

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

Petition: 50-005-13-1-5-00029
Petitioners: David and Jean Harris
Respondent: Marshall County Assessor
Parcel: 50-43-06-000-037.000-005
Assessment Year: 2013

The Indiana Board of Tax Review (the “Board”) issues this determination in the above matter, and finds and concludes as follows:

PROCEDURAL HISTORY

1. David and Jean Harris (the “Petitioners”) initiated an assessment appeal with the Marshall County Property Tax Assessment Board of Appeals (the “PTABOA”) on September 30, 2013.
2. On December 4, 2013, the PTABOA issued its Notification of Final Assessment Determination (“Form 115”) declining to make any changes to the assessment.
3. The Petitioners then timely filed a Petition for Review of Assessment (“Form 131”) with the Board on January 13, 2014.
4. The Petitioners elected to have the administrative hearing conducted under the Board’s small claims procedures. The Respondent did not elect to have the proceeding removed from the Board’s small claims procedures.
5. Patti Kindler, the Board’s appointed Administrative Law Judge (the “ALJ”), held the administrative hearings on October 16, 2014. The ALJ did not inspect the subject property.
6. Certified Tax Representative Sharon LeVeque represented the Petitioners. Marshall County Assessor Debra Dunning and Deputy Assessor Mindy Penrose appeared for the Marshall County Assessor’s Office (the “Respondent”). All were sworn in as witnesses and testified under oath.

FACTS

7. The subject property is a single-family residence located at 8881 Sycamore Drive in Bremen.
8. The PTABOA determined the 2013 assessed value for the land is \$192,100 and the assessed value for the improvements is \$152,300, for a total assessed value of \$344,400.

9. The Petitioners requested a reduction to \$131,200 for the land and \$132,600 for the improvements, for a total assessed value of \$263,800.

RECORD

10. The official record for this matter contains the following:

- a) A digital recording of the hearing,
- b) Exhibits:

Petitioners Exhibit A-1:	Notice of hearing, dated September 15, 2014
Petitioners Exhibit B-1-2:	Property Record Card (“PRC”) for subject property
Petitioners Exhibit C-1-10:	Real Estate Evaluation Report for 2013
Petitioners Exhibit D-1-6:	Sales Disclosure Form (“SDF”), Multiple Listing Service (“MLS”) sales information, and PRC for 3852 West Shore Drive
Petitioners Exhibit D-7-14:	SDF, MLS sales information, and PRC for 3624 West Short Drive
Petitioners Exhibit D-15-22:	SDF, MLS sales information, and PRC for 3608 West Shore Drive
Petitioners Exhibit D-23-28:	SDF, MLS sales information, and PRC for 3961 Lake Shore Drive
Petitioners Exhibit D-29-34:	SDF, MLS sales information, and PRC for 3753 Lake Shore Drive
Petitioners Exhibit D-35-36:	PRC for 3607 Lake Shore Drive
Petitioners Exhibit D-37-39:	PRC for 3601 Lake Shore Drive
Petitioners Exhibit E-1-2:	LeVeque Power of Attorney, 2014-2025
Petitioners Exhibit F:	Rebuttal of Respondent’s Exhibit P regarding front foot pricing and time adjustments
Petitioners Exhibit G:	Rebuttal of Respondent’s Exhibit J with handwritten notes
Respondent Exhibit A:	Respondent’s Exchange of Evidence request to Petitioners, dated September 24, 2014
Respondent Exhibit B:	Form 131 petition
Respondent Exhibit C:	Form 115 determination
Respondent Exhibit D:	LeVeque Power of Attorney, 2010-2015
Respondent Exhibit E:	SDF for subject property, dated June 14, 2006
Respondent Exhibit F:	Photograph of the subject property
Respondent Exhibit G:	Two aerial maps of the subject property
Respondent Exhibit H:	2013 PRC for subject property
Respondent Exhibit I:	2012 and 2013 Land Orders for German and North Townships

Respondent Exhibit J:	Demonstrative exhibit showing Lake of the Woods 2010, 2011 and 2012 on-water sales, with a sales location map
Respondent Exhibit K:	SDF, PRC, and aerial map for 4532 West Shore Drive
Respondent Exhibit L:	SDF, PRC, and aerial map for 3253 Lake Shore Drive
Respondent Exhibit M:	SDF, PRC, and aerial map for 3961 Lake Shore Drive
Respondent Exhibit N:	SDF, PRC, and aerial map for 3654 West Shore Drive
Respondent Exhibit O:	SDF, PRC, and aerial map for 3794 West Shore Drive
Respondent Exhibit P:	SDF, PRC, and aerial map for 3923 Lake Shore Drive
Respondent Exhibit Q:	SDF, PRC, and aerial map for 3483 Lake Shore Drive
Respondent Exhibit R:	SDF, PRC, and aerial map for 3395 Lake Shore Drive
Respondent Exhibit S:	SDF, PRC, and aerial map for 3471 Lake Shore Drive
Respondent Exhibit T:	SDF, PRC, and aerial map for 3753 Lake Shore Drive
Respondent Exhibit U:	SDF, PRC, and aerial map for 4089 Lake Shore Drive
Respondent Exhibit V:	Demonstrative exhibit showing Respondent's corrections to Petitioners Exhibit C-8
Board Exhibit A:	Form 131 petition with attachments
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing Sign-In sheet

c) These Findings and Conclusions.

OBJECTIONS

11. The Respondent objected to the admission of Petitioners' Exhibit F because Ms. LeVeque listed the 2012 improvement values for several properties, but should have listed their 2013 values. Ms. LeVeque countered that Petitioners' Exhibit F is simply a response to the Respondent's spreadsheet of sales. The ALJ took the objection under advisement.
12. The Respondent's objection goes more to the weight of the evidence rather than to its admissibility. Consequently, the objection is overruled and Petitioners' Exhibit F is admitted.

BURDEN OF PROOF

13. 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. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The taxpayer must explain how each piece of evidence relates to the requested assessment. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
14. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Thus, where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following assessment date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal regardless of the amount of the increase..." I.C. § 6-1.1-15-17.2(d). These provisions may not apply if there was a change in the property's improvements, zoning or use, or if the assessment was determined using the income approach to value. I.C. § 6-1.1-15-17.2(c) and (d).
15. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence of the correct assessment. If neither party offers evidence that suffices to prove the property's correct assessment, the assessment reverts to the previous year's value. I.C. § 6-1.1-15-17.2(b).
16. The Petitioners had previously appealed the subject property's 2012 assessment to the Board. Therefore, the burden of proof for the 2013 assessment year depends on the Board's determination for 2012.
17. The Board ordered no change to the property's 2012 assessed value of \$356,500. The 2013 assessment of \$344,400 represents a decrease from the prior year's assessment. Thus, the burden of proof for the 2013 assessment year rests with the Petitioners.

CONTENTIONS

18. Summary of the Petitioners' case:
 - a) The Petitioners purchased the property in 2006 for \$345,000 and the property has depreciated since then. The Petitioners contend that the 2013 assessment should be \$131,200 for the land and \$132,600 for the improvements, for a total assessed value

of \$263,800. Ms. LeVeque presented her Real Estate Evaluation Report which was completed pursuant to the procedures of an appraisal and supports the requested value with a sales comparison and an assessment comparison using other lakefront properties in the area.¹ *LeVeque testimony; Pet'r Exs. C-1-10.*

- b) The subject property is 82 feet by 148 feet, with 90 feet of frontage on the water. It has a well, sewer, and electric and gas utilities. The property was purchased in 2002 for \$150,000 and was superior to a vacant lot because it had a well and sewer hookup, which Ms. LeVeque valued at \$3,500 and \$10,000, respectively. Ms. LeVeque maintains that there has been no appreciation in land values since that time. While Ms. LeVeque stated that the house on the subject property was built in 2006 in her report, she admitted that was an error and that the house was actually built in 2004. The house has vinyl siding and an asphalt roof. *LeVeque testimony; Pet'r Exs. C-1 and C-9.*
- c) Ms. LeVeque used five comparable sales in developing her estimate of value. She offered SDFs, MLS sales sheets, photographs, and PRCs for the five sales she compared to the subject property in her report.
- Comparable No. 1 is 3852 West Shore Drive. This property sold for \$223,000 on December 13, 2013, and its adjusted sales price is \$275,375.
 - Comparable No. 2 is 3624 West Shore Drive. This remodeled property, closest in proximity, size, and age to the subject property, sold for \$242,000 on February 12, 2013. It is above the grade of the subject property and is partially constructed of brick. Its adjusted sale price is \$255,090. After her report was completed, Ms. LeVeque discovered that this property's sale included \$20,000 worth of personal property. Thus, the correct adjusted sales price for this property is \$235,090.
 - Comparable No. 3 is 3608 West Shore Drive. This property sold for \$125,000 on April 26, 2013. It has a lower grade than the subject property and was on the market for 911 days. Its adjusted sales price is \$206,715.
 - Comparable No. 4 is 3961 Lake Shore Drive. This property sold for \$318,000 on July 1, 2011, and its adjusted sales price is \$374,500. Ms. LeVeque considers this property an outlier among the seven comparables she used.
 - Comparable No. 5 is 3753 Lake Shore Drive. This property sold for \$165,000 on July 10, 2012, and its adjusted sales price is \$270,065.

LeVeque testimony; Pet'r Exs. C-1, C-2, C-5, C-6 and D-1-34.

¹ While Ms. LeVeque's report is similar to an appraisal, she prepared and signed the report as a tax representative and did not certify the appraisal as being prepared in conformity with USPAP.

- d) Ms. LeVeque also relied on two comparable assessments in arriving at her estimate of value, and she submitted their PRCs in support.
- Comparable No. 6 is 3607 Lake Shore Drive. This property was assessed for \$262,100 in 2013. It was built in 2002 and is in the same age bracket as the subject property. It is also twice the size of the subject property, but is situated on a smaller lot. Ms. LeVeque made adjustments of \$35 per square foot for the square footage and \$1,300 per front foot for the lot size, along with adjustments for the bedrooms, bathrooms and other items. The adjusted sales price is \$263,830.
 - Comparable No. 7 is 3601 Lake Shore Drive. This is a newer property that was assessed for \$252,300 in 2013. It is one year older and 1,062 square feet larger than the subject property. After adjustments, its value is \$263,500.

LeVeque testimony; Pet'r Exs. C-2, C-3, C-6, C-7 and D-35-39.

- e) Ms. LeVeque made adjustments to account for the differences between the subject property and the comparable properties, but there were no adjustments made for time. Ms. LeVeque prepared an addendum to her report using five properties located in the subject property's neighborhood that sold twice between August 1, 2005 and August 27, 2014. According to Ms. LeVeque the sales information with regard to these five homes shows that there has only been depreciation. Thus, no time adjustments were warranted. *LeVeque testimony; Pet'r Exs. C-1, C-2, C-3 and C-9.*
- f) To adjust for the year built, Ms. LeVeque made a \$1,000 adjustment for every ten years of age to account for design and change. The age adjustment was applied consistently to all of the comparables. *LeVeque testimony.*
- g) With regard to condition, Ms. LeVeque looked to the grades assigned by the assessor as reported on the PRC of each comparable. Although she did not do any interior inspections, if the assessor had assigned a comparable property a C-grade, Ms. LeVeque made no adjustments. Alternatively, where a property was assigned a D-grade by the assessor, Ms. LeVeque applied a \$50,000 upward adjustment. All of the D-grade properties were adjusted the same for consistency. *LeVeque testimony.*
- h) To adjust for differences in square footage, Ms. LeVeque applied a \$35 per square foot depreciated adjustment to all of the comparables. She then bracketed the square footage of the subject property for consistency. *LeVeque testimony.*
- i) With regard to differences in lot sizes, Ms. LeVeque relied on nine Lake of the Woods sales. She deducted the Respondent's cost of improvements from each property's sales price to determine how much of the sale price was allocated to the land. The adjusted front foot price extracted from each sale are as follows:
- 3608 West Shore Drive's adjusted front foot price is \$763.

- 3624 West Shore Drive's adjusted front foot price is \$1,177.
- 3608 West Shore Drive's adjusted front foot price is \$1,389.
- 4215 Lake Shore Drive's adjusted front foot price is \$1,340.
- 3966 West Shore Drive adjusted front foot price is \$2,069.
- 4006 Liberty Drive's adjusted front foot price is \$1,769.
- 5148 West Shore's adjusted front foot price is \$1,994.
- 4271 Lake Shore Drive's adjusted front foot price is \$1,991.
- 3966 West Shore Drive's adjusted front foot price is \$2,170.

The nine land sale prices were about 28% lower than their corresponding assessments, suggesting a decline in the market values of the properties. The adjustments made were \$1,300 per front foot for all of the comparables. The \$1,300 per front foot was determined by considering the median of sites having 50 or more front feet. Considering square footage, the average median would be \$9.60 per square foot. The subject property has 12,136 square feet which results in a value of approximately \$116,500. *LeVeque testimony; Pet'r Ex. C-8.*

- j) Ms. LeVeque also made several other adjustments to her comparables. She used \$5 per square foot to account for differences in decks, patios, and open framed porches, and \$10 per square foot to account for differences in enclosed frame porches. For differences in room counts, Ms. LeVeque made adjustments for bathrooms using \$400, which is the depreciated amount of 50% of the Respondent's cost. She also made depreciated adjustments of \$2,000 for fireplaces and for central air. Finally, she made adjustments to her comparables of \$3,000 per garage stall and/or similar size. *LeVeque testimony.*
- k) After adjustments, the value of the comparable sales ranged from \$235,000 to \$275,000.² Ms. LeVeque eliminated Comparable No. 3 and Comparable No. 4 because they fell outside of the typical range. She then used Comparable Nos. 1, 3, 5, 6 and 7 to find the median range of value. *LeVeque testimony; Pet'r Exs. C-1, C-2 and C-3.*
- l) Of the comparable sales, Ms. LeVeque contends that Comparable No. 2 is the most similar to the subject property in lot size. Comparable No. 2 has a 90 foot lot and

² Ms. LeVeque apparently rounded these figures from \$235,090 (\$255,090 minus \$20,000 in personal property) and \$275,375.

- required the lowest net adjustments of all the comparables. *LeVeque testimony; Pet'r Ex. C-1.*
- m) Considering the assessment comparables only, Comparable No. 6 carries the most weight because it required the lowest net adjustment of all the sales and assessments. Comparable No. 6 falls in the median range of value.
 - n) Ms. LeVeque requests that the subject property have a total assessed value of \$263,800, with the land assessed at \$131,200 and the improvements assessed at \$132,600. *LeVeque testimony; Pet'r Exs. C-1 and C-2.*

19. Summary of the Respondent's case:

- a) The Respondent contends that the subject property's assessment is correct. On June 4, 2006, the Petitioners purchased the property for \$345,000. When compared to what the Petitioners paid for the property, the 2013 assessment of \$344,400 is reasonable. *Dunning testimony; Resp't Exs. C, E and H.*
- b) The land order for the Lake of the Woods (On Water) neighborhoods located in German and North Townships shows the 2013 neighborhood adjustments and trending factor. The 2013 base rate for both neighborhoods is \$2,440 per front foot. At \$2,343 per front foot, the Respondent contends that the subject property's 2013 assessment is correct according to the land order. *Dunning testimony; Resp't Ex. I.*
- c) To support the subject property's 2013 assessment, the Respondent also presented a spreadsheet used to calculate the lakefront foot pricing for eleven sales of waterfront properties in Lake of the Woods. The Respondent used sales that occurred between November 16, 2010 and September 14, 2012, and offered SDFs, PRCs and maps to support the sales data. The Respondent extracted the cost of improvements from the sale price of each property to determine how much of the sales price was attributable to the property's land value. The Respondent then divided each property's land value by its effective frontage to determine its price per front foot. Based on the eleven sales, the Respondent determined the median price per front foot was \$2,815, while the average price per front foot was \$2,744. The Respondent contends that the subject property's 2013 land assessment at \$2,343 per front foot is reasonable in comparison. *Dunning testimony; Resp't Exs. J, K, L, M, N, O, P, Q, R, S, T and U.*

ANALYSIS

20. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the

value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

21. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2013 assessment was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). To establish a prima facie case, a taxpayer must "demonstrate that their suggested value accurately reflects the property's true market value-in-use (and, consequently, that the assessor's assessed value failed to accurately reflect the market value-in-use)." *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
22. As discussed previously, the Petitioners had the burden of proving that the 2013 assessment of \$344,400 was incorrect by demonstrating what the correct assessment should be. In support of their contention that the subject property is over-valued, Ms. LeVeque presented a Real Estate Evaluation Report that she had prepared. It includes both a sales comparison approach and an assessment comparison approach. It also notes that she "is being paid based on a contingency fee." The Petitioners requested a reduction to \$131,200 for the land and \$132,600 for the improvements, for a total assessed value of \$263,800.
23. With regard to the Petitioners' sales comparison approach, Ms. LeVeque, argued that the Petitioners' property was over-valued for the 2013 assessment based on the adjusted sales of five purportedly comparable properties located on Lake of the Woods. A 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." MANUAL at 3. In order to effectively use the sales-comparison approach as evidence in a property assessment appeal, 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. 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.*
24. Ms. LeVeque attempted to account for the differences between the subject property and the purportedly comparable properties by making adjustments for age, condition, square footage, lot size, decks, patios, porches, bath fixtures, fireplaces, central air and garage size, but she did little to show how the features and amenities of the comparable properties were actually similar to those of the subject property. While her testimony briefly touched on the characteristics of some of her comparables, such as Comparable

No. 2 consisting of brick, she did not provide the level of comparison contemplated by *Long*.

25. Ms. LeVeque failed to establish that the purportedly comparable properties were actually comparable to the subject property, or that her adjustments conform to generally accepted appraisal principles. Thus, her sales comparison approach is not probative evidence of the market value-in-use.
26. Even if Ms. LeVeque had shown that the properties were comparable, her adjustments also have a number of errors and inconsistencies such that her estimate of value may or may not accurately reflect the property's true market value-in-use.
 - a. To adjust for the year built, Ms. LeVeque testified that she made a \$1,000 adjustment to all of the comparables for every ten years of age. However, she failed to provide any substantial evidentiary basis for applying a \$1,000 per ten year adjustment. Assuming, arguendo, that she did establish an acceptable basis for using that rate, she still failed to apply it consistently. For example, Ms. LeVeque reported that Comparable No. 1 was 54 years old, but her report shows it was built in 1960, making the property 53 years old in the 2013 assessment year at issue. That minor mistake aside, applying the \$1,000 adjustment to either age should have resulted in a positive adjustment of \$5,000, not the \$4,000 adjustment reported by Ms. LeVeque. Similarly, Comparable No. 3 was built in 1961 and was 52 years old in 2013, which also should have resulted in a positive adjustment of \$5,000 under her adjustment scheme, but instead she assigned it a \$4,500 adjustment without explanation. Furthermore, she adjusted Comparable No. 2 (16 years old; reported as 17 years old) and Comparable No. 4 (20 years old) by \$1,500, even though her age adjustments should have resulted in a \$1,000 adjustment to Comparable No. 2 and a \$2,000 adjustment to Comparable No. 4.
 - b. With regard to condition, Ms. LeVeque adjusted Comparable No. 3 and Comparable No. 5 by \$50,000 to account for their lower D-grades as compared to the subject property's C-grade. However, she failed to offer any objective market-based support to explain why \$50,000 was an appropriate amount for the adjustments. Likewise, while Ms. LeVeque adjusted each comparable property to account for their different sizes, she failed to explain how she arrived at the \$35 per square-foot adjustment. In addition, when applying the size adjustment to Comparable No. 3 and Comparable No. 5, she rounded her adjustments while choosing not to round the adjustment for Comparable No. 2. She also failed to make any size adjustment to Comparable No. 4 although a positive adjustment was warranted based on the reported square footage for the property.
 - c. Ms. LeVeque's lot size adjustments are also unsupported by the evidence. To account for differences in lot sizes, Ms. LeVeque analyzed nine properties and calculated a price per front foot for each property. *See Pet'r Ex. C-8*. According to Ms. LeVeque, her analysis resulted in a price of \$1,300 per front foot, which she then applied to make her adjustments. As part of making a prima facie case, "it is the

taxpayer's duty to walk the [Indiana Board and this] Court through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (quoting *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). However, Ms. LeVeque did nothing to explain how she arrived at the \$1,300 or that she followed generally accepted appraisal principles. Her addendum indicates that the \$1,300 front foot price was based on the average of sales Comparables 3, 4, 5, 6, 7, 8, and 9. It appears, however, that Ms. LeVeque erroneously calculated the total sum of these seven sales as \$10,991. She compounded this error by dividing by nine when there were only seven sales included, but her average price of \$1,302 is incorrect regardless of which denominator is used in the calculation.

- d. Ms. LeVeque included the sales of Comparable No. 2 and Comparable No. 3 in her group of nine properties used to calculate her adjustment price, effectively using the comparables' own values to make their lot size adjustments. Comparable No. 3 is also included in her analysis twice, but Ms. LeVeque calculated its front foot price differently for each occurrence without explanation. Thus, the Board concludes that the \$1,300 average price per front foot used to make her lot size adjustments is not reliable.
- e. Even if the Board overlooks the errors discussed above and assumes that the \$1,300 average is correct, Ms. LeVeque failed to apply it consistently to the comparables. She calculated her adjustments for Comparable No. 1, Comparable No. 4, and Comparable No. 5 using the subject property's front foot value of 82 feet, but then failed to make adjustments to Comparable No. 2 and Comparable No. 3 which each have 90 feet of frontage. This minor 8 foot difference would lead to a negative adjustment of \$10,400 for both properties. Conversely, if the subject property actually has 90 front feet as Ms. LeVeque claimed during her testimony, then no adjustments were in fact necessary for Comparable No. 2 and Comparable No. 3. However, in that case, the adjustments to Comparable No. 1, Comparable No. 4 and Comparable No. 5 should have been \$10,400 higher to properly account for the subject property's extra 8 feet of frontage.
- f. Ms. LeVeque also did little to explain how she arrived at a \$5 per square-foot adjustment amount for features such as decks, patios, and open-frame porches, a \$10 per square foot adjustment for enclosed porches, a \$2,000 adjustment for fireplaces and air conditioning, a \$3,000 per garage stall adjustment, or a \$400 per bath fixture adjustment. Additionally, she failed to adequately walk the Board through the application of her adjustments for these features, relying instead on the assertion that they were applied consistently to all the comparable properties. *Id.*
- g. Finally, Ms. LeVeque stated that, based on her sales comparison analysis, the sale that should be given the most weight is Comparable No. 2, which had an adjusted value of \$255,090. She testified that it is the most like the subject property and required the lowest net adjustments of all the comparables. However, by her own admission, the sales price she reported for Comparable No. 2 included \$20,000 in personal property that should have been excluded. Because of these errors, the Board

- is not convinced that Ms. LeVeque's sales comparison approach conforms to generally accepted appraisal principles. It is not probative evidence of market value-in-use.
27. The Petitioners also offered an assessment comparison approach using the 2013 assessments of two properties located on Lake of the Woods. An assessment comparison approach attempts to show market value-in-use through comparable assessments. Ind. Code § 6-1.1-15-18. The statute does not automatically make evidence of other assessments probative. *Id.* A party must still establish the comparability of the properties being examined. Again, conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long*, 821 N.E.2d at 470. Instead, a party 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, a party must explain how any differences between the properties affect their relative market values-in-use. *Id.*
28. While Ms. LeVeque introduced copies of the PRCs for Comparable No. 6 and Comparable No. 7, she failed to offer any meaningful testimony relating their specific features and characteristics to the subject property. Ms. LeVeque failed to establish that her purportedly comparable properties were actually comparable to the subject property as required by *Long*. Furthermore, Ms. LeVeque's adjustments to the two assessment comparables suffer from many of the same errors present in her sales comparison approach discussed above. Given the small sample size of two properties, there is a question as to whether Ms. LeVeque simply selected these two as comparables to support a predetermined assessed value for the subject property.³ Thus, the Petitioners' requested value is not probative evidence of the market value-in-use of the subject property.
29. Because the Petitioners did not offer probative evidence to show the market value-in-use of the subject property, they failed to make a prima facie case that the 2013 assessment was incorrect. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

30. The Petitioners did not make a prima facie case for reducing the property's 2013 assessment. The Board therefore finds for the Respondent.

³ This is of even greater concern because Ms. LeVeque acknowledged that she is being paid on a contingency fee basis. *See Pet'r Ex. C-1*. Where an expert has a financial interest in the outcome of a case, such as with a contingent fee, that fact is an appropriate consideration in weighing the credibility of the expert's opinion. *See Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874, 877 (Ind. Tax Ct. 1993) (stating that the contingent nature of an expert witness's fee goes to the weight of the expert's testimony). An expert witness's opinion of value should be unbiased, and the fact that she is being paid a contingency fee diminishes her credibility.

FINAL DETERMINATION

In accordance with these findings and conclusions, the Board orders no change to the property's 2013 assessment.

ISSUED: March 16, 2015

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days 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>>.