

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

Petition No.: 06-002-11-1-5-00169
Petitioner: LeRoy Jackson, Jr.
Respondent: Boone County Assessor
Parcel No.: 002-03730-01
Assessment Year: 2011

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

Procedural History

1. The Petitioner appealed the assessment of his property for 2011 with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by letter dated August 25, 2011.
2. The PTABOA issued a notice of its decision on October 13, 2011.
3. The Petitioner filed a Form 131 petition with the Board on November 18, 2011. The Petitioner elected to have his case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 26, 2012.
5. The Board held an administrative hearing on November 29, 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: LeRoy Jackson, Jr., property owner
 - b. For Respondent:¹ Lisa Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA Member

¹ Mr. David Truitt appeared as counsel for the Respondent.

Facts

7. The property under appeal is a single-family home with a detached garage and utility shed located at 2845 East 750 North, Lebanon, in Boone County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2011, the PTABOA determined the assessed value of the property to be \$22,000 for the land and \$154,900 for the improvements, for a total assessed value of \$176,900.
10. The Petitioner requested an assessed value of \$6,000 for the land and \$97,000 for the improvements, for a total assessed value of \$103,000.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
 - a. The Petitioner contends that his property was over-valued for the 2011 assessment year based on his purchase of the property. *Jackson testimony*. According to Mr. Jackson, he purchased the property under appeal on February 3, 2011, for \$103,000. *Id; Petitioner Exhibits 1, 2 and 3*. In support of this contention, Mr. Jackson submitted his settlement statement and a counter offer prepared by Keller Williams Realty. *Petitioner Exhibit 1, 2 and 3*.
 - b. Similarly, Mr. Jackson contends that the Respondent assessed his property for more than its market value-in-use based on its appraised value. *Jackson testimony*. Mr. Jackson testified that, prior to his purchase of the subject property, the bank had the property appraised twice. *Id*. The first appraisal was conducted prior to the bank listing the property for sale. *Id*. According to Mr. Jackson, he spoke with the appraiser, who estimated the property's value at \$112,000. *Id*. Mr. Jackson testified that two weeks prior to his closing, the bank had another appraisal performed on the property, which estimated the property's value at \$108,000.² *Id*.
 - c. Mr. Jackson also contends that his property was assessed too high because the house was not in a livable condition when he purchased the property. *Jackson testimony*. According to Mr. Jackson, the house had major plumbing damage, there were holes in the walls, the carpet was damaged by dogs and the house was infested with rodents. *Id*. In addition, the property had an old barn which was in very poor condition and several rotted railroad ties in the yard. *Id*.

² Mr. Jackson testified that he and Lisa Parrett, who is a realtor for Keller Williams Realty, made several attempts to get copies of the appraisals from the bank, but were unable to obtain copies of either appraisal. *Jackson testimony*.

- d. Finally, Mr. Jackson testified that his property was over-valued based on the general decline of housing prices in 2011. *Jackson testimony*. According to Mr. Jackson, in November of 2011, the national news reported that Indiana was third in the nation for foreclosures behind Florida and Pennsylvania. *Id.* Thus, Mr. Jackson argues, this supports his argument that his property's assessed value should be reduced. *Id.*

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

- a. The Respondent contends that the property under appeal was correctly assessed for the 2011 assessment year. *Garoffolo testimony*. In support of this position, the Respondent submitted a comparative market analysis and multiple listing sheets for four properties located in the area of the Petitioner's property. *Respondent Exhibit 6*. According to the Respondent, the comparable properties sold from \$68 per square foot to \$110 per square foot, or for an average of \$89 per square foot in 2009 and 2010. *Garoffolo testimony; Respondent Exhibit 6*. Ms. Garoffolo argues that if the \$89 per square foot value was applied to the Petitioner's 2,184 square foot house, the value of the Petitioner's property would be approximately \$194,400; whereas the Petitioner's property was assessed for only \$176,900. *Id.* Thus, Ms. Garoffolo concludes, the subject property was assessed below its market value for the 2011 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 shows that the sale was a "short sale" and therefore the sale is considered invalid and should not be used to establish the subject property's market value. *Garoffolo testimony; Respondent Exhibit 4*. In addition, Ms. Garoffolo argues that the subject property sold on August 17, 2007, for \$203,000 – although she admitted that the 2007 sale was also an invalid sale. *Id.*
- c. Finally, the Respondent contends that, despite the Petitioner's testimony that the house was not in a livable condition, the county's evidence shows that the house was in "pretty nice" condition at the time of the Petitioner's purchase of the property. *Garoffolo testimony*. In support of this position, the Respondent submitted eleven interior and exterior photographs of the subject property. *Respondent Exhibit 3*. In addition, Ms. Lewis and Ms. Garoffolo testified that the multiple listing sheet for the property did not state that the house was in need of repairs or that there were any problems with the property. *Lewis and Garoffolo testimony; Respondent Exhibit 4*. Thus, the Respondent concludes, the Petitioner's property was not over-valued in 2011. *Garoffolo testimony*.

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 – Chicago Title Insurance Company settlement statement, dated February 3, 2011, and warranty deed from Sheila Clark to LeRoy Jackson, Jr., dated February 3, 2011,
- Petitioner Exhibit 2 – Chicago Title Insurance Company buyer's / borrower's settlement statement, dated February 3, 2011,
- Petitioner Exhibit 3 – Counter offer prepared by Keller Williams Realty, dated January 28, 2011,
- Petitioner Exhibit 4 – Letter with contact information for Lisa Parrett,

- Respondent Exhibit 1 – Boone County appeal worksheet,
- Respondent Exhibit 2 – Property record card for the subject property,
- Respondent Exhibit 3 – Eleven interior and exterior photographs of the subject property,
- Respondent Exhibit 4 – Two multiple listing sheets for the subject property, dated April 28, 2007, and July 16, 2010, respectively,
- Respondent Exhibit 5 – Form 114, Notice of Hearing on Petition – Real Property – by County Property Tax Assessment Board of Appeals,
- Respondent Exhibit 6 – Comparative Market Analysis and multiple listing sheets for 4933 South State Road 75, Jamestown, 1180 North 500 West, Lebanon, 755 West State Road 47, Lebanon and 8150 State Road 39, Lebanon,
- Respondent Exhibit 7 – Form 115, Notification of Final Assessment Determination,
- Respondent Exhibit 8 – Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment,
- Respondent Exhibit 9 – Indiana Board of Tax Review's 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 § 6-1.1-15-17.2.³ 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. However, because the Board below finds that the best evidence of the property's value in 2011 was the Petitioner's purchase price, the Board need not analyze which party bears the burden of proof in this matter.

Analysis

15. The Petitioner provided sufficient evidence to establish that his property's assessment should be reduced to its 2011 purchase price. 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 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 contends that the subject property was over-valued in 2011 based on the property's purchase price. *Jackson testimony*. According to Mr. Jackson, he purchased the property under appeal for \$103,000. *Id.*; *Petitioner Exhibit 1*. The sale occurred on February 3, 2011, which is sufficiently close to the March 1, 2011, assessment date to be probative of the property's market value-in-use for the 2011 assessment year.
 - 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). The Assessor, however, argued that Mr. Jackson's purchase of the property was a "short sale" and therefore should not be used to value the subject property.
 - d. Market value is defined as the most probable price that a property would bring in a competitive and open market where the buyer and seller are acting prudently, knowledgably, and without undue stimulus. MANUAL at 10. Implicit in this

³ 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.

definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed or advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

Id.

- e. Despite the fact that the listing sheet identifies this property as a “possible short sale,”⁴ the property was sold by an individual – not a bank – and there was no evidence that the seller and Mr. Jackson were in any way related. *Respondent Exhibit 4*. Further, the evidence showed that the seller was represented by a realtor and the property was listed on the Multiple Listing Service – which is typically the way residential properties are sold. *Id.* Therefore the Board can infer that the property was widely advertised. Moreover, the listing sheet shows that the property remained on the market for 193 days – which suggests that the property had sufficient exposure to the market.
- f. In addition, Mr. Jackson testified that the property was appraised twice prior to its sale. *Jackson testimony*. Mr. Jackson testified that the first appraisal, valuing the property at \$112,000, was done prior to the property being listed for sale and the second appraisal, valuing the property at \$108,000, was done two weeks prior to his closing on the property. *Id.* However, Mr. Jackson testified that he could not obtain copies of the documents. *Id.* Mr. Jackson’s testimony regarding the property’s appraised values alone would not have been sufficient to establish the value of the property. But Mr. Jackson was testifying to matters in which he had personal knowledge. Thus, while the Board gives little weight to the appraised values of the property, they do tend to support Mr. Jackson’s purchase price.
- g. The Board therefore finds that the evidence Mr. Jackson purchased the subject property for \$103,000, supported by his testimony regarding the property’s appraised values, was sufficient evidence to raise a prima facie case that his property was over-valued for the March 1, 2011, assessment date.
- h. Once the Petitioner raises a prima facie case that his property was over-valued, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See*

⁴ To be precise, the MLS sheet has the notations “PossShortSale” and “ASIS,” which the Respondent testified meant the sale was a short sale and the property was sold as is.

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 his prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

- i. Here, the Respondent argues that the subject property sold on August 17, 2007, for \$203,000. *Garoffolo testimony; Respondent Exhibit 4*. Thus, Ms. Garoffolo argues, the property was not over-valued at \$176,000. However, that sale took place more three and half years before the March 1, 2011, assessment date. Without evidence relating the property's 2007 sale price to the value of the subject property in 2011, the Respondent's evidence of the property's 2007 sale has little probative weight. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (a party must explain how its evidence relates to the subject property's market value-in-use of the relevant valuation date).
- j. The Respondent also argues that the Petitioner's property was valued correctly in 2011 based on the average sale price of similar properties located in the subject property's area. *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.*
- k. But the Respondent presented no evidence to show that the properties she offered were comparable to the property under appeal. In fact, the Respondent's evidence showed that the sale prices of properties in the area ranged from \$68 per square foot to \$110 per square foot in 2009 and 2010. Thus, the Board can infer that the homes in the Petitioner's area varied a great deal. 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). Thus, the Respondent’s evidence fails to rebut or impeach the Petitioner’s prima facie case.

Conclusion

16. The Petitioner presented probative evidence that the value of his property was \$103,000 in 2011. The Respondent failed to rebut or impeach the Petitioner’s evidence. The Board therefore finds in favor of the Petitioner and holds that the value of the subject property is \$103,000 for the March 1, 2011, 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 reduced to \$103,000 for the March 1, 2011, assessment date.

ISSUED: February 21, 2013

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>.