

REPRESENTATIVES FOR PETITIONERS:

Mitchell S. Cohen, *pro se*
Danielle A. Cohen, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Linda Phillips, Tippecanoe County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mitchell S. & Danielle A. Cohen,	)	Petition No.:	79-001-12-1-5-00001
)		
Petitioners,	)	Parcel No.:	79-07-13-351-002.000-001
)		
v.	)	County:	Tippecanoe
)		
Tippecanoe County Assessor,	)	Township:	Fairfield
)		
Respondent.	)	Assessment Year:	2012

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

October 14, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (the “Board”) having 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. Because the 2012 assessment of the subject property increased by more than 5% over the 2011 assessment, the Tippecanoe County Assessor (the “Respondent”) had the burden of

proving that the 2012 assessment was correct. The Respondent admitted the assessed value established by the PTABOA was in error. Because the Respondent found the PTABOA value to be in error, the Respondent offered an appraisal report showing the 2012 market value-in-use of the subject property at \$311,000. Although Mr. and Mrs. Cohen (the “Petitioners”) claim errors contained in the appraisal report render the report unreliable in establishing the subject property’s market value-in-use, their evidence does not support such a claim. Additionally, the Petitioners did not offer any probative evidence to support a further reduction. Consequently, the Board finds that the property’s assessment must be reduced to \$311,000.

PROCEDURAL HISTORY

2. On November 16, 2012, the Petitioners appealed the subject property’s 2012 assessment. On April 20, 2013, the Tippecanoe County Property Tax Assessment Board of Appeals (the “PTABOA”) issued its determination lowering the assessment, although not to the amount that the Petitioners had requested. The Petitioners then timely filed a Form 131 petition with the Board on May 6, 2013.
3. On February 20, 2014, the Board’s administrative law judge, Dalene McMillen (the “ALJ”), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.
4. The following people testified under oath:

For the Petitioners: Mitchell Cohen
Danielle Cohen

For the Respondent: Linda Phillips, Tippecanoe County Assessor
Jesse Wallenfang, Sales Data & Appeals Manager for
Tippecanoe County Assessor
5. The Petitioners presented as their exhibit a document entitled “Grounds for Appeal Argument” (with attachments) which was attached to Board Exhibit A.

6. The Respondent presented the following exhibits:

- Respondent Exhibit 1 – The Petitioners’ request for review of assessment,
- Respondent Exhibit 2 – 2012 original property record card (“PRC”) for the subject property,
- Respondent Exhibit 3 – Notification of Final Assessment Determination – Form 115 dated April 20, 2013,
- Respondent Exhibit 4 – The 2012 PRC for the subject property,
- Respondent Exhibit 5 – The restricted appraisal report prepared by Deborah Green, Rangeline Appraisal Company dated February 5, 2014.

7. The following additional items are part of the record:

- Board Exhibit A – Form 131 petition for review with attachments,¹
- Board Exhibit B – Notice of Hearing dated January 14, 2014,
- Board Exhibit C – Hearing sign-in sheet.

8. The property under appeal is a single-family home located at 813 Emerald Drive in Lafayette.

9. The PTABOA determined the following assessment for 2012:

Land: \$68,200 Improvements: \$255,100 Total: \$323,300

10. The Petitioners requested the following assessment for 2012:

Land: \$68,200 Improvements: \$180,500 Total: \$248,700

¹ The Form 131 petition lists the preceding year assessment as \$262,900 while the property record card reports the preceding year at \$256,400. This discrepancy has no effect on the application of the burden shifting statute.

BURDEN OF PROOF

11. Generally, the taxpayer has the burden to prove that an assessment is incorrect 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). A burden-shifting statute creates two exceptions to that rule.

12. First, Ind. Code § 6-1.1-15-17.2(a) “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Under Ind. Code § 6-1.1-15-17.2(b), “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 the Indiana tax court.”

13. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code 6-1.1-15.” Under those circumstances:

if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving the assessment is correct.

14. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, to include the above burden-shifting language. The change applies to all appeals pending before the Board. *See P.L. 97-2014*.

15. The Respondent assessed the subject property for \$256,400 in 2011. For 2012, the PTABOA assessed the subject property for \$323,300. The parties agreed the assessment increased more than 5% from 2011 to 2012. The Respondent therefore has the burden of proving that the 2012 assessment is correct. To the extent that the Petitioners seek an assessment below the previous year's level, however, they bear the burden of proving that lower value.

PARTIES' CONTENTIONS

A. SUMMARY OF THE RESPONDENT'S EVIDENCE AND CONTENTIONS

16. The Respondent contends that in 2011 the Respondent changed computer systems. The Respondent contends that because of a "quirk" in the new system, the Petitioners' 2011 assessment was artificially low at \$256,400. The Petitioners purchased their property in 2007 for \$325,000, so their assessed values in the years prior to 2011 were in the \$300,000 range. The error was corrected in 2012 and the Petitioners' assessed value was originally calculated at \$330,400. *Phillips testimony; Respondent Exhibits 2 & 3.*
17. The PTABOA reduced the 2012 assessment from \$330,400 to \$323,300. *Wallenfang testimony; Respondent Exhibits 2-4.*
18. The Respondent hired Rangeline Appraisal Company to conduct an independent appraisal. The appraisal report was prepared by Deborah Green, a residential appraiser licensed in Indiana, who certified that she prepared her appraisal in conformance with the Uniform Standards of Professional Appraisal Practices ("USPAP"). In her appraisal report, Ms. Green estimated the subject property's value to be \$311,000 as of March 1, 2012, based on a sales comparison analysis. *Phillips & Wallenfang testimony; Respondent Exhibit 5.*

19. For her sales comparison analysis, Ms. Green chose similar houses located in the same high school service area that sold within the appropriate time period for establishing a 2012 assessment.² She chose one comparable property located in the same neighborhood as the subject property. The other two comparable properties are located in another location with homes of similar age and size. The appraiser made adjustments to the comparables with regard to the area of the land, the quality of construction, the bathroom count, the gross living area, the basement size, the basement finish, the number of porches, any swimming pools, the size of the garage, and any financing considerations. The Respondent argues that the appraisal is the best evidence of value for the 2012 assessment. *Phillips testimony; Respondent Exhibit 5.*

B. Summary of the Petitioners' Evidence and Contentions

20. The Petitioner contends that, at the PTABOA hearing, the Respondent submitted the sale prices of three comparable properties that showed the average sale price was \$128 per square foot, which she claimed supported an assessed value of \$330,400. *M. Cohen testimony; Board Exhibit A.*

21. After the PTABOA hearing, the Respondent commissioned a new appraisal that, the Petitioners contend, should be given little weight. The Petitioners contend that the appraiser used two comparable properties that are in a different neighborhood and school district than the subject property. The Petitioners contend that the comparable property located at 5010 Dunbar Drive has more land, a larger garage, 3.5 bathrooms and has upgraded amenities, such as a "Jacuzzi," a deck, wood floors and a swimming pool.³ The Petitioners argue that the two comparable properties in the appraisal report should not be considered accurate measures when establishing the value of the subject property. *M. Cohen testimony.*

² The Petitioners and the Respondent offer conflicting testimony about the school district of some of the properties used in the appraisal.

³ The Petitioners testified that they used the website "Zillow" to obtain information on the comparable properties used in the appraisal report submitted by the Respondent. The appraisal report lists 5010 Dunbar as having 2.1 bathrooms. *Respondent Exhibit 5. M. Cohen testimony.*

22. The Petitioners attached evidence to their Form 131 petition entitled “Grounds for Appeal Argument.” It shows what they contend are four similar homes in their neighborhood, in the same school district and of similar value that sold in 2011. They provided the dates of the sales, sales prices and sizes of the homes. Based on this information, they calculated a price per square foot for each of the four comparable properties. The comparable analysis shows the price per square foot ranged from \$83 to \$137 with an average of \$106. *M. Cohen testimony; Board Exhibit A.*
23. The Petitioners also submitted three similar properties from the neighborhood that sold in 2010. Based on the same criteria stated above, the sale price per square foot ranged from \$95 to \$125 with an average of \$112. According to the Petitioners, the Respondent used 2010 sale prices to establish the 2011 assessed values and 2011 sale prices to establish the 2012 assessed values. The Petitioners contend that the 2010 and 2011 average sale prices per square foot show house sale prices decreased by 5.4%. The Respondent, however, is proposing that based on the appraisal, the 2012 value of the subject home should be \$112 per square foot which is the 2010 average sale price.⁴ This evidence, the Petitioners argued, demonstrates the subject property is over-valued. The Petitioners believe their property should be valued at no more than \$106 per square foot. *M. Cohen testimony; Board Exhibit A.*
24. The Petitioners argue that by continuing to lower the assessment in the various stages of this case, the Respondent has exhibited a pattern of submitting erroneous evidence in an effort to establish the market value of the subject property for 2012. *M. Cohen testimony.*

⁴ It is not clear from where the Petitioner is deriving this number. The Assessor presented several different valuations throughout the proceedings, however, all of these valuations result in excess of \$112 per sq ft.

Analysis

25. The Respondent conceded that the PTABOA's 2012 assessment is incorrect. Nevertheless, the Respondent proved the subject property was worth \$311,000. The Board reaches this conclusion for the following reasons:
- a. In Indiana, real property is assessed based on its "true tax value," which the 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." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.
 - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2012 assessment, both the assessment and valuation dates were March 1, 2012. Ind. Code § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).
 - c. The Respondent offered an appraisal prepared by a licensed appraiser in accordance with USPAP. It determined the value of the subject property was \$311,000 as of

March 1, 2012. Although its estimated value is less than the disputed assessment, this appraisal is sufficient to make a prima facie case for an assessment at \$311,000.

- d. Once the Respondent establishes a prima facie case, the burden shifts to the Petitioners to rebut the Assessor's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). At that point, the Petitioners must offer evidence that impeaches or rebuts the Respondent's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
- e. The Petitioners challenged the appraiser's opinion on the grounds that two of the comparable properties were outside of the subject neighborhood and school district. In addition, the Petitioners argued that one comparable property had superior amenities, such as a Jacuzzi, a deck, wood floors and a swimming pool. The appraisal expressly accounted for the differences between the subject property and the comparable properties through various adjustments. Therefore, the Board is not persuaded by the Petitioners' arguments.
- f. Finally, the Petitioners relied on their analysis of four comparable sales in their neighborhood to show the assessed value of the subject property should be no more than \$106 per square foot. In order to effectively use a sales-comparison analysis as evidence in a property assessment appeal, the proponent must show that the properties are truly comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long*, 821 N.E.2d at 471. Rather, 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 affect the relative market value-in-use. The testimony regarding the average price in the neighborhood being \$106 per square foot, however, presents no probative evidence with regard to the market value-in-use of the subject property.

SUMMARY OF FINAL DETERMINATION

26. The 2012 assessment of the subject property increased by more than 5% over the 2011 value. With the burden shifting statute, this fact means the Respondent bore the burden of proving that assessed value is correct. But the Respondent conceded the 2012 assessment is incorrect. Nevertheless, the Respondent made a *prima facie* case that an assessment of \$311,000 would be correct. The Petitioners failed to prove that they are entitled to any further reduction. Consequently, the Board orders that the 2012 assessment be changed to \$311,000.

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

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.