular year is: (1) one hundred twenty-four thousand eight hundred dollars (\$124,800) for a single family dwelling unit; or (2) three hundred thousand dollars (\$300,000) for any other type of property.” Indiana Code § 6-1.1-12-22(a).⁴ “The term “property” means a building or structure which was erected at least

⁴ Indiana Code § 6-1.1-12-22(c) states “the term “rehabilitation” means significant repairs, replacements, or improvements to an existing structure that are intended to increase the livability, utility, safety, or value of the property under rules adopted by the department of local government finance.” Indiana Code § 6-1.1-12-22(c).

fifty (50) years before the date of application for the deduction...” Indiana Code § 6-1.1-12-22(b). However, the term “property” does “not include land.” *Id.*

23. Ms. Walters claims she meets the criteria set forth by Indiana Code § 6-1.1-12-22 to receive a rehabilitation deduction on her residential property. *Walters testimony.* Ms. Walters testified that the home under appeal was constructed in 1905. *Id.; Petitioner Exhibit 4.* Further, Ms. Walter testified she started rehabilitating the property in 1989 and that the renovations continued up through 2000.⁵ *Walters testimony.* At the time the renovations were started, Ms. Walters argues, the assessed value of her property was \$10,030, representing a true tax value of \$30,100. *Walters testimony; Petitioner Exhibit 3.* According to Ms. Walters, the renovations cost approximately \$71,233.53. *Petitioner Exhibit 5.*
24. There is no dispute that the Petitioner rehabilitated her property. Similarly, there is no dispute that the cost of the repairs was in excess of \$10,000 or that the structure was more than fifty years old. Thus, the only questions are whether “the assessed value of [the] property [] increased because it has been rehabilitated” and, if the assessed value was increased due to the rehabilitation, whether the Petitioner met the requirements for filing for the deduction.
25. Here, the Petitioner filed her Petition in 2005 for the March 1, 2006, assessment year. However, the Petitioner presented no evidence that the assessed value of her property increased between the property’s 2005 and 2006 assessments because of her rehabilitation of the house. The Petitioner only presented a “Notice of Assessment to Land and Improvements” dated September 17th, 1990, showing an additional assessment of \$1,970 for a new garage. *Petitioner Exhibit 3.* The Respondent’s evidence, on the other hand, showed that the house was assessed as a B grade structure in good condition since 2002. *Respondent Exhibit 1.* Neither the grade, nor the condition, was changed on the property between 2002 and 2006. *Id.* In fact, the Respondent’s evidence shows that

⁵ The Petitioner also replaced her furnace in 2004. *Walters testimony.*

the property's value did not change between 2002 and 2005 and the only thing that changed on the property's assessment between 2005 and 2006 was a market adjustment. *Id.* Thus, contrary to the Petitioner's argument, the evidence suggests that the property's assessed value increased between 2005 and 2006 due to the annual trending requirement that began in 2006, rather than due to any rehabilitation of the house.

26. Ms. Walters argues that "trending" is not mentioned in Indiana Code § 6-1.1-12-22 and therefore it should not be considered as the reason for increasing the assessed value of her property. *Walters testimony.* The legislature, however, specifically expressed its intent that the assessed value of real property be adjusted annually. Under Indiana Code § 6-1.1-4-4.5, beginning in 2006 and each year thereafter, assessors are required to adjust or "trend" property values every year to account for changes in property values since the last general reassessment occurred. Failing to adjust the Petitioner's property value would frustrate the intent of the legislature to provide for uniform and equal assessments with a more current valuation date. *See* Indiana Code § 6-1.1-4-4.5.
27. Indiana Code § 6-1.1-12-22 does not state that the assessed value of rehabilitated property can not be changed. The statute merely states that the rehabilitation deduction applies *if* the assessed value of a property is increased due to the property being rehabilitated. Thus, because the assessed value of her property did not increase between 2005 and 2006 due to her rehabilitation of the property, the Petitioner is not entitled to the rehabilitation deduction in 2006.
28. The Respondent, however, admitted that the assessment of the Petitioner's property changed during the March 1, 2002, statewide general reassessment. *Downey testimony.* According to Ms. Downey, the grade assigned to the Petitioner's house was lowered from a B+1 to a B and the condition rating was raised from fair to good. *Id.* Ms. Downey testified that she was not certain whether the changes to the grade and condition of the Petitioner's house in 2002 were due to the Petitioner's rehabilitation of the property. *Id.*

29. If the assessed value of a property is increased because the property has been rehabilitated, Indiana Code § 6-1.1-12-24 (a) states that an application for the rehabilitation deduction “must be filed before June 11 *of the year in which the addition to assessed value is made.*” Indiana Code § 6-1.1-12-24 (a) (emphasis added). Indiana Code § 6-1.1-12-24 (b) states “If notice of the addition to assessed valuation for any year is not given to the property owner before May 11 of that year, the application required by this section may be filed not later than thirty (30) days after the date such a notice is mailed to the property owner at the address shown on the records of the township assessor.” Indiana Code § 6-1.1-12-24 (b). Similarly, Indiana Code § 6-1.1-12-24(d) states that a “deduction application filed under this section is applicable for the year in which the addition to assessed value is made and in the immediate following four (4) years without any additional application being filed.” Indiana Code § 6-1.1-12-24(d).
30. Assuming the property’s 2002 assessed value increased due to Ms. Walters’ rehabilitation of her property, she was required to file for the deduction at the time she received notice that the property’s assessment increased. *See* Indiana Code § 6-1.1-12-24(d) (A rehabilitation deduction must be filed for in the year the addition to the assessed value is made). Ms. Walters did not contend that she never received notice of her property’s assessment after the 2002 general reassessment, but she argued that the assessment “limits” had not increased and therefore she could not file for the rehabilitation deduction until 2005. *Walter testimony.*
31. The former version of Indiana Code § 6-1.1-12-24(d), as amended by P.L. 20-2004, Sec. 7, stated that the “deduction provided by this section applies only for the rehabilitation of residential property which is located within this state and which is described in one (1) of the following classifications: ... (2) a two (2) family dwelling if before rehabilitation the assessed value (excluding exemptions or deductions) of the improvements does not exceed twenty-four thousand dollars (\$24,000)...” Even if the Board accepted Ms. Walters’ contention that the assessed value of her property before rehabilitation was

\$30,100, the property did not qualify for the deduction under the previous version of the statute.

32. The law clearly states that the application for a rehabilitation deduction must be filed in the year the addition to the property's assessed value due to the rehabilitation is made. Indiana Code § 6-1.1-12-24(d) (2005). Ms. Walters did not timely file for the rehabilitation deduction as a result of the increase in her assessed value in 2002. Further, by Ms. Walters' own admission, her property did not qualify for the benefits of the law in 2002. Therefore, she is not entitled to the deduction in 2006.

Summary of Final Determination

33. The Petitioner failed to raise a prima facie case that her property is entitled to receive a rehabilitation deduction for the March 1, 2006, assessment date. The Board therefore finds in favor of the Respondent.

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

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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 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 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/bills/2007/SE0287.1.html>.