

REPRESENTATIVE FOR PETITIONER:

Mark Matkovic, *pro se*

REPRESENTATIVE FOR RESPONDENT:

David F. Truitt, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mark J. and Nina F. Matkovic,)	Petition No.:	06-003-11-1-5-00101
)		
Petitioners,)	Parcel No.:	003-16130-19
)		(06-04-07-000-002.024-005)
v.)		
)		
Boone County Assessor,)	County:	Boone
)		
Respondent.)	Assessment Year:	2011

Appeal from the Final Determination of the
Boone County Property Tax Assessment Board of Appeals

February 20, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioners' property was over-valued for the 2011 assessment year.

PROCEDURAL HISTORY

2. The Petitioners, Mark J. and Nina F. Matkovic, initiated their assessment appeal by filing a request with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) on August 16, 2011. The PTABOA issued its determination on September 15, 2011.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed a Form 131 Petition for Review of Assessment with the Board on October 28, 2011, petitioning the Board to conduct an administrative review of their appeal.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on November 29, 2012, in Lebanon, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Mark Matkovic, property owner

For the Respondent:

Lisa Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA member

6. The Petitioners presented the following exhibits:
 - Petitioner Exhibit 1 – Form 11 R/A, Notice of Assessment of Land and Structures, dated August 2, 2011; U.S. Department of Housing and Urban Development settlement statement, dated August 25, 2010; property record cards for 6793 Old Hunt Club Road, 6962 Old Hunt Club Road, and 6745 Old Hunt Club Road, comparative market analysis with multiple listing sheets for 9485 East 400 South, 7785 Cheval Rue Court, 7365 Hunt Country Lane, 6628 Belfair Court, 6820 Berkley Court, 6262 Montana Springs Drive, 4074 Wild Wood Court, and 4076 Wild Wood Court; and a copy of an envelope from the Petitioners to the Boone County Assessor, dated November 14, 2012.

7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Boone County appeal worksheet,
 - Respondent Exhibit 2 – Petitioner’s appraisal report, prepared by John M. Wagner of Indy Appraisal Services, dated September 12, 2011,
 - Respondent Exhibit 3 – Multiple listing sheets for 11636 Willow Springs Drive, 660 Spring Hills Drive, 830 Sugarbush Ridge, and 6793 Old Hunt Club Road,
 - Respondent Exhibit 4 – Three photographs of the subject property,
 - Respondent Exhibit 5 – Form 114, Notice of Hearing on Petition – Real Property – by County Property Tax Assessment Board of Appeals,
 - Respondent Exhibit 6 – Form 115, Notification of Final Assessment Determination,
 - Respondent Exhibit 7 – Property record card for the subject property,
 - 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 Notice of hearing on Petition.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
 - Board Exhibit A – Form 131 petition with attachments,
 - Board Exhibit B – Notice of Hearing, dated October 26, 2012,
 - Board Exhibit C – Hearing sign-in sheet.

9. The property under appeal is a single-family home located at 6759 Old Hunt Club Road, Zionsville, in Boone County.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2011, the PTABOA determined the assessed value of the property to be \$180,300 for the land and \$589,700 for the improvements, for a total assessed value of \$770,000.
12. The Petitioners requested a total assessed value of \$547,000.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

14. Mr. Matkovic contends that the burden is on the Respondent to prove the property's assessment was correct for 2011. *Matkovic testimony*. Mr. Matkovic testified that a representative from the assessor's office visited his property and inspected the basement, where she observed water damage and mold. *Matkovic testimony*. According to Mr. Matkovic, as a result of the site visit, he received a Form 11 valuing the subject property at \$439,500 for 2010. *Id.*; *Petitioner Exhibit 1*. Because the property's March 1, 2011, assessed value was \$770,000, Mr. Matkovic argues, the property's assessed value increased over 5% and therefore the Respondent has the burden of proof in this appeal. *Matkovic argument*.

15. Mr. Matkovic contends that their property's value increased too much between 2010 and 2011. *Matkovic argument*. According to Mr. Matkovic, even if the county assessor reduced the property's assessment in 2010 to \$439,500 because of issues with the basement, it is unrealistic to believe that by fixing the water damage and eliminating mold it would increase the property's value to \$770,000, which is over a \$300,000 increase. *Matkovic testimony*. Mr. Matkovic testified that the cost to cure the issues with his basement was only about \$25,000. *Id.*
16. The Petitioners further contend that their property was over-valued for the 2011 assessment year based on their purchase of the property. *Matkovic testimony*. According to Mr. Matkovic, the Petitioners purchased the property under appeal on August 25, 2010, for \$567,000. *Matkovic testimony; Petitioner Exhibit 1*. In support of this contention, Mr. Matkovic submitted the settlement statement from the sale. *Petitioner Exhibit 1*.
17. Similarly, the Petitioners contend that their property was assessed for more than its market value-in-use for the March 1, 2011, assessment date based on the property's appraised value of \$547,000. *Matkovic testimony; Respondent Exhibit 2*. According to Mr. Matkovic, the appraisal report was prepared by John M. Wagner of Indy Appraisal Services. *Id.* Mr. Wagner is an Indiana Licensed Residential Appraiser who certified that he prepared his appraisal in conformance with the Uniform Standards of Appraisal Practices (USPAP). *Id.* In his appraisal report, Mr. Wagner estimated the property's value to be \$547,000 as of September 9, 2011, based on a sales comparison analysis. *Respondent Exhibit 2*.
18. In addition, the Petitioners argue that the Respondent incorrectly applied the "neighborhood factor" to properties in the area for 2011. *Matkovic testimony*. According to Mr. Matkovic, three properties in the neighborhood sold in 2009 and 2010 for less than their assessed values. *Matkovic testimony; Petitioner Exhibit 1*. Mr. Matkovic argues that, because the properties sold for less than their assessed values, the "neighborhood factor" in the area should be less than one instead of the 1.25 factor that was applied by

the county assessor. *Matkovic testimony*. Thus, the Petitioners conclude, their property's assessed value was over-stated based the assessor's incorrect application of the "neighborhood factor." *Id.*

19. Finally, Mr. Matkovic contends that the Petitioner's land value was too high in 2011 based on the sale prices of eight vacant lots in the area. *Matkovic testimony*. In support of this contention, Mr. Matkovic submitted a comparative market analysis and multiple listing sheets showing that vacant land in the area sold from \$90,000 to \$250,000 in 2010 and 2011. *Petitioner Exhibit 1*. According to Mr. Matkovic, the properties located at 7365 Hunt Country Lane, 7785 Cheval Rue Court, and 9485 East 400 South are very similar to the subject property because they all have wells and septic systems and no sidewalks or street lights. *Matkovic testimony; Petitioner Exhibit 1*. The average sale price of the three comparable properties was \$47,761 per acre. *Id.* Applying the \$47,761 per acre amount to the subject property's 2.25 acres, results in a land value of \$107,400; whereas the land was assessed for \$180,300 in 2011. *Id.*

RESPONDENT'S CONTENTIONS

20. Ms. Garoffolo argues that the Petitioners should have the burden of proof in this appeal. *Garoffolo testimony*. According to Ms. Garoffolo, the Petitioners' property was originally assessed for \$1,044,300 for March 1, 2010. *Id.* In support of this contention, Ms. Garoffolo submitted the Petitioners' property record card. *Respondent Exhibit 7*. Thus, Ms. Garoffolo contends that, because the property's March 1, 2011, assessed value was only \$770,000, the Petitioners' assessed value decreased between 2010 and 2011. *Garoffolo testimony*. Therefore, the Petitioners would have the burden of proof in this appeal. *Garoffolo testimony*.
21. The Respondent's witness, Ms. Lewis, on the other hand, testified that while she was working on the county's 2012 reassessment, she inspected the Petitioners' property and found mold remediation work being done in the basement of the home. *Lewis testimony*.

Thus, Ms. Lewis testified that the Petitioners were granted a 70% reduction in the assessed value of their home because of the mold remediation and the condition of the house, which resulted in an assessed value of \$439,500. *Id.* But, she argued, the reduction was for only a single year. *Id.*

22. The Respondent contends that the Petitioners' property was correctly assessed for the 2011 assessment year. *Garoffolo testimony.* Ms. Garoffolo testified that prior to the PTABOA hearing on the Petitioner's appeal, the assessor's office conducted a comparative market analysis of sales in the area of the Petitioners' property. *Id.* According to Ms. Garoffolo, comparable properties sold, on average, for \$156 per square foot of living area. *Id.* Applying the \$156 per square foot value to the Petitioners' house, resulted in a value of \$769,080, which was rounded by the PTABOA to \$770,000 for the March 1, 2011, assessment year. *Id.* Thus, Ms. Garoffolo concludes, the subject property was assessed correctly for the 2011 assessment year. *Id.*
23. In response to the Petitioners' case, the Respondent contends that the Petitioners' purchase price should be given little weight. *Garoffolo testimony.* According to Ms. Garoffolo, the subject property was "bank owned" and therefore the sale is considered invalid by the assessor and should not be used to establish the property's market value. *Garoffolo testimony.*
24. Similarly, the Respondent's witness argues that the Petitioners' appraisal is flawed and should be given little weight. *Lewis testimony.* According to Ms. Lewis, while the appraiser relied upon five sales in his sales comparison approach, he failed to make any adjustment to the sale prices for ages of the houses. *Id.* Moreover, Ms. Lewis argues, the comparable property located at 11636 Willow Springs Drive was an invalid sale because it was bank owned. *Lewis testimony; Respondent Exhibit 3.* Thus, she concludes, the

Petitioners' appraisal fails to show that the property under appeal was over-valued for 2011. *Lewis testimony*.¹

25. Finally, Ms. Lewis admitted that she prepared the land analysis for the Petitioners using eight vacant lots. *Lewis testimony; Petitioner Exhibit 1*. However, she argues, to calculate the average cost per acre for assessment purposes, the Petitioners needed to include the cost of the power lines to the property, the driveway, the well and the septic system. *Lewis argument*. Thus, the Respondent's witness argues, the Petitioners' comparable analysis fails to show that their property's land value was too high in 2011. *Id.*

BURDEN OF PROOF

26. 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 § 6-1.1-15-17.2.² 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

¹ Ms. Lewis testified she is a licensed appraiser. *Lewis testimony*.

² 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.

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 Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

27. Here the Petitioners contend that their property's assessed value increased from \$439,500 in 2010 to \$770,000 in 2011. *Matkovic testimony; Petitioner Exhibit 1*. The Respondent, on the other hand, testified that the Petitioners' property's March 1, 2010, assessed value was initially \$1,044,300 which is shown on the property record card. *Garoffolo testimony; Respondent Exhibit 7*. However, the Respondent's witness, Ms. Lewis testified that because of the condition of the house and the mold in the basement the property was given a 70% reduction in value for 2010. *Lewis testimony*. Thus, the property's Form 11 shows the property's 2010 value to be \$439,500.
28. Because the Board below finds that the best evidence of the property's value is the Petitioner's purchase price, the Board need not decide which party bears the burden of proof in this matter. Thus, the Board need not decide whether the property's March 1, 2010, assessed value was the \$1,044,300 value recorded on the property record card or the \$439,500 value reported on the property's Form 11.

ANALYSIS

29. 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. *Id.* A market-value-in-use appraisal prepared according to USPAP 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 property or comparable properties, and any other

information compiled according to generally accepted appraisal principles. MANUAL at 5.

30. Here, the Petitioners contend that their property was over-valued in 2011 based on the property's purchase price and its appraised value. *Matkovic testimony*. According to Mr. Matkovic, the Petitioners' purchased the property under appeal on August 25, 2010, for \$567,000. *Id.*; *Petitioner Exhibit 1*. The purchase price of a property is often the best indication of the property's value. *See Hubler Realty Co. 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).
31. In addition, the property appraised for \$547,000 as of September 9, 2011. *Respondent Exhibit 2*. The appraiser is an Indiana Licensed Residential Appraiser who certified that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices. *Id.* An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479.
32. Both the sale of the property and the property's appraisal fall within six months of the assessment date at issue and are therefore sufficiently probative of the property's market value-in-use for the 2011 assessment year. Thus, the Board finds that the Petitioners raised a prima facie case their property was over-valued for the March 1, 2011, assessment date.
33. Once the Petitioners raised a prima facie case that their property was over-valued, the burden shifted to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative

evidence that the Petitioners faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

34. Here, the Respondent did not dispute that the Petitioners purchased the property on August 20, 2010, for \$567,000. *Garoffolo testimony; Respondent Exhibit 7*. Ms. Garoffolo merely argued that the property was “bank owned.” Therefore, she argued, the sale was invalid and should not be used to establish the subject property’s market value. *Garoffolo testimony*. The Respondent, however, presented no evidence to support its contention that the purchase price was somehow not a valid sale or that the bank would sell a property for less than its market value. Similarly, Ms. Lewis testified that the Petitioners’ appraiser chose an invalid sale as one of the comparables and made inadequate adjustments to the comparable sales. However, Ms. Lewis failed to present any evidence that the appraiser was biased or that the appraisal was flawed. It is well within an appraiser’s expertise to choose sales it deems most comparable to the property under appeal and apply adjustments to those comparable properties to value the differences between them. “Open-ended questions” and “conclusory statements” are not sufficient to rebut the Petitioners case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) (“In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Rassel’s calculations. Rather, he merely asked open-ended questions or made conclusory statements”). The Respondent, therefore, failed to rebut or impeach the Petitioners’ evidence that their property was over-valued for the 2011 assessment year.
35. The Respondent also testified that the assessor’s office conducted a comparative market analysis which showed that comparable properties in the subject property’s area sold for an average of \$156 per square foot of living space. *Garoffolo testimony*. Applying the \$156 per square foot value to the Petitioners’ property, Ms. Garoffolo argues, results in a value of \$770,000 for the property. *Id.* The Respondent, however, failed to present any probative evidence identifying the properties used in the analysis or how the differences between the properties were valued or that applying the average price per square foot to

the Petitioners' property reflected the property's market value-in-use in 2011. 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, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Thus, the Respondent failed to rebut the Petitioners' prima facie case with its "comparable sales analysis."

36. Both the property's purchase price and its appraised value were submitted as evidence of the property's value in 2011. *Petitioner Exhibit 1 and Respondent Exhibit 2*. By seeking a value of \$547,000 for their property, however, the Petitioners implied that the appraisal was the better indicator of the property's value. *Matkovic testimony*. But an appraisal represents an estimate of a property's value based on the opinion of an appraiser. The purchase price of a property is not an estimate, but rather an actual sale. In this case, the property's purchase price provides direct evidence of how the buyer and seller valued the utility of the property needed in order for the seller to abandon the property. While the appraisal provided some justification for a lower valuation, the Board finds that there was insufficient evidence to persuade it that the Petitioners' purchase price was somehow flawed. The Board therefore finds that the Petitioners' purchase of the subject property for \$567,000 is the best evidence in this appeal and gives it the greatest weight.

SUMMARY OF FINAL DETERMINATION

37. The Petitioners presented probative evidence that the value of their property was \$567,000 in 2011. The Respondent failed to rebut or impeach the Petitioners' evidence. The Board therefore finds that the value of the property under appeal is \$567,000 for the March 1, 2011, assessment date.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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 under 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 Indiana 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/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.