

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

Petition Nos.: 45-024-07-1-5-00001
45-024-09-1-5-00001
Petitioner: Leonard Adams, Jr.
Respondent: Lake County Assessor
Parcel No.: 45-03-27-253-007.000-024
Assessment Years: 2007 and 2009¹

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 his 2007 assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 134.² The Petitioner initiated his 2009 assessment appeal by filing a Form 130 on December 22, 2010.
2. The PTABOA issued notice of its decisions for both 2007 and 2009 on September 8, 2011.
3. The Petitioner filed his Form 131 petitions with the Board on October 13, 2011. The Petitioner elected to have his appeals heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 9, 2012.
5. The Board held an administrative hearing on January 7, 2013, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The Petitioner elected to waive a hearing and have the Board issue its determination based solely on the written and documentary evidence he submitted pursuant to 50 IAC 3-1-6. Sherry Stone-Lucas, Director of Real Estate, appeared and was sworn on behalf of the Assessor.

¹ The Board only received a Form 131 Petition for 2007 and 2009. The Petitioner included a Form 131 Petition without a petition number in the package of evidence he mailed to the Board with 2008 and 2009 in the box for the assessment year. However, there is no evidence that this Petition was filed with the Board.

² According to the Respondent, the Petitioner submitted a Form 134 with handwritten notes to initiate his 2007 appeal. However, there is no filing date on the Form 134, except for the August 26, 2010, date the assessor signed it. *Respondent Exhibit 3.*

Facts

7. The property under appeal is a single-family home located at 4409 Arbutus Lane, East Chicago, Indiana.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2007, the PTABOA determined the assessed value of the property to be \$15,700 for the land and \$87,500 for the improvements, for a total assessed value of \$103,200. For 2009, the PTABOA determined the assessed value of the property to be \$19,800 for the land and \$111,100 for the improvements, for a total assessed value of \$130,900.
10. The Petitioner did not request a specific value; he only stated that the subject property should be assessed for “less” in 2007 and, for 2009, the Petitioner requested a value of “less than \$60,000” for his property.

Issues

11. Summary of the Petitioner’s contentions in support of the alleged errors in his property’s assessment:
 - a. The Petitioner contends that his property was over-valued for the 2007 and the 2009 assessment years based on sales of other comparable properties. *Petitioner Exhibit 9*. In support of this contention, Mr. Adams submitted five Multiple Listing Service (MLS) detail reports for properties in his neighborhood. *Id.* According to Mr. Adams the property located at 4318 Arbutus Lane, which was the “same as mine” sold for \$35,000, on May 20, 2010.³ *Id.* In addition, Mr. Adams argues that the property located at 4402 Arbutus Lane, which was pending a sale on August 10, 2011, was “bigger and the improvements were outstanding.” *Id.* Mr. Adams argues that the property located at 4330 Arbutus Lane, which sold for \$73,500, on September 15, 2010, was “bigger and better than mine.” *Id.* Likewise, Mr. Adams contends, the property located at 4433 Arbutus Lane, which sold on January 25, 2010, for \$35,000, was “bigger and the improvements were outstanding.” *Id.* Lastly, Mr. Adams argues that the property located at 4414 Arbutus Lane sold on November 19, 1998, for \$83,000, and the property was also “bigger and the improvements outstanding.” *Id.* Mr. Adams also submitted an estimate from the “HomeGain” website for the property located at 4425 Arbutus Lane, which stated that the value of the property ranged from \$63,003 to \$73,960. *Petitioner Exhibit 9*. According to Mr. Adams, this property is “bigger and the improvements are good.” *Id.*
 - b. Mr. Adams also contends he applied for a disability deduction several years earlier, but he never received the deduction. *Petitioner Exhibit 2*. In support of this contention, Mr. Adams submitted a physician’s report dated February 13, 1996, and

³ This property actually sold for \$38,797 according to the MLS detail report.

an “Excuse Slip” from East Chicago Community Health Center dated September 23, 2009. *Id.*

12. Summary of the Respondent’s contentions in support of the property’s 2007 and 2009 assessed values:
 - a. The Respondent’s representative contends that the property’s 2007 assessed value was correct based on sales of comparable properties. *Stone-Lucas testimony.* In support of this contention, Ms. Stone-Lucas presented a spreadsheet with four sales in the subject property’s neighborhood, along with the property record cards and MLS information. *Respondent Exhibits 9-13.* Ms. Stone-Lucas contends the properties are almost identical to the subject property in lot size, living area, amenities, and age. *Stone-Lucas testimony; Respondent Exhibits 9-13.* According to Ms. Stone-Lucas, she made adjustments where necessary for differences in living area and for the existence of a garage, resulting in a median sale price of \$126,829. *Id.; Respondent Exhibit 9.*
 - b. Similarly, the Respondent’s representative contends that the property’s 2009 assessed value was correct based on comparable sales. *Stone-Lucas testimony.* In support of this contention, Ms. Stone-Lucas submitted a spreadsheet, which contained three properties that sold in the subject property’s neighborhood; she also included property record cards and MLS information for these properties. *Respondent Exhibits 18-20.* According to Ms. Stone-Lucas, she made adjustments for differences in living area, the age of the properties, and the size of the garage. *Stone-Lucas testimony; Respondent Exhibit 18.* Ms. Stone-Lucas contends the median sale price in 2009 was \$118,300. *Id.*
 - c. Finally, the Respondent’s representative argues that the evidence presented by the Petitioner is irrelevant. *Stone-Lucas testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Form 131 petitions,
 - b. A digital recording of the hearing labeled 45-024-07-1-5-00001 Adams,
 - c. Exhibits:⁴

Petitioner Exhibit 1 –	Form 115 for 2009 with a letter from the PTABOA dated August 16, 2011,
Petitioner Exhibit 2 –	Physician report from Ned E. Fleming, MD, discharge instructions from Northwestern Memorial Hospital

⁴ The Petitioner did not submit Petitioner Exhibit 3 or Petitioner Exhibit 4.

- dated May 2, 2007, a physician's referral from Bayne W. Spotwood, MD, dated September 27, 2010, an "excuse slip" from Dr. Spotwood dated September 23, 2009, and several prescription receipts dated September 14, 2011, through September 16, 2011,
- Petitioner Exhibit 5 – Form 11 for the 1995 assessment year dated June 7, 1996, and a cashier's check in the amount of \$66,825.83,
- Petitioner Exhibit 6 – Notice of defect from the Board dated October 18, 2011, and Form 131 petition for 2007,
- Petitioner Exhibit 7 – Form 115 for 2007,
- Petitioner Exhibit 8 – Statement of pension benefits from the Public School Teachers' Pension and Retirement Fund of Chicago dated March 13, 1996,
- Petitioner Exhibit 9 – Letter from the Petitioner dated November 4, 2011, with attachments including statement of pension benefits dated March 13, 1996, letter from Wayne Slusser at Community Title Company dated April 1, 1996, physician's report from Ned E. Fleming, MD, dated September 7, 1995, MLS detail report for 4330 Arbutus Lane, MLS detail report for 4433 Arbutus Lane, MLS detail report for 4414 Arbutus Lane, MLS detail report for 4402 Arbutus Lane, "HomeGain" report for 4425 Arbutus Lane, and MLS report for 4318 Arbutus Lane,
- Petitioner Exhibit 10 – Letter from the Petitioner to the assessor dated November 4, 2011,
- Petitioner Exhibit 11 – Form 130 petition dated November 4, 2011, and Form 131 petition,
- Petitioner Exhibit 12 – Page 1 of the Petitioner's Form 130, dated October 22, 2009,
- Petitioner Exhibit 13 – Letter from Marlene Knipp regarding the Petitioner's 2007 and 2008 PTABOA hearings dated August 6, 2010,
- Petitioner Exhibit 14 – Two copies of the Petitioner's request for preliminary conference on his March 1, 2011, assessment,
- Respondent Exhibit 1 – Spreadsheet showing the percentage of change in assessed values for the subject property for 2006, 2007, 2008 and 2009,
- Respondent Exhibit 2 – Property record card for the subject property,
- Respondent Exhibit 3 – Form 134 for 2007,
- Respondent Exhibit 4 – PTABOA hearing notice dated August 16, 2011,
- Respondent Exhibit 5 – Board hearing notice for the 2007 assessment year dated November 9, 2012,

- Respondent Exhibit 6 – Form 130 petition for 2008 and letter from the PTABOA dated August 16, 2011,⁵
- Respondent Exhibit 7 – Form 115 for 2008,
- Respondent Exhibit 8 – Form 134 for 2008,
- Respondent Exhibit 9 – Spreadsheet of four comparable properties that sold between 2005 and 2006,
- Respondent Exhibit 10 – Property record card and MLS detail report for 4433 Arbutus Lane,
- Respondent Exhibit 11 – Property record card and MLS detail report for 4410 West Guadalupe Circle,
- Respondent Exhibit 12 – Property record card and MLS detail report for 4405 Arbutus Lane,
- Respondent Exhibit 13 – Property record card and MLS detail report for 4417 Arbutus Lane,
- Respondent Exhibit 14 – Form 130 petition for 2009,
- Respondent Exhibit 15 – PTABOA hearing notice for 2009 dated August 16, 2011,
- Respondent Exhibit 16 – Form 115 for 2009,
- Respondent Exhibit 17 – Board hearing notice for the 2009 assessment year dated November 9, 2012,
- Respondent Exhibit 18 – Spreadsheet of three comparable properties that sold between 2006 and 2009,
- Respondent Exhibit 19 – Property record card and MLS detail report for 4313 Alder Street,
- Respondent Exhibit 20 – Property record card and MLS detail report for 4445 Lane of the Roses,

- Board Exhibit A – Form 131 petitions,
- Board Exhibit B – Notice of hearing, dated November 9, 2012,
- Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the correct assessment should 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). Effective July 31, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed

⁵ This Form 130 petition is marked 08/09 at the top of the form, but according to the Respondent it is for 2008.

and reenacted as Indiana Code § 6-1.1-15-17.2.⁶ That statute shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here because the property's 2007 assessed value did not increase by more than 5% over the property's assessed value in 2006, the Petitioner retains the burden of proof. In contrast, the subject property's assessed value in 2009 increased by more than 5% over the property's assessed value for 2008. Despite the fact that the ALJ miscalculated the amount of the increase, the burden is shifted to the Respondent for the March 1, 2009, assessment year. To the extent that the Petitioner seeks an assessment for 2009 below the previous year's level however, the Petitioner has the burden of proving a lower value for his property.

Analysis

15. The Petitioner failed to establish a prima facie case that his property was over-valued for the March 1, 2007, assessment year. The Board reached this decision for the following reasons:
 - a. In Indiana, assessors value real property based on the property's market value-in-use, 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market-value-in-use appraisal prepared according to USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b. Regardless of the method used to value a property for appeal purposes, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment date, the valuation date was January 1, 2006, and for the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3 (2009).
 - c. Here, the Petitioner presented MLS information for properties that sold in 1998, 2010 and 2011 to show that his property was over-assessed. In making this argument the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the property. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.") In order to effectively use

⁶ HEA 1099 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* But while many of the Petitioner’s comparable sales were of houses that were nearly identical to his property, the sales all occurred in 2010 and 2011. The Petitioner did not provide any explanation as to how these sales might demonstrate or be relevant to a value as of January 1, 2006 – five years prior to the Petitioner’s comparable properties’ sale dates. *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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Thus, the Petitioner’s sales fail to raise a prima facie case that his property was over-valued for the 2007 assessment year.

- d. The Petitioner also contends that he applied for a disability deduction but the auditor never applied it to his tax assessment. In support of this contention, the Petitioner presented various medical records purporting to show he is disabled. *Petitioner Exhibit 2*. However, Mr. Adams presented no evidence that he filed for a disability deduction. More importantly, Mr. Adams failed to offer evidence that he met the requirements of Indiana Code 6-1.1-12-11, including that he was “eligible to receive disability benefits under the federal Social Security Act (42 U.S.C. 301 et seq.)” or that his disability was “determined by using the same standards as used by the Social Security Administration” and that his “taxable gross income for the calendar year preceding the year in which the deduction is claimed did not exceed seventeen thousand dollars (\$17,000).”⁷ Therefore, the Petitioner failed to provide sufficient evidence that he was entitled to a disability deduction for either the March 1, 2007, or the March 1, 2009, assessment dates.
 - e. When the Petitioner fails to provide probative evidence for an assessment change, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus., v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
16. The Respondent failed to establish a prima facie case that the property’s March 1, 2009, assessed value was correct. The Board reached this decision for the following reasons:
- a. For the 2009 assessment year, the Respondent presented MLS information and property record cards for three properties that sold between October 20, 2006, and December 16, 2009, to show that the property was assessed correctly. Like the Petitioner, the Respondent here essentially relies on a sales comparison approach to

⁷ Petitioner Exhibit 8 suggests that Mr. Adams’ annual income is \$17,768.28.

establish the market value-in-use of the property. And again, the proponent must establish the comparability of the properties being examined. *Long*, 821 N.E.2d at 470. Here, Ms. Stone-Lucas presented a chart that purported to value the differences between the subject property and her three comparable sales. However, she provided no evidence of how those “adjustments” were calculated. While the rules of evidence generally do not apply in the Board’s hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Thus, the Respondent’s comparable sales analysis fails to support the property’s assessed value for the 2009 assessment year.

- b. The Respondent failed to establish a prima facie case that the property’s assessed value was correct for the March 1, 2009, assessment date. Therefore, the property’s assessment must be reduced to the previous year’s assessed value of \$119,000 under Indiana Code § 6-1.1-15-17.2.⁸
- c. That, however, does not end the Board’s inquiry because the Petitioner requested an assessed value of “less than \$60,000” for the March 1, 2009, assessment year. As explained above, the Petitioner has the burden of proving that he is entitled to that additional reduction. The Board therefore turns back to the Petitioner’s evidence. The Petitioner presented the same evidence for the March 1, 2009, assessment year as he did for the March 1, 2007, assessment year. And while his comparable sales were closer in time to the January 1, 2008, valuation date for the March 1, 2009, assessment, the Petitioner’s sales were still two to three years removed from the valuation date. Therefore, the Petitioner failed to prove that his property’s value for the March 1, 2009, assessment year should be lower than the previous year’s assessment.

Conclusion

- 17. The Petitioner failed to raise a prima facie case that the subject property was over-valued for the March 1, 2007, assessment date. Therefore the Board orders no reduction in the property’s value for 2007. For the March 1, 2009, assessment, however, the Respondent had the burden of proving the assessed value of the Petitioner’s property was correct – which the Respondent failed to meet. Therefore, the Petitioner’s property’s 2009 value must be returned to its previous year’s assessment of \$119,000. The Petitioner, however, failed to raise a prima facie case that the property’s value should be any lower than the previous year’s assessment for 2009.

⁸ Even if the Board found the Respondent’s comparable sales evidence to be probative, by Ms. Stone-Lucas’ own admission, the median sale value for the comparable properties was \$118,300. *Respondent Exhibit 18*.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the March 1, 2007, assessment should not be changed. The March 1, 2009, assessment shall be reduced to \$119,000.

ISSUED: April 2, 2013

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 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>>.