

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

**Petitions:** 75-008-11-1-5-09800  
75-008-11-1-5-48500  
**Petitioner:** Mark Binkley  
**Respondent:** Starke County Assessor  
**Parcels:** 75-11-07-101-016.000-008  
75-11-07-101-017.000-008  
**Assessment Year:** 2011

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, finding and concluding as follows:

**Procedural History**

1. The Petitioner initiated his assessment appeals with the County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 petitions on October 24, 2011.
2. The PTABOA issued notice of its decisions on August 6, 2012.
3. The Petitioner filed his Form 131 petitions with the Board on September 4, 2012. He elected the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 26, 2013.
5. Administrative Law Judge Ellen Yuhan held the administrative hearing on April 2, 2013.
6. Mark Binkley, County Assessor Rhonda Milner, Ronald L. Simoni, and John Viveiros were sworn as witnesses at the hearing.

**Facts**

7. The subject property consists of two contiguous parcels. Parcel 75-11-07-101-016.000-008 (parcel 16) is a residential parcel with a single-family dwelling located at 4026 S CR 210 and parcel 75-11-07-101-017.000-008 (parcel 17) is a residential parcel with a shed located at 4081 S 625 E. They are located in or near Knox.
8. The ALJ did not conduct an on-site inspection of the properties.

9. The PTABOA determined the 2011 assessed value of parcel 16 is \$275,100 for the land and \$48,300 for the improvements (total assessed value of \$323,400). The PTABOA determined the 2011 assessed value of parcel 17 is \$35,300 for the land and \$6,500 for the improvements (total assessed value of \$41,800). The total assessed value of both parcels is \$365,200.
10. On his Form 131 petitions the Petitioner requested an assessed value of \$174,752 for parcel 16 and \$20,049 for parcel 17. At the hearing the Petitioner requested a total value based on either the amount he paid or the appraised value of \$230,000.

### **Contentions**

11. Summary of the Petitioner's case:
  - a. The subject property was purchased for a total of \$195,000 on August 19, 2011. *Petitioner Exhibit 2.*
  - b. An appraisal prepared by Sherry L. Ritter-Banic, a certified residential appraiser, valued the properties at \$230,000 as of September 13, 2011. That valuation is based on a sales comparison analysis. The appraisal was for refinancing purposes when the Petitioner wanted to build a home on the property, but according to the appraisal there wasn't enough equity. *Binkley testimony; Petitioner Exhibit 3.*
  - c. Listings are not an indication of value. The listings for the subject properties should not be considered. Alternatively, the fact that the subject properties were on the market for two years and never sold indicates those listings were over-priced. Binkley Real Estate did not list the properties, but just acted as the Petitioner's buyer agent.<sup>1</sup> *Binkley testimony; Respondent Exhibit 8.*
  - d. Although the Petitioner did not own the properties on the March 1, 2011, the taxes were pro-rated at closing. He was responsible for paying the taxes based on the 2011 assessment payable in 2012. *Binkley testimony.*
  - e. The Petitioner did not know the hearing had been scheduled until the day before the hearing when the assessor called him. Had he received the notice of hearing, the Petitioner would have had another appraisal performed and would have had a professional represent him at these proceedings. *Binkley testimony.*<sup>2</sup>

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<sup>1</sup> Mr. Binkley testified that his grandfather originally owned Binkley Real Estate, but it is currently owned by August Gappa. Although the purchase agreement shows that Mr. Binkley holds an Indiana real estate license, he is not a licensed agent of Binkley Real Estate.

<sup>2</sup> Even though the Petitioner offered this testimony, he did not request a continuance.

12. Summary of the Respondent's case:

- a. Mr. Simoni is a licensed appraiser and Level II Assessor-Appraiser, but he has not appraised the subject properties and has not formed an opinion of value regarding them. *Simoni testimony.*
- b. The subject properties are correctly assessed. In May 2009, John Wampler, an experienced realtor, listed the properties separately, parcel 16 at \$199,900 and parcel 17 at \$199,900, for a combined price of \$399,800. This listing expired in May 2010. Pam Baker relisted the properties in May 2011. She listed parcel 16 for \$210,000 and parcel 17 for \$179,000 for a combined price of \$389,900. The Pam Baker listings show parcel 16 sold for \$195,000 and parcel 17 was withdrawn. *Simoni testimony; Respondent Exhibit 8.*
- c. The appraisal should be given little weight because it contains numerous errors. On page 1 of the appraisal regarding offering prices and dates, the appraiser references MLS#6295774 (the Binkley Real Estate listing) with zero days on the market (DOM). The appraiser's last comment in this section regarding the listing on August 26, 2011, for \$210,000 and the closing on August 26, 2011, also refers to the Binkley listing. The appraiser's information is misleading because she only addressed the property with the house and not the vacant lot. In addition, she failed to include the Pam Baker listing information. *Simoni testimony; Respondent Exhibit 8.*
- d. The lot dimensions in the appraisal are misleading as well because the dimensions are not squared off. The appraiser should have noted that the dimensions are irregular or used the 1.34 acres per the county records. Additionally, the appraiser included two listings in her comparables and listings cannot be used to establish value. Further, the appraiser made an error in the lake frontage for comparable 8 because the lake frontage is 50 feet, not the 125 feet the appraiser shows. *Simoni testimony; Respondent Exhibit 8.*
- e. The appraiser did not include the properties that she used to establish her land values of \$1,000 to \$2,000 per front foot on the lake. The appraiser claims the "typical lake frontage is between 50-100 feet. Excess front footage is valued at \$500-\$1,000 per front foot beyond what is typical in the market." The appraiser did not adjust for the lake frontage over the norm, she adjusted \$500 a front foot for differences between the subject properties and the comparable properties. Further, the appraiser used 145 feet for the subject property while the survey shows the frontage is 151 feet. *Simoni testimony; Respondent Exhibits 6, 8.*
- f. The appraiser's front foot adjustment is too low. Market value base rates in the area are in excess of \$2,000 per front foot. *Simoni testimony; Viveiros testimony.* The Respondent submitted the property record cards, the sales disclosure forms and GIS maps for two properties. *Respondent Exhibits 10-16.* Parcel 75-10-13-103-111.000-002 is a vacant, lake view lot with 55 feet effective frontage. It sold for \$125,000 on March 29, 2007. That price is equivalent to \$2,273 per front foot. *Viveiros*

- testimony; Respondent Exhibits 10, 11, 16.* Parcel 75-10-24-203-016.000-002 is a lake front lot with 50 feet on the lake. It sold for \$150,000 on September 14, 2010. The price is equivalent to \$3,000 per front foot. This property also sold in 2006 for \$145,000. These 2010 and 2006 sales together indicate there may have been slight appreciation over that time, but the base rates have not changed. *Viveiros testimony; Respondent Exhibit 13, 14, 16.*
- g. A property with 16 feet of lake frontage adjoining the subject property sold for \$85,000. That price is equivalent to \$5,312 per front foot. *Simoni testimony; Respondent Exhibit 8.* If the \$2,000 base rate is applied to the 150 feet of the subject properties, the value is \$300,000 even before the addition of the small house. That value is close to the disputed assessed value. *Viveiros testimony.*
- h. The Petitioner's purchase price for the subject properties was not considered to be valid for trending because it was an outlier. *Viveiros testimony.*
- i. In calculating excess frontage, 100 feet is considered to be a standard lot in this area, even though many of the lots are 50 feet. Once a lot exceeds the standard, there is a formula to calculate the factor that is applied to the entire lot value. The standard lot size of 100 feet would be deducted from the total front footage and the remaining footage divided by two. Then divide the result by the actual front footage to arrive at the excess frontage factor. This formula applies to lots with more than 200 feet. Because the subject property has only 140 to 150 feet, there might be a slight reduction for excess frontage, but it would be a small amount. The effective rate still would be in excess of \$1,500 per front foot. *Viveiros testimony.*
- j. Mr. Simoni testified about how he would correct the mistakes in the appraisal. His calculations adjusted the comparable properties using \$1,500 a front foot which is minimal because he typically adjusts \$1,750 to \$2,000 a front foot when doing an appraisal. He recalculated the land adjustments for the comparable properties based on the difference between the subject properties' actual 151 feet of frontage and the comparable properties' frontage. After his changes to the appraisal, the comparable values would be as follows: comparable #1 changed from \$408,900 to \$462,900; comparable #2 changed from \$347,500 to \$411,500; comparable #3 changed from \$298,700 to \$418,700; comparable #4 changed from \$241,900 to \$348,900; comparable #5 increased from \$249,100 to \$353,100; comparable #6 changed from \$227,300 to \$262,300. Mr. Simoni changed the listings identified as comparables #7 and #8, but he also stated they cannot be used to establish value. With his changes, the comparables' value range would be \$262,300 to \$462,900. The estimate of value must be between the lowest number and the highest number. *Simoni testimony; Respondent Exhibit 8.*
- k. In determining comparability, lake frontage has the most influence. Comparables #1, #2, and #6 with frontage of 100 feet, 90 feet, and 119 feet respectively, have the most similar amount of lake frontage to the subject property, but the gross adjustments are too high on #6. Mr. Simoni did not estimate a value for the subject property, but it

would be in the range of the five remaining comparables, \$348,000 to \$462,900—most likely close to the listing prices of \$399,800 and \$389,900. *Simoni testimony.*

- l. The sale of the subject property is not consistent with the definition of market value. The definition of market value includes a reasonable time allowed for exposure to the market. Although Mr. Wampler listed the property for a year and Ms. Baker listed it for a period of time, they had it on the market for almost \$400,000. The property was not on the market at any time for the amount the Petitioner paid. *Simoni testimony; Respondent Exhibit 8.*
- m. The intended use of the appraisal was for refinancing. It specifically states, “This appraisal was prepared for the intended user, First Federal Savings Bank, for refinancing mortgage loan purposes for the subject and improvement. Any other use other than mortgage loan purposes will render this appraisal document null and void.” *Simoni testimony; Respondent Exhibit 4.*
- n. The Petitioner did not own the property on the March 1, 2011. *Milner testimony.*<sup>3</sup>

### **Record**

13. The official record for this matter contains the following:
  - a. The Form 131 petitions,
  - b. A digital recording of the hearing,
  - c. Petitioner Exhibit 1 – Notice of Intent to Appeal,  
Petitioner Exhibit 2 – Purchase Agreement dated August 2011,  
Petitioner Exhibit 3 – Appraisal Report as of September 13, 2011,  
Petitioner Exhibit 4 – Form 130 petition for parcel 16,  
Petitioner Exhibit 5 – Form 130 petition for parcel 17,  
Petitioner Exhibit 6 – Form 115 for parcel 17,  
Petitioner Exhibit 7 – Form 115 for parcel 16,  
Petitioner Exhibit 8 – Form 131 petition for parcel 17,  
Petitioner Exhibit 9 – Form 131 petition for parcel 16,  
Petitioner Exhibit 10 – Worksheet with pro-rated values and the subject property record cards,

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<sup>3</sup> The Respondent offered no substantial argument regarding this point. The Board has held that a person who is responsible for the property taxes may appeal the assessment upon which those taxes are based. The Board’s procedural rules support that conclusion. *See* 52 IAC 2-2-13 (defining “party” to include “[t]he taxpayer responsible for the property taxes payable on the subject property.”) There was no dispute about the testimony that the Petitioner was responsible for paying at least some of the taxes based on the assessed value for March 1, 2011. Although the Respondent implied a question, the record establishes the Petitioner’s standing to bring this appeal.

Respondent Exhibit 1 – Form 131 petitions for the subject properties,  
Respondent Exhibit 2 – Definition of market value,  
Respondent Exhibit 3 – Form 130 petitions for the subject properties,  
Respondent Exhibit 4 – Page 10 of the Supplemental Addendum of the appraisal,  
Respondent Exhibit 5 – Sales disclosure form for the subject property,  
Respondent Exhibit 6 – Certificate of Survey dated April 4, 1995,  
Respondent Exhibit 7 – GIS maps and property record cards for the subject properties,  
Respondent Exhibit 8 – Indiana Map Reference,  
John Wampler listings MLS#241053 and #241076,  
Pam Baker listings MLS#100025936 and #10025937,  
Binkley Real Estate listing MLS#6297362,  
Page 1 of the appraisal,  
Page 2 of the appraisal,  
Page 3 of the appraisal,  
Page 8 of the appraisal,  
Page 9 of the appraisal,  
MLS information for 5512 S CR210,  
Plat map,  
Condition ratings from an appraisal,  
List of 13 sales from paragonrels.com website dated 3/20/2013,  
MLS information for 3185 SCR210,  
MLS information for S 625 East,  
List of 22 sales from paragonrels.com website dated 3/16/2013,  
Respondent Exhibit 9 – Purchase agreement for the subject properties,  
Respondent Exhibit 10 – Property record card for 75-10-13-103-111.000-002,  
Respondent Exhibit 11 – Sales disclosure form for 75-10-13-103-111.000-002,  
Respondent Exhibit 12 – Map of 75-10-13-103-111.000-002,  
Respondent Exhibit 13 – Property record card for 75-10-24-203-016.000-002,  
Respondent Exhibit 14 – Sales disclosure form for 75-10-24-203-016.000-002,  
Respondent Exhibit 15 – Map of 75-10-24-203-016.000-002,  
Respondent Exhibit 16 – Summary of the vacant land sales,  
  
Board Exhibit A – Form 131 petitions,  
Board Exhibit B – Notice of hearing, dated February 26, 2013,  
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 a property's assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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 to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

15. The assessed values under appeal did not increase by more than 5%. Therefore, Ind. Code § 6-1.1-15-17.2 does not apply. The Petitioner has the burden of proof.

## **Analysis**

16. The Petitioner made a prima facie case. The Respondent presented some rebuttal evidence, but the weight of the evidence supports the claims that the assessments must be reduced.
- a. An appraisal prepared according to USPAP often is a good way to prove that value. *See Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6 (Ind. Tax Ct. 2005). The purchase price of a property also can be good indication of its value. *See Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (upholding the Board's determination that the weight of the evidence supported a property's purchase price over its appraised value). In fact, there are several options. A party may offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles.
  - b. Regardless of what the evidence is, a party must explain how that evidence relates to 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 2011, the assessment date and the valuation date both were March 1, 2011.

- c. There is no dispute about the fact that the Petitioner bought the subject property for \$195,000 on August 19, 2011. There also is no dispute that the subject property was appraised for \$230,000 as of September 13, 2011, and the fact that the appraiser is an Indiana Licensed Residential Appraiser who certified that she prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).
- d. In this case, the Petitioner's purchase and the appraisal were within six months of the assessment date. They both are close enough in time to be probative evidence for this case. The Petitioner made a prima facie case through either one. Consequently, the Board must consider how effectively the Respondent rebutted or impeached the Petitioner's case.
- e. The Respondent started by attempting to prove the assessments totaling \$365,200 are correct because these properties were listed with one realtor for a combined asking price of \$399,800 for more than a year and subsequently they were listed with another realtor for an additional period with a combined asking price of \$389,900. But they did not sell during either of these listings. These unsuccessful listings probably indicate an accurate valuation would be something less than \$389,900. But that fact is irrelevant. It does nothing to establish that \$365,200 actually is an accurate valuation. Ultimately, the Respondent offered no substantial evidence that the existing assessed values correspond to the actual market value-in-use of the subject property. Instead, the Respondent primarily focused on attacking the credibility of the Petitioner's purchase price and the appraisal.
- f. The Respondent claimed the appraisal is flawed and should be given little or no weight because it contains misleading statements and errors. The main attack on the appraisal related to the land value adjustments for the comparables. According to Mr. Simoni, the appraiser stated that typical lake frontage is between 50 feet and 100 feet, with excess front footage valued at \$500-\$1,000 per front foot. According to Mr. Simoni, the appraiser's adjustments for the comparables were not enough. (The appraiser explained her adjustments in the Supplemental Addendum. She used \$500 per front foot. She adjusted less per front foot because the subject had excess frontage and she deemed a minimal adjustment of \$500 necessary.) Mr. Simoni purported to recalculate the appraiser's land adjustments on the comparables using \$1,500 a front foot. He substituted his opinion of land value to arrive at a higher range of values based on the same comparables. Nothing in the record indicates that his attempt to redo part of another appraiser's work to correct it (thereby reaching a higher range of values) is consistent with USPAP or generally accepted appraisal principles. Although he is an appraiser, Mr. Simoni clearly stated that he did not do an appraisal of the subject property and he was not attempting to provide an opinion of its value. It is clear that Mr. Simoni did not testify as an unbiased appraiser in this case. Accordingly, his attempt to redo calculations in another appraiser's work and use those to support a higher conclusion of value regarding the subject property has little or no probative value.



- g. Similarly, the Respondent attempted to attack the appraisal because it was prepared for refinancing purposes. Conclusory evidence and argument was offered on this point, however, it provided very little, if any, reason to conclude the appraiser's opinion of value was wrong.
- h. But Mr. Simoni criticized other aspects of the appraisal as well. For example, he noted a substantial mistake in the lake frontage of comparable #8 and a small mistake the lake frontage of the subject property. In final analysis, these errors diminish the credibility and weight of the appraisal because they indicate the appraiser was not as careful as she should have been.
- i. Even though the Petitioner paid \$195,000 for the subject property, the Respondent argued that price is not a reliable indication of market value-in-use. The Respondent claimed the transaction did not meet the definition of market value because the definition requires allowing a reasonable time for exposure on the open market. The Respondent claims this requirement was lacking, but the Board disagrees. Before the Petitioner bought the subject property, these parcels were exposed on the market for a long time by two different realtors with an asking price of almost \$400,000. The Respondent's claim that there would have been more potential buyers if the asking price had been lower. And perhaps a significantly lower asking price would have been better by encouraging more offers. But the Board will not base a final determination on that kind of speculation. The lengthy marketing time for the subject property with a series of realtors cannot be disregarded simply because the final selling price was only about half of the asking price. (Of course, differences between asking price and an offer to purchase are common. Negotiating and resolving those differences to reach a final selling price is also common practice.) Nothing in the record indicates the sale was made under duress or that it was not an arm's-length transaction. Therefore, this point is not a substantial reason to disregard the Petitioner's purchase price.
- j. The Respondent also argued the Petitioner's purchase price was not valid for trending purposes because it was an outlier. In other words, the Respondent claims that the Petitioner somehow bought the subject property for substantially less than other people have paid for comparable properties. But the Respondent failed to support this conclusory testimony with substantial, probative evidence.
- k. The Respondent offered several purportedly comparable sales. In order to effectively use the sales comparison approach, however, the proponent must establish comparability. Conclusory statements that a property is "similar" or "comparable" are not enough. *Long*, 821 N.E.2d at 470. 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.*

1. The Respondent presented no substantial evidence to show that the other properties actually are comparables. The record contains no meaningful analysis of size, location, age, condition, or other specific factors that must be considered to draw any kind of meaningful conclusion from a comparison. Because the Respondent failed to identify or value the differences between the properties, the other sales have no probative value. *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (“the Court has frequently reminded taxpayers that statements that another property ‘is similar’ or ‘is comparable’ are nothing more than conclusions and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that the comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. *These standards are no less applicable to assessing officials.*” (citations omitted and emphasis added)).

### **Conclusion**

17. After weighing everything and based on the totality of the evidence in this case, the Board finds that the most credible and convincing evidence of value for both parcels together is the price the Petitioner paid for the subject property in August 2011.

### **Final Determination**

In accordance with the above findings and conclusions, the total assessed value of the subject properties will be reduced to \$195,000.

ISSUED: June 18, 2013

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Commissioner, 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>>.