

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

Petition No.: 09-020-11-1-1-00001
Petitioner: David Martin
Respondent: Cass County Assessor
Parcel No.: 09-09-30-100-019.000-020
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 Cass County Property Tax Assessment Board of Appeals (the PTABOA) on September 6, 2011.
2. The PTABOA issued a notice of its decision on May 4, 2012.
3. The Petitioner filed a Form 131 petition with the Board on June 6, 2012. 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 January 11, 2013.
5. The Board held an administrative hearing on February 14, 2013, 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: David Martin, property owner
 - b. For Respondent: Cathy Isaacs, Cass County Assessor
James Morris II, valuation witness

Facts

7. The property under appeal is a single-family home located at 6106 South County Road 800 East, Walton, in Cass 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 \$88,800 for the land and \$581,400 for the improvements, for a total assessed value of \$670,200.
10. The Petitioner requested an assessed value of \$88,800 for the land and \$412,000 for the improvements, for a total assessed value of \$500,800.

Contentions

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
 - a. The Petitioner testified that he agrees with the county's assessed value of the land for 2011. *Martin testimony*. Mr. Martin, however, disputes the assessed value of his home. *Id.* According to Mr. Martin, the "great recession" disconnected the link between the construction cost and the market value-in-exchange of larger homes in Cass County and homes in general across the country. *Id.* Mr. Martin testified that the typical home sold in Cass County is a ranch style home with approximately 1,500 square feet of living area. *Id.* Therefore, homes with 5,562 square feet or more are considered "white elephants" in the local market with limited buyers. *Id.* Based on his house's 9,398 square feet size, Mr. Martin concludes, his home should be assessed for \$412,000 in 2011. *Id.*
 - b. Mr. Martin further contends that his property was over-valued in 2011 based on the assessed values of other houses in the county. *Martin testimony*. In support of his contention, Mr. Martin submitted property record cards of four properties. *Petitioner Exhibits 2-5*. According to Mr. Martin, the house located at 11 Stoneridge in Logansport, which is assessed for \$455,000, is a "marginally" larger home with similar finishes as his house. *Petitioner Exhibit 2*. The house located at 9370 East County Road 950 South in Galveston, which is assessed for \$506,600, is similar in size and finishes. *Petitioner Exhibit 3*. The house located at 15 Stoneridge in Logansport, which is assessed for \$401,900, is slightly smaller in size with similar finishes. *Petitioner Exhibit 4*. And the house located at 6969 East Logansport Road in Logansport, which is assessed for \$360,400, is smaller in size and is located in the same school district as the subject property.¹ *Petitioner Exhibit 5*. Mr. Martin argues that while the comparable properties may vary in lot size, home size and finishes from the subject property, such differences generally do not make a significant difference to a potential buyer looking for a large home in Cass County. *Martin testimony*. Thus, Mr. Martin concludes, the assessed values of the comparable properties support his argument that his house's value was over-assessed. *Id.*

¹ Mr. Martin contends that a "real estate ad" listed the 6969 East Logansport Road home with 10,000 square feet, however, the county's property record card shows the home with 5,562 square feet. *Martin testimony; Petitioner Exhibit 5*.

- c. Similarly, the Petitioner contends that his property's assessed value was overstated based on the listing prices of two properties in the county. *Martin testimony*. In support of this position, Mr. Martin submitted multiple listing sheets for 6969 East Logansport Road in Logansport and 5101 Canterbury Lane in Logansport. *Id.* According to Mr. Martin, 6969 East Logansport Road, which is listed for \$489,900, is superior to his property. *Martin testimony; Petitioner Exhibit 6*. Mr. Martin testified that the property is located in the same school district as the subject property and, although it has less land, the property has a swimming pool and a horse barn with an apartment. *Martin testimony; Petitioner Exhibit 6*. In addition, Mr. Martin testified, the property located at 5101 Canterbury Lane, which is listed for \$399,000, is similar to his house in size and amenities. *Martin testimony; Petitioner Exhibit 7*. Thus, Mr. Martin argues, his property is valued higher than a superior property and a similar property in the county. *Id.* In fact, Mr. Martin testified that only one "high-end" home has sold in Cass County during the relevant time period. *Martin testimony*. According to Mr. Martin, it was smaller than the subject property, and it sold for \$435,000 in 2010. *Martin testimony*.
- d. Finally, Mr. Martin contends that the assessor reduced the 2012 assessment on his home to approximately \$450,700. *Martin testimony*. Thus, Mr. Martin argues, the reduction of his house's assessed value in 2012 demonstrates that the 2011 assessed value of his home was over-stated. *Id.*

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

- a. The Respondent's witness, Mr. Morris, contends that the property under appeal was correctly assessed for the 2011 assessment year. *Morris testimony*. In support of this position, the Respondent submitted an assessment comparison analysis, and property record cards and photographs for six comparable properties located in Clay, Miami and Jackson Townships. *Respondent Exhibits R-2 and R4 – R9*. Mr. Morris testified that all six homes are of similar "quality." *Morris testimony*. The sizes of the homes ranged from 6,112 square feet to 9,968 square feet and the grade factors ranged from B to A for the houses. *Morris testimony*. Prior to making any adjustments, Mr. Morris testified, the comparable properties' assessed values ranged from \$53.61 per square foot to \$70.29 per square foot, with a median assessed value of \$66.29 per square foot; whereas the Petitioner's property was assessed for only \$61.86 per square foot. *Morris testimony; Respondent Exhibits R1 and R2*.
- b. Mr. Morris testified that he adjusted the six comparable properties for the properties' location, grade and design, age, above grade living area, plumbing fixtures, basement size, basement finish, size of garage and carport, fireplaces, and extra "outbuildings" using the schedules set forth in the REAL PROPERTY GUIDELINES – VERSION A (Guidelines). *Morris testimony; Respondent R1 and R2*.
- c. First, Mr. Morris testified, he adjusted the properties to account for the differences in their locations. *Morris testimony*. For example, the trending factor of the subject

- property's neighborhood was 1.09, while the trending factor for 3904 East 375 North property's neighborhood was 0.92. *Id.* Thus, Mr. Morris testified, he subtracted the Petitioner's property's 1.09 trending factor from the comparable property's 0.92 trending factor, resulting in a difference of 0.17. *Id.* Multiplying the 0.17 trending factor by the comparable home's assessed value of \$463,000, results in a positive adjustment to the comparable property of \$78,710. *Id.* Mr. Morris testified that the location adjustment only applies to the assessed value of the house – not the land. *Id.* And if the comparable properties' neighborhood factor is larger than the subject property's neighborhood factor, the location adjustment would be a negative adjustment. *Morris testimony; Respondent Exhibit R1.*
- d. The next adjustment Mr. Morris made was an adjustment for the grade and design of the properties. *Morris testimony.* According to Mr. Morris, the grade factors are shown in the Guidelines on Appendix C, schedule F on page 9. *Id.; Respondent Exhibit R12.* For example, the Petitioner's house is an A grade structure which receives a 150% cost adjustment, but the comparable property located at 7 Waters Edge Court has a B+2 grade house which receives a 140% cost adjustment. *Morris testimony; Respondent Exhibits R1 and R2.* Thus, Mr. Morris testified, he multiplied the 10% difference in cost adjustments related to the properties' grades by the comparable home's assessed value of \$450,500, which resulted in a positive adjustment of \$45,050. *Id.*
- e. Similarly, Mr. Morris testified, he calculated the difference in age between the properties by comparing the physical depreciation being applied to each structure. *Morris testimony.* According to Mr. Morris, the Petitioner's house was built in 2011, so it received no physical depreciation in 2011. *Morris testimony; Respondent Exhibits R1 and R2.* But, for example, the comparable property located at 15 Stoneridge was constructed in 1989 and was receiving 8% physical depreciation. *Id.* Thus, Mr. Morris testified, he subtracted the comparable property's physical depreciation from the subject property's physical depreciation (*i.e.* $0.08 - 0 = 0.08$) and then multiplied by the comparable property's assessed value of \$429,600, resulting in an age adjustment of positive \$34,368. *Id.*
- f. Mr. Morris also adjusted the comparable properties' values based on the properties' differences in above grade living area. *Morris testimony; Respondent Exhibits R1 and R2.* According to Mr. Morris, the comparable houses larger than the subject property received a negative adjustment; whereas the comparable houses smaller than the Petitioner's home received a positive adjustment. *Id.* In order to calculate the adjustment, Mr. Morris testified that he first added up all costs that make up the costs of the above grade area, such as heating adjustments, finished living area and exterior features, and then divided that assessed value by the finished living area size to arrive at price per square foot. *Id.* The price per square foot was then applied to the difference in above grade living area between the Petitioner's home and the comparable home. *Id.* For example, the property located at 3904 East 375 North has \$214,600 in above grade living area features and 3,694 square feet of living area,

which equals \$58.09 per square foot. *Id.* The above grade living area of the Petitioner's home is 1,335 square feet larger than the house located at 3904 East 375 North and so Mr. Morris testified that he multiplied the \$58.09 per square foot cost by the 1,335 square foot difference, resulting in a positive adjustment of \$77,550 to the assessed value of 3904 East 375 North. *Id.* According to Mr. Morris, adjustments for the size and finish of the basement areas were calculated in the same manner. *Id.*

- g. The comparable properties were also adjusted for the differences in the number of plumbing fixtures at \$700 per fixture. *Morris testimony; Respondent Exhibit R1 and R2.* And the comparable properties were each given a positive adjustment of \$18,500 to account for the subject property's carport, with the exception of the property located at 7 Waters Edge Court, which has a four car garage. *Id.* Also, because the subject property does not have a fireplace, a negative adjustment was made to the comparable properties for their fireplaces. *Id.* Finally, the subject property has no extra buildings located on the property, and therefore a negative adjustment was applied to the comparable properties' assessed values to account for their pole buildings, swimming pools, tennis courts and green houses. *Id.*
 - h. After adjustments, Mr. Morris testified that the six comparable homes' assessed values ranged from \$602,947 to \$686,852, with an average assessed value of \$644,022 and a median assessed value of \$655,214. *Morris testimony; Respondent Exhibit R2.* The Petitioner's house, on the other hand, was assessed for only \$581,400. *Morris testimony; Respondent Exhibit R10.* Thus, Mr. Morris concludes, the Petitioner's property was not over-valued for the 2011 assessment year. *Morris testimony.*
 - i. In response to the Petitioner's case, Mr. Morris contends that the Petitioner's comparable properties should be given little weight. *Morris testimony.* According to Mr. Morris, the property located at 6969 East Logansport Road is a smaller home and is not the same quality as the Petitioner's home. *Id.; Respondent Exhibit R1.* Similarly, the property located at 5101 Canterbury Lane is a much smaller home that was built in 1979. *Id.* Moreover, Mr. Morris contends that 5101 Canterbury Lane is listed for sale for \$399,000, but its assessed value is \$402,300 – which he argues shows that properties in the county were not over-valued in 2011. *Morris testimony; Respondent Exhibit R13.*
 - j. Finally, Mr. Morris contends that he agrees there were limited sales of larger, quality homes in Cass County. *Morris testimony; Respondent Exhibit R1.* But Mr. Morris contends that the sales that have occurred support the subject property's assessed value. *Morris testimony.* For example, Mr. Morris testified, the property located at 15 Stoneridge has 6,112 square feet of living area on 14.836 acres, and sold on October 15, 2004, for \$670,000; whereas the Petitioner's home has 9,398 square feet of living area on 43.38 acres. *Id.; Respondent Exhibits R3 and R8.*
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 – Property record card for the subject property,
- Petitioner Exhibit 2 – Property record card for 11 Stoneridge, Logansport,
- Petitioner Exhibit 3 – Property record card for 9370 East County Road 950 South, Galveston,
- Petitioner Exhibit 4 – Property record card for 15 Stoneridge, Logansport,
- Petitioner Exhibit 5 – Property record card for 6969 East Logansport Road, Logansport,
- Petitioner Exhibit 6 – Multiple listing sheet for 6969 East Logansport Road, Logansport,
- Petitioner Exhibit 7 – Multiple listing sheet for 5101 Canterbury Lane, Logansport,

- Respondent Exhibit R1 – Summary of Respondent’s testimony,
- Respondent Exhibit R2 – Respondent’s assessment comparison analysis,
- Respondent Exhibit R3 – Property record card, three exterior photographs and an aerial map for the subject property,
- Respondent Exhibit R4 – Property record card and two exterior photographs for 3904 East 375 North, Logansport,
- Respondent Exhibit R5 – Property record card and two exterior photographs for 7 Waters Edge Court, Logansport,
- Respondent Exhibit R6 – Property record card and two exterior photographs for 80 Heartland Hills Drive, Logansport,
- Respondent Exhibit R7 – Property record card and four exterior photographs for 11 Stoneridge, Logansport,
- Respondent Exhibit R8 – Property record card and four exterior photographs for 15 Stoneridge, Logansport,
- Respondent Exhibit R9 – Property record card and five exterior photographs for 9370 East County Road 950 South, Galveston,
- Respondent Exhibit R10 – Notification of Final Assessment Determination – Form 115, dated May 4, 2012,
- Respondent Exhibit R11 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated June 5, 2012,
- Respondent Exhibit R12 – Real Property Assessment Guideline, Appendix C, page 9,
- Respondent Exhibit R13 – Property record card for 5101 Canterbury Lane, Logansport,

- 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). Under Indiana Code § 6-1.1-15-17, however, the burden shifts 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 failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of his property for 2011. 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. Mr. Martin first claimed that his home was assessed too high compared to other similar homes in the county. In support of his contentions, the Petitioner submitted property record cards for the subject property and the four comparable homes. Pursuant to Indiana Code § 6-1.1-15-18 (c), “To accurately determine market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district ...” Ind. Code § 6-1.1-15-18. However, “the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices.” *Id.*

- c. Here Mr. Martin merely observed that because the four comparable properties have “large” homes with similar type interior finish that they would attract the same potential buyer as the subject property in Cass County. But it is not clear that a property is comparable simply because the size of the home might attract the same potential buyer as the subject property. The property’s location, its lot size and the age, size, quality of construction, condition and amenities of the house all play a role in the value of the property. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Because the Petitioner made no attempt to identify specific similarities in the properties or value the differences between the properties, the assessed values of the comparable properties do not support a finding that the Petitioner’s property was assessed incorrectly.
- d. The Petitioner also contends that his property was over-valued based on the listing prices of two similar properties in the county. *Martin testimony*. In support of this position, Mr. Martin submitted multiple listing sheets for 6969 East Logansport Road and 5101 Canterbury Lane. *Petitioner Exhibits 6 and 7*. In essence, Mr. Martin offers a “sales comparison approach valuation” based on two comparable properties’ listing prices. 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 properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.*
- e. Here, Mr. Martin merely testified that 6969 East Logansport Road is in the same school district and has less land, but has a swimming pool and horse barn with an apartment. Mr. Martin also testified that the property located at 5101 Canterbury Lane is similar in size and amenities as the subject property. However, this falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972). In addition, Mr. Martin made no attempt to value the differences between the properties. Thus, the Petitioner failed to show its property was over-valued based on the listing prices of the properties located at 6969 East Logansport Road and 5101 Canterbury Lane.
- f. Further, Mr. Martin argued that the “great recession” disconnected the link between construction cost and the market value-in-exchange of “large” homes in Cass County and, in fact the country. *Martin testimony*. But the Petitioner provided no evidence of the data upon which he relied to make his conclusions. 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).

- g. Finally, Mr. Martin contends that because the assessor reduced his home's 2012 assessed value to \$450,700, this demonstrates that the assessed value of the house was too high in 2011 and should be reduced. *Martin testimony*. But each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *Id.* There are numerous reasons why the value of a property would change from one year to the next year, and it was the Petitioner's burden to show that the assessment for the year at issue was incorrect.

Conclusion

16. The Petitioner failed to establish a prima facie case that his property was over-valued for the March 1, 2011, assessment year. The Board finds in favor of the Respondent.

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 not be changed.

ISSUED: April 15, 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>.