

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

Petition No.: 02-057-12-1-5-00052
Petitioners: Gregory & Carmen Cooper
Respondent: Allen County Assessor
Parcel No.: 02-02-07-100-016.006-057
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. The Coopers (“Coopers or Petitioners”) appealed their 2012 assessment to the Allen County Property Tax Assessment Board of Appeals (“PTABOA”), which mailed notice of its determination on December 31, 2012.
2. The Coopers filed a Form 131 petition with the Board, electing to have their appeal heard according to the Board’s small claims procedures. On October 10, 2013, the Board held a hearing through Administrative Law Judge (“ALJ”) Dalene McMillen. The ALJ did not inspect the property.
3. The following people were sworn at the hearing:
 - a. For the Petitioners: Gregory Cooper, owner¹
Carol Cooper, Gregory Cooper’s mother
 - b. For the Assessor:² Jesse Hawk, Allen County Deputy Assessor

Facts

4. The Coopers’ property contains a single-family home with a swimming pool, gazebo, and bath house located at 3117 McComb Road in Huntertown.

¹ Mr. Cooper filed an appearance as Carol Cooper’s attorney. Mr. Cooper was also sworn as a witness because Carol Cooper’s appeal (Petition number 02-057-12-1-5-00046) and Gregory & Carmen Cooper’s appeal were combined into a single hearing.

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

5. The PTABOA determined the following assessment:
Land: \$172,500 Improvements: \$498,900 Total: \$671,400.
6. At the hearing, Mr. Cooper stated that he is only appealing the assessment of the land and requested a land assessment of \$88,900.

Record

7. The record contains the following:
 - a. The Form 131 petition,
 - b. A digital recording of the hearing,
 - c. Exhibits for Gregory Cooper's appeal:
 - GCooper Exhibit 1 – 2012 property record card for the Cooper's property,
 - GCooper Exhibit 2 – Letter from Kathi Clifton, Vice President, Branch Manager of Star Bank, dated September 30, 2013,
 - GCooper Exhibit 3 – Uniform Residential Appraisal Report prepared by Joseph Patane, Michiana Appraisal Services, LLC, dated March 14, 2011,
 - GCooper Exhibit 4 – Property record card for Doug Hoffer at 2910 McComb Road,
 - GCooper Exhibit 5 – Property record card for Loren Bunnell at 3108 McComb Road,
 - GCooper Exhibit 6 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131 for the Cooper's property,
 - GCooper Exhibit 7 – Notification of Final Assessment Determination – Form 115 for the Cooper's property, dated December 31, 2012,
 - GCooper Exhibit 8 – None (the list of exhibits shows GCooper Exhibit 8 as a GIS map, but he did not submit it),
 - GCooper Exhibit 9 – 2010 property record card for Carol Cooper's property at 3113 McComb Road,
 - GCooper Exhibit 10 – Notification of Final Assessment Determination – Form 115 for the Cooper's property, dated January 23, 2012,

 - Respondent Exhibit 1 – 2012 property record card for the Cooper's property,
 - Respondent Exhibit 2 – Sales disclosure form for the Cooper's property at 3117 McComb Road,
 - Respondent Exhibit 3 – Property record card for Anthony Geller property at 2919 McComb Road,
 - Respondent Exhibit 4 – Sales disclosure form for Anthony Geller property at 2919 McComb Road,
 - Respondent Exhibit 5 – Property record card for Summit City Realty LLC at 2907 McComb Road,

- Respondent Exhibit 6 – Sales disclosure form for Summit City Realty LLC at 2907 McComb Road,
- Respondent Exhibit 7 – Property record card for Scott Gill at 2903 McComb Road,
- Respondent Exhibit 8 – Sales disclosure form for Scott Gill at 2903 McComb Road,
- Respondent Exhibit 9 – Property record card for Babar Majeed at 3121 McComb Road,
- Respondent Exhibit 10 – Sales disclosure form for Babar Majeed at 3121 McComb Road,
- Respondent Exhibit 11 – Property record card for Brad Jeffrey at South of McComb Road,
- Respondent Exhibit 12 – Sales disclosure form for Brad Jeffrey for Lot 9 Shadow Creek,
- Respondent Exhibit 13 – Not submitted,
- Respondent Exhibit 14 – Not submitted,
- Respondent Exhibit 15 – Not submitted,
- Respondent Exhibit 16 – Sales comparison analysis,
- Respondent Exhibit 17 – Sales brochure for Shadow Creek and four multiple listing sheets for Shadow Creek lots 1, 2, 7, and 9,
- Respondent Exhibit 18 – Listing comparison analysis,
- Respondent Exhibit 19 – List price per acre of land within the geographic area of the Cooper’s property,
- Respondent Exhibit 20 – Information on Shadow Creek Development from the Indiana Secretary of State’s website,

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

d. Exhibits from Carol Cooper’s appeal:

- CCooper Exhibit 1 – 2012 property record card for Carol Cooper’s property,
- CCooper Exhibit 2 – Letter from Kathi Clifton, Vice President, Branch Manager of Star Bank, dated September 30, 2013,
- 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 at 2910 McComb Road,
- CCooper Exhibit 5 – Property record card for Loren Bunnell at 3108 McComb Road,
- CCooper Exhibit 6 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131 for Carol Cooper’s property,
- CCooper Exhibit 7 – Notification of Final Assessment Determination – Form 115 for Carol Cooper’s property, dated December 31, 2012,
- CCooper Exhibit 9 – 2010 property record card for Carol Cooper’s 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 Carol Cooper’s 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 Carol Cooper’s 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 Carol Cooper’s property,

e. These Findings and Conclusions.

Objections

8. The parties made several objections, all of which the ALJ took under advisement. The Board therefore turns to those objections.

The Assessor’s objections:

9. The Assessor objected to the following exhibits:
 - GCooper & CCooper Exhibit 2 (Letter from Kathi Clifton, Vice President, Branch Manager of Star Bank)
 - GCooper & CCooper Exhibit 3 (Appraisal report prepared by Joseph Patane)

³ Mr. 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.

- GCooper & CCooper Exhibit 4 (Property record card for Doug Hoffer at 2910 McComb Road)
- GCooper & CCooper Exhibit 5 (Property record card for Loren Bunnell at 3108 McComb Road)

10. 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.
11. "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.

12. 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.
13. 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.
14. 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.
15. Nonetheless, the Assessor's hearsay objections are overruled and will be admitted into the record based on the Board's discretionary authority.
16. Finally, the Assessor objected to CCooper Exhibits 4 and 5, which are property record cards for Doug Hoffer and Loren Bunnell. The Assessor argued that the purchase prices on Doug Hoffer and Loren Bunnell's properties were not arm's length transactions and are not credible. 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.

Gregory Cooper's objections:

17. Mr. Cooper objected to the following exhibits:
- Respondent Exhibit 16 and Respondent Exhibit 3 (Sales comparison analysis)
 - Respondent Exhibit 17 and Respondent Exhibit 23 (Sales brochure and four multiple listing sheets for Shadow Creek lots 1, 2, 7, and 9)
 - Respondent Exhibit 18 and Respondent Exhibit 24 (Listing comparison analysis)
 - Respondent Exhibit 19 and Respondent Exhibit 25 (List price per acre of land within the geographic area of Carol Cooper's property)
 - Respondent Exhibit 20 (Information on Shadow Creek Development from the Indiana Secretary of State's website)
18. Respondents Exhibits 3, 24, and 25 were introduced during the Carol Cooper portion of the hearing and are discussed by the Board in the Carol Cooper Determination. Nonetheless, Exhibit 3 is a sales comparison analysis comparing comparable 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 expert testimony as an employee of the Assessor's Office. Hawk was present to be cross-examined about this material. The objection is overruled.
19. The Petitioner objected to Respondent Exhibit 25 introduced during Carol Cooper's case 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. Deputy Assessor Hawk stated 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 the Deputy Assessor's testimony. Ind. R. Evid. 803(6). The objection is overruled.
20. Mr. Cooper also objected to Respondent Exhibits 17 and 20 as hearsay.⁴ Exhibit 17 is a sales brochure and four multiple listing sheets for Shadow Creek. Once again, the Board overrules the objection. Deputy Assessor 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 provided it does not form the sole basis of the decision, which these do not.
21. The Board now turns to the Petitioner's objections to the Respondent's exhibits submitted during the Gregory and Carmen Cooper portion of the hearing.
22. The Petitioner objected to Respondent's exhibits 16, 18-20 submitted during the Gregory and Carmen Cooper portion of the hearing.

⁴ Respondents Exhibits 23 (Carol Cooper case) and 17 (Gregory and Carmen Cooper case) are identical.

23. Respondent's Exhibit 16 is a sales comparison analysis very similar to Exhibit 3 introduced in the Carol Cooper portion of the hearing. For the same reasons found above, the Board overrules the objection.
24. Respondent's Exhibit 18 is a sales listing analysis very similar to Exhibit 24 introduced in the Carol Cooper portion of the hearing. For the same reasons found above, the Board overrules the objection.
25. Respondent's Exhibit 19 is a GIS map identical to Exhibit 25 introduced in the Carol Cooper portion on the hearing. For the same reasons explained above, Exhibit 19 is a business record and admitted. The objection is overruled.
26. Finally, Exhibit 20 is from the Indiana Secretary of State's website. The document is hearsay and does not fit in the requirements to be a public record. The objection is sustained.

Burden of Proof

27. 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
28. 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).
29. 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.
30. For 2011, the subject proper was initially assessed \$176,700. *GCooper Exhibit 1*. After an informal hearing through the Board's Facilitation Program, the Assessor issued a Form 115 reducing the 2011 land assessment to \$88,900. *GCooper Exhibit 10*. The land assessment for 2012 is \$172,500. *GCooper Exhibit 1*. *GCooper Exhibit 1*. 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).

Contentions

31. 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 to be \$62,240, however, the form also states that "no money changed hands." *Id.* Because no money changed hands between the parties, the Deputy Assessor considers the sale price to be invalid in establishing the market value-in-use of the land in the Shadow Creek neighborhood. *Hawk testimony.*
- c. The Deputy 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 Deputy 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 19 (GCooper); Respondent Exhibit 25 (CCooper).* Specifically, he offered copies of the property record cards and sales disclosure forms:

<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 Exhibits 3-12 (GCooper case); Respondent Exhibits 4-13 (CCooper case).

- d. The above properties are all vacant land sales. *Hawk testimony.* The vacant land sales show that properties in the Shadow Creek neighborhood sold from \$20,819 per acre to \$23,868 per acre. *Id.; Respondent Exhibit 25 (CCooper).* Carol Cooper's property is being assessed at \$22,117 per acre. *Id.* And Gregory Cooper's property is being assessed at \$22,169 per acre. *Respondent Exhibit 19 (GCooper).* 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 16 (GCooper); Respondent Exhibit 3 (CCooper).* The comparable sales analysis shows the subject property and two properties that sold on November 19, 2010, and February 22, 2011. *Hawk testimony; Id.* It also shows the sale price, location, size, view, topography, and shape. *Hawk testimony.* According to Deputy Assessor Hawk, 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 16 (GCooper); Respondent Exhibit 3 (CCooper)*. Then the difference in price was divided by the difference in size to determine an adjustment price of \$9,400 per acre. *Id.; Hawk testimony*. 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 land, and a positive adjustment of \$8,800 was applied. *Hawk testimony; Respondent Exhibit 16 (GCooper); Respondent Exhibit 3 (CCooper)*. 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 16 (GCooper); Respondent Exhibit 3 (CCooper)*. Thus, Mr. Cooper's land assessment of \$172,500 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 17-18 (GCooper); Respondent Exhibits 23-24 (CCooper)*. Once again the listing comparison analysis shows the listing price, location, size, view, topography, and shape. *Id.* 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. After the adjustments were applied the indicated market value-in-use of the four multiple listings is \$186,750. *Hawk testimony; Respondent Exhibit 18 (GCooper); Respondent Exhibit 24 (CCooper)*. The listing comparison analysis supports the land sales that have occurred in the Shadow Creek neighborhood. *Hawk testimony*.
- g. During cross examination, Mr. Cooper questioned Deputy Assessor Hawk on the sale prices of two properties located at 2910 and 3108 McComb Road. *GCooper & CCooper Exhibits 4-5*. The Deputy Assessor 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 that sold for \$48,000. *Id.* The Deputy Assessor testified 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. *Id.*
- h. Mr. Cooper also questioned the Deputy Assessor about not identifying that 2907 and 2903 McComb Road as having ponds on their properties, when he alleged that properties are "identical" to the subject property. *G. Cooper argument; Respondent Exhibits 5,7 (GCooper); Respondent Exhibits 6, 8 (CCooper)*. According to Hawk, the individual characteristics of those two properties were not analyzed. *Hawk testimony*. The county submitted those two properties to show that their per acre sale prices were comparable to the per acre assessed value of the subject property. *Id.*
- i. Deputy Assessor Hawk agreed that the lots in the Shadow Creek neighborhood are not all identical. *Hawk testimony*.

32. Summary of the Coopers' case:⁵

- a. The Coopers contend their land is assessed in excess of its market value-in-use. *G. Cooper testimony*. In support of their claim, Gregory and Carmen Cooper offered a March 14, 2011, residential appraisal report. *GCooper & CCooper Exhibit 3*. The appraisal report was prepared by Joseph M. Patane of Michiana Appraisal Services, LLC for the subject property for a 2011 appeal to the PTABOA. *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 was \$62,400. *Id.*
- b. Mr. Gregory Cooper argues that the Appraisal was used to compare the properties of Carol Copper and Gregory Cooper in 2011 at the "original hearing" with the Assessor, Carol Cooper, Gregory Cooper and a representative from the Board.⁶ *G. Cooper testimony*. As a result of the meeting, Carol Cooper's land assessed value was reduced to \$88,200. *Id.*; *CCooper Exhibit 10*. Similarly, Gregory Cooper's land assessed value was reduced to \$88,900. *Id.*; *GCooper Exhibit 10*. Mr. Cooper argues that his appraisal still has probative value in 2012, and that the subject land assessed value should be reduced to \$88,900 for March 1, 2012. *Id.*
- c. The sales disclosure form prepared when Carol Cooper transferred property to Gregory Cooper reflects a sale price of \$62,240. The assertion that this transfer does not represent an arm's length transaction is inaccurate. *G. Cooper argument*. Further, the appraiser's reliance on this price in his appraisal report is not inappropriate. *Id.* According to Mr. Cooper, the \$62,240 figure on the sales disclosure form was the assessed value from the property record card on Carol Cooper's property.⁷ *Id.*; *GCooper & CCooper Exhibit 9*. In addition, Mr. Cooper 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.*; *GCooper & CCooper Exhibit 3 at pg. 2 of 6*. Mr. Cooper argues that is why the appraiser used the 2007 value of the property in his appraisal report. *G. Cooper testimony*. Thus, \$62,240 is not an inappropriate number to use to establish the value of the land. *Id.*

⁵ Mr. Cooper requested that the testimony, arguments, and evidence from Carol Cooper's appeal be incorporated into Gregory and Carmen Cooper's appeal, except for the testimony regarding the GIS map (i.e. CCooper Exhibit 25), which is exclusive to Carol Cooper's appeal. *G. Cooper testimony*. Mr. Rogers did not object. *Rogers testimony*.

⁶ The Board interprets this "original 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.

⁷ Carol Cooper's 2010 property record card shows that for March 1, 2006, the land assessed value was \$62,700. *GCooper & 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.*

- d. Mr. Cooper 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*.⁸ Furthermore, Mr. Cooper argues that Hawk failed to impeach Ms. Cooper's evidence that her value is overstated. *Id.*

Analysis

33. The Assessor made a prima facie case supporting the 2012 land assessment. The Coopers 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.” 2011 REAL 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).
 - b. In any case, a party must explain how its 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 was 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 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 2-12, 19 (GCooper)*. The subject land was assessed at \$22,169 per acre for a total assessment of \$172,500.

⁸ This is a curious argument considering the comparable properties are contiguous to Carol Cooper's property and Gregory Cooper's property and that Mr. Cooper stated that the reason the 2011 appraisal report should be used to value his and his mother's land is because they share a common tree line, are on the same cul-de sac, there is only a one foot variation in terrain and the lots are essentially the same size.

- 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.⁹ *Hawk testimony; Respondent Exhibits 3-4, 11-12, 16 (GCooper)*. According to the DLGF, assessing official 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. The property at South of McComb Road and the subject property are located near one another with only two parcels between them. *Respondent Exhibit 19 (GCooper)*. 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, Deputy Assessor Hawk adjusted each comparable. *Id.; Respondent Exhibit 16 (GCooper)*.
- e. The Deputy Assessor 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 comparables compared to the subject land and how the size differences affected the 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 17-18 (GCooper)*. After he adjusted each property for any difference in size, the market value for each property is \$186,750 and the subject land is assessed at \$172,500. *Hawk testimony; Respondent Exhibit 17-18 (GCooper)*. 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, all together it is sufficient to make a prima facie case that the 2012 assessment is correct.
- h. In rebuttal, the Petitioners' evidence included the 2011 Appraisal Report for the subject property and the Form 115 for the 2011 assessment that reduced land assessment to \$88,900. The Board will start with the 2011 Form 115 issued by the PTABOA.
- i. The Petitioners assert that the 2011 Form 115 reducing their land assessment shows the Assessor's acceptance that the appraisal has the proper value for the subject land for 2012. 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

⁹ The February 22, 2011, sale for 2919 McComb Road on the sales comparison analysis appears to be a typo. Both the Property Record Card and the Sales Disclosure Form show that this property was sold in December of 2011. *Respondent Exhibit 3-4, 16 (GCooper)*.

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 of the subject property provides little probative evidence for the 2012 land assessment.

- j. Next, the Board turns to the 2011 Appraisal for the subject property. 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, about how the appraiser arrived at this value. *GCooper 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 (GCooper, CCooper)*.
- 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. Based on the sales disclosure form, however, the terms of this transaction did not involve cash or a cash equivalent. Further, a change in ownership from mother to son where no money changed hands is not a very credible indication of the price that the subject property actually would sell for after exposure in a competitive market. The Board regards such evidence as an unreliable 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

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

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 Petitioners' property land 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>>.