

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

Petitions: 50-005-12-1-5-00055
50-005-12-1-5-00057
50-005-13-1-5-00022
50-005-13-1-5-00023
Petitioner: Tammy Jaworski
Respondent: Marshall County Assessor
Parcels: 50-43-07-000-095.000-005
50-43-07-000-096.000-005
Assessment Years: 2012 and 2013

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

Procedural History

1. Tammy Jaworski (the “Petitioner”) initiated the 2012 assessment appeals with the Marshall County Property Tax Assessment Board of Appeals (the “PTABOA”) on October 29, 2012. The Petitioner initiated the 2013 appeals on September 30, 2013.
2. The PTABOA issued notice of its determinations on the 2012 appeals on September 25, 2013. The PTABOA issued its determinations on the 2013 appeals on December 4, 2013.¹
3. The Petitioner filed the Form 131 petitions for 2012 with the Board on November 6, 2013 and the Form 131 petitions for 2013 on January 13, 2014. The Petitioner elected to have all of the appeals heard under the Board’s small claims procedures.
4. The Board issued notices of hearing to the parties on September 19, 2014.
5. On November 19, 2014, Ellen Yuhan, the Administrative Law Judge appointed by the Board (the “ALJ”), held the administrative hearing. The ALJ did not inspect the subject property.

¹ The “Date Notification mailed” field on the 2013 determination for Parcel No. 50-005-13-1-5-00022 was left blank. Since the 2012 determinations for both parcels were issued on the same date, the Board will assume the undated 2013 determination was issued concurrently with the 2013 determination for the other parcel, which is dated December 4, 2013.

6. Tax representative Sharon LeVeque was sworn and presented testimony on behalf of the Petitioner. Debra A. Dunning, Marshall County Assessor (the “Respondent”) and Mindy Penrose, Deputy Assessor, were sworn and presented testimony on behalf of the Respondent.

Facts

7. The subject property is a single-family dwelling on two parcels located at 4822 West Shore Drive in Bremen
8. The assessed values for parcels 50-43-07-000-095.000-005 (“095”) and 50-43-07-000-096.000-005 (“096”) for assessment years 2011, 2012, and 2013 are as follows:

Parcel	Year	Land	Improvements	Total
095	2011	139,400	8,600	148,000
095	2012	108,500	11,500	120,000
095	2013	104,300	11,000	115,300
096	2011	148,800	55,700	204,500
096	2012	108,400	65,400	173,800
096	2013	103,900	63,100	167,000

9. The Petitioner requested a total assessment of \$242,000 for each year.²

Record

10. The official record contains the following:
 - a. A digital recording of the hearing,
 - b. Petitioner Exhibit A1-A4 – Notices of Hearing,
 Petitioner Exhibit B1-4 – Subject property record cards (PRCs),
 Petitioner Exhibit C1-12 – Real Estate Value Estimate,
 Petitioner Exhibit D1-5 – Multiple Listing Service (MLS) Report and PRC for 4006 Liberty Street,
 Petitioner Exhibit D6-11 – MLS report and PRC for 4016 Liberty Street,
 Petitioner Exhibit D12 – Map from the Beacon website for 4016 Liberty Street,
 Petitioner Exhibit D13-17 – MLS report and PRC for 4858 West Shore Drive,
 Petitioner Exhibit D18-20 – MLS report and PRC for 3654 West Shore Drive,
 Petitioner Exhibit D21-23 – MLS report and PRC for 4345 Lake Shore Drive,

² The Petitioner uses the parcels as one property and is seeking a total assessment of \$242,000 for each year.

Petitioner Exhibit D24-D30 – MLS report and PRC for 3608 West Shore Drive,
Petitioner Exhibit D31-D33 – PRCs for 3624 West Shore Drive,
Petitioner Exhibit D34-D36 – PRCs for 4010 West Shore Drive,
Petitioner Exhibit D37-D41 – PRCs for 4016 Liberty Street,
Petitioner D42 – Map from the Beacon website for 4016 Liberty Street,
Petitioner Exhibit D43-D45 – PRCs for 4006 Liberty Drive,
Petitioner Exhibit E1-E41 – Rebuttal to Respondent Exhibit 13,

For the 2012 appeal:

Respondent Exhibit 1 – Exchange of Evidence Request,
Respondent Exhibit 2 – Intent to file Form 130, Form 138 Defect Notice, and Power of Attorney
Respondent Exhibit 3 – Letter and e-mail to Petitioner requesting informal conference,
Respondent Exhibit 4 – Form 115 and Minutes of PTABOA hearing for parcel 095,
Respondent Exhibit 5 – Form 115 and Minutes of PTABOA hearing for parcel 096,
Respondent Exhibit 6 – PRC for key 095,
Respondent Exhibit 7 – PRC for key 096,
Respondent Exhibit 8 – Form 131 for key 095,
Respondent Exhibit 9 – Form 131 for key 096,
Respondent Exhibit 10 – Photograph of subject property,
Respondent Exhibit 11 – Aerial photograph of two contiguous lots,
Respondent Exhibit 12 – Marshall County Land Order,
Respondent Exhibit 13 – Spreadsheet comparing subject property to seven comparable sales,
Respondent Exhibit 14 – Aerial photograph of subject and comparable sales,
Respondent Exhibit 15 – Sales disclosure form, PRC, and map for 4215 Lake Shore Drive,
Respondent Exhibit 16 – Sales disclosure form, PRC, and map for 9036 Birch Road,
Respondent Exhibit 17 – Sales disclosure form, PRC, and map for 3654 West Shore Drive,
Respondent Exhibit 18 – Sales disclosure form, PRC, and map for 3253 Lake Shore Drive,
Respondent Exhibit 19 – Sales disclosure form, PRC, and map for 3966 West Shore Drive,
Respondent Exhibit 20 – Sales disclosure form, PRC, and map for 3961 Lake Shore Drive,
Respondent Exhibit 21 – Sales disclosure form, PRC, and map for 3794 West Shore Drive,
Respondent Exhibit 22 (rebuttal) – Correction of Petitioner Exhibit C9 for 2012,
Respondent Exhibit 23 (rebuttal) – Correction of Petitioner Exhibit C9 for 2013,
Respondent Exhibit 24 (rebuttal) – PRC for 50-43-06-000-284.000-005,

For the 2013 appeal:

- Respondent Exhibit 1 – Exchange of Evidence Request,
- Respondent Exhibit 2 – Intent to file From 130 and Power of Attorney
- Respondent Exhibit 3 – Letter to Petitioner with corrected assessed values,
- Respondent Exhibit 4 – Form 115 and Minutes of PTABOA hearing for parcel 095,
- Respondent Exhibit 5 – Form 115 and Minutes of PTABOA hearing for parcel 096,
- Respondent Exhibit 6 – PRC for key 095,
- Respondent Exhibit 7 – PRC for key 096,
- Respondent Exhibit 8 – Form 131 for key 095,
- Respondent Exhibit 9 – Form 131 for key 096,
- Respondent Exhibit 10 – Photograph of subject property,
- Respondent Exhibit 11 – Aerial photograph of two contiguous lots,
- Respondent Exhibit 12 – Marshall County Land Order,
- Respondent Exhibit 13 – Spreadsheet comparing subject property to eleven comparable sales,
- Respondent Exhibit 14 – Aerial photograph of subject and comparable sales,
- Respondent Exhibit 15 – Sales disclosure form, PRC, and map for 4532 West Shore Drive,
- Respondent Exhibit 16 – Sales disclosure form, PRC, and map for 3253 Lake Shore Drive,
- Respondent Exhibit 17 – Sales disclosure form, PRC, and map for 3961 Lake Shore Drive,
- Respondent Exhibit 18 – Sales disclosure form, PRC, and map for 3654 West Shore Drive,
- Respondent Exhibit 19 – Sales disclosure form, PRC, and map for 3794 West Shore Drive,
- Respondent Exhibit 20 – Sales disclosure form, PRC, and map for 3923 Lake Shore Drive,
- Respondent Exhibit 21 – Sales disclosure form, PRC, and map for 3483 Lake Shore Drive,
- Respondent Exhibit 22 – Sales disclosure form, PRC, and map for 3395 Lake Shore Drive,
- Respondent Exhibit 23 – Sales disclosure form, PRC, and map for 3471 Lake Shore Drive,
- Respondent Exhibit 24 – Sales disclosure form, PRC, and map for 3753 Lake Shore Drive,
- Respondent Exhibit 25 – Sales disclosure form, PRC, and map for 4089 Lake Shore Drive,

- Board Exhibit A – Form 131 Petitions,
- Board Exhibit B – Notices of Hearing, dated September 19, 2014,
- Board Exhibit C – Hearing sign-in sheet.

c. These Findings and Conclusions.

OBJECTIONS

11. The Respondent objected to Petitioner's Exhibits B1-B4, the subject property record cards, because the values were for 2014 and not the years under appeal. The Respondent's objection goes more to the weight of the evidence and not the admissibility. The ALJ admitted the exhibits over the objection.

Burden

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to the rule.
13. First, Ind. Code § 6-1.1-15-17.2 (a) "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Under Ind. Code § 6-1.1-15-17.2(b), "the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indianan board of tax review or to the Indiana tax court."
14. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code 6-1.1-15." Under those circumstances:

If the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.
15. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, to include the above burden-shifting language. The change applies to all appeals pending before the Board. *See P.L. 97-2014*.
16. Because the assessed value for parcel 095 decreased between 2011 (\$148,000) and 2012 (\$120,000), and because the assessed value for parcel 096 decreased between 2011 (\$204,500) and 2012 (\$173,800), the Petitioner had the burden of proving that the 2012

assessments were incorrect. The burden with regard to the 2013 assessed values depends on the resolution of the 2012 matters and will be addressed in turn.

Contentions

17. Summary of the Petitioner's case:

a. The Petitioner contends that the subject property is over-valued based on sales of similar properties. In support of this contention, the Petitioner submitted a real estate value estimate with five sales of lakefront properties and one assessment of a lakefront property. Ms. LeVeque testified that she adjusted the six comparable properties for differences in lot sizes, living areas, garage sizes, exterior features, central air systems and fireplaces. The value estimate for the subject property is \$242,000. *LeVeque testimony; Petitioner Exhibits C1-12.*

b. With regard to the proposed comparable sales discussed herein, the following adjustment amounts were applied consistently among those properties as necessary:

- Lot: \$1,300 per front foot
- Living area: \$15 per square foot
- Garage size: \$2,500 per car
- Exterior features: \$4.25 difference
- Central air or fireplace: \$2,000
- Enclosed porch: \$10 per square foot
- Year-built: \$2,000 per 10 years

Exhibit C3.

c. Proposed comparable property #1 is located at 4006 Liberty Street in Bremen. It consists of two parcels and it sold for \$190,000 in July of 2012. Adjustments for differences were made consistent with the amounts enumerated above. *Exhibits C1-12, D1-5.*

d. Proposed comparable property #2 is located at 4015 Liberty Street in Bremen. It consists of two parcels. Ms. LeVeque stated that she put the most weight on this proposed comparable because of its similarities to the subject property. Adjustments for differences were made consistent with the amounts enumerated above. *LeVeque testimony; Petitioner Exhibits C1-12, D6-11.*

e. Proposed comparable property #3 is located at 4858 West Shore Drive in Bremen. It is assessed at \$227,720. Ms. LeVeque contends such an assessment amount indicates the market is driven by lakefront footage. The property is currently listed at \$275,000. Adjustments for differences were made consistent with the amounts enumerated above. *LeVeque testimony; Petitioner Exhibits C1-12, D13-17.*

- f. Proposed comparable property #4 is located at 3654 West Shore Drive in Bremen. It sold for \$215,000 in January of 2011. The sale included a maintenance-free aluminum pier. Ms. LeVeque personally inspected the property and made a condition adjustment because the interior had been completely redone. Adjustments for differences were made consistent with the amounts enumerated above. *LeVeque testimony; Petitioner Exhibits C1-12, D18-20.*
- g. Proposed comparable #5 is located at 4345 Lakeshore Drive in Bremen. Ms. LeVeque contends that she made an age adjustment with regard to this property because it is 17 years older than the subject property. The property sold for \$182,000 in 2007 and sold again for \$143,400 in 2009. Ms. LeVeque contends that such decrease in sale price emphasizes a decline in the housing market during that period. Adjustments for differences were made consistent with the amounts enumerated above. *LeVeque testimony; Petitioner Exhibits C1-12, D21-23.*³
- h. Proposed comparable #6 is located at 3608 West Shore Drive. Ms. LeVeque contends this property was included, not so much as a comparable, but to show the Assessor's front foot adjustment is not what the market is commanding. This property has 90 feet of lake frontage which is \$1,389 per foot without any improvements. If the improvements of \$56,300 are deducted from the sale price, the land value is \$68,700, or \$763.33 a front foot. Ms. LeVeque contends she placed no weight on this sale because it was outside the time frame but it should be considered in this analysis as the time adjustment shows no appreciation. Adjustments for differences were made consistent with the amounts enumerated above. *LeVeque testimony; Petitioner Exhibits C1-12, D24-27.*
- i. The Petitioner contends that the evidence shown in Respondent's Exhibit 13 is misstated, miscalculated, and invalid for the following reasons:
- Sale #1 was a property purchased on a 100% land contract for the purpose of declaring a homestead. It sold for \$1,523 per front foot.
 - Sale #2 refers to a property built during the "real estate bubble" and should not be used as a comparable.
 - Sale # 3 shows an incorrect improvement value. The Respondent shows the 2012 improvements valued at \$94,500.⁴ According to the PRC, the improvement for 2012 is \$131,600. This lot has only 40 feet of frontage and is not comparable to the subject property.
 - Sale #4 occurred on January 28, 2011. The Respondent indicates a sale price of \$215,000. The Petitioner contends the seller paid \$10,000 in points

³ Comparables 1, 4, and 5, had large lot size adjustments because they had significantly less lakefront footage.

⁴ Respondent's Exhibit 13 actually shows an improvement value of \$125,100 for March 1, 2013.

resulting in an actual sale price of \$205,000. Ms. LeVeque visited this property and contends that the seller totally remodeled it. She used the Craftsman cost approach to calculate a replacement value of \$93,280. Subtracting the \$93,280 replacement cost from the sale price of \$205,000 results in a land value of \$111,720, or \$2,031 per front foot for the 55 feet of frontage.

- Sale # 5 is not a valid sale. The sale involves a land contract where 100% of the purchase price was financed. This is merely a strategy for obtaining a homestead credit. It is a private sale with no exposure time. There was also a transfer to a family member in 2012 after the first sale in 2011.
- Sale #6 shows an incorrect improvement value of \$59,200. On the day of sale, the improvements were assessed at \$61,300.
- Sale #7 shows an incorrect improvement value of \$35,500.⁵ On the day of sale, the improvements were assessed at \$36,600.
- Sale #8 was a private sale and shows an incorrect improvement value of \$19,100. On the day of sale, the improvements were assessed at \$19,800.
- Sale #9 shows an incorrect improvement value of \$42,400. On the day of sale, the improvements were assessed at \$43,800.
- Sale #10 was a private sale and shows an incorrect improvement value of \$85,400. On the day of sale, the improvements were assessed at \$91,000.
- Sale #11 was a private sale and the improvement value is incorrect.⁶
- The Respondent left out the sale of parcel 50-42-01-000-155.000-009. The \$2,170 per frontage foot appears to be correct for the 2011 sale. However, the property sold again on March 15, 2012 at \$1,949 per front foot. The latter sale carries more influence for the 2012 assessment because it sold only 15 days after the March 1, 2012 assessment date.
- The Respondent left out the sale of parcel 50-42-01-000-048.000-009. The property was assessed at \$1,695 per front foot on the day of the 2009 sale. Ms. LeVeque used a Craftsman cost approach which resulted in a land value of \$1,580 per front foot.
- The Respondent only used sales that would have a higher front foot price with 40 and 50 front foot lots, while the subject property has 102 front feet on the water. The smaller lots are not comparable.

LeVeque testimony; Petitioner Exhibits E1-41.

- j. Ms. LeVeque testified that she was unable to attend the PTABOA hearing for the 2013 appeals because it was scheduled on a Saturday. According to Ms. LeVeque, she told Ms. Dunning over a year ago that she could not attend Saturday hearings. She gave Ms. Dunning dates when she would be available to attend the PTABOA hearing. The county scheduled the hearing for Saturday, November 16, 2013. Ms. LeVeque contends, because of the number of IBTR hearings she had, she did not

⁵ Respondent's Exhibit 13 actually shows an improvement amount of \$35,400 as opposed to \$35,500.

⁶ Ms. LeVeque does not indicate in her testimony what the correct value should be.

request a continuance 20 days before the hearing as required, but she did give the county a 14-day notice. By the time she received the county's denial of the continuance, it was too late to get the evidence submitted 10 days before the hearing. *LeVeque testimony.*

18. Summary of the Respondent's case:

- a. Ms. Dunning testified that Ms. LeVeque requested that any PTABOA hearings on properties she appealed be held after April 1, 2013. On December 27, 2012, Ms. Dunning sent a letter to Ms. LeVeque addressing that issue and requesting that she submit her proposed values, evidence and offer a time for inspection for the appealed parcels. Ms. Dunning explained that the Indiana Code states specific times and deadlines for county assessors to follow to fairly and equitably review all appeals and, because of that, Marshall County would not be able to grant her extended time. Ms. Dunning requested Ms. LeVeque respond to the letter in order to attempt to resolve any issues and told her if she did not respond the PTABOA would have no choice but to schedule her hearings. Ms. LeVeque did not respond. *Dunning testimony; Respondent Exhibit 3.*
- b. Ms. Dunning testified that at the PTABOA hearing Ms. LeVeque stated her only issue was with the land values. Ms. LeVeque requested \$1,700 per front foot. That is the only correspondence the county had with Ms. LeVeque regarding the issue. Ms. Dunning prepared her case based on the land value. *Dunning testimony; Respondent Exhibit 4.*
- c. According to Ms. Dunning, the assessed value is correct and equitable. For the 2012 appeal, she submitted PRCs, sales disclosure forms, and a spreadsheet for seven properties that sold in 2009 and 2011. For a land value based on those sales, Ms. Dunning calculated the median price per square foot and the median price per front foot by extracting the assessed value of the improvements from the sale prices. The median price per front foot is \$2,955 and the average price per front foot is \$3,071. The subject's land assessment divided by the front footage is \$2,126, which is lower than the median and the average of the sales. It shows the land is not over-assessed and the price per front foot is based on comparable sales. *Dunning testimony; Respondent Exhibits 13-21.*
- d. For 2013, Ms. Dunning submitted the PRCs, sale disclosure forms, and a spreadsheet of 11 properties that sold in 2010-2012. The median price per frontage foot is \$2,815 and the average price per front foot is \$2,744. In comparison, the land assessment for both subject lots is \$208,200 or \$2,041 per front foot. *Dunning testimony; Respondent Exhibits 13-25.*
- e. On the Petitioner's Real Estate Value Estimate, there are very large adjustments for lot sizes and other items causing gross adjustments to be approximately 46% to 57%.

The Respondent contends that there should have been better sales closer to the assessment date. *Penrose testimony; Petitioner Exhibits C1-3.*

- f. According to Ms. Penrose, comparables 1, 2, and 6 from the Real Estate Value Estimate were used in that estimate and also on the large lot adjustment sheet. However, all three of those comparables have discrepancies between the two exhibits. Comparable 1 in the Real Estate Value Estimate is 68 feet by 88 feet. In the large lot adjustment it is 67 feet by 88 feet. Comparable 2 is 105 feet by 83 feet in one estimate and 105 feet by 80 feet in the other estimate. Comparable 6 differs by three feet as well. Further, only some of the comparables from the Real Estate Value Estimate were used in the large lot adjustment. The Respondent contends that the Petitioner is picking and choosing comparables accordingly. *Penrose testimony; Petitioner Exhibits C1-2, C9.*

- g. The Respondent contends that if the Petitioner would have used the other two sales from the Real Estate Value Estimate and looked at the sales the county used to establish market value prior to the March 1, 2012 assessment date, the median price per front foot would have been different. On Respondent's Exhibit 22 (rebuttal), the first grid down to line 6 is a copy of the large lot adjustment as shown in Petitioner Exhibit C9. The area highlighted in lavender shows the incorrect numbers found. Further, lines 8 and 9 are sales that were used in the Real Estate Value Estimate that were not originally in the large lot adjustment. Such corrections would change the median price per front foot to \$2,691 for 2012. The same calculation for 2013 results in a median price per front foot of \$2,204. The subject property is currently assessed at \$2,085 per front foot for one parcel and \$2,170 per front foot for the other parcel. *Penrose testimony; Respondent Rebuttal Exhibits 22, 23; Petitioner Exhibits C-2, C9.*

- h. On the large lot adjustment sheet, the Petitioner contends the median is the average of lines 3 and 4. A median is calculated by arranging all of the numbers in ascending order and identifying the middle number. There are five numbers listed and, therefore, the median would be the third or middle number, which in this case would be \$1,435, not \$1,300. Using the incorrect median makes all of the lot size adjustments on the Real Estate Value Estimate incorrect. Therefore, all of the indicated values on that document are incorrect. *Penrose testimony; Petitioner Exhibits C1-C3.*

- i. Petitioner's Exhibit C-8 lists time adjustments. The Petitioner used the sale of 4016 Liberty Street as her comparable #2. That property sold on October 2, 2006 for \$200,000 and then in January 2008 for \$230,000. The property was not used in the time adjustment sheet. If it had been included, it would have shown an appreciation of \$2,100 per month. The property at 3654 West Shore Drive is another sale that was not included in the time adjustment sheet. That property sold in June of 2005 for \$188,000 and then again in January of 2011 for \$214,900, which indicates an appreciation of \$340 per month. *Penrose testimony; Petitioner Exhibit C8.*

- j. The Petitioner's PRCs shown in Petitioner's Exhibits D1-D45 are from the 2014 assessment and do not show the correct depreciation and the improvements from 2014. They have nothing to do with the 2012 and 2013 assessment years. They only show the total values. *Penrose testimony; Petitioner Exhibits D1-D45.*
- k. The Petitioner claims that the sale at 3654 West Shore Drive was for \$215,000 less \$10,000 in points paid by the seller. The Respondent claims that the points paid equaled \$100, not \$10,000. *Penrose testimony; Petitioner Exhibits E1, E14.*
- l. The property on Petitioner's Exhibit E-41, line 2, is a non-buildable lot. Rather, it is an easement owned by four individuals and used by people on that street for access to Lake of the Woods. It is not comparable to the subject property. *Penrose testimony; Respondent Rebuttal Exhibit 24.*
- m. The Real Estate Value Estimate has multiple errors throughout. For example, there are incorrect assessed values, incorrect adjustments and lot sizes, incorrect assessment years, and an incorrect method of calculating a median value. With so many inaccuracies throughout the Real Estate Value Estimate, the credibility of Exhibit C, and all of the Petitioner's exhibits, is in question. *Penrose testimony.*

Analysis

- 19. The Petitioner failed to make a prima facie case that the assessed value is incorrect for the 2012 assessment. The Board reached this decision for the following reasons:
 - a. For 2012, 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 a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. Other kinds of permissible evidence include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b. Regardless of the type of evidence, a party must explain how its evidence relates to the required 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 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). The valuation date for a 2013 assessment is March 1, 2013. *Id.* Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.

- c. The Petitioner presented a Real Estate Value Estimate prepared by Ms. LeVeque. Ms. LeVeque estimated the value of the property at \$242,000 as of March 1, 2012 and March 1, 2013. Ms. LeVeque used the sales of five properties and the assessed value of one property to reach her estimate of value. According to Ms. LeVeque, she adjusted the comparable properties for the differences in lot size, living area, age, and exterior features, among others.
- d. The largest adjustments to the comparable properties are for differences in lot size. In support for her lot size adjustment, Ms. LeVeque submitted a spreadsheet comprised of five sales. Only one of the sales was in the appropriate time frame for the March 1, 2012 assessment date and two were in the appropriate time frame for the 2013 assessment. In fact, one of the properties, 4016 Liberty, sold in 2008, four years before the 2012 assessment date. More recent sales in 2011 could have been used to establish land value as was shown in Respondent's Exhibit 13. Additionally, as the Respondent pointed out, Ms. LeVeque calculated the median price per front foot incorrectly. The value that should have been used for her land adjustments was \$1,435 per front foot, not \$1,300 per front foot.
- e. Ms. LeVeque argued that the year built adjustment should be \$2,000 per every 10 years. Her analysis, as indicated on Petitioner Exhibit C-10, indicates that adjustment could range from \$0 per year to \$1,500 per year. Again, Ms. LeVeque calculated the median incorrectly. When considering the values from the analysis, the median is the average of \$279 and \$546.88, or \$412.94 per year, or \$4,129 for every 10 years.
- f. Finally, while the adjustments in the Petitioner's sales comparison may not differ significantly from those made by a certified appraiser in an appraisal report, an appraiser typically certifies that its appraisal complies with Uniform Standards of Professional Appraisal Practice ("USPAP"). In this case, nothing shows whether or not the sales comparison was prepared in compliance with USPAP. Because of this and the errors cited herein, the Board finds that the sales comparison is insufficiently reliable to be probative of the property's market value-in-use. Consequently, the sales comparison does not support a decrease in the assessment.
- g. The Board's proceedings are conducted *de novo*. The PTABOA's conduct did not hinder the Petitioner's ability to present relevant evidence and argument during the Board's hearing. *See Ind. Code* § 6-1.1-15-4.
- h. The Petitioner failed to make a prima facie case that the assessed values for 2012 are incorrect. Because the Petitioner failed to prove the incorrectness of the assessments at issue, the Respondent's duty to prove the correctness of the assessments with substantial evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003). Consequently, the Board orders no change for 2012.

- i. Because the Board orders no change for 2012, and the assessed value of neither parcel increased by more than 5% between 2012 and 2013, the Petitioner also has the burden of proof for the 2013 assessment year. The Petitioner relied on the same evidence and arguments for 2013 as she did for 2012, and the Board reaches the same conclusion. The Petitioner failed to make a prima facie case that the assessed values for 2013 are incorrect. Consequently, the Board orders no change for 2013.

Final Determination

20. The Petitioner failed to establish a prima facie case that the assessments were incorrect. Accordingly, the Board finds for the Respondent and the 2012 and 2013 assessed values will not be changed.

ISSUED: February 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 after 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>>.