

REPRESENTATIVE FOR PETITIONER:

Frank J. Loughery, trustee

REPRESENTATIVE FOR RESPONDENT:

David F. Truitt, attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Frank J. Loughery Revocable Trust,)	Petition No.:	06-010-11-1-5-00157
)		
Petitioner,)	Parcel No.:	010-01320-06
)		
v.)		
)		
Boone County Assessor,)	County:	Boone
)		
Respondent.)	Assessment Year:	2011

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

February 26, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioner's property was overstated for the 2011 assessment year.

PROCEDURAL HISTORY

2. The Petitioner's representative, Frank J. Loughery, initiated an assessment appeal by filing a request with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) on August 23, 2011. The PTABOA issued its determination on October 6, 2011.
3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Loughery filed a Form 131 Petition for Review of Assessment with the Board on November 7, 2011, petitioning the Board to conduct an administrative review of the Petitioner's appeal.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on November 29, 2012, in Lebanon, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Frank J. Loughery, Trustee

For the Respondent:

Lisa Garoffolo, Boone County Assessor

Peggy Lewis, PTABOA Member

6. The Petitioner presented the following exhibits:

- Petitioner Exhibit 1 – Email from Frank Loughery to David Truitt, dated November 28, 2012,
- Petitioner Exhibit 2 – Petitioner’s representative’s summary testimony on the Petitioner’s appraisal,
- Petitioner Exhibit 3 – Petitioner’s representative’s summary testimony on the Respondent’s comparative market analysis.¹

7. The Respondent presented the following exhibits:

- Respondent Exhibit 1 – Boone County appeal worksheet,
- Respondent Exhibit 2 – Property record card for the subject property,
- Respondent Exhibit 3 – Three photographs of the subject property,
- Respondent Exhibit 4 – Petitioner’s appraisal report prepared by Stephen J. Clifford of S.J. Clifford Appraisals, dated August 3, 2011,
- Respondent Exhibit 5 – Multiple listing sheets for 11523 Willow Ridge Trail, dated June 19, 2007, and March 26, 2010; 3126 Huddersfield Lane, dated March 19, 2010; 10192 Hickory Ridge Drive, dated June 18, 2010; 11539 Willow Springs Drive, dated June 13, 2007, and March 2, 2010; 8535 Hunt Club Road, dated April 2, 2011; 6125 Stonegate Run, dated August 7, 2009; and 9772 East 300 South, dated May 7, 2010,
- Respondent Exhibit 6 – Boone County comparative market analysis,
- Respondent Exhibit 7 – Form 115, Notification of Final Assessment Determination,
- Respondent Exhibit 8 – Revised property record card for the subject property,
- Respondent Exhibit 9 – Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment,
- Respondent Exhibit 10 – Indiana Board of Tax Review, Notice of Hearing on Petition,
- Respondent Exhibit 11 – Summary of building permits issued in March for Union Township.

¹ Mr. Loughery testified that he inadvertently identified the Respondent’s comparative market analysis as “Grid Report #5” on Petitioner Exhibit 3. *Loughery testimony*. Mr. Loughery testified that the Respondent’s comparative market analysis is actually Respondent Exhibit 6. *Id.*

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,²
Board Exhibit B – Notice of Hearing, dated October 26, 2012,
Board Exhibit C – Hearing sign-in sheet.

9. The property under appeal is a single-family home located at 9451 Pleasantview Lane, Zionsville, in Boone County.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2011, the PTABOA determined the assessed value of the Petitioner’s property to be \$223,100 for the land and \$1,092,500 for the improvements, for a total assessed value of \$1,315,600.
12. The Petitioner’s representative requested an assessed value of \$200,000 for the land and \$600,000 for the improvements, for a total assessed value of \$800,000.

JURISDICTIONAL FRAMEWORK

13. The Indiana 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 Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

² Mr. Loughery requested that the Petitioner’s appraisal attached to the Form 131 petition, submitted and labeled as Board Exhibit A, be incorporated as part of the Petitioner’s evidence. There was no objection from the Respondent.

PETITIONER'S CONTENTIONS

14. The Petitioner's representative contends that the property under appeal was assessed for more than its market value-in-use based on the property's appraised value. *Loughery testimony*. In support of this position, Mr. Loughery submitted an appraisal report prepared by Stephen J. Clifford of S.J. Clifford Appraisals. *Board Exhibit A*. Mr. Clifford is an Indiana Licensed Appraiser, who certified that he prepared the appraisal in conformance with the Uniform Standards of Appraisal Practices (USPAP). *Id.* In the appraisal report, Mr. Clifford estimated the value of the Petitioner's property to be \$800,000 as of June 17, 2011, based on a sales comparison analysis and a cost approach valuation. *Id.*
15. The Petitioner's representative testified that the six comparable properties used by the appraiser in his sales comparison analysis sold from between \$760,000 and \$1,037,500, which, Mr. Loughery argues, further demonstrates that the property's assessed value of \$1,315,600 was too high. *Loughery testimony; Board Exhibit A*. In addition, the comparable properties are all two-story homes ranging in size from 3,515 square feet to 6,008 square feet; whereas the Petitioner's home is a one-story house with 5,013 square feet of living area. *Id.* Mr. Loughery contends that, because all of the homes in the area are custom built, they vary in features, such as the number of bedrooms and bathrooms in the house, the size of the garage, whether they have pools, whether they have outdoor fireplaces or kitchens and whether they have finished basements. *Id.* Therefore, he contends, it is necessary to provide a detailed analysis to establish the properties' fair market values, like that provided by Mr. Clifford in his sales comparison analysis. *Id.*
16. Mr. Loughery contends that the Respondent's case lacks any detailed analysis and therefore should be given little weight. *Loughery testimony*. According to Mr. Loughery, two of the four comparable properties used in the Respondent's comparative market analysis are superior to the Petitioner's property. *Id.; Respondent Exhibit 6*. In particular, Mr. Loughery testified, the property located at 8 Woodward Place was the

2010 Indianapolis Monthly Dream Home. *Loughery testimony; Petitioner Exhibit 3.* The house was advertised as having over 8,500 square feet of living area, a four car garage, a tile roof, seven fireplaces, a covered lanai with a fireplace and a television, a basement wine cellar, a gunite swimming pool, hand carved cabinetry and iron entry doors from Texas. *Id.* Similarly, the property located at 11576 Willow Bend Court was the 2008 Home-A-Rama “best in show.” *Id.* The home was advertised as having 9,674 square feet of living area with six bedrooms, five full bathrooms and three half-bathrooms, a theatre, a gentlemen’s lounge, an exercise-spa room, a bar with beer tap, a wine cellar, a fire pit, and an outdoor kitchen. *Id.* Removing the sale prices of these two properties, Mr. Loughery argues, lowers the average selling price of the Respondent’s comparable properties to approximately \$975,000. *Id.*

17. Finally, in response to questioning, Mr. Loughery testified that the house was built in 2009 and 2010. *Loughery testimony.* Mr. Loughery admitted that a building permit was applied for, but testified that his contractor applied for the permit and the permit was issued to the builder. *Loughery testimony; Respondent Exhibit 11.* Mr. Loughery agreed that the Petitioner purchased the lot from a developer for \$240,000 on October 15, 2007, as shown on the Respondent’s property record card. *Loughery testimony; Respondent Exhibit 8.* Further, Mr. Loughery testified about the cost of constructing the home:

Truitt: Okay, do you know how much it was filed for with local area Plan Commission?

Loughery: I do not.

Truitt: Let me hand you what is going to be Respondent’s Exhibit No. 11 and direct your attention to that item. If you would take a look at it please and see if you see anything in there with regard to your home.

...

Is there a cost indicator on that exhibit, sir, for your home?

Loughery: There is a description called a construction cost.

Truitt: And what figure is that sir?

Loughery: \$1,027,000.

Truitt: Thank you sir.

RESPONDENT'S CONTENTIONS

18. The Respondent's witness, Ms. Lewis, contends that the property under appeal was correctly assessed for the 2011 assessment year. *Lewis testimony*. In support of this position, the Respondent submitted an analysis of four comparable properties located in Eagle and Union Township. *Respondent Exhibit 6*. Ms. Lewis testified that all four of the properties are in the same school district as the Petitioner's property; the homes are all of similar "status;" the size of the homes above grade range from 4,542 square feet to 6,155 square feet; and the lot sizes are all between one and three acres. *Lewis testimony; Respondent Exhibit 6*. According to Ms. Lewis, the comparable properties sold for an average price of \$1,442,875 in 2010 and 2011, while the Petitioner's property was assessed for only \$1,315,600. *Lewis testimony; Respondent Exhibits 6 and 8*.
19. Further, Ms. Lewis, who is a licensed appraiser, contends that the Petitioner's appraisal should be given little weight. *Lewis testimony*. According to Ms. Lewis, while the appraiser relied upon six sales in his sales comparison approach, his adjustments for the value of the lots, the gross living area of the house and the basement finish were too low.³ *Id.; Respondent Exhibit 4*. For example, the Petitioner paid \$240,000 for 1.41 acres of land, but the appraiser only adjusted the comparable properties' lots by \$5,500 per acre. *Id.* In addition, Ms. Lewis testified, the comparable properties sold from \$145.81 per square foot to \$281.62 per square foot, but the gross living area adjustment used by the appraiser was only \$50.00 per square foot. *Id.* But the "biggest problem" with the appraisal, Ms. Lewis contends, is the \$10.00 per square foot adjustment the appraiser

³ Ms. Garoffolo testified that she provided the multiple listing sheets for each comparable property in the Petitioner's property's appraisal to further illustrate the differences between the Petitioner's property and the comparable properties. *Respondent Exhibit 5*.

made for the properties' basements. *Id.* In million dollar homes, like the Petitioner's, the basement is normally finished in similar materials as the main floor area. *Lewis testimony.* And, in fact, Ms. Lewis contends, the Petitioner's appraiser valued the basement area of the subject property at \$62.13 per square foot in his cost approach analysis. *Id.; Respondent Exhibit 4.*

20. Moreover, Ms. Lewis argues, the Petitioner's appraiser should have included the property located at 11576 Willow Bend Court in his sales comparison analysis. *Lewis testimony; Respondent Exhibit 6.* According to Ms. Lewis, 11576 Willow Bend Court, which sold for \$1.7 million, is similar in size and value to the subject property. *Id.* In fact, Ms. Lewis argues, there were several comparable properties in the same area that sold for higher than the comparable properties used by the Petitioner's appraiser in his sales comparison analysis. *Lewis testimony.* But the appraiser only used properties that sold from \$760,000 to \$1,037,500. *Id.; Respondent Exhibit 4.*
21. Finally, Ms. Lewis argues that, to the extent the Petitioner's appraisal has any probative value, the appraiser's cost approach is a better representation of the property's market value in 2011 than the appraiser's sales comparison analysis. *Lewis testimony.* According to Ms. Lewis, because the Petitioner's house was constructed in 2009 and 2010, the cost approach is a reliable method of determining its value. *Id.; Respondent Exhibit 8.* And the appraiser used the Marshall and Swift residential cost service, which is used by most appraisers to determine the cost of a property. *Lewis testimony; Respondent Exhibit 4.* The appraiser estimated the value of the Petitioner's property to be \$1,133,714 under the cost approach; whereas the Petitioner's property was assessed for \$1,315,000. *Id.* Thus, Ms. Lewis concludes, appraiser's cost approach proves that the Petitioner's property was accurately assessed for the 2011 assessment year. *Lewis testimony.*

BURDEN OF PROOF

22. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his 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). Pursuant to Indiana Code § 6-1.1-15-17.2, however, the burden shifts to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

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 (emphasis added). Here, while the property's assessed value increased by more than five percent between 2010 and 2011, the Petitioner's home was only 83% complete at the time of the 2010 assessment. Construction was completed prior to the 2011 assessment. Therefore, the 2011 assessment was not for the "same property" that was assessed in 2010 and the Petitioner retains the burden of proof in this matter.

ANALYSIS

23. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 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, from the property." MANUAL at 2. Thus, a party's evidence in a tax appeal must be

consistent with that standard. *Id.* A market-value-in-use appraisal prepared according to USPAP will often 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, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

24. Here, the Petitioner's representative contends that the Petitioner's property was assessed too high in 2011 based on its appraised value. *Loughery testimony*. In support of this contention, Mr. Loughery submitted an appraisal report prepared by Stephen Clifford that estimated the value of the Petitioner's property to be \$800,000 as of June 17, 2011. *Board Exhibit A*. Mr. Clifford is an Indiana Licensed Appraiser who certified that he prepared the property's appraisal in accordance with USPAP. *Id.* While the relevant assessment date for the Petitioner's appeal was March 1, 2011, the appraisal valued the property within about three months of that date. Furthermore, pursuant to 50 IAC 27-3-2, local assessing officials are instructed to use sales of properties occurring between January 1, 2010, and March 1, 2011, in performing sales ratio studies for the March 1, 2011, assessment date. Thus, because the appraiser used four sales that occurred in 2010 in his sales comparable analysis, the Board finds that the Petitioner's appraisal is some evidence of the property's market value-in-use for the 2011 assessment year. The Petitioner therefore raised a prima facie case that its property was over-valued. *See Meridian Towers*, 805 N.E.2d at 479.
25. Once the Petitioner raises a prima facie case that its property was over-valued, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

26. Here, the Respondent's witness argued that the Petitioner's property was valued correctly in 2011 based on the sale prices of four properties located in Eagle and Union Townships. *Lewis testimony; Respondent Exhibit 6*. But Ms. Lewis presented no evidence to show that the properties were comparable to the property under appeal and she made no attempt to adjust the sales for any differences between the properties. In fact, she just averaged the sale prices of the four properties and concluded that the sales supported the property's assessed value. However, as the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that the comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. *These standards are no less applicable to assessing officials.*" 836 N.E.2d at 1082 (citations omitted and emphasis added). Thus, the Board finds that the Respondent's market analysis is insufficient evidence to rebut the Petitioner's appraisal.
27. Ms. Lewis also argued that the Board should give little weight to the Petitioner's appraisal because the appraiser's adjustments to his comparable properties for the site value, gross living area and basement finish were too low and because there were other sales the appraiser should have considered in valuing the Petitioner's property. *Lewis testimony*. But Ms. Lewis identified no specific errors in the appraisal. Nor did she present any substantial reason to doubt the credibility of the appraiser or his work in appraising the subject property. To the extent that she attempted to dispute the appraiser's choice of comparable properties, this unsupported argument is not persuasive. It is well within an appraiser's expertise to choose the sales he deems most comparable to the subject property and apply adjustments to those comparable properties to account for the differences between them. And while Ms. Lewis testified as to her opinion about more "proper" adjustments for the properties' lot sizes, their gross living areas and basement finish, she failed to relate those "adjustments" to any specific value for the

Petitioner's property. Thus, Ms. Lewis' evidence failed to sufficiently impeach the Petitioner's evidence.

28. Finally, the Respondent argued that the Petitioner's property was properly assessed based on its cost. *Truitt argument*. In support of this contention, the Respondent's counsel offered a summary sheet purporting to show that a building permit was issued to the Petitioner's contractor and that the permit identified the cost of building the house to be \$1,027,000. *Respondent Exhibit 11*. A party may offer actual construction costs compiled in accordance with generally accepted appraisal principles to establish a property's market value-in-use. MANUAL at 5. But while Mr. Loughery agreed that the Petitioner purchased the lot for \$240,000, he never testified that the \$1,027,000 reported on the summary sheet represented the cost to construct the house on the lot. The Respondent could have served discovery and requested the construction contracts from the Petitioner. Or the Respondent's counsel could have simply asked Mr. Loughery under oath if the amount recorded on the summary sheet represented the amount that the Petitioner paid to construct the house. But he did not. Mr. Loughery simply read the value on the summary sheet and agreed that it was described as the "construction cost" on the document. Granted, Mr. Loughery did not object to the summary sheet; nor did he testify that the summary sheet was in error or that the building permit did not actually reflect the costs of building the home. But Mr. Truitt never asked whether the \$1,027,000 was the actual cost to construct the Petitioner's house and the Board will not speculate on what Mr. Loughery's answer would have been had the question been raised. Thus, the Respondent's summary sheet alone is insufficient evidence of the property's cost to rebut the Petitioner's appraisal.
29. However, as the Respondent's witness argued, the Petitioner's appraiser valued the property at \$1,133,714 using the cost approach. Despite his \$1,133,714 cost valuation, the Petitioner's appraiser "reconciled" the property's value to be \$800,000 – which is identical to the value he determined under the sales comparison approach. Thus, the appraiser appears to have completely disregarded his cost approach valuation in his final

reconciliation of value. At a minimum, the appraiser failed to explain why there was such a difference between the value he estimated under the cost approach and the value he estimated under the sales comparison approach or why he gave no weight to his cost analysis despite the fact that the Petitioner's house was newly constructed.

30. Thus, while the Board is hesitant to disregard an appraiser's "reconciliation" of values between the various valuation approaches, there was a close correlation between the cost approach estimated by the Petitioner's appraisal and the construction cost reported on the Respondent's summary of building permits issued by the county. And Mr. Loughery failed to dispute the value reported as "construction cost" on the Respondent's summary sheet. Finally, the Petitioner's house was newly constructed and there was nothing in the appraisal to support a finding that the cost analysis was somehow unreliable. Therefore the Board finds that the Petitioner's appraiser's cost approach value of \$1,133,700 (rounded) is better evidence of the property's value for 2011 than the appraiser's sales comparison value of \$800,000 or the appraisal's "reconciled value" of \$800,000.

SUMMARY OF FINAL DETERMINATION

31. The Petitioner's representative raised a prima facie case that the Petitioner's property was over-valued for the 2011 assessment year. The Respondent offered rebuttal evidence. The Board finds in favor of the Petitioner, but holds that the value of the subject property was \$1,133,700 for the March 1, 2011, assessment date.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.