

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

Petition Nos.: 79-017-08-1-5-00001
79-017-09-1-5-00001
Petitioners: Paul and Theresa Jacobsen
Respondent: Tippecanoe County Assessor
Parcel No.: 79-03-29-301-029.000-018
Assessment Years: 2008 and 2009

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 Petitioners appealed the assessments of their property for 2008 and 2009 with the Tippecanoe County Property Tax Assessment Board of Appeals (the PTABOA) by letter dated January 27, 2009.
2. The PTABOA issued notices of its decisions on November 23, 2010.
3. The Petitioners filed Form 131 petitions with the Board on December 31, 2010. The Petitioners elected to have their cases heard according to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated December 2, 2011.
5. The Board held an administrative hearing on January 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 Petitioners: Paul Jacobsen, property owner
 - b. For Respondent:¹ Pamela Hruska, Tippecanoe County Deputy Assessor

¹ Ms. Linda Phillips, Tippecanoe County Assessor, was also in attendance but was not sworn in as a witness to give testimony.

Facts

7. The property under appeal is a single-family home located at 5275 Grapevine Drive, West Lafayette, Tippecanoe Township, in Tippecanoe County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2008, the PTABOA determined the assessed value of the property to be \$121,600 for the land and \$421,600 for the improvements, for a total assessed value of \$543,200.
10. For 2009, the PTABOA determined the assessed value of the property to be \$121,600 for the land and \$442,000 for the improvements, for a total assessed value of \$563,600.
11. For 2008 and 2009, the Petitioners requested a total assessed value of \$448,000.²

Issue

12. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
 - a. The Petitioners contend that the Respondent assessed their property for more than its market value-in-use for 2008 and 2009. *Jacobsen testimony*. Mr. Jacobsen testified that Deborah Lewellen of Scheidt & Company, Inc., a certified appraiser, appraised the property under appeal in connection with a bank loan that the Petitioners had applied for. *Id.*; *Petitioner Exhibit 1*. The Petitioners offered one page from Ms. Lewellen's appraisal. *Petitioner Exhibit 1*. That page shows that Ms. Lewellen estimated the property's value at \$448,000 as of March 27, 2009. *Petitioner Exhibit 1*.
 - b. The appraiser used the sales comparison and cost approaches to value in appraising the property under appeal; although the portion of the appraisal report that the Petitioners submitted did not include the appraiser's cost approach analysis. *Petitioner Exhibit 1*. The excerpt from the Petitioners' appraisal contained a sales comparison grid setting forth adjustments that the appraiser made to the sales prices of three comparable properties. *Id.* Below the sales comparison grid the appraiser provided a space for a "Summary of Sales Comparison Approach." *Id.* Rather than explain the sales comparison approach in that space, however, the appraiser wrote "See Attached Addendum." *Id.* The Petitioners did not submit the addendum. *Id.*

² At the hearing, Mr. Jacobsen requested that the property's assessed value be reduced to somewhere between \$450,000 and \$460,000. *Jacobsen testimony*.

- c. The Petitioners also contend that their property is over-valued based on the general decline in property values. *Jacobsen testimony*. Mr. Jacobsen argues that it is inconceivable that the value of the Petitioners' property would increase from \$452,000 in 2007 to \$543,200 in 2008, based on the housing trends in the Lafayette area. *Jacobsen testimony*. In support of his contention, Mr. Jacobsen presented a copy of a "Journal and Courier" article, dated August 27, 2006, indicating that appreciation in residential properties in Lafayette ranked 272nd among 275 metro areas ranked by the Office of Federal housing Enterprise Oversight. *Petitioner Exhibit 2*. The article also stated that housing prices in the Lafayette Metropolitan Statistical area were just 1.2 percent higher than the previous year. *Id.* Similarly, an article from MSNBC.com showed homes in Lafayette in a "cool" market and ranked the area as 271st out of 275 metro areas in housing appreciation. *Id.* An article in USATODAY.com, dated August 31, 2006, showed that sales of homes in the Midwest were off 5.9 percent and that the median price dipped 0.6 percent to \$178,000. *Id.* Thus, Mr. Jacobsen concludes, the property under appeal is over-valued for 2008 and 2009 based on the property's 25% increase in assessed value between 2007 and 2008. *Jacobsen testimony*.

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

- a. The Respondent's representative argues that the one page excerpt from the Petitioners' 2009 appraisal should be given little weight because it does not value the Petitioners' property as of the proper valuation date. *Hruska testimony*. According to Ms. Hruska, the Petitioners' appraisal is more than two years removed from the proper valuation date of January 1, 2007, for the March 1, 2008, assessment. *Id.* Similarly, the appraisal is one year and two months removed from the proper valuation date of January 1, 2008, for the 2009 assessment year. *Id.*
- b. The Respondent's representative further argues that the Petitioners' appraisal should be given little weight because the appraiser failed to properly adjust the comparable properties she used in her sales comparable analysis. *Hruska testimony*. According to Ms. Hruska, the appraiser did not sufficiently adjust the sale prices of two comparable properties that were not located on the golf course. *Id.; Respondent Exhibit A*. In addition Ms. Hruska argues, two of the comparable properties are two-story homes; whereas the property under appeal is a one-story ranch home. *Hruska testimony; Respondent Exhibit K*. Despite the fact that the living area of two-story homes is valued differently than the living area of one-story homes, the appraiser did not adjust the sales prices of the comparable properties for this difference. *Id.* In support of this contention, Ms. Hruska submitted an analysis of homes in the Petitioners' neighborhood. *Hruska testimony; Respondent Exhibit H*. According to Ms. Hruska, the Respondent's analysis shows the median sale price of a one-story home is approximately \$168

per square foot; while the median sale price of a two-story home is approximately \$144 per square foot. *Id.* Thus, Ms. Hruska argues, one-story homes in the Petitioners' neighborhood have a higher median sale price, which the Petitioners' appraiser failed to account for in her sales-comparison analysis. *Id.*; *Respondent Exhibit K.*

- c. The Respondent's representative also disputes the Petitioners' contention that property values have fallen in the area. *Hruska testimony.* According to Ms. Hruska, Mr. Jacobsen relies on newspaper articles discussing the entire Lafayette area; rather than the sales trends in the Petitioners' neighborhood. *Id.* More importantly, Ms. Hruska argues, sales data shows that the Petitioners' neighborhood has not seen any significant decline in values. *Id.* In support of this contention, Ms. Hruska presented a "paired sales" analysis of thirteen properties that she argues proves, on average, property values held steady between 2005 and 2010 and only showed a 1% decrease in value based on the median trend factor. *Id.*; *Respondent Exhibit G.*
- d. The Respondent's representative testified however that upon preparing for the PTABOA hearing, the county discovered errors on the Petitioners' property's property record card. *Hruska testimony.* According to Ms. Hruska, the living area of the Petitioners' house and basement and the Petitioners' basement finished area were incorrectly calculated. *Hruska testimony; Respondent Exhibit F.* Further, upon inspection by Ms. Hruska, she determined the grade of the structure should be lowered from A to B+1. *Id.* The Respondent's representative contends adjusting the living area and the grade of the house, results in an assessed value of \$483,600 for 2008; rather than \$543,200. *Id.* Similarly, Ms. Hruska argues, the county believes that the assessed value of the Petitioners' property should be reduced to \$480,700 for 2009. *Id.* Thus, the Respondent requests that the Board lower the Petitioners' property's assessed value to \$483,600 for 2008 and \$480,700 for 2009. *Id.*
- e. The Respondent's representative argues that the reduced assessed values for the Petitioners' property in 2008 and 2009 reflect the property's market value-in-use for those years. *Hruska testimony.* According to Ms. Hruska, the average sales price for properties located on the golf course in the Petitioners' neighborhood was \$189.45 per square foot in 2008 and \$198.17 per square foot in 2009 and the median sales price was \$181.05 per square foot in 2008 and \$196.03 per square foot in 2009. *Id.*; *Respondent Exhibit F.* Ms. Hruska notes that if she used multiple listing service values, which includes finished basement area as living space, the average sales price per square foot of properties in the area is \$126 per square foot, while the average price per square foot of properties located on the golf course is \$116 per square foot. *Hruska testimony; Respondent Exhibit I.* Because the Petitioners' home has 4,070 square feet of living area including the finished basement, Ms. Hruska argues, the Petitioners' proposed assessment equates to \$119 per square foot for 2008 and \$118 per square foot for 2009. *Id.*

Thus, Ms. Hruska concludes, the Petitioners' property is accurately assessed for the March 1, 2008, and March 1, 2009, assessment dates. *Hruska testimony*.

- f. Finally, Ms. Hruska agreed that the Petitioners' property's assessed value increased dramatically between 2007 and 2008, but she argued it was because the county adjusted the land to reflect that the Petitioners' lot is located on the golf course. *Hruska testimony*. According to Ms. Hruska, lots located on the golf course were selling for about "twice" the amount of lots located off the golf course. *Id.* In support of this contention, Ms. Hruska submitted vacant land sales for the Winding Creek subdivision between 2004 and 2007. *Respondent Exhibit E*.

Record

14. The official record for this matter is made up of the following:

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – One page excerpt from a Uniform Residential Appraisal Report, prepared by Deborah Lewellen of Don R. Scheidt & Company, Inc., dated March 27, 2009,

Petitioner Exhibit 2 – Journal and Courier article "Lafayette homes not selling, not appreciating," dated August 27, 2006; MSNBC.com article "Hot or not? Housing markets across America," dated August 31, 2006; USATODAY.com article "Existing home sales drop 4.1% in July, median prices drop in most regions," dated August 24, 2006; and USATODAY article "Home sales decline, 1B", dated August 24, 2006,

Respondent Exhibit A – Tippecanoe County Assessor's appeal summary,

Respondent Exhibit B – Petitioners' property's property record card,

Respondent Exhibit C – Aerial map of the Petitioners' neighborhood,

Respondent Exhibit D – Four exterior photographs of the Petitioners' property,

Respondent Exhibit E – 2004 through 2007 vacant land sales in the Winding Creek subdivision,

- Respondent Exhibit F – Respondent’s analysis of market trends in the Winding Creek subdivision,
- Respondent Exhibit G – Respondent’s 2006 through 2010 average and median trending factors for the Winding Creek subdivision,
- Respondent Exhibit H – Respondent’s analysis of the average and median price per square foot of one-story and two-story homes,
- Respondent Exhibit I – Multiple listing sales analysis of the average and median price per square foot of properties in the Petitioners’ neighborhood,
- Respondent Exhibit J – Building permit list showing Petitioners’ property,
- Respondent Exhibit K – One page excerpt of the Petitioners’ Uniform Residential Appraisal Report, prepared by Don R. Scheidt & Company, Inc.,

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

d. These Findings and Conclusions.

Analysis

15. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that his 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:

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

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.

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. The Board has now issued several decisions explaining that Indiana Code § 6-1.1-15-17.2 applies to all appeals that had not been heard as of the statute's July 1, 2011, effective date. *See e.g., Echo Lake, LLC v. Morgan County Assessor*, Ind. Bd. of Tax Rev., Pet. Nos. 55-016-09-1-4-00001, *et al.* (Nov. 4, 2011); and *Stout v. Orange County Assessor*, Ind. Bd. of Tax Rev., Pet. No. 59-007-09-1-5-00001 (Nov. 7, 2011).

16. Here, the Petitioners contend that their property's value increased from \$452,000 in 2007 to \$543,200 for the 2008 assessment. *Jacobsen testimony; Form 11, Notice of Assessment of Land and Structures, attached to the Petitioners' Form 131 Petitions.* The Respondent's representative did not dispute this increase or present evidence rebutting these values. Therefore, because the property's assessed value for 2008 increased more than 5% over the property's assessed value in 2007, the assessor has the burden to prove the assessment was correct in 2008. *See* Ind. Code § 6-1.1-15-17.2.
17. For the 2009 assessment, however, the evidence shows that the property's assessment increased from \$543,200 in 2008 to \$563,600 in 2009, which is less than a 5% increase. Therefore, the Petitioners have the burden to show that their property's assessment is incorrect and the burden to prove the property's market value-in-use. *See e.g. Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 478 (a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its correct assessment should be).
18. The Respondent failed to provide sufficient evidence to establish a prima facie case that the assessed value of the Petitioners' property was correct in 2008. The Board reached this decision for the following reasons:
 - a. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See id.* A market-value-in-use appraisal prepared according to USPAP often will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b. 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). Otherwise, the evidence lacks probative value. *See*

id. (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.”). For March 1, 2008, assessments, the valuation date was January 1, 2007, and for March 1, 2009, assessments, the valuation date was January 1, 2008. *See* 50 IAC 21-3-3(b) (2009) (making the valuation date for assessments after March 1, 2005 January 1 of the year preceding the assessment date)

- c. The Respondent’s representative admitted that the Petitioners’ property was over-valued for 2008, but she contends the correct value for the property was \$483,600 based on the average sales price of properties located on the golf course in the Petitioners’ neighborhood. *Hruska testimony; Respondent Exhibits F and I.* According to Ms. Hruska, the average sale price for properties located on the golf course in the Petitioners’ neighborhood was \$189.45 per square foot. *Hruska testimony; Respondent Exhibit F.* If MLS data is used which incorporates finished basement area as living area, Ms. Hruska argues, the average price per square foot for properties located on the golf course was \$116. *Hruska testimony; Respondent Exhibit I.* The corrected value of the Petitioners’ property equates to \$183.30 per square foot, or \$119 per square foot if the finished basement is included in the living area calculation. *Hruska testimony.*
- d. 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.*
- e. Here, the Respondent presented no evidence to show that her offered properties were comparable to the property under appeal. In fact, based on the Respondent’s evidence that sale prices for properties in the Petitioners’ neighborhood ranged from \$133.93 per square foot to \$217.81 per square foot in 2006 and 2007, the Board can infer that the homes in the Petitioners’ neighbor varied a great deal. Because the Respondent’s representative made no attempt to identify or value the differences between the properties, the Respondent’s sales comparable 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).

- f. Because the Assessor failed to meet her burden of proof, the subject property’s March 1, 2008, assessment must be reduced to its previous year’s level of \$78,000 for the land and \$374,000 for the improvements, for a total assessed value of \$452,000.
19. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value their property for 2009. The Board reached this decision for the following reasons:
- a. The Petitioners argue that their property is over-valued based on the property’s appraised value. *Jacobsen testimony*. In support of this contention, Mr. Jacobsen offered evidence that, at least in some respects, follows what the Manual and Tax Court describe as being relevant to a property’s market value-in-use. Specifically, the Petitioners offered one page from an appraisal that estimated the property’s value at \$448,000. *Petitioner Exhibit 1*. The appraisal was prepared by Deborah Lewellen, a certified appraiser, and she used two generally accepted appraisal methods to estimate the property’s value – the cost and sales comparison approaches. *Jacobsen testimony; Id.*
 - b. But the Petitioners omitted key portions of Ms. Lewellen’s appraisal report. For example, the page offered did not certify that Ms. Lewellen followed Uniform Standards of Professional Appraisal Practice (USPAP). More importantly, the report’s missing pages appear to contain key information about Ms. Lewellen’s analysis. For example, in performing her sales comparison analysis, Ms. Lewellen adjusted the sale prices of her three comparable properties. Yet the summary of Ms. Lewellen’s sales comparison analysis, in which she presumably explained her adjustments, is contained in an “Attached Addendum” that the Petitioners did not submit.
 - c. Also, the appraiser estimated the subject property’s value as of March 27, 2009. *Jacobsen testimony; Petitioner Exhibit 1*. However, the valuation date for the March 1, 2009, assessment date was January 1, 2008. The Petitioners failed to show how the March 27, 2009, estimate of their property’s market value was relevant to the January 1, 2008, valuation date for the March 1, 2009, assessment date. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from

a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date). Thus, in light of the Petitioners' decision to omit key portions of Ms. Lewellen's appraisal report, the Board gives little to no weight to Ms. Lewellen's valuation opinion.

- d. Mr. Jacobsen also argues that property values are either declining or only slightly increasing in Lafayette, Tippecanoe County and, in fact, across the country. *Petitioner Exhibit 2*. Therefore, he argues, the Assessor erred by increasing the value of the Petitioners' property in 2008 and 2009. *Jacobsen testimony*. While Mr. Jacobsen provided news articles showing a decline or only a slight increase in the housing market in the Lafayette area, that evidence alone is insufficient to conclude the Petitioners' property itself declined in value. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Here, the Petitioners did not write the articles. Nor was the author present. Mr. Jacobsen submitted no evidence regarding the credibility of the data relied upon by the articles' authors or the accuracy of the conclusions drawn from the articles. Moreover, the Petitioners' evidence was from 2006. Mr. Jacobsen presented no evidence of property values in 2008 or 2009. Therefore the Board finds the Petitioners' argument to be insufficient to support a change in the property's assessment.
- e. The Petitioners therefore failed to raise a prima facie case that their property was over-assessed for the March 1, 2009, assessment year. Where a taxpayer fails to provide probative evidence that a property's assessed value should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Nonetheless, the Respondent's representative conceded that there was an error in the living area of the property's house, basement and basement finished area. *Hruska testimony; Respondent Exhibit F*. In addition, the Respondent's representative concedes that the grade of the structure should be lowered from A to B+1. *Id.* According to Ms. Hruska, adjusting the house's living area and the grade results in an assessed value of \$480,700 for the Petitioners' property for 2009. *Hruska testimony; Respondent Exhibits A and F*. The Board commends the Respondent's representative for her candor and finds that the subject property should be valued at \$480,700 for the March 1, 2009, assessment date.

Conclusion

20. The Petitioners' property's March 1, 2008, assessment increased by more than 5%, and therefore the Assessor bore the burden of proving the property's March 1, 2008, assessment was correct. The Respondent failed to raise a prima facie case that the

assessed value was correct for March 1, 2008. Therefore the property's assessment must be returned to its 2007 value, or a total assessed value of \$452,000. For 2009, however, the Petitioners had the burden to show that their property's assessed value was incorrect, which the Petitioners failed to do. Despite the Petitioners' failure to raise a prima facie case, the Respondent agreed that the subject property's assessment was over-valued in 2009. The Board, therefore, accepts the Respondent's concession and finds that the subject property's assessment should be reduced to \$480,700 for the March 1, 2009, assessment.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed values of the Petitioners' property should be changed.

ISSUED: _____

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>.