

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

Petition No.: 06-015-10-1-5-00384
Petitioner: Paul M. and Pamela A. Hoppe Revocable Trust
Respondent: Boone County Assessor
Parcel No.: 019-17586-00
Assessment Year: 2010

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

Procedural History

1. Paul Hoppe, on behalf of the Petitioner, appealed the Petitioner's property's 2010 assessment with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by letter dated November 10, 2010.
2. The PTABOA issued a notice of its decision on March 23, 2011.
3. The Petitioner's representative filed a Form 131 petition with the Board on May 5, 2011. The Petitioner elected to have its case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 16, 2012.
5. The Board held an administrative hearing on September 5, 2012, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Paul M. Hoppe, Trustee
 - b. For Respondent:¹ Lisa Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA Member

¹ David Truitt appeared as counsel for the Respondent.

Facts

7. The property under appeal is a single-family home located at 10295 Wildwood Drive, Zionsville, in Boone County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2010, the PTABOA determined the assessed value of the property to be \$73,400 for the land and \$267,800 for the improvements, for a total assessed value of \$341,200.
10. The Petitioner's representative requested an assessed value of \$65,000 for the land and \$245,000 for the improvements, for a total assessed value of \$310,000.²

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in its property's assessment:
 - a. The Petitioner's representative contends that the Petitioner's property was over-valued for the 2010 assessment year based on the Petitioner's purchase of the property. *Hoppe testimony*. According to Mr. Hoppe, the Petitioner purchased the property under appeal on January 9, 2008, for \$324,000. *Id.*; *Petitioner Exhibit 2*. In support of this contention, Mr. Hoppe submitted the property's property record card. *Petitioner Exhibit 2*.
 - b. Mr. Hoppe contends that the Respondent assessed the Petitioner's property for more than its market value-in-use for 2010. *Hoppe testimony*. Mr. Hoppe testified that Nicholos Holston, a certified appraiser, appraised the property under appeal in connection with a bank loan that the Petitioner applied for. *Id.*; *Petitioner Exhibit 1*. Mr. Hoppe offered five pages from Mr. Holston's appraisal. *Petitioner Exhibit 1*. The excerpt shows that Mr. Holston estimated the property's value at \$324,000 as of August 29, 2008. *Petitioner Exhibit 1*.
 - c. Mr. Hoppe further contends that the Petitioner's property's assessed value was overstated in 2010 based on the sale prices of eight similar properties in the area. *Hoppe testimony*. In support of this contention, Mr. Hoppe submitted multiple listing sheets showing that the properties sold from \$263,000 to \$332,450 in 2009. *Petitioner Exhibit 3*. According to Mr. Hoppe, the comparable houses are all brick homes like the subject property, but the comparable houses are larger than the Petitioner's house. *Hoppe testimony*; *Petitioner Exhibit 3*. The comparable properties are also located in neighborhoods that have amenities such as sidewalks, street lights, green space, clubhouses, and pools; whereas the Petitioner's property's neighborhood has none of these amenities. *Hoppe testimony*. Despite the fact that the subject property is

² At the hearing, Mr. Hoppe requested a total assessed value of \$305,000. *Hoppe testimony*.

inferior to the comparable properties, Mr. Hoppe argues, the Petitioner's property was assessed for \$341,200 in 2010. *Hoppe testimony; Petitioner Exhibit 2.*

- d. Similarly, Mr. Hoppe testified that the three comparable properties used in the Petitioner's appraisal report sold from \$320,000 to \$325,000. *Hoppe testimony; Petitioner Exhibit 1.* According to Mr. Hoppe, this further demonstrates that the Petitioner's property's assessed value of \$341,200 was too high. *Hoppe testimony.*
- e. In fact, Mr. Hoppe argues that the county assessor has consistently assessed properties in the area for more than their sale prices. *Hoppe testimony.* Mr. Hoppe testified that he compared the county's assessed value to five of the comparable properties' sale prices. *Id.* According to Mr. Hoppe, the five properties sold from \$263,000 to \$302,000; whereas their assessed values ranged from \$320,400 to \$378,600. *Hoppe testimony; Petitioner Exhibit 3.* Thus, the comparable properties were assessed from \$33,400 to \$95,100 higher than their sale prices, which he argues supports the Petitioner's argument that its property's assessed value should be reduced. *Hoppe testimony.*
- f. The Petitioner's representative also contends that its property was over-valued based on the general decline of the housing market since 2007. *Hoppe testimony.* In support of this contention, Mr. Hoppe presented a copy of an "About.com" article, indicating that the prices of homes in the Indianapolis metro area dropped ten percent from November 2007 to November 2008. *Petitioner Exhibit 4.* Similarly, the "Indiana University Kelley School of Business, Indiana Business Research Center" showed that, based on the Federal Housing Finance Agency's (FHFA) housing price index, the price of Indiana homes declined ten percent from early 2007 to the fourth quarter of 2011. *Id.* An article written by Kyle J. Anderson, Ph.D. of the Kelley School of Business, Indiana University also shows that home prices were down 7.7 percent since 2007 in the Indianapolis and Carmel area. *Id.* Information from FHFA shows that the five year appreciation rate of houses in Indiana was a negative three and a half percent and a copy of an article from "nwi.com" shows the "median selling price of single-family homes in Northwest Indiana in 2011 was 7.8 percent lower than highs reached just before the collapse of the housing boom four years ago..." *Id.* Because property values declined between the Petitioner's purchase of the property in 2007 and the 2010 assessment date, Mr. Hoppe argues that the Petitioner's property's assessed value should be reduced to its 2008 purchase price of \$324,000, depreciated by approximately 5%, or \$305,000 for the 2010 assessment year. *Id.*
- g. Finally, Mr. Hoppe contends that the county assessor erred in its preparation of the property's property record card. *Hoppe testimony; Petitioner Exhibit 2.* According to Mr. Hoppe, the property record card shows 1,912 square feet of living area on the first floor and 1,115 square feet on the second floor for a total area of 3,027 square feet. *Id.* The property record card also shows the garage has 728 square feet. *Id.* The Petitioner's floor plans, however, show that the home only has 1,784 square feet of living area on the first floor; 1,000 square feet on the second floor and 680 square

feet of garage space.³ *Id.* In addition, Mr. Hoppe confirmed that the basement was omitted from the Petitioner's 2010 property record card. *Hoppe testimony.* But, he argues, it should have no effect on the Petitioner's market value-in-use, because the value of the basement was included in the Petitioner's purchase price and appraised value. *Hoppe testimony.*

- h. In response to the Respondent's case, Mr. Hoppe argues that the assessor's market analysis should be given little weight. *Hoppe testimony.* According to Mr. Hoppe, the Respondent's comparable properties are all one-story homes, while the Petitioner's property is a two-story home. *Id.* Mr. Hoppe argues that it costs more per square foot to build a one-story home than a two-story home. *Id.* Thus, Mr. Hoppe argues, the Respondent's comparable market analysis fails to show the Petitioner's property was assessed correctly for 2010. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends that the property under appeal was correctly assessed for the 2010 assessment year. *Garoffolo testimony.* In support of this position, the Respondent submitted sales information for five properties located in the area of the Petitioner's property. *Respondent Exhibit 7.* According to the Respondent, properties in the property's neighborhood sold from \$208,500 to \$352,900 in 2008 and 2009. *Garoffolo testimony; Respondent Exhibit 7.* Properties with a basement sold from \$122 per square foot to \$160 per square foot and properties without basements sold from \$125 per square foot to \$129 per square foot, while the Petitioner's property was assessed for only \$112.72 per square foot.⁴ *Garoffolo testimony; Respondent Exhibits 5 and 7.* Thus, Ms. Garoffolo concludes, the subject property was assessed below its market value for the 2010 assessment year. *Garoffolo testimony.*
- b. Further, the Respondent contends that the Petitioner's purchase price should be given little weight. *Garoffolo testimony.* According to Ms. Garoffolo, the multiple listing sheet on the property under appeal shows the property was "bank owned" and therefore the sale is considered invalid by the assessor and cannot be used to establish the subject property's market value. *Garoffolo testimony; Respondent Exhibit 4.* In addition, she argues, the property history report shows that the Petitioner's property was originally listed for sale on July 14, 2005, for \$359,900. *Garoffolo testimony; Respondent Exhibit 6.* The property's sale price was reduced on June 5, 2007, to \$344,900. *Id.* Thus, Ms. Garoffolo concludes, the current assessed value of \$341,200 is fair for the March 1, 2010, assessment. *Id.*

³ Mr. Hoppe testified that he re-measured the exterior of the home to confirm the floor plans were accurate. *Hoppe testimony.*

⁴ Ms. Garoffolo testified at the PTABOA hearing, the county discovered the Petitioner's basement was omitted from the 2010 assessment. *Garoffolo testimony.* The PTABOA instructed the assessor to add the basement to the Petitioner's assessment for 2011. *Respondent Exhibit 8.*

- c. The Respondent also argues that the Petitioner’s sales comparison analysis was flawed. *Garoffolo testimony*. According to Ms. Garoffolo, the Petitioner’s comparable properties are all located in different neighborhoods that are miles away from the subject property. *Id.* In addition, Ms. Garoffolo argues, different builders built the “comparable” houses than built the Petitioner’s house. *Id.* Thus, the Respondent argues, the Petitioner’s comparable analysis fails to show the property under appeal was over-valued in 2010. *Id.*
 - d. Finally, the Respondent contends that, despite the Petitioner’s evidence that the housing market declined from 2007 through 2011, the county’s data shows the housing market has remained “steady” in Boone County. *Garoffolo testimony*. Thus, she argues, properties in Boone County, including properties in the Petitioner’s property’s neighborhood, were not affected by the economy. *Id.*
13. The official record for this matter is made up of the following:
- a. The Form 131 petition and related attachments.
 - b. The digital recording of the hearing.
 - c. Exhibits:
 - Petitioner Exhibit 1 – Excerpt of an appraisal report prepared by Nicholas E. Holston,
 - Petitioner Exhibit 2 – Property record card for the subject property,
 - Petitioner Exhibit 3 – Multiple listing sheets for 6105 Mountain Hawk Drive, 8928 Shelburne Way, 5502 South 875 East, 4440 Brittany Drive, 752 Franklin Trace, 8995 Shelburne Way, 8846 Pin Oak Drive, and 8944 Shelburne Way,
 - Petitioner Exhibit 4 – About.com article “Home Sales Decline in Indy Metro Area,” Indiana Business Review article “The State of Indiana’s Housing Market,” Kyle J. Anderson, Ph.D. article “Indianapolis-Carmel Forecast 2011,” FHFA “House Price Appreciation by State,” FHFA “House Price Appreciation Over Previous Fourth Quarters” graph, “FHFA House Price Index History for USA” graph, “FHFA Seasonally Adjusted House Price Index For USA,” and nwi.com article “Home price plunges bestow blessings, curses,”
 - Petitioner Exhibit 5 – “How Your Property Tax Bills Is Calculated” notice,
 - Petitioner Exhibit 6 – Notification of Final Assessment Determination – Form 115,
 - Petitioner Exhibit 7 – Floor plans for the subject property,
 - Respondent Exhibit 1 – Boone County appeal worksheet,
 - Respondent Exhibit 2 – Exterior photograph of the subject property,

Respondent Exhibit 3 – Exterior photograph of the subject property,
Respondent Exhibit 4 – Multiple listing sheet with interior and exterior
photographs of the subject property,
Respondent Exhibit 5 – Property record card for the subject property,
Respondent Exhibit 6 – MIBOR property history report,
Respondent Exhibit 7 – Comparative market analysis for Cedar Bend,
Respondent Exhibit 8 – Notification of Final Assessment Determination – Form
115,
Respondent Exhibit 9 – Petition to the Indiana Board of Tax Review for Review
of Assessment – Form 131,
Respondent Exhibit 10 – Indiana Board of Tax Review Notice of Hearing on
Petition,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

14. 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 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.⁵ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here because the property's assessed value did not increase more than 5% over its previous year's assessment, the Petitioner retains the burden of proof.

Analysis

15. The Petitioner established a prima facie case for a reduction in the assessed value of its property for 2010. The Board reached this decision for the following reasons:

a. Indiana assesses real property based on its true tax value, which is "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." 2002 REAL PROPERTY ASSESSMENT

⁵ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

- MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. See *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 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 acceptable appraisal principles. MANUAL at 5.
- b. Here, the Petitioner’s representative contends that the subject property was over-valued in 2010 based on the property’s purchase price.⁶ *Hoppe testimony*. According to Mr. Hoppe, the Petitioner purchased the property under appeal on January 9, 2008, for \$324,000. *Id.*; *Petitioner Exhibit 2*. Mr. Hoppe admitted that a relocation company sold the property for the sellers. *Hoppe testimony*. However, Mr. Hoppe testified that the sellers were still living in the home at the time of their purchase and there was no relationship between the Petitioner and the sellers of the property. *Id.*
- c. The purchase price of a property is often the best indication of the property’s value. See *Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board’s determination that the weight of the evidence supported the property’s purchase price over its appraised value). While the sale occurred two years prior to the March 1, 2010, assessment date, the Respondent admitted that the county used 2008 and 2009 sales data to establish their 2010 assessments. Moreover, the assessor testified that property values “remained steady” during the relevant time period, which is supported by the property record card which shows that the property’s assessed value fluctuated little from its \$345,100 assessed value in 2007, to \$346,800 in 2009 and \$341,200 in 2010. Thus, the Board finds that the Petitioner’s purchase of the property in 2008 is sufficient to raise a prima facie case that the property was over-valued for the March 1, 2010, assessment date.
- d. Mr. Hoppe also argues that the Petitioner’s purchase price should be further reduced for the 2010 assessment year. *Hoppe testimony*. In support of this argument, Mr. Hoppe provided articles and graphs which he contends show that the housing market in Boone County declined approximately 10%. *Petitioner Exhibit 4*. But there is no evidence of the data upon which the authors relied and the authors of the articles were not available to describe their conclusions. While the rules of evidence generally do not apply in the Board’s hearings, the Board requires some evidence of the accuracy

⁶ Mr. Hoppe also offered five pages from an appraisal that estimated the property’s value at \$324,000 as of August 29, 2008. *Petitioner Exhibit 1*. However, Mr. Hoppe omitted key portions of the appraisal report. For example, the excerpt he offered did not certify that Mr. Holston followed Uniform Standards of Professional Appraisal Practices. More importantly, the report’s missing pages appear to contain key information about Mr. Holston’s analysis including the adjustments he made to the comparable properties in his sales comparable analysis. Thus, in light of Mr. Hoppe’s decision to omit key portions of Mr. Holston’s appraisal report, the Board gives little weight to the appraisal report.

and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Because a reduction in the median or average sale price between years may simply reflect a trend toward lower value homes selling faster than higher value homes, and because the Petitioner's evidence does not show that its home in particular declined in value during the relevant time period, the Petitioner's hearsay evidence alone is insufficient to conclude that the Petitioner's property's 2010 assessment should be further reduced from its purchase price.⁷ Thus, the Board concludes that the Petitioner raised a prima facie case that its property's 2010 assessment should not exceed its 2008 purchase price of \$324,000, but the Petitioner failed to raise a prima facie case that the assessed value of its property should be further reduced.

- e. Once the Petitioner raises a prima facie case that its property was over-valued, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- f. Here, the Respondent did not dispute that the Petitioner purchased the property in 2008 for \$324,000. *Garoffolo testimony; Respondent Exhibit 4*. Ms. Garoffolo merely argued that, because the property was bank owned, the sale was "invalid" and cannot be used to establish the subject property's market value. *Garoffolo testimony*. Mr. Hoppe, however, testified that it was not a foreclosure or short sale. *Hoppe testimony*. According to Mr. Hoppe, the Petitioner purchased the property from a relocation company, but that the family was still living in the house at the time of its sale. *Id.* Moreover, the evidence shows that the property was offered for sale on the Multiple Listing Service for over six months. *Respondent Exhibit 4*. Thus, even if the property was "bank owned" as the Respondent contends, it was widely marketed for a reasonable period of time. The Respondent presented no evidence that a bank would sell a property for less than its market value and, absent such evidence, the Board will not assume that a property's sale price reflects anything other than its market value simply because it was "bank owned."

⁷ According to the floor plans, the Petitioner's house is 1,784 square feet on the first floor, 1,000 square feet on the second floor, and the basement is 1,518 square feet; while the attached garage has 680 square feet. *Petitioner Exhibit 7*. In contrast, the property record card shows that the house is 1,912 square feet for the first floor, 1,115 square feet for the second for and the garage is 728 square feet. *Respondent Exhibit 5*. Therefore, the Board directs the Assessor to correct the dimensions of the house, basement and garage. The Board is not directing any specific change to the value of the property with this determination. The Board only orders a correction in the area of the house, basement, and garage.

- g. Ms. Garoffolo also argues the Petitioner's property was valued correctly in 2010 based on the sale prices of properties located in the subject property's neighborhood. *Garoffolo testimony*. In making this argument, the Respondent 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*, 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.*
- h. Here, the Respondent presented no evidence to show that the properties she offered were comparable to the property under appeal. She merely testified that properties in the Petitioner's neighborhood sold for prices ranging from \$122 per square foot to \$160 per square foot in 2008 and 2009. Because the Respondent made no attempt to identify or value the differences between the properties, the Respondent's sales comparable market analysis has little probative value. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that the comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. *These standards are no less applicable to assessing officials.*" 836 N.E.2d at 1082 (citations omitted and emphasis added). The Respondent, therefore, failed to rebut or impeach the Petitioner's evidence that the property was over-valued for the 2010 assessment year.

Conclusion

16. The Petitioner raised a prima facie case that its property was over-valued for the 2010 assessment year. The Respondent failed to rebut or impeach the Petitioner's evidence. The Board finds in favor of the Petitioner and holds that the value of the subject property was \$324,000 for the March 1, 2010, assessment date.

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 of the Petitioner's property should be lowered to \$324,000 for 2010.

ISSUED: November 14, 2012

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE
- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html>.