

REPRESENTATIVE FOR PETITIONERS:

Sharon LeVeque, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:

Debra Dunning, Marshall County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

David and Jean Harris,)	Petition No. 50-005-11-1-5-00017
)	
Petitioners)	Parcel No. 50-43-06-000-035.000-005
)	
v.)	County: Marshall
)	
Marshall County Assessor,)	Township: German
)	
Respondent.)	2011 Assessment Year

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

January 27, 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 Petitioners, David and Jean Harris, prove that the subject property was overvalued for the 2011 assessment?

PROCEDURAL HISTORY

2. The Petitioners contested the 2011 assessment of the subject property.¹ On December 4, 2012, the Marshall County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. The Petitioners then timely filed a Form 131 petition with the Board.
3. On October 29, 2013, the Board's administrative law judge, Jennifer Bippus (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Certified Tax Representative Sharon LeVeque, Marshall County Assessor Debra Dunning, and Deputy Assessor Mindy S. Relos-Penrose were sworn and testified.
5. The Petitioners submitted the following exhibits:

Petitioners Exhibit 1:	View of subject property,
Petitioners Exhibit 2:	Aerial view of subject property,
Petitioners Exhibit 3:	Subject property record card,
Petitioners Exhibit 4A:	View of parcel 50-43-07-000-081.000-005,
Petitioners Exhibit 4B:	Aerial view of parcel 50-43-07-000-082.000-005,
Petitioners Exhibit 4C:	Property record card for parcel 50-43-07-000-081.000-005,
Petitioners Exhibit 4D-E:	Property record card for parcel 50-43-07-000-082.000-005,
Petitioners Exhibit 4F:	Property record card for parcel 50-43-07-000-083.000-005,
Petitioners Exhibit 4G-J:	Sales Disclosure Form for parcels 50-43-07-000-081.000-005, 50-43-07-000-082.000-005, and 50-43-07-000-083.000-005,
Petitioners Exhibit 5A:	Aerial view of parcel 50-43-06-000-149.000-005,
Petitioners Exhibit 5B:	Property record card for parcel 50-43-06-000-149.000-005,
Petitioners Exhibit 6A:	View of parcel 50-43-07-000-137.000-005,
Petitioners Exhibit 6B-C:	Property record card for parcel 50-43-07-000-137.000-005,

¹ One Form 130 indicated the assessment year under appeal was 2009. Another Form 130, which was presented by the Respondent, and objected to by the Petitioners' representative, indicated 2011 as the assessment year under appeal. Both the Form 115 and Form 131 indicate that 2011 is the proper year under appeal. Thus, this appeal is for the 2011 assessment year. Further, it appears from the testimony that the Petitioners' representative initiates her appeals via email.

Petitioners Exhibit 7A:	View of parcel 50-42-12-000-103.000-009,
Petitioners Exhibit 7B:	Property record card for parcel 50-42-12-000-103.000-009,
Petitioners Exhibit 7C-D:	Property record card for parcel 50-42-12-000-104.000-009,
Petitioners Exhibit 7E:	Property record card for parcel 50-43-07-000-061.000-005,
Petitioners Exhibit 8A:	Property record card for parcel 50-43-06-000-310.000-005,
Petitioners Exhibit 8B:	View of parcel 50-43-06-000-310.000-005,
Petitioners Exhibit 8C:	Aerial view of parcel 50-43-06-000-310.000-005,
Petitioners Exhibit 9A:	Property record card for parcel 50-43-06-000-311.000-005,
Petitioners Exhibit 9B:	Property record card for parcel 50-43-06-000-312.000-005,
Petitioners Exhibit 9C:	View of parcel 50-43-06-000-312.000-005,
Petitioners Exhibit 10A-B:	Excel spreadsheet listing comparable properties,
Petitioners Exhibit 11A:	Property record card for parcel 50-43-06-000-245.000-005,
Petitioners Exhibit 11B:	Property record card for parcel 50-43-06-000-246.000-005,
Petitioners Exhibit 11C:	View of parcel 50-43-06-000-246.000-005,
Petitioners Rebuttal Exhibit 1:	Sale listing for parcel 50-43-07-000-137.000-005,
Petitioners Rebuttal Exhibit 2:	Beacon site summary and aerial view for parcel 50-43-06-000-344.000-005, ²
Petitioners Rebuttal Exhibit 3:	Aerial view and property record card for parcel 50-53-31-000-022.000-005.

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1:	Form 130 and power of attorney,
Respondent Exhibit 2:	Form 134 and e-mail correspondence between the Assessor's office and Ms. LeVeque,
Respondent Exhibit 3:	Form 115,
Respondent Exhibit 4:	Aerial photograph of the subject property,
Respondent Exhibit 5:	Photograph of parcel 50-43-06-000-037.000-005,
Respondent Exhibit 6:	Aerial photograph of subject property,
Respondent Exhibit 7:	Copy of survey for Sycamore Acres,
Respondent Exhibit 8:	May 14, 2004, sales disclosure form for the subject property,

² On Petitioners Rebuttal Exhibit 2, the aerial view identifies the property as Parcel ID 50-43-06-000-344.000-005; however, this exhibit also refers to the same property as Parcel ID 50-43-06-000-345.000-005.

Respondent Exhibit 9: November 8, 2006, sales disclosure form for the subject property,
 Respondent Exhibit 10: June 14, 2006, sales disclosure form for parcel 50-43-06-000-037.000-005,
 Respondent Exhibit 11: Subject property record card,
 Respondent Exhibit 12: Spreadsheet indicating price per square foot of comparables,
 Respondent Exhibit 13: Aerial view, sales disclosure form, and property record card for parcel 50-43-07-000-239.000-005,
 Respondent Exhibit 14: Aerial view, sales disclosure form, and property record card for parcels 50-43-06-000-344.000-005 and 50-43-06-000-345.000-005,
 Respondent Exhibit 15: Aerial view, sales disclosure form, and property record card for parcel 50-43-07-000-251.000-005,
 Respondent Exhibit 16: Current vacant land listings and related property record cards,

Respondent Rebuttal Exhibit 1: Spreadsheet indicating average front foot values.

7. The Board recognizes the following additional items as part of the record:

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

8. The subject property is an unimproved residential parcel located at 8881 Sycamore Drive in Bremen.

9. The PTABOA determined the assessment is \$22,600 for land and \$0 for improvements.

10. The Petitioners requested a total assessment of \$13,200.

OBJECTIONS

11. Ms. LeVeque objected to Respondent Exhibits 1 and 2 (Forms 130 and 134) because she testified that she "never saw a Form 134 from this Assessor" and "she never filled out a Form 130." She argued that neither form has any bearing on the hearing. Ms. Dunning and Ms. Relos-Penrose both responded that the forms are filled out internally to help

keep track of appeals. Further, the PTABOA also uses the Form 134. Thus, the exhibits are procedural in nature. The Board therefore finds no legal grounds to exclude them, and Ms. LeVeque did not offer any. Ms. LeVeque's objection is overruled, and the exhibits are admitted.

12. In addition, Ms. LeVeque objected to Respondent Exhibits 5 and 10 because they refer to the main lakefront parcel, which is contiguous to the subject parcel but not in question in the present appeal. In other words, Ms. LeVeque appears to argue that the exhibits are irrelevant. Again, Ms. LeVeque's objections to both exhibits are overruled. Ms. LeVeque's arguments here go to the weight of the exhibits rather than to their admissibility.
13. Further, 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

14. 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.

PETITIONERS' CONTENTIONS

15. The subject property is assessed too high in light of assessments and sales of comparable properties. The comparable properties support a value of \$1.26 per square foot. *LeVeque argument.*

16. There is an encroachment, or easement, on the property used by the Lakes of the Woods sewer service. Since the property is surrounded on all four sides by roadways, there is extensive “noise pollution.” As a result, the previous owner did not want to build a house on the property, and instead sold it to the Petitioners for \$29,000 in 2006. The Petitioners wanted to build a pole barn on it; however, they could not obtain an approval. This property remains unimproved. The Petitioners use it to store their boats, docks, and other lake “toys.” *LeVeque testimony.*
17. Because the property is unimproved, the best comparables are other unimproved lots. Nonetheless, the first comparable the Petitioners offered, located on West Shore Drive in Bremen, contains a pole barn. A land value of \$16,600 was obtained by subtracting the value of the pole barn and the \$20,100 “seller discount.” Thus, the land sold for only \$0.56 per square foot. *LeVeque testimony; Pet’r Exs. 4A-J.*
18. Next, the Petitioners offered a vacant lot on Addison Street in Bremen that assessed for \$7,800 and “sold for \$1.14 per square foot.” *LeVeque testimony; Pet’r Exs. 5A-B.*
19. A property located at 5017 West Shore Drive in Bremen has a small building on it and has a land assessment of only \$20,600. This property is much larger than the subject property. It is next to a creek and is only bordered by one street. The land is assessed at \$0.86 per square foot. *LeVeque testimony; Pet’r Exs. 6A-C.*
20. The next property the Petitioners presented is located on West Shore Drive in Bremen and consists of three parcels with assessments totaling, according to the Petitioners, \$19,300 (\$1.71 per square foot).³ According to Ms. LeVeque, this property is superior to the subject property because it has two buildable lots and a vacated alley. The property sold for \$31,000 (\$1.89 per square foot) in March of 2007. *LeVeque argument; Pet’r Exs. 7A-E.*

³ The actual assessed values for the three parcels are \$5,900, \$6,500, and \$9,100. Therefore, the actual total is \$21,500.

21. Another comparable property, located at 8488 Chicago Street in Bremen is assessed for \$3,900 (\$0.56 per square foot). This property is smaller than the subject property, but it is superior because it only has one road frontage, making it buildable and sellable. Ms. LeVeque argues that it matters little that this property is currently listed for \$295,000. *LeVeque argument; Pet'r Exs. 8A-C.*
22. The Petitioners presented another unimproved lot, located on Carter Street, which is assessed for \$14,400 (\$1.78 per square foot). Again, this property is smaller than the subject property, but it is superior because it only has one road frontage. *LeVeque argument; Pet'r Exs. 9A-C.*
23. The last property presented is located at 3484 Lakeshore Drive in Bremen and is assessed for \$12,200 (\$1.55 per square foot). This property is superior to the subject property because it has only one road frontage. Further, this property consists of two lots that could be sold separately if the owner desired. *LeVeque argument; Pet'r Exs. 11A-C.*
24. The Petitioners proceeded to rank all of the comparable properties they presented, leading to a median value of \$1.26 per square foot. *LeVeque testimony; Pet'r Exs. 10A-B.*

RESPONDENT'S CONTENTIONS

25. The subject property's assessment is correct. In 2004, the subject property sold for \$22,000. The Petitioners purchased the subject property in 2006 for \$29,000. The current assessment is \$22,900. *Dunning argument; Resp't Exs. 8, 9, & 11.*
26. In determining the assessment, the Respondent used sales of three properties that were in the same neighborhood, "this neighborhood is priced in off water Lake of the Woods." The Respondent utilized the Marshall & Swift cost tables to value the improvements on each property, then extracted land values from the sale price. Next, the land values were converted to square-foot values. The median value was \$2.35 per square foot. The subject property is assessed at \$2.16 per square foot. *Dunning testimony; Resp't Exs. 12-15.*

27. There are three contiguous vacant lots currently listed for \$49,000. Based on those listing prices, the front-foot value for land is \$237. Thus, the current assessment of the subject property is reasonable at \$184 per front foot. *Dunning argument; Resp't Exs. 12, 16.*
28. The Petitioners' evidence contains many flaws. First, the Petitioners' median comparable price per square foot was calculated incorrectly. Instead of \$1.26 per square foot, the correct calculation for the median comparable price should be \$1.38.⁴ *Relos-Penrose argument.*
29. Next, the comparable sale the Petitioners presented from West Shore Drive was an invalid sale. The parties involved in this sale had a family or business relationship. *Relos-Penrose argument; Pet'r Exs. 4A-J.*
30. When a property is involved in a sale, it is more appropriate to use the sale price, rather than its assessment, to value it. The Addison Street property was a sale. It sold in September of 2011 for \$12,000 (\$240 per front foot). The subject property is assessed at \$184 per front foot. *Relos-Penrose argument; Pet'r Exs. 5A-B.*
31. The Petitioners compared the subject property to the property located at 5017 West Shore Drive. The West Shore Drive property has an effective frontage of 99 feet and was assessed at \$20,600 (\$208 front foot). The subject property is assessed at only \$184 per front foot. *Relos-Penrose testimony; Pet'r Exs. 6A-C.*
32. Further, the property located on West Shore Drive consists of three parcels, but only two of the parcels are contiguous. An alley separates them from the third parcel. The first two parcels are assessed at \$193.75 per front foot. The third parcel had an inaccurate influence factor applied to its assessment. If the inaccurate influence factor were removed, the assessment of the third parcel would be \$164.38 per front foot. *Relos-Penrose testimony; Pet'r Exs. 7A-E.*

⁴ In reference to this to this discrepancy, Ms. LeVeque stated during cross examination "I assume I calculated wrong."

33. The property at 8488 Chicago Street includes three parcels and is a rear lot contiguous to the Petitioners' home. These parcels were once listed for sale together at \$295,000. The Respondent argues that even if the listing price were reduced by 20%, the result would be \$802 per front foot, but the current assessment is \$209 per front foot. *Relos-Penrose argument; Pet'r Exs. 8A-C*.
34. Similarly, the two lots on Carter Street are actually part of four contiguous parcels, and there are improvements on two of those parcels. When looked at as a whole, the parcels together are assessed at \$185 per front foot. *Relos-Penrose testimony; Pet'r Exs. 9A-C*.
35. The property located at 3484 Lakeshore Drive consists of five parcels. One of the parcels on Lakeshore Drive is a front lot, but the other four are all rear lots. The total assessment of this property equates to \$247 per front foot. *Relos-Penrose testimony; Pet'r Exs. 11A-C*.
36. When the Petitioners' comparable properties are converted to front-foot pricing, the result confirms that the current assessment of the subject property is correct. The average front-foot value of the comparables is \$199.28 and the median front-foot value is \$193.75. The current assessed value of the subject property is below both of these values at \$184 per front foot. *Relos-Penrose argument; Resp't Rebuttal Ex. 1*.

BURDEN OF PROOF

37. 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.

38. In this appeal, the parties agreed that the assessed value for the subject property did not change from the previous year, thus the burden remains with the Petitioners.

ANALYSIS

39. 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 a property's 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.

40. 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.

41. Here, the Petitioners, through their tax representative Ms. LeVeque, randomly offered sales and assessment comparisons in an attempt to prove that the assessment of the subject property is too high. First, regarding the purportedly comparable sales, the Petitioners recognize 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). Ms. LeVeque's analysis of comparability was limited to conclusory statements as to whether each purportedly comparable property was inferior or superior to the subject. Her evidence lacked the type of analysis contemplated by *Long*.
42. Another way to show a property's market value-in-use is through assessments of comparable properties. *See Ind. Code § 6-1.1-15-18*. But *Ind. Code § 6-1.1-15-18* does not automatically make evidence of other assessments probative. Instead, 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 properties' relative market values-in-use. *Id.* This Ms. LeVeque did not achieve.
43. Here, the Petitioners' representative failed to discuss how the properties she submitted as comparable property 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 fact that mistakes were made by the Petitioners'

representative. The Board therefore finds that the Petitioners failed to raise a prima facie case that their property was over-valued for the 2011 assessment year.

44. 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

45. The Petitioners 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>>.