

REPRESENTATIVE FOR PETITIONERS:

Sharon LeVeque, Tax Representative

REPRESENTATIVE FOR RESPONDENT:

Debra A. Dunning, Marshall County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

David and Jean Harris,)	Petition Nos.: 50-005-10-1-5-00017
)	50-005-11-1-5-00017A
Petitioners,)	
)	Parcel No.: 50-43-06-000-037.000-005
v.)	
)	
Marshall County Assessor,)	County: Marshall
)	
Respondent.)	Assessment Years: 2010 and 2011

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

March 18, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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 Petitioners' property was over-valued for the 2010 and 2011 assessment years.

PROCEDURAL HISTORY

2. Ms. LeVeque, on behalf of the Petitioners, Mr. and Mrs. Harris, initiated an appeal of their property's 2010 assessment with the Marshall County Property Tax Assessment Board of Appeals (PTABOA) on September 16, 2010. The Marshall County PTABOA issued its assessment determination on the 2010 appeal on March 7, 2012.¹
3. Ms. LeVeque initiated the Petitioners' 2011 assessment appeal with the PTABOA.² The Marshall County PTABOA held a hearing on August 27, 2012, and issued its assessment determination. There is no date on the PTABOA determination for 2011.
4. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed their Form 131 Petitions for Review of Assessment for 2010 and 2011 on April 23, 2012, petitioning the Board to conduct an administrative review of the property's 2010 and 2011 assessments.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on December 19, 2012, in Plymouth, Indiana.
6. The following persons were sworn at the hearing:

¹ The original Form 115 had an incorrect legal description and assessed value. The Marshall County PTABOA issued a corrected Form 115 on April 24, 2012.

² None of the documents submitted by the parties indicates the exact date when Ms. LeVeque initiated the Petitioners' 2011 appeal.

For the Petitioners:

Sharon LeVeque, taxpayer representative,³

For the Respondent:

Debra A. Dunning, Marshall County Assessor,⁴
Mindy S. Relos, Marshall County Deputy Assessor.

7. The Petitioners presented the following exhibits for the 2010 and 2011 assessment years:

- | | |
|---------------------------|--|
| Petitioner Exhibit 1 – | 2012 property record cards for the subject property, |
| Petitioner Exhibit 2-3– | Property record card for 3253 Lakeshore Drive, Multiple Listing Service (MLS) information, and Craftsman cost valuation, |
| Petitioner Exhibit 4 – | Property record cards for 3608 West Shore Drive, MLS information, map from the Beacon website, and Craftsman cost valuation, |
| Petitioner Exhibit 5 – | Property record cards for 4016 Liberty Street, MLS information, and Craftsman cost valuation, |
| Petitioner Exhibit 6 – | Property record cards for 4010 West Shore Drive, map from the Beacon website, and a calculation of land value, |
| Petitioner Exhibit 7 – | Property record card for 9036 Birch Drive, MLS information, Craftsman cost valuation, and excerpt of the sales disclosure form, |
| Petitioner Exhibit 8 – | Property record cards for 4006 Liberty Street, MLS information, map from the Beacon website, and Craftsman cost valuation, |
| Petitioner Exhibit 9-10 – | Property record card for the subject property, MLS information, and Craftsman cost valuation, |
| Petitioner Exhibit 11 – | Property record card for 8977 North Shore Drive, and Craftsman cost valuation, |
| Petitioner Exhibit 12 – | Property record cards for 4215 Lake Shore Drive, and Craftsman cost valuation, |
| Petitioner Exhibit 13 – | Property record card for 3654 West Shore Drive, MLS information, and Craftsman cost valuation, |
| Petitioner Exhibit 14 – | Property record card for 4670 West Shore Drive, MLS information, e-mail communications between the Petitioners’ representative and Mr. Szalay, and tax information regarding the property, |
| Petitioner Exhibit 15 – | Excel spreadsheet of comparable sales, |
| Petitioner Exhibit 16 – | Property record cards for 4010 West Shore Drive. |

³ Ms. LeVeque testified that she was retained on a contingent fee basis.

⁴ Ms. Dunning arrived late to the hearing and failed to sign the sign-in sheet; however, she was still sworn-in and represented the Respondent.

8. The Respondent presented the following exhibits:

For 2010:

- Respondent Exhibit 1 – Form 130 petition, Form 138, Power of Attorney for Petitioners’ representative, and Form 114,
- Respondent Exhibit 2 – PTABOA minutes and corrected Form 115,
- Respondent Exhibit 3 – Property record card and photograph of the subject property,
- Respondent Exhibit 4 – Form 131 petition,
- Respondent Exhibit 5 – Beacon map showing the subject property,
- Respondent Exhibit 6 – Sales disclosure form for the subject property including the rear lot,
- Respondent Exhibit 7 – 2010 Lake of the Woods land order,
- Respondent Exhibit 8 – Spreadsheet of comparable sales,
- Respondent Exhibit 9 – Comparable sale information for 4016 Liberty Street,
- Respondent Exhibit 10 – Comparable sale information for 4427 East Shore Drive,
- Respondent Exhibit 11 – Comparable sale information for 4345 Lake Shore Drive,
- Respondent Exhibit 12 – Comparable sale information for 4215 Lake Shore Drive.

For 2011:

- Respondent Exhibit 1 – Form 130 petition and Power of Attorney for Petitioners’ representative,
- Respondent Exhibit 2 – Form 115 with PTABOA determination,
- Respondent Exhibit 3 – Form 131 petition,
- Respondent Exhibit 4 – Property record card for the subject property,
- Respondent Exhibit 5 – Beacon map showing the subject property,
- Respondent Exhibit 6 – Sales disclosure form for the subject property including the rear lot,
- Respondent Exhibit 7 – 2010 Lake of the Woods land order,
- Respondent Exhibit 8 – Spreadsheet of comparable sales,
- Respondent Exhibit 9 – Comparable sale information for 4016 Liberty Street,
- Respondent Exhibit 10 – Comparable sale information for 4427 East Shore Drive,
- Respondent Exhibit 11 – Comparable sale information for 4345 Lake Shore Drive,
- Respondent Exhibit 12 – Comparable sale information for 4215 Lake Shore Drive,
- Respondent Exhibit 13 – Comparable sale information for 4532 West Shore Drive,
- Respondent Exhibit 14 – Comparable sale information for 3253 Lake Shore Drive,
- Respondent Exhibit 15 – Comparable sale information for 3961 Lake Shore Drive,
- Respondent Exhibit 16 – Comparable sale information for 4670 West Shore Drive,
- Respondent Exhibit 17 – Comparable sale information for 3654 West Shore Drive,
- Respondent Exhibit 18 – Comparable sale information for 3794 West Shore Drive.

9. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notice of Hearing-Reschedule, dated October 24, 2012,
Board Exhibit C – Hearing sign-in sheet.
10. The subject property is a single-family home located at 8881 Sycamore Drive, in Bremen, Indiana.
11. The ALJ did not conduct an on-site inspection of the subject property.
12. For 2010 and 2011, the PTABOA determined the property's assessed value to be \$211,100 for the land and \$131,000 for the improvements, for a total assessed value of \$342,100.
13. For 2010 and 2011, the Petitioners contend the assessed value of the land should be \$135,300. The Petitioners did not contest the value of the improvements.

JURISDICTIONAL FRAMEWORK

14. 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.

PARTIES' CONTENTIONS

15. The Petitioners contend that the assessed value of their land was over-stated for the 2010 and 2011 assessment years based on sales of comparable properties. The Petitioners presented the following evidence in support of their contentions:

- A. The Petitioners' representative, Ms. LeVeque, contends that the Petitioners' land was over-valued based on sales of similar properties. *LeVeque testimony*. In support of this contention, Ms. LeVeque submitted a spreadsheet showing waterfront properties that sold between 2002 and 2011 and the property record cards for those properties. *Petitioner Exhibits 2-16*. According to Ms. LeVeque, the sales support a value of \$1,430 per foot of frontage on the lake.⁵ *LeVeque testimony*.
- B. Ms. LeVeque first submitted the property record card for 3253 Lake Shore Drive, which sold on April 29, 2011, for \$520,000. *LeVeque testimony; Petitioner Exhibits 2-3*. According to Ms. LeVeque, she calculated the cost of the improvements at \$519,900 using the Craftsman National Building Cost Estimator; which in turn lead to a land value of \$100. *Id.; Petitioner Exhibits 2-3 and 15*. According to Ms. LeVeque, this same piece of property sold as vacant land in 2004 for \$111,500, or \$1,186 a front foot. *Id.; Petitioner Exhibit 2-3*. The assessor valued the land at \$171,800 or \$1,828 a front foot. *Id.; Petitioner Exhibits 2-3 and 15*.
- C. Next, Ms. LeVeque testified that the property located at 3608 West Shore Drive, sold on September 30, 2010, for \$175,000.⁶ *LeVeque testimony; Petitioner Exhibit 4*. Ms. LeVeque stated that she valued the improvements at \$49,500 using the Craftsman cost tables, with the remaining \$125,500 attributable to the land, or \$1,394 a front foot. *LeVeque testimony; Petitioner Exhibits 4 and 15*.
- D. Ms. LeVeque testified that 4016 Liberty Street, which includes three parcels, sold for \$230,000 on January 24, 2008. *Petitioner Exhibits 5 and 15*. Ms. LeVeque contends that the depreciated value of the improvements using the Craftsman cost tables was \$82,363, resulting in a land value of \$147,637. *LeVeque testimony; Petitioner Exhibit 5*. According to Ms. LeVeque, the three parcels together have 64 feet of frontage on

⁵ While the Petitioners' representative argued that the Petitioners' land should be valued at \$1,430 per front foot, she later argued the Petitioners land should be valued at \$1,650 per front foot.

⁶ Ms. LeVeque contends that the sale fell through due to finances, which she argues proves that the market rejected the property even at a lower value per front foot. *LeVeque testimony*.

the channel and 105 feet on the lake. *Id.* Therefore, Ms. LeVeque estimated the property's land value to equal \$1,406 per foot of frontage on the lake. *Id.*; *Petitioner Exhibit 15*. In rebuttal, Ms. LeVeque contends that she included the expired listing to show the condition of the property, which she considered in her cost approach. *LeVeque testimony*.

- E. In addition, Ms. LeVeque testified that the property at 4010 West Shore Drive, which consists of two parcels, sold on September 28, 2010, for \$174,000. *LeVeque testimony; Petitioner Exhibits 6 and 15*. According to Ms. LeVeque, Parcel No. 50-43-12-000-026.000-009 (Parcel No. 026) is a lake front lot and Parcel No. 50-42-12-000-025.000-009 (Parcel No. 025) is a channel lot with a pole building. *Id.* Ms. LeVeque testified that she "corrected" the sizes of the lots and estimated the properties' values based on the assessment of an adjacent lot. *Id.* For example, Ms. LeVeque contends Parcel No. 025 would be 70.3 feet wide and equal to a neighboring lot which is assessed at \$37,700. *Id.* Ms. LeVeque then added \$11,800 for the pole building, resulting in a total estimated value of \$49,500. *Id.* Ms. LeVeque contends Parcel No. 026 is a pie-shaped lot, which she calculated to be 84 feet by 195. *Id.* Ms. LeVeque testified that she subtracted the \$49,500 value for Parcel No. 025, from the sale price of \$174,000, resulting in a value of \$124,500 for the 84 feet of frontage on Parcel No. 026, or \$1,482 a front foot. *Id.* In rebuttal, Ms. LeVeque argued that the Respondent's witness claimed Parcel No. 026 was a channel property; however, it is assessed as "on water." *Id.*; *Petitioner Exhibits 6 and 16*. Further, Ms. LeVeque argues that the assessor changed the dimensions of the lot because there is a difference of 127 feet between the 2011 property record card and the 2012 property record card. *Id.* Parcel No. 025 also shows different dimensions between 2010 and 2012. *LeVeque testimony; Petitioner Exhibits 6 and 16*.
- F. Ms. LeVeque next presented the sale of 9036 Birch Drive, which sold on December 23, 2009, for \$320,000. *Petitioner Exhibits 7 and 15*. According to Ms. LeVeque, the sale included \$25,500 of personal property, resulting in a net sales price of \$294,500. *LeVeque testimony; Petitioner Exhibit 7*. Ms. LeVeque calculated the

depreciated cost of improvements using the Craftsman cost estimator at \$213,633, leaving the market value of the land at \$140,976, or \$1,532 per front foot. *Id.*; *Petitioner Exhibit 7 and 15.*

G. Ms. LeVeque then submitted the sale of 4006 Liberty Street, which she contends sold on June 14, 2011, for \$219,000.⁷ *Petitioner Exhibits 8 and 15.* According to Ms. LeVeque, the MLS information shows this property consists of two parcels, with a net water frontage of 92 feet. *LeVeque testimony; Petitioner Exhibit 8.* Ms. LeVeque testified that she “eliminated the assessor’s assessed value of the site at \$155,900 because “I show the market attributable to the land of \$190,000.” *Id.*; *Petitioner Exhibits 8 and 15.*

H. The Petitioners’ representative contends the subject property sold in 2006 for \$345,000. *LeVeque testimony; Petitioner Exhibits 9-10 and 15.* According to Ms. LeVeque, the depreciated cost of improvements using the Craftsman cost tables is \$204,863. *Id.* Ms. LeVeque argued that subtracting her estimated improvement value from the property’s sale price, resulted in a price per front foot of \$1,632. *Id.*; *Petitioner Exhibit 15.* Ms. LeVeque contends that her estimated land value is further supported by a previous sale of the property for \$150,000, which equated to approximately \$1,667 per front foot. *Id.* However, Ms. LeVeque argued that the Petitioners’ purchase price of \$345,000 in 2006 should not be used to value the property for 2010 or 2011, because she contends the Indiana Association of Realtors claimed that values declined 26% in Marshall County, which “the DLGF website will confirm.”⁸ *Id.*

⁷ This is actually a listing, rather than a sale. However, according to the property record card, a transfer occurred on July 20, 2012, for \$190,000.

⁸ Ms. Relos objected to this statement as hearsay. Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801) may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) 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 Respondent’s objection is over-ruled, but the Board may not rely upon Ms. LeVeque’s assertion without non-hearsay evidence to support her claims.

- I. Ms. LeVeque also submitted the vacant land sale of 8977 North Shore Drive, which occurred on July 28, 2003. *Petitioner Exhibits 11 and 15*. According to Ms. LeVeque, this property sold for \$120,000 or \$1,714 a front foot. *LeVeque testimony; Petitioner Exhibits 11 and 15*.
- J. Next, Ms. LeVeque submitted the sale of 4215 Lake Shore Drive, which sold on October 8, 2009, for \$229,100.⁹ *LeVeque testimony; Petitioner Exhibits 12 and 15*. Ms. LeVeque testified that after she used the Craftsman cost estimator to value the improvements and after she added the value of the rear lot, the resulting land value was \$142,100, or \$1,776 per front foot. *Id.; Petitioner Exhibits 12 and 15*.
- K. Ms. LeVeque then presented a sale of an improved property “in like new condition” at 3654 West Shore Drive, which sold for \$215,000 on January 28, 2011. *Petitioner Exhibit 13*. According to Ms. LeVeque she calculated a land value of \$134,232 or \$2,441 a front foot. *Petitioner Exhibit 15*.
- L. Finally, Ms. LeVeque submitted the sale of 4670 West Shore Drive, for \$250,000 in December of 2011. *Petitioner Exhibit 14*. But Ms. LeVeque, argued, this sale was not an arm’s length transaction because the buyer and the seller were acquainted. *LeVeque testimony; Petitioner Exhibit 14*. According to Ms. LeVeque, the buyer purchased this property to get it back from a tax sale. *Id.*
- M. In response to the Respondent’s argument, Ms. LeVeque contends that the properties located at 4532 West Shore Drive and 3961 Lake Shore Drive are only 40 feet wide. *LeVeque testimony*. Therefore, Ms. LeVeque argues they are not comparable to the subject property because “they are half of what the subject property is.” *Id.; citing Respondent Exhibits 13 and 15 (2011)*.
- N. In addition, Ms. LeVeque argues that “the time adjustments from the time we have here is to be considered static.” *LeVeque testimony*. According to Ms. LeVeque,

⁹ Ms. LeVeque testified that the sale consisted of three lots, but the property record cards submitted by the Petitioners, suggest that only two of the three lots sold for \$229,100; while the third lot sold separately for \$20,900.

from 2006 to 2008, there was a housing boom and properties were selling at much higher prices than what the cost approach would account for. *Id.* Ms. LeVeque contends that the property located at 3608 West Shore Drive supports her argument since the assessor had the land alone assessed at \$187,300 and then “the land and the house has sold once, went back on the market, and the house with the land has been declined or has been rejected over 800 and some days at \$175,000.” *Id.*; *Petitioner Exhibit 4*.

O. Finally, Ms. LeVeque requested that the Board look carefully at the cost approach used to value the improvements. *LeVeque testimony*. Ms. LeVeque contends, for example, that the assessor valued the property at 3253 Lake Shore Drive at \$58.30 a square foot. *Id.*; *Petitioner Exhibits 2-3*. According to Ms. LeVeque, however, the property is a luxury home and according to her cost approach it would cost \$147.30 a square foot to build. *LeVeque testimony*. Further, Ms. LeVeque argues that the same problem exists with the subject property because the assessor has the improvements valued at \$131,000, or \$62 a square foot, for “what Craftsman calls a Class C luxury home.” *Id.*; *citing Respondent Exhibit 3 (2010)*.

16. The Respondent contends the property’s assessed values were correct and equitable in 2010 and 2011. The Respondent presented the following evidence in support of the assessment:

A. Ms. Dunning testified that, for the 2010 assessment, she used the sales of four waterfront properties to calculate the base rate for the land in the Petitioners’ property’s neighborhood. *Dunning testimony*. In support of this contention, Ms. Dunning submitted a spreadsheet summarizing the sales and the property record cards, maps, and sales disclosure forms for each property. *Respondent Exhibits 8-12 (2010)*. According to Ms. Dunning, she used the 2010 cost tables to estimate the value of any improvements – rather than the 2012 Craftsman cost tables. *Dunning testimony*. Ms. Dunning then extracted the improvement values from the sale prices and calculated the land price per square foot. *Id.*; *Respondent Exhibit 8 (2010)*.

Based on the four sales, the average price per square foot of land was \$19.35;

whereas the subject property's land value was only \$17.39 per square foot in 2010.
Id.

- B. In addition, Ms. Dunning contends that the sales she used for the 2010 assessment and six additional sales in 2010 and 2011, support the property's 2011 assessed value. *Dunning testimony*. In support of this contention, Ms. Dunning submitted a spreadsheet summarizing the sales and the property record cards for each property, maps of the properties' locations, and a sales disclosure form for each sale. *Respondent Exhibits 8-18 (2011)*. According to Ms. Dunning, all of the properties were buildable, waterfront lots that are comparable to the subject property. *Dunning testimony*. Ms. Dunning contends that the ten sales averaged \$20.39 per square foot for the land, while the subject property's land was assessed for only \$17.39 per square foot in 2011. *Id.*; *Respondent Exhibit 8 (2011)*.
- C. Ms. Dunning argues that the DLGF issued the "Marshall & Swift cost tables" for counties to use in calculating the improvement value. *Dunning testimony*. According to Ms. Dunning, when she compared the Petitioners' improvement values on Ms. LeVeque's comparable sales with the assessed values of the properties, the main difference was the amount of depreciation. *Id.* Ms. Dunning contends that any difference in the improvement value will result in a completely different land value. *Id.*
- D. Ms. Dunning further contends that she used more recent sales in her analysis because in annual trending assessors "try to go back two years to get comparable sales." *Dunning testimony*. The Petitioners' representative, however, used sales from 2002, 2003 and 2004. *Id.* And Ms. Dunning argues, Ms. LeVeque failed to time adjust any of her sales to 2010 or 2011. *Id.*
- E. In response to the Petitioners' case, Ms. Relos argued that the Petitioners' evidence should be given little weight. *Relos testimony*. According to Ms. Relos, the Petitioners' representative used the 2012 Craftsman cost tables while the appeals at issue were for 2010 and 2011. *Id.* Ms. Relos argued that the "Craftsman cost

estimator over-stated the improvement values, which in turn lowers the land values.” *Id.* For example, the Petitioners’ representative calculated a cost of \$519,900 for the house located at 3253 Lake Shore Drive, which left only \$100 for the land value. *Id.*; *Petitioner Exhibits 2-3 and 15.* To the contrary, Ms. Relos argued, using the 2011 assessed value for the improvements and the abstraction method, results in a land value of \$314,200 or \$2,419 a front foot. *Relos testimony.*

- F. In addition, Ms. Relos argues, Ms. LeVeque incorrectly included Parcel No. 50-42-07-000-025.000-005, which had an assessed value \$44,000, in the sale of 4016 Liberty Street. *Relos testimony; Petitioner Exhibit 5.* According to Ms. Relos, the sale actually included Parcel No. 50-43-07-000-033.000-005, which had an assessed value of only \$6,600. *Id.*; *Respondent Exhibit 9.* Moreover, Ms. Relos contends the Petitioners’ representative’s use of a -22% depreciation factor, was incorrect. *Relos testimony.* Ms. Relos contends that, when the age of the improvements was entered into the Craftsman cost estimator, the system showed 46% depreciation. *Id.* According to Ms. Relos, this changed the value of the improvements to \$64,932, which in turn changed the land value from \$1,406 a front foot to \$2,464 a front foot. *Id.*
- G. Ms. Relos also contends that 4010 West Shore Drive is a pie-shaped lot with only 10 feet of frontage on the lake. *Relos testimony; Petitioner Exhibit 6.* The majority of the property is channel front. *Id.* According to Ms. Relos, given that only a small section of this property is located on the lake, it would not be a desirable lake front property. *Id.* Thus, its market value would be as a channel lot and it would not be comparable to the subject property. *Id.*
- H. Similarly, Ms. Relos argues that the Petitioners’ representative over-stated the value of the improvements located at 9036 Birch Drive, by deriving her value from the 2012 Craftsman cost schedules. *Relos testimony; Petitioner Exhibit 7.* Ms. Relos testified that she used the property’s 2011 improvement value of \$138,600, and by using the abstraction method, estimated the market value of the land to be \$13.34 per

square foot, or \$1,695 per front foot. *Id.* However, Ms. Relos argues, the assessed value of the property's land is \$11.59 per square foot, or \$1,471 per front foot. *Id.*

- I. In addition, Ms. Relos argued that the sale of the property located at 4006 Liberty Street occurred in July of 2012, which is after the assessment date for both the 2010 and 2011 assessment years; thus it would not be used for trending until March 1, 2013. *Relos testimony; Petitioner Exhibit 8.* Moreover, Ms. Relos contends, the Petitioners' listing information is not correct. *Id.* According to Ms. Relos, the Petitioners' listing expired and the property was relisted on February 20, 2012. *Id.* Ms. Relos further argues the Petitioners' representative incorrectly states that, according to the Craftsman cost estimator, the 49 year old house should receive 35% depreciation. *Id.* However, Ms. Relos argues that if the home located at 4016 Liberty Street is 35 years old and receives 46% depreciation, then a 49 year old house should receive more than 35% depreciation. *Id.*
- J. Ms. Relos also contends that the Petitioners purchased the subject property for \$345,000 on June 19, 2006. *Relos testimony; Respondent Exhibit 6.* Ms. Relos argues that the best indicator of the property's market value is its purchase price. *Relos testimony.* According to Ms. Relos the subject property has an assessed value of \$342,100, which is lower than the subject property's sale price. *Id.*
- K. Finally, Ms. Relos contends that the assessed value of the improvements at 3654 West Shore Drive is only \$39,800 for 2011, which is less than half of what the Petitioners list as the depreciated cost of the improvements. *Relos testimony; Petitioner Exhibit 13.* Ms. Relos further contends that deducting the assessed value of the improvements from the \$215,000 sales price, results in a land value of \$3,185 a front foot or \$23.25 a square foot. *Id.* According to Ms. Relos, the property is assessed at only \$2,470 a front foot or \$18.04 a square foot. *Id.*

BURDEN OF PROOF

17. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong 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). Pursuant to Indiana Code § 6-1.1-15-17.2, however, the burden of proof shifts to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here, the Petitioners' representative and the Respondent agreed that the assessed values of the subject property remained the same for 2009, 2010, and 2011. The Petitioners, therefore, have the burden of proof for the 2010 and 2011 assessment years.

ANALYSIS

18. 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 property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
19. Here, the Petitioners' representative argued that the Petitioners' land was over-valued for 2010 and 2011 based on the sales of other properties on the Lake of the Woods. In making this argument, the Petitioners' representative essentially relies on a sales comparison approach to establish the market value-in-use of the property. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property

directly by comparing it to similar, or comparable, properties that have sold in the market.”) 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 v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

20. In support of her argument, Ms. LeVeque submitted sales and cost information for thirteen waterfront properties that sold between July 2002 and July 2012. For the improved properties, Ms. LeVeque calculated the cost of the improvements using the 2012 Craftsman cost estimator and abstracted the improvement value from the sales price to arrive at the market value of the land for each property, resulting in front foot values that ranged from \$1 to \$2,489. Based on the sales, the Petitioners’ representative contends the subject property’s land should be valued at \$1,650 a front foot, resulting in an assessed value of \$135,300 for the land for 2010 and 2011.
21. The Petitioners’ representative, however, made no attempt to show how the properties were similar or how the properties differed. Ms. LeVeque only testified that her sales were all lake-front properties. But whether properties are similar enough to be considered “comparable” depends on a number of factors including the size, shape, topography, accessibility and use of the properties. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972) (“One need only examine the multitudinous factors which make separate tracts of land similar or dissimilar to realize that the variation in the character of land is limitless. No two tracts of land are identical”). And in fact the Petitioners’ representative calculated front foot values ranging from \$1 to \$2,489 – which suggests that the properties differed substantially. Nor did Ms. LeVeque offer support for her conclusion

that the subject property's land should be valued at \$1,650 a front foot based on sales that ranged from \$1 to \$2,489 per front foot.

22. Even if Ms. LeVeque had sufficiently shown that her sales were comparable to the subject property, the method she used to extract the land value from the sales price had little credibility or reliability. First, Ms. LeVeque applied 2012 cost tables to sales that occurred up to ten years earlier – which over-stated the improvement values and, in return, underestimated the land values on her comparable sales. Moreover, the amount of depreciation Ms. LeVeque applied to the various sales was inconsistent throughout her entire presentation. For example, the property at 3608 West Shore Drive was 51 years old as of 2012, and Ms. LeVeque applied 59.5% depreciation; whereas the property at 4215 Lake Shore Drive, which was 62 years old and has the same grade and condition according to the properties' property record cards, was given a 50% depreciation.
23. In addition, Ms. LeVeque's analysis erred on several specific sales. For example, the property located at 4016 Liberty Street sold on January 24, 2008, for \$230,000. According to the Petitioners' representative, this sale involved three parcels: Parcel No. 50-43-07-000-025.000-005, Parcel No. 50-43-07-000-026.000-005 and Parcel No. 50-43-07-000-027.000-005. But the sale did not actually include 50-43-07-000-025.000-005. According to the sales disclosure form, the three parcels sold were Parcel No. 50-43-07-000-026.000-005, Parcel No. 50-43-07-000-027.000-005 and Parcel No. 50-43-07-000-033.000-005. Parcel No. 50-43-07-000-033.000-005 is only 20 feet by 23 feet, which is significantly smaller than the 33 feet by 80 feet size of Parcel No. 50-43-07-000-025.000-005. Thus, Ms. LeVeque's inclusion of Parcel No. 50-43-07-000-025.000-005 significantly over-estimated the size of the land, which then underestimated the price per front foot or price per square foot value of the property.
24. Similarly, according to the Petitioners' representative, the sale of 4215 Lake Shore Drive was comprised of three parcels: Parcel No. 50-43-07-000-201.000-005, Parcel No. 50-43-07-000-202.000-005 and Parcel No. 50-43-07-000-251.000-005. *Petitioner Exhibits 12 and 15*. However, the sales disclosure form shows that the sale was only for two parcels. *Respondent Exhibit 12 (2010)*. Parcel 50-43-07-000-251.000-005 was not part

of that sale, but sold separately for \$20,900 on the same date, October 8, 2009. And when she abstracted the improvements from the sale price, Ms. LeVeque calculated the depreciated cost of improvements to be \$78,088 on Exhibit 12, but used \$87,000 on Exhibit 15.

25. Finally, Ms. LeVeque used sales that were too remote in time to be probative. For example, she presented several sales that occurred between 2002 and 2006. However, she failed to relate those sales to the relevant valuation dates for the 2010 or 2011 assessment dates.
26. Here the Petitioners' representative failed to discuss how the properties she submitted as comparable sales 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 Petitioners' evidence lacked credibility based on the method Ms. LeVeque used to abstract the land value and the number of errors in her data. The Board therefore finds that the Petitioners failed to raise a prima facie case that their property was over-valued for the 2010 or the 2011 assessment years.
27. 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

28. The Petitioners failed to raise a prima facie case that their property was over-valued for the 2010 or the 2011 assessment years. The Board finds in favor of the Respondent

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 for the Petitioners' property should not be changed for 2010 or 2011 assessment years.

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, 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>>