

REPRESENTATIVE FOR PETITIONER:

Sharon LeVeque, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:

Debra Dunning, Marshall County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Linda Scarberry Crouch,	)	Petition No.:	50-006-11-1-5-00025A
)		
Petitioner,	)	Parcel No.:	50-43-06-000-309.000-005
)		
v.	)	County:	Marshall
)		
Marshall County Assessor,	)	Township:	German
)		
Respondent.	)	Assessment Year:	2011

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

March 20, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (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

ISSUE

1. Did the Petitioner, Linda Scarberry Crouch, prove that the subject property was overvalued for the 2011 assessment?

PROCEDURAL HISTORY

2. The Petitioner apparently contested the subject property's 2011 assessment, but the record lacks any written documentation of an original appeal to the PTABOA. The Board therefore cannot determine when, or even if, it was filed. Nonetheless, on April 23, 2012, the Petitioner filed a Form 131 petition with the Board, and indicated on the petition that the Marshall County Property Tax Assessment Board of Appeals (PTABOA) did not "agree with the 2010 appeal and 180 days have exceeded notice Form 115 is attached." *Bd. Ex. A.*
3. At the hearing, the Respondent offered a PTABOA determination dated December 4, 2012, which is over seven months after the Petitioner filed her Form 131 with the Board. *Resp't Ex. 2.* Once the Petitioner filed her Form 131 petition, however, jurisdiction in this matter no longer rested with the PTABOA. Since the Respondent offered no objection to the hearing, and did not dispute the Petitioner's claim that the PTABOA failed to act in a timely manner, the Board will conclude that this matter is properly before it. *See* Ind. Code § 6-1.1-15-1(k) and (o) (allowing a taxpayer to seek review by the Board if a county PTABOA does not hold a hearing within 180 days of the taxpayer filing its notice of review with the county or township assessor).
4. On October 29, 2013, the Board's administrative law judge, Jennifer Bippus (ALJ), held a hearing on the petition.¹ Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Certified Tax Representative Sharon LeVeque, property owner Linda Scarberry Crouch, Marshall County Assessor Debra Dunning, and Deputy Assessor Mindy S. Relos-Penrose were sworn and testified.
6. The Petitioner submitted the following exhibits:
Petitioner Exhibit 1A - B: Subject property record card,
Petitioner Exhibit 2A: Aerial view of subject property,

¹ The hearing was consolidated and also included a petition contesting the 2010 assessment.

- Petitioner Exhibit 2B: Aerial view of subject property, along with a city park highlighted in blue,
- Petitioner Exhibit 2C: Aerial view showing public access around the subject property which is highlighted in blue,
- Petitioner Exhibit 2D: Aerial view of park located in front of subject property which is highlighted in blue,
- Petitioner Exhibit 3A - C: Form 115 for 2010 assessment year,
- Petitioner Exhibit 3D: PTABOA meeting minutes,
- Petitioner Exhibit 4A: Property record card for parcel 50-43-06-000-284.000-005,
- Petitioner Exhibit 4B: Aerial view of parcel 50-43-06-000-284.000-005,
- Petitioner Exhibit 4C: Property record card for parcel 50-42-12-000-025.000-009,
- Petitioner Exhibit 4D: Aerial view of parcel 50-42-12-000-025.000-009,
- Petitioner Exhibit 4E: Property record card for parcel 50-43-07-000-203.000-005,
- Petitioner Exhibit 4F: Aerial view of parcel 50-43-07-000-203.000-005,
- Petitioner Exhibit 4G: Property record card for parcel 50-43-07-000-216.000-005,
- Petitioner Exhibit 4H: Aerial view of parcel 50-43-07-000-216.000-005,
- Petitioner Exhibit 4I: Property record card for parcel 50-43-07-000-276.000-005,
- Petitioner Exhibit 4J: Aerial view of parcel 50-43-07-000-276.000-005,
- Petitioner Exhibit 4K: Property record card for parcel 50-43-07-000-034.000-005,
- Petitioner Exhibit 4L: Property record card for parcel 50-43-07-000-035.000-005,
- Petitioner Exhibit 4M: Aerial view of parcel 50-43-07-000-035.000-005,
- Petitioner Exhibit 4N - O: Property record card for parcel 50-43-07-000-024.000-005,
- Petitioner Exhibit 4P: Aerial view of parcel 50-43-07-000-024.000-005,
- Petitioner Exhibit 4Q: Property record card and aerial view of parcel 50-43-07-000-025.000-005,
- Petitioner Exhibit 4R: Property record card for parcel 50-43-07-000-026.000-005,
- Petitioner Exhibit 4S: Aerial view of parcel 50-43-07-000-026.000-005,
- Petitioner Exhibit 5A - B: Spreadsheet created by Petitioner's representative with properties listed (4A – 4S).²
- Petitioner Rebuttal Ex. 1: Aerial map of parcel 50-42-12-000-026.000-009,
- Petitioner Rebuttal Ex. 2: Subject property record card printed October 17, 2013,
- Petitioner Rebuttal Ex. 3: Subject property record card printed October 7, 2013,
- Petitioner Rebuttal Ex. 4: Multiple Listing Service (MLS) listing for 3654 West Shore Drive,
- Petitioner Rebuttal Ex. 5: MLS listing for 9036 Birch Road,
- Petitioner Rebuttal Ex. 6: Property record card for parcel 50-43-07-000-202.000-005 located at 4215 Lake Shore Drive.

7. The Respondent submitted the following exhibits:

- Respondent Exhibit 1: Form 131 petition,
- Respondent Exhibit 2: Form 115,

² The Petitioner's representative made both mathematical and labeling errors on this exhibit; however, these errors were corrected at the hearing by the Petitioner's representative.

- Respondent Exhibit 3: 1995 land contract for the subject property,
- Respondent Exhibit 4: Trust deed for the subject property,
- Respondent Exhibit 5: Photograph of the subject property,
- Respondent Exhibit 6: Aerial photograph of subject property from “Pictometry”,
- Respondent Exhibit 7: Aerial photograph of subject property from Beacon website,
- Respondent Exhibit 8: Rental data collection sheet marked confidential,
- Respondent Exhibit 9: 2011 German Township rental spreadsheet marked confidential,
- Respondent Exhibit 10: March 1, 2011, subject property record card,
- Respondent Exhibit 11: 2011 Land Order for German Township,
- Respondent Exhibit 12: March 1, 2012, subject property record card,
- Respondent Exhibit 13: Property record card for parcel 50-43-06-000-139.000-005,
- Respondent Exhibit 14: Sales comparison spreadsheet,
- Respondent Exhibit 15: Sale Disclosure Form and property record card for 3654 West Shore Drive,
- Respondent Exhibit 16: Sale Disclosure Form and property record card for 9036 Birch Road,
- Respondent Exhibit 17: Sale Disclosure Form and property record card for 4215 Lake Shore Drive.

8. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 131 petition with attachments,
- Board Exhibit B: Hearing notice, dated June 24, 2013,
- Board Exhibit C: Respondent’s request for continuance, dated July 1, 2013,
- Board Exhibit D: Board’s granting of continuance, dated July 9, 2013,
- Board Exhibit E: Hearing notice, dated August 28, 2013,
- Board Exhibit F: Hearing sign-in sheet.

9. The subject property is a residential property located at 3891 Lake Shore Drive in Bremen.

10. The 2011 assessment is \$120,800 for land and \$21,500 for improvements, for a total value of \$142,300.³

11. The Petitioner did not request a specific value at the hearing before the Board.

OBJECTIONS

12. Ms. LeVeque objected to Respondent Exhibit 2. This exhibit, however, is procedural in nature; given it is a Form 115. The Board finds no legal grounds to exclude it, and the

³ These are the same assessment values listed on Respondent Exhibit 2.

only grounds Ms. LeVeque offered was that the exhibit was not relevant to the Board's hearing. Objections made on relevancy grounds go to the weight of the exhibit rather than to the admissibility. Ms. LeVeque's objection is therefore overruled, and Respondent's Exhibit 2 is admitted.

13. Ms. LeVeque objected to Respondent Exhibit 8 and 9 on the grounds that they contain confidential rental data for properties in German Township. Ms. LeVeque objected to these exhibits because the Respondent did not, due to their confidential nature, provide them to the Petitioner.
14. In connection to her objections to Respondent Exhibit 8 and 9, Ms. LeVeque also objected to Respondent Exhibit 10, 12, and 13. These exhibits consist of the 2011 and 2012 subject property record cards and a 2012 property record card of another rental property. Ms. LeVeque argues that the assessments were based on the rental data contained in Respondent Exhibit 8 and 9.
15. The Board sustains Ms. LeVeque's objections to Respondent Exhibit 9 and 13. While the Board appreciates the Respondent's efforts with regard to confidential information, it is simply unfair to consider evidence that an opposing party cannot even examine, let alone respond to. *See* 52 IAC 2-3-4(a) (requiring a party to serve all other parties with any papers submitted to the Board or its ALJ). Thus, Respondent Exhibit 9 must be excluded. While the Respondent did provide the Petitioner with copies of Respondent Exhibit 13, the Respondent's reason for offering this exhibit inextricably links it to Respondent Exhibit 9. As such, these two exhibits are excluded.
16. The Board notes, however, that its exclusion of these exhibits has no effect on the Board's determination in this matter. Indeed, as is discussed below, the Respondent did not use rental information in computing the subject property's 2011 assessment.
17. As to Ms. LeVeque's objections to Respondent Exhibit 8, 10, and 12, the Board ultimately overrules these objections. Respondent Exhibit 8 is a form that was completed by the Petitioner, so there would be no reason to exclude this exhibit. Even if the

Respondent failed to hand this over to the Petitioner, the Petitioner is not prejudiced by the introduction of this exhibit given they had all of the information on the form at their disposal. As to Respondent Exhibit 10 and 12, these are record cards pertaining to the subject property. It is troubling that the Petitioner's representative would make an objection to these exhibits in the first place. Not only are these record cards for the exact property that is under appeal, but the Petitioner actually introduced one of these exhibits as a rebuttal exhibit.⁴ Accordingly, the Board overrules Ms. LeVeque's objections to Respondent Exhibit 8, 10, and 12.

18. Finally, it is not clear whether Ms. LeVeque, as a tax representative, should raise such objections. Tax representatives are prohibited from actions that constitute the practice of law. *See* 52 IAC 1-2-1(b)(4). Objections to exhibits on evidentiary grounds may cross the line into the practice of law. Tax representatives are strongly cautioned against crossing the line in any appearances before the Board.

JURISDICTIONAL FRAMEWORK

19. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

20. The subject property's assessment is too high. The land assessment is almost \$100,000 higher than it was in 2009. *LeVeque argument.*
21. The size of the subject property, which is 35 feet by 135 feet, is typical for the subject property's neighborhood. Due to public-access lots and a park that surround the subject

⁴ Petitioner Rebuttal Exhibit 3.

property, there is no privacy. Accordingly, this lack of privacy would be a deterrent to future purchasers, and consequently they would pay less for the property. *LeVeque argument.*

22. Because the Petitioner uses the subject property as rental property, it should be assessed as such. Further, the assessed value should be obtained by using the income approach to value. However, the Petitioner was denied access to neighborhood rental information needed to calculate a gross rent multiplier. Thus, the Petitioner is unable to calculate the assessment using the income approach. *LeVeque argument.*
23. Assessment and sales data from comparable properties show that the subject property's land assessment is overvalued. The front-foot prices for the comparables range from \$244 to \$1,573 per front foot, which is lower than the subject property's assessment. *LeVeque argument; Pet'r Ex. 4A-4S, 5A, 5B.*
24. Most of the purported comparable properties presented by the Respondent are larger, are superior in location, and have no public right-of-ways. Further, the purported comparable properties presented by the Respondent are not rentals like the subject property, thus they should not be considered comparable. *LeVeque argument; Resp't Ex. 15, 16, 17.*
25. The Respondent did not correctly calculate the effective frontage on the subject property. Accordingly, Ms. LeVeque argues that if she, as a real estate broker, were to put the subject property on the market for "51 feet of water frontage, I would be sued." Moreover, the properties used by the Respondent are larger and have more frontage than the subject property, and at least one property was classified as "channel-front" in another appeal hearing. Thus, the Respondent failed to support the current assessment. *LeVeque argument.*

RESPONDENT'S CONTENTIONS

26. The subject property's assessment is correct. The subject property is located in the Washnock addition, and it sits right along the Lake of the Woods. Prior to 2010, the subject property was assessed as off-water. In 2010, the subject property was changed to a neighborhood called On the Water Lake of the Woods and that assessment carried through to 2011. This was consistent with other properties in the area and took the subject property from a channel property to a water front property, increasing the value of the land considerably. Consequently, the base rate for land changed from \$224 per front foot to \$2,574 per front foot. *Relos-Penrose testimony; Resp't Ex. 10, 11, 12.*
27. The subject property is not assessed as rental property because there were no sales of rental properties in the subject property neighborhood to compute a gross rent multiplier. Further, two other rental properties exist in the same neighborhood; however, these properties are not receiving a rental adjustment either because of the lack of data. *Dunning testimony; Resp't Ex. 2.*
28. The Petitioner purchased the subject property on land contract in 1995, for \$62,000. That price, however, does not include a \$3,000 down payment. Since the purchase of the subject property, it has been remodeled. *Dunning testimony; Resp't Ex. 3.*
29. Further, three sales serve to support the current assessment. The Respondent was able to take the sale price and extract the improvements to develop a price per square foot. The comparable properties are also "water frontage" and have access to Lake of the Woods. Further, these properties are located in the same neighborhood as the subject property. These comparable properties, located at 3654 West Shore Drive, 9036 Birch Road, and 4215 Lake Shore Drive, sold for "an average of \$19.93 and a median of \$23.01" per square foot. The subject property is assessed at \$17.96 per square foot. *Dunning testimony, Resp't Ex. 14, 15, 16, 17.*
30. The comparable properties presented by the Petitioner are not comparable to the subject property. Most of the properties do not have as much frontage as the subject property.

More importantly, most of them, while privately owned, are used for public access to the beach. While Ms. LeVeque disputes it, these properties have building restrictions. Therefore, a 60% negative influence factor is applied to the properties' assessments. *Relos-Penrose argument.*

31. Finally, the data presented by the Petitioner's representative lacks credibility because she used actual frontages instead of effective frontages in her analysis. Further, some of the properties used are channel front lots and not water front lots. In addition, her data contains numerous errors in addresses, parcel numbers, and sale dates. *Relos-Penrose argument.*

BURDEN OF PROOF

32. 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.

33. The subject property's current assessment is the same as it was in 2010. Thus, the burden remains with the Petitioner.

ANALYSIS

34. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the property's market value-in-use. To show market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
35. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2011 assessment was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.
36. Here, the Petitioner, through her tax representative Ms. LeVeque, randomly offered assessment comparisons, and one sales comparison, in an attempt to prove that the assessment of the subject property is too high. First, regarding the purportedly comparable sale, the Petitioner recognizes that one can estimate the value of a subject property by analyzing the sales of comparable properties. A party offering such evidence must show that the properties are generally comparable to each other, and also must show how any relevant differences affect the relative values. *See Long*, 821 N.E.2d at 470-71 (holding that, in applying the sales-comparison approach, the taxpayers needed to explain how any differences between their property and the properties to which they sought to compare it affected the properties' relevant market values-in-use). In order to effectively

use the sales comparison approach as evidence in a property assessment appeal however, the proponent must establish the comparability of the properties being examined.

Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470.

37. Here, Ms. LeVeque’s analysis of comparability was limited to a conclusory statement claiming that the purportedly comparable property is superior to the subject property. Again, in order to effectively utilize the sales comparison approach one must provide the Board with more than simple conclusory statements. The Petitioner’s case lacked the type of analysis contemplated by *Long*.
38. Another way to show market value-in-use is through comparable properties’ assessments. *See* Ind. Code § 6-1.1-15-18. This statute, however, does not automatically make evidence of other assessments probative. The party relying on those assessments must apply generally accepted appraisal and assessment practices to show that the properties are comparable to the property under appeal. Again, conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *See Long*, 821 N.E.2d at 470. One must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the other properties. *Id.* at 471. Similarly, one must explain how any differences between the other properties and the property under appeal affect the relative market values-in-use. *Id.* This Ms. LeVeque did not achieve.
39. Here, the Petitioner’s representative failed to discuss how the properties she submitted as comparable properties were similar to the subject property or how they differed. The Petitioners’ evidence did little to quantitatively or qualitatively show how the differences between the properties affected their relative values. Furthermore, the Petitioner’s evidence lacked credibility based on the fact that mistakes were made by the Petitioner’s representative.

40. The Board notes that the evidence and testimony presented by Ms. LeVeque is very difficult to follow and at times incomprehensible. Her exhibits contain multiple mistakes and mathematical errors. The Board reminds taxpayers that in making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board through every element of the analysis”).
41. Ms. LeVeque also disagreed with the Respondent’s methodology in computing the assessment. Specifically, she contended that the subject property should be assessed as a rental property, and that the Respondent incorrectly calculated the effective frontage. But it is not enough to simply challenge the methodology used to compute the assessment. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006). Instead, Ms. LeVeque was required to rely on market-based evidence to prove that the assessed value does not reflect the property’s market value-in-use. This Ms. LeVeque failed to do. The Board therefore finds that the Petitioner failed to make a prima facie case that the subject property was over-valued for 2011.
42. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

43. The Petitioner did not make a prima facie case for reducing the subject property's March 1, 2011, assessment. The Board therefore finds for the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first 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 within forty-five (45) days of 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>>.