

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

Petition No.: 02-057-12-1-5-00046
Petitioner: Carol Cooper
Respondent: Allen County Assessor
Parcel No.: 02-02-07-100-016.005-057
Assessment Year: 2012

The Indiana Board of Tax Review (“the Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Carol Cooper (“Cooper” or “Petitioner”) initiated her 2012 assessment appeal with the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) on August 3, 2012.
2. On December 31, 2012, the PTABOA issued a determination denying the appeal.
3. Cooper filed a Form 131 petition with the Board on February 12, 2013. She elected to have her appeal heard according to the Board’s small claims procedures. Formal written notice of the hearing was issued on September 5, 2013.
4. On October 10, 2013, Administrative Law Judge (“ALJ”) Dalene McMillen held the hearing. She did not inspect the property.
5. The following people were sworn at the hearing:
 - a. For the Petitioner: Carol Cooper, owner
Gregory S. Cooper¹
 - b. For the Assessor:² Jesse Hawk, Allen County Deputy Assessor

¹ Gregory Cooper is Carol Cooper’s son. He filed an appearance as her attorney. He also represented himself in his assessment appeal, Petition number 02-057-12-1-5-00052, which was heard at the same time. As such, Gregory was sworn as a witness.

² Mr. F. John Rogers, Thompson and Rogers, appeared as counsel for the Assessor.

Facts

6. The property under appeal is residential with a single-family home located at 3113 McComb Road in Huntertown.
7. The PTABOA determined the following assessment:

Land: \$173,400 Improvements: \$343,700 Total: \$517,100.
8. At the hearing, Cooper stated that she is appealing only the land assessment and requested a land assessment of \$88,200.

Record

9. The record contains the following:
 - a. The Form 131 petition,
 - b. A digital recording of the hearing,
 - c. Exhibits:
 - CCooper Exhibit 1 – 2012 property record card for subject property,
 - CCooper Exhibit 2 – Letter from Kathi Clifton, Vice President, Branch Manager of Star Bank, dated September 30, 2013, for property located at 3117 McComb Road,
 - CCooper Exhibit 3 – Uniform Residential Appraisal Report for Gregory & Carmen Cooper’s property at 3117 McComb Road prepared by Joseph Patane, Michiana Appraisal Services, LLC, dated March 14, 2011,
 - CCooper Exhibit 4 – Property record card for Doug Hoffer, 2910 McComb Road,
 - CCooper Exhibit 5 – Property record card for Loren Bunnell, 3108 McComb Road,
 - CCooper Exhibit 6 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131 for subject property,
 - CCooper Exhibit 7 – Notification of Final Assessment Determination – Form 115 for subject property, dated December 31, 2012,
 - CCooper Exhibit 8 – GIS map of 3117 McComb Road (i.e. Gregory Cooper’s property) and 3113 McComb Road (i.e. subject property),
 - CCooper Exhibit 9 – 2010 property record card for subject property,
 - CCooper Exhibit 10 – Notification of Final Assessment Determination – Form 115 for Carol Cooper’s property, dated January 23, 2012,

 - Respondent Exhibit 1 – 2012 property record card for subject property,

- Respondent Exhibit 2 – Sales disclosure form for Gregory & Carmen Cooper’s property at 3117 McComb Road,
- Respondent Exhibit 3 – Sales comparison analysis,
- Respondent Exhibit 4 – Property record card for Anthony Geller property at 2919 McComb Road,
- Respondent Exhibit 5 – Sales disclosure form for Anthony Geller property at 2919 McComb Road,
- Respondent Exhibit 6 – Property record card for Summit City Realty LLC at 2907 McComb Road,
- Respondent Exhibit 7 – Sales disclosure form for Summit City Realty LLC at 2907 McComb Road,
- Respondent Exhibit 8 – Property record card for Scott Gill at 2903 McComb Road,
- Respondent Exhibit 9 – Sales disclosure form for Scott Gill at 2903 McComb Road,
- Respondent Exhibit 10 – Property record card for Babar Majeed at 3121 McComb Road,
- Respondent Exhibit 11 – Sales disclosure form for Babar Majeed at 3121 McComb Road,
- Respondent Exhibit 12 – Property record card for Brad Jeffrey at South of McComb Road,
- Respondent Exhibit 13 – Sales disclosure form for Brad Jeffrey for Lot 9 Shadow Creek,
- Respondent Exhibit 15 – 2012 property record card and exterior photograph for subject property,³
- Respondent Exhibit 23 – Sales brochure and four multiple listing sheets for Shadow Creek lots 1, 2, 7, and 9,
- Respondent Exhibit 24 – Listing comparison analysis,
- Respondent Exhibit 25 – List price per acre of land within the geographic area of subject property,

- Board Exhibit A – Form 131 petition with attachments,
- Board Exhibit B – Hearing notice,
- Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Objections

10. The parties made several objections all of which the ALJ took under advisement. The Board turns to the objections.

³ Attorney Rogers identified Respondent Exhibits 14, 16, 17, 18, 19, 20, 21, and 22, but he did not offer them into the record. Accordingly, there is no Respondent Exhibits 14, or 16 through 22.

A. The Assessor's objections:

11. The Assessor objected to the following exhibits:

- CCooper Exhibit 2 (Letter from Kathi Clifton, Vice President, Branch Manager of Star Bank)
- CCooper Exhibit 3 (Appraisal report prepared by Joseph Patane)
- CCooper Exhibit 4 (Property record card for Doug Hoffer at 2910 McComb Road)
- CCooper Exhibit 5 (Property record card for Loren Bunnell at 3108 McComb Road)
- CCooper Exhibit 9 (2010 property record card for Carol Cooper's property)

12. The Assessor objected to CCooper Exhibits 2 and 3, the letter from Kathi Clifton of Star Bank and the 2011 appraisal report as hearsay. She also objected to Carol Cooper and Gregory Cooper's testimony about the Appraisal.

13. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 2-7-3. The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

14. The Appraisal and letter from Kathi Clifton of Star Bank are hearsay. The Appraisal was offered to show the value of the land as determined by the appraiser, and the letter was offered to show that the Appraisal was a business record.

15. A business record is an exception to the rule against hearsay in certain circumstances. Indiana Rule of Evidence 803(6) states: The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: A record of an act, event, condition, opinion, or diagnosis if: (C) making the record was a regular practice of that activity; (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(9) or (10) or with a statute permitting certification.

16. Clifton did not testify as a custodian of the business record and her letter does not satisfy the certification requirements under the rules. These Exhibits do not fall under the business record exception.

17. Nonetheless, the Assessor's hearsay objections are overruled and will be admitted into the record based on the Board's discretionary authority.
18. Next, the Assessor objected to CCooper Exhibits 4, 5 and 9, which are three property record cards for Doug Hoffer, Loren Bunnell and Carol Cooper. She argued that the purchase prices on Doug Hoffer and Loren Bunnell's properties were not arm's length transactions, therefore they are not credible. The Assessor also argued that Ms. Cooper's 2006 assessed value shown on her 2010 property record card does not equate to the land's market value. Merely disagreeing with what the evidence demonstrates is not a valid objection. All of the Assessor's objections go to the weight of the evidence, rather than the admissibility. The objections are overruled.

B. Carol Cooper's objections:

19. The Petitioner objected to the following exhibits:
 - Respondent Exhibit 3 (Sales comparison analysis)
 - Respondent Exhibit 23 (Sales brochure and four multiple listing sheets for Shadow Creek lots 1, 2, 7, and 9)
 - Respondent Exhibit 24 (Listing comparison analysis)
 - Respondent Exhibit 25 (List price per acre of land within the geographic area of Carol Cooper's property)
20. The Petitioner objected to Hawk's testimony about the comparable properties in Respondent Exhibit 3 based on hearsay and relevance. Hawk visually inspected the comparable properties. This testimony is not hearsay because it is not an out of court statement. Further, the testimony is relevant to establish that the comparables are indeed comparable to the subject property. The objection is overruled.
21. The Petitioner also objected to Respondent Exhibits 3 and 24 as hearsay. This objection is overruled. Exhibit 3 is a sales comparison analysis comparing properties to the subject property. The sales comparison analysis was created by the Assessor. Similarly, Exhibit 24 is a listing comparison analysis also created by the Assessor. Hawk is a Deputy Assessor and gave testimony as an employee of the Assessor's Office. To the extent the analyses are hearsay, Hawk was present to testify to the analyses and his opinion, and to be cross-examined. The objection is overruled.
22. The Petitioner objected to Respondent Exhibit 25 as hearsay and having no foundation. Exhibit 25 is a GIS map showing the parcels in the subject property's neighborhood with the sale price and date for each parcel. Hawk stated that this type of map is from the Assessor's GIS system and is an approved process by the Department of Local Government Finance as a method to support assessments. This is a record kept in the ordinary course of the Assessor's business, as evidenced by Hawk's testimony. Ind. R. Evid. 803(6). The objection is overruled.

23. The Petitioner also objected to Respondent Exhibit 23, which is a sales brochure and four multiple listing sheets for Shadow Creek as being hearsay. Once again, the Board overrules the objection. Hawk testified that he got the sales brochure and multiple listing sheets from an appraiser. The Board can permit hearsay evidence to be entered into the record at its discretion provided that hearsay does not form the sole basis of the decision. This evidence does not form the sole basis of the decision in this matter and Respondent Exhibit 23 is admitted.

Burden of Proof

24. 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 as recently amended by P.L. 97-2014 creates two exceptions to that rule.
25. First, Indiana Code section 6-1.1-15-17.2 “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 tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, 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(b).
26. Second, Indiana Code section 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 IC 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 that the assessment is correct.” This change is effective March 25, 2014, and has application to all appeals pending before the Board.
27. For 2011, the subject property was initially assessed \$177,600. After an informal hearing through the Board’s Facilitation Program, the Assessor issued a Form 115 reducing the 2011 land assessment to \$88,200. The land assessment for 2012 is \$173,400. Because the Petitioner successfully appealed the land assessment in 2011, the Assessor has the burden for the 2012 land assessment under section 17.2(d).

Summary of Parties' Contentions

28. Summary of the Assessor's case:

- a. The subject property is residential land with a single-family home in the Shadow Creek neighborhood in Perry Township. *Hawk testimony; Respondent Exhibit 1.*
- b. On October 29, 2007, the Assessor's office received a sales disclosure form showing that Carol Cooper "transferred for no or discounted consideration, or gift" to Gregory Cooper 7.781 acres located at 3117 McComb Road. *Hawk testimony; Respondent Exhibit 2.* The sales disclosure form shows the sales price was \$62,240, however, the form also states that "no money changed hands." *Id.* Because no money changed hands between the parties, this is not a value that can be relied on to establish market value. *Hawk testimony; Respondent Exhibit 2.*
- c. The Assessor applied the economic principle of substitution, which is that an owner will pay no more for a property than the amount for which an equally desirable property with similar utility may be purchased. *Hawk testimony.* The Assessor pointed to a map showing five comparable land sales that sold in the subject property's neighborhood to support the assessed value. *Id.; Respondent Exhibit 25.* Specifically, Hawk offered copies of the property record cards and sales disclosure forms for:

<u>Address</u>	<u>Sale Price</u>	<u>Sale Date</u>	<u>Size</u>	<u>Price / Per Acre</u>
2919 McComb Road	\$165,000	12/22/2011	6.913 acres	\$23,868
2907 McComb Road	\$88,000	12/21/2005	3.93 acres	\$22,392
2903 McComb Road	\$92,000	4/26/2006	3.99 acres	\$23,058
3121 McComb Road	\$180,000	11/8/2006	7.595 acres	\$23,700
South of McComb Road	\$182,500	11/19/2010	8.766 acres	\$20,819

Respondent Exhibit 4-13.

- d. The above properties are all vacant land sales showing that these properties, located in the same Shadow Creek neighborhood as the subject property, sold from \$20,819 per acre to \$23,868 per acre. *Hawk testimony; Respondent Exhibit 25.* The subject property is being assessed at \$22,117 per acre. *Id.* This range demonstrates that the subject property is not over-valued for the neighborhood. *Hawk testimony.*
- e. The Deputy Assessor also presented a comparable sales analysis. *Respondent Exhibit 3.* The comparable sales analysis shows the subject property, and two properties that sold on November 19, 2010, and December 22, 2011.⁴ *Hawk testimony; Respondent Exhibit 3.* It also shows the sale price, location, size, view, topography, and shape. *Id.*

⁴ The February 22, 2011, sale date for 2919 McComb Road on the sales comparison analysis appears to be a typo as the both the Property Record Card and Sales Disclosure Form show that this property was sold in December of 2011. *Respondent Ex. 3, 4-5.*

According to the Deputy Assessor, the three properties are all located in the Shadow Creek neighborhood. *Id.* The three properties also have the same topography and view. *Id.* As far as the shape of the land, the subject property is rectangular, whereas the two comparables are mostly rectangular with some slight difference. *Hawk testimony.* Through sales, the Deputy Assessor determined that the slight difference in shape of the land of the two comparables properties has not affected their market value. *Id.* The comparable sales analysis shows the land size adjustment was calculated by determining the differences in sizes and sales prices between the two comparable properties. *Respondent Exhibit 3.* Then the difference in price was divided by the difference in size to determine an adjustment price of \$9,400 per acre. *Id.* The Deputy Assessor applied the adjusted price per acre to the size differences between the subject land and the two comparable properties. *Id.* 2919 McComb Road's land is slightly smaller than the subject property and received a positive adjustment of \$8,800. *Hawk testimony; Respondent Exhibit 3.* The second comparable located at South of McComb Road's land size is slightly bigger, so a negative adjustment of \$8,700 was applied. *Id.* The adjusted sale prices show the average market value-in-use of the subject land is \$173,800. *Hawk testimony; Respondent Exhibit 3.* Thus, Ms. Cooper's land assessment of \$173,400 is appropriate. *Hawk testimony.*

- f. Next, the Deputy Assessor analyzed four multiple listings in the Shadow Creek neighborhood in the same manner as he analyzed the two comparable land sales. *Hawk testimony; Respondent Exhibits 23-24.* Once again, the listing comparison analysis shows the listing price, location, size, view, topography, and shape. *Id.; Respondent Exhibit 24.* The multiple listings ranged in size from 6.503 acres to 8.766 acres, yielding size adjustments of positive \$600 and \$12,600 and negative \$8,700. *Respondent Exhibit 24.* After the adjustments were applied, the indicated market value-in-use of the four multiple listings is \$186,750. *Hawk testimony; Respondent Exhibit 24.* The listing comparison analysis supports the land sales that have occurred in the Shadow Creek neighborhood. *Hawk testimony.*
- g. During cross examination, the Petitioner questioned the Deputy Assessor on the sale prices of two properties located at 2910 and 3108 McComb Road. *CCooper Exhibits 4-5.* He verified that both properties sold in 2003. *Hawk testimony.* Doug Hoffer's property at 2910 McComb Road sold for \$67,188, while Loren Bunnell's property at 3108 McComb Road is 8 acres and sold for \$48,000. *Id.* The Deputy Assessor stated that the sale price on Doug Hoffer's property was not an arm's length transaction because Mr. Hoffer is an interested party in the Shadow Creek neighborhood development. *Rogers argument.*
- h. The Petitioner also questioned the Deputy Assessor about not identifying that the properties at 2907 and 2903 McComb Road have ponds, when he alleged that properties are "identical" to the subject property. *G. Cooper argument; Respondent Exhibits 6 & 8.* According to the Deputy Assessor, the individual characteristics of those two properties were not analyzed. *Hawk testimony.* The county submitted those two properties to show

their sale prices per acre were comparable to the per acre assessed value of the subject property. *Id.*

- i. The Deputy Assessor testified that the lots in the Shadow Creek neighborhood are not all identical. *Hawk testimony.*
- j. Finally, there appears to be a lack of credibility in the appraisal report prepared for 3117 McComb Road. *Rogers argument.* The appraiser's opinion of the site value in the appraisal report is the same value (\$62,240) that Ms. Cooper stated on her sales disclosure form when she transferred the property to Gregory Cooper in 2007 for no money. *Id.*

29. Summary of the Petitioner's case:

- a. The Petitioner contends her land is assessed in excess of its market value-in-use. *C. Cooper testimony.* In support of her claim, she offered a March 14, 2011, residential appraisal report prepared for Gregory and Carmen Cooper's ("Gregory Cooper") property located at 3117 McComb Road. *CCooper Exhibit 3.* The appraisal report was prepared by Joseph M. Patane of Michiana Appraisal Services, LLC. *Id.* Mr. Patane is an Indiana Certified Residential Appraiser and the report certified that it was prepared in conformance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* Using the cost approach to value, Mr. Patane showed the site value of the land as \$62,240. *Id.*
- b. The subject property is nearly identical to Gregory Cooper's nearby property. *C. Cooper testimony.* The subject property and 3117 McComb Road were split from one piece of farmland. *C. Cooper testimony; CCooper Exhibit 8.* These properties share a common tree line and the same cul-de-sac. There is one foot variation in the terrain, but the lots are essentially the same size. In addition, each property has one acre of woods. They share electric, cable and telephone services. *C. Cooper testimony.*
- c. The appraisal for 3117 McComb Road was used to compare it to the subject property at the informal hearing between the Assessor, Carol Cooper, Gregory Cooper, and ALJ Stanford.⁵ *G. Cooper testimony.* As a result of this hearing, the assessment for Carol Cooper's land was reduced to \$88,200 by the Assessor. *Id.; CCooper Exhibit 10.* By reducing Carol Cooper's land assessment in 2011 based on this appraisal, the Assessor acknowledged that the subject property and 3117 McComb Road were similar. *G. Cooper testimony.* Because the 2011 appraisal for 3117 McComb Road has probative value in 2012, and the subject property and 3117 McComb Road are similar, the subject property's land assessed value should be reduced to \$88,200 for March 1, 2012. *Id.*

⁵ The Board interprets this informal hearing referred to by Mr. Cooper, to be what is known as the Voluntary Dispute Resolution or what is commonly referred to as the Indiana Board of Tax Review's "Facilitation Program." *See Ind. Code § 6-1.5-3-4.* The objective of the Facilitation Program is to assist taxpayers and local assessing officials in voluntarily resolving appeal disputes at the county level.

- d. The sales disclosure form prepared when Carol Cooper transferred the property located at 3117 McComb Road to Gregory Cooper in 2007 reflects a sale price of \$62,240. The assertion that this transfer does not represent an arm's length transaction is inaccurate. It is appropriate for the appraiser to rely on this value in the appraisal report. *G. Cooper argument*. According to the Petitioner, the \$62,240 figure placed on 3117 McComb Road when she sold it to Greg Cooper in 2007 was the assessed value from the county's property record card.⁶ *Id.*; *CCooper Exhibit 9*. In addition, the Petitioner claims the appraiser had all the same information as the Assessor and he did not find the transaction to be inappropriate for valuation purposes. *Id.*; *CCooper Exhibit 3, pg. 2*. That is why the appraiser used the 2007 sale price of the property in his appraisal report for the 2011 appraisal. *G. Cooper testimony*. Thus, the Petitioner argues the \$62,240 is an appropriate number to use to establish the value of the land. *Id.*
- e. The Petitioner argues that the Deputy Assessor did not present any probative evidence to demonstrate that his comparable properties are identical to the subject property. *G. Cooper testimony*. Thus, the Deputy Assessor failed to impeach Ms. Cooper's evidence that her value is overstated. *Id.*

Analysis

30. The Assessor made a prima facie case supporting the 2012 land assessment. The Petitioner did not introduce probative evidence to the contrary. The Board reaches this conclusion for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the 2011 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, for the property." 2011REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party's evidence in a tax appeal must be consistent with that standard. *See Id.* For example, a market value-in-use appraisal prepared according to Uniform Standards of the Professional Appraisal Practice often will be probative. *See Id.*; *see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 2, 3; *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

⁶ Carol Cooper's 2010 property record card shows for March 1, 2006, the land assessed value was \$62,700. *CCooper Exhibit 9*. In response to questioning, Ms. Cooper admitted that when she gave property to her son Gregory Cooper, she used the assessed value on her property record card to establish the market value in exchange. *C. Cooper testimony*. In fact, Ms. Cooper stated "I am not going to charge my son more than the assessed value." *Id.*

- b. In any case, a party must explain how her evidence relates to the property's market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *Id.* For 2012 assessments, the valuation date is March 1, 2012. *See* I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2 (c).
- c. Here, Deputy Assessor Hawk supported the subject land assessment in multiple ways. First, he presented a GIS map showing five vacant land sales in the subject neighborhood that sold at prices ranging from \$20,819 to \$23,868 per acre during 2005 to 2011. He also provided the property record card and sales disclosure forms. *Respondent Exhibit 4-13, 25.* The subject land was assessed at \$22,177 per acre for a total assessment of \$173,400.
- d. Second, Hawk presented a comparable sales analysis. The analysis shows land sales on December 22, 2011, and November 19, 2010, for \$23,868 and \$20,819 per acre. *Respondent Exhibits 3, 4-5, 12-13.* According to the DLGF, assessing officials use sales of properties occurring from March 2, 2010, through March 1, 2012, for a 2012 assessment. Therefore, the sale dates on these properties are relevant. The two comparable properties and the subject property are all in the same Shadow Creek neighborhood. Hawk testified that he visually inspected the properties and all three properties have the same or similar topography and view. *Hawk testimony.* Furthermore, based on the GIS map, the two comparable properties share a property line. There is a slight difference in the shape of the properties that does not affect the market value. *Hawk testimony.* With respect to the difference in size, the Deputy Assessor adjusted each comparable. *Id.; Respondent Exhibit 3.*
- e. Deputy Assessor Hawk meaningfully explained how the comparable land and the subject land are similar and he accounted for their differences. This evidence supports the land assessment and is probative because it explains how the comparable properties compare to the subject land and how the size differences affect value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax. Ct. 2005).
- f. Next, Deputy Assessor Hawk introduced four listings in the subject neighborhood. These listings reference the price, location, size, view, topography, and shape. *Respondent Exhibit 23-24.* After he adjusted each property for any difference in size, the market value for each property is \$186,750 whereas the subject land is assessed at \$173,400. *Hawk testimony; Respondent Exhibit 23-24.* The Petitioner objected to this evidence as hearsay and while the Board admitted the evidence over the objection, this evidence may not form the sole basis of the determination, which it does not. Further, to the extent real estate listings, on their own, are generally not probative evidence of market value, in this case, this evidence simply provides further support for the other probative evidence that supports the land assessment.
- g. While the Assessor's evidence is not absolutely compelling, as a whole it is sufficient to make a prima facie case that the 2012 assessment is correct.

- h. In rebuttal, the Petitioners' evidence included the Appraisal Report for a nearby property located at 3117 McComb Road, a GIS map, and the Form 115 issued for the 2011 assessment reducing the land assessment to \$88,200. The Board will start with the 2011 Form 115 issued by the PTABOA.
- i. The Petitioner asserts that the 2011 Form 115 reducing her land assessment indicates the Assessor's acceptance that the appraisal for a neighboring property has the proper value for the subject land for 2012. This argument is without merit. The Board finds that the Form 115 reducing the value of the subject property for 2011 lacks probative value for a 2012 appeal. Each tax year and each assessment year stands alone. Evidence of a property's assessment for one year does not necessarily show its true tax value for a different assessment year. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Therefore, the 2011 Form 115 reducing the land assessment has no probative value for the 2012 land assessment.
- j. Next, the Board turns to the 2011 Appraisal for 3117 McComb Road. This Appraisal is not credible evidence of the land value for the subject property for assessment year 2012. Using the cost approach, the Appraisal arrived at a land value of \$62,240. There is no indication in the Appraisal, other than a reference to the 2007 sale price, how the appraiser arrived at this value. *Petitioner Exhibit 3, pgs. 2-3*. The "sale" referenced in the Appraisal was between Carol Cooper and Gregory Cooper for \$62,240. But the sales disclosure statement for this transaction reveals it was a quitclaim deed and that "no money changed hands." *Respondent Exhibit 2*.
- k. The 2011 Real Property Assessment Manual defines market value as the "most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress." REAL PROPERTY ASSESSMENT MANUAL at 5-6. The terms of this transaction revealed in the sales disclosure form indicate that no cash or equivalent was exchanged for the property. Further, a quitclaim change of ownership from mother to son where no money changed hands is not indicative of a price that 3117 McComb Road would sell for after exposure in a competitive market. Therefore, the Appraisal's value based on the cost approach that relies on this 2007 transaction is highly conclusory and appears to be based on a non arms-length transaction between Carol Cooper and Gregory Cooper. Such a transaction is not a reliable indicator of value.
- l. The Appraisal is also hearsay. Specifically, the 2011 Appraisal Report and Star Bank's letter are hearsay, to which the Assessor properly objected. Although the Assessor's hearsay objection was overruled, if hearsay "is properly objected to and does not fall

within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay.” 52 IAC 2-7-3. The 2011 Appraisal Report and Star Bank’s letter cannot form the sole basis of the Board’s decision. Given that the Petitioner offered no other probative evidence of the land’s market value-in-use, the Board finds that the Petitioner failed to rebut the evidence put forth by the Assessor supporting the 2012 assessment.

Conclusion

31. The Respondent made a prima facie case for the 2012 land assessment and the Petitioner failed to introduce probative evidence in rebuttal. The Board finds for the Assessor.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner’s land should not be changed.

ISSUED: April 8, 2014

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>>.