

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

Petition No.: 79-026-12-1-5-00001
Petitioners: Charles R. Jr. & Kelly Penquite
Respondent: Tippecanoe County Assessor
Parcel No.: 164051000982 (79-07-08-105-009.000-026)
Assessment Year: 2012

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

Procedural History

1. Charles and Kelly Penquite (the “Petitioners”) appealed their 2012 assessment to the Tippecanoe County Property Tax Assessment Board of Appeals (the “PTABOA”), which mailed notice of its determination on April 26, 2013.
2. The Penquites then filed a Form 131 petition with the Board on June 7, 2013. They elected to have their appeal heard under the Board’s small claims procedures.
3. The Board issued a notice of hearing to the parties dated July 16, 2014.
4. On August 22, 2014, the Board held an administrative hearing through its designated administrative law judge, Dalene McMillen (the “ALJ”). Neither the Board nor the ALJ inspected the property.
5. Charles R. Penquite, Jr., the property owner who appeared *pro se*, and Jesse Wallenfang, the Sales Data and Appeals Manager of the Tippecanoe County Assessor’s Office, were sworn as witnesses.¹

Facts

6. The property under appeal is a single-family home located at 146 Crimson Court in West Lafayette.
7. For 2012, the PTABOA determined the assessed value of the property to be \$30,900 for the land and \$87,300 for the improvements, for a total assessed value of \$118,200.

¹ Kelly Penquite, co-owner, and Chris Penquite, son of the owners, were present and sworn in as witnesses but did not present any testimony.

8. On their Form 131 petition, the Penquites requested an assessed value of \$30,900 for the land and \$49,100 for the improvements, for a total assessed value of \$80,000.

Record

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

- a. The digital recording of the hearing,

- b. Exhibits:

- Petitioner Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
- Petitioner Exhibit 2 – “Property Tax Assessment Appeals Fact Sheet” (the “Fact Sheet”) issued by the Department of Local Government Finance (DLGF),
- Petitioner Exhibit 3 – Notice of Assessment of Land and Structures – Form 11 R/A – C/I for March 1, 2012,
- Petitioner Exhibit 4 – Notification of Final Assessment Determination – Form 115-I-PT for March 1, 2012,
- Petitioner Exhibit 5 – Sales disclosure form for the subject property, dated July 6, 2011,
- Petitioner Exhibit 6 – Sales disclosure form for the subject property, dated February 29, 2012,
- Petitioner Exhibit 7 – Residential appraisal report prepared by Edward Smith of Appraisals by John Nicholson and Associates, dated March 8, 2012,
- Petitioner Exhibit 8 – Multiple listing sheet (MLS) for 1005 Lindberg Road, West Lafayette, dated August 28, 2012,
- Petitioner Exhibit 9 – MLS for 2110 Carlisle, West Lafayette, dated April 6, 2012,
- Petitioner Exhibit 10 – MLS for 202 Dehart Street, West Lafayette, dated January 20, 2012,
- Petitioner Exhibit 11 – MLS for 106 Arbour Court, West Lafayette, dated August 15, 2012,
- Petitioner Exhibit 12 – MLS for 1000 Hillcrest, West Lafayette, dated November 21, 2012,

- Respondent Exhibit 1 – Assessor’s burden of proof analysis,
- Respondent Exhibit 2 – Assessor’s “Review of Petitioner Sales Comparable” and sales disclosure forms for 1005 Lindberg Road, West Lafayette, 2110 Carlisle Road, West Lafayette, and 106 Arbour Court, West Lafayette,
- Respondent Exhibit 3 – Assessor’s sales comparable analysis,

Respondent Exhibit 4 – Assessor’s “Review of the Appraisal submitted by the Petitioner to PTABOA and IBTR” and sales disclosure forms for 137 Knox Drive, West Lafayette and 1816 Summit Drive, West Lafayette,

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

c. These Findings and Conclusions.

Burden of Proof

10. Generally, a taxpayer has the burden to prove that an assessment is incorrect and what the 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.
11. First, Indiana Code § 6-1.1-15-17.2, as amended, “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.” IC 6-1.1-15-17.2(a) “Under this section, 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 Indiana board of tax review or to the Indiana tax court.” IC 6-1.1-15-17.2(b).
12. Second, IC 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 IC 6-1.1-15.” Under those circumstances,

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.
13. 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.*

14. The Assessor assessed the subject property for \$128,300 in 2011. For 2012, the PTABOA determined the property's assessment at \$118,200. The parties agreed the assessment did not increase more than 5%. Therefore, the Penquites have the burden of proof.

Summary of Parties' Contentions

15. The Petitioners' case:
 - a. The Penquites submitted two sales disclosure forms. The first sales disclosure form shows the subject property was sold by Sheriff Tracy A. Brown to Deutsche Bank National Trust Company, Trustee ("Deutsche Bank") on July 6, 2011, for \$82,500. The second sales disclosure form shows that Deutsche Bank sold the property to the Penquites on February 29, 2012, for \$80,000. The Penquites contend that the DLGF issued the Fact Sheet that states "[t]he assessed value should reflect the amount a willing buyer would pay for the property at the time of the assessment." The Penquites argue that they, as willing buyers, paid \$80,000 for the property under appeal. Therefore, the assessed value should reflect no more than that amount for 2012. *Penquite testimony; Petitioner Exhibits 2, 5, and 6.*
 - b. The Petitioners also contend that an appraisal shows the assessment of the property is too high. Edward Smith from John Nicholson and Associates, an Indiana licensed residential appraiser, prepared the appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). The appraisal report was prepared for Lafayette Savings Bank prior to the Penquites financing the property. Mr. Smith analyzed the property using both the sales-comparison and cost approaches, giving the greatest weight to his conclusion under the sales-comparison approach. He estimated the subject property's value was \$80,000 as of March 8, 2012. *Penquite testimony; Petitioner Exhibit 7.*
 - c. The Penquites pointed out that the appraisal report states the subject property is in need of significant repairs. The photos offered show partially painted walls, writing on the walls, a broken door to the garage, holes in walls, torn carpet, rotted fascia boards, and peeling exterior boards. The Penquites argue that these items show the Assessor's classification of the home being in fair condition is inaccurate. *Penquite testimony; Petitioner Exhibit 7.*
 - d. The Penquites contend that the subject property was over-valued in 2012 based on the sale of five comparable properties. According to the Penquites, the subject property and the five comparable properties are located within the West Lafayette school district. *Penquite testimony.*
 - e. The first comparable property is located at 1005 Lindberg Lane. The property sold on August 28, 2012, for \$68,603. The comparable property has 1,680 square feet of finished living area, six rooms, three bedrooms, and one full bathroom. This

comparable property has 168 more square feet of finished living area than the subject property. Both properties have the same number of rooms. *Penquite testimony; Petitioner Exhibit 8.*

- f. The second comparable property is located at 2110 Carlisle Road. The property sold on April 6, 2012, for \$72,766. The comparable property has 1,422 square feet of finished living area, seven rooms, three bedrooms, and one full bathroom. This comparable property has 90 less square feet of finished living area than the subject property. *Penquite testimony; Petitioner Exhibit 9.*
- g. The third comparable property is located at 202 Dehart Street. The property sold on January 20, 2012, for \$82,000. The comparable property has 1,466 square feet of finished living area, six rooms, three bedrooms, and two full bathrooms. The comparable house has 46 more square feet of finished living area and one extra bathroom. This house is very similar to the subject property. *Penquite testimony; Petitioner Exhibit 10.*
- h. The fourth comparable property is located at 106 Arbour Court. The property sold on August 15, 2012, for \$82,000. The comparable property has 1,270 square feet of finished living area, six rooms, three bedrooms, and two full bathrooms. The comparable house has 242 less square feet of finished living area and one extra bathroom.. *Penquite testimony; Petitioner Exhibit 11.*
- i. The fifth comparable property is located at 1000 Hillcrest Road. The property sold on November 21, 2012, for \$90,000. The comparable property has 1,890 square feet of finished living area, seven rooms, three bedrooms, and two full bathrooms. The comparable property has 378 more square feet of finished living area, one extra room and one more bathroom than the subject property. *Penquite testimony; Petitioner Exhibit 12.*
- j. The Penquites argue that the purchase price, the appraisal report and the sales of the five comparable properties demonstrate that the subject property is over-valued. The Penquites believe their property should be valued at no more than \$80,000. *Penquite testimony.*

16. The Assessor's case:

- a. The Assessor's witness, Mr. Wallenfang, pointed to five similar properties sold in the subject property's neighborhood that support the assessed value. As evidence, Mr. Wallenfang presented a comparable sales analysis. The comparable sales analysis shows the five comparable properties sold between February 12, 2010, and October 7, 2011. It also shows sale price, living area, grade, condition, year built, number of bathrooms, story height, and description of the garage. According to Mr. Wallenfang, the five comparable properties chosen were the closest in square footage, grade, condition, year of construction and construction style. Because of the similarities

- among the comparable properties and the subject property, the county felt the comparable properties' sale prices required no adjustments. Pursuant to the comparable sales analysis, the five comparable properties sold for an average of \$78.13 per square foot, while the subject property is assessed at \$78.17 per square foot. Mr. Wallenfang argues that based on the median sale price in the area, the subject property's assessment of \$78.17 per square foot is appropriate. *Wallenfang testimony; Respondent Exhibit 3.*
- b. The Penquites listed the sale prices of five comparable properties on their Form 131 petition. Upon examination of the Penquites' five comparable sales, it was discovered that four of the five sales were not arms-length transactions. The four comparable properties were sold either as a result of a short sale, foreclosure action, sheriff sale or associated with a real estate owned ("REO") transaction. The property located at 1000 Hillcrest Road was an arms-length transaction but it sold on November 21, 2012, which is eight months after the March 1, 2012, assessment date. The property located at 202 Dehart Street was the only property that sold in the relevant time frame for a 2012 assessment. *Wallenfang testimony; Respondent Exhibit 2.*
 - c. The assessor claims that the five comparable properties offered were different construction styles than the subject property. The Penquites did not make any type of adjustment for the differences in construction types. It also appears that the Penquites pulled their information on the comparable properties from the 2009 PRCs rather than the 2012 PRCs. The five comparable properties were not an accurate measure of the subject property's market value. *Wallenfang testimony; Respondent Exhibit 2.*
 - d. The Penquites also offered the Fact Sheet which is a helpful resource for taxpayers appealing their assessments. The Fact Sheet states the assessed value of the property should reflect the amount a willing buyer would pay for the property. According to Mr. Wallenfang, the buyer is not the only factor that is considered in a market value transaction. In a market value transaction the person selling the property must be doing so without any undue stress or "atypical" pressure for the transaction to be considered an arms-length transaction. Therefore, the REO, foreclosure sales and short sales submitted by the Penquites would not be considered reliable in establishing the subject property's market value. *Wallenfang testimony.*
 - e. At the PTABOA hearing, the Penquites offered an appraisal report prepared by John Nicholson and Associates. Mr. Wallenfang pointed to what the county believes are various problems with the appraisal. The first concern is the Penquites were not the intended user of the appraisal. The appraisal report was performed for Lafayette Savings Bank for financing purposes. The appraisal report was not performed for ad valorem purposes. Mr. Wallenfang argues that without the appraiser's work file, the county cannot verify that the appraiser would have come to the same conclusion if he were establishing the value of the subject property for ad valorem purposes. *Wallenfang testimony; Respondent Exhibit 4.*

- f. The appraiser relied on the sales comparison approach to value the property. However, the appraiser only used distressed sales. He used an estate sale, REO sales and short sales to establish the market value. No arms-length transactions were included in his sales comparison approach. Furthermore, the appraiser gave no explanation for excluding valid market sales when he developed his opinion of the market value of the subject property. In addition, the comparable properties used were varying construction styles, however, no adjustments were made to their sales prices. *Wallenfang testimony; Respondent Exhibit 4.*
- g. Mr. Wallenfang also took issue with the appraiser's statement that he could find no prior sales or transfers of the comparable properties. According to Mr. Wallenfang, the appraiser shows the comparable property located at 137 Knox Drive sold on May of 2011 for \$78,000. However, he ignored that the property sold again on September 8, 2011, for \$132,000. For the comparable property located at 1816 Summit Drive, the appraiser shows it sold in January of 2012 for \$72,300. However, the property sold prior to that on November 2, 2011, for \$88,960. *Wallenfang testimony; Respondent Exhibit 4.*
- h. Mr. Wallenfang claims the PTABOA gave the appraisal report no weight because they were unable to see the appraiser's work file on the subject property and because of the appraiser's lack of research in preparing the appraisal report and his use of inappropriate comparable properties in the sales comparison approach. The appraisal report therefore is not an accurate estimate of the subject property's market value. *Wallenfang testimony.*

Analysis

- 17. The Penquites provided sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. The Board reached this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the 2011 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, for the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party's evidence in a tax appeal must be consistent with that standard. *See Id.* For example, a market value-in-use appraisal prepared according to Uniform Standards of the Professional Appraisal Practice often will be probative. *See Id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 2, 3; *see also* Ind. Code § 6-1.1-15-18 (allowing

- parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).²
- b. In any case, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *See 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. *Id.* For 2012 assessments, the valuation date was March 1, 2012. *See* I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Here, the Penquites contend that the subject property was over-valued in 2012 based on the property's purchase price. According to the Penquites, they purchased the property under appeal for \$80,000. The sale occurred on February 29, 2012, which is sufficiently close to the March 1, 2012, assessment date to be probative of the property's market value-in-use for the 2012 assessment year.
 - d. The purchase price of a property is often the best indication of the property's value. *See Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). The Assessor, however, argued that the Penquites purchase of the property was associated with a sheriff sale and therefore should not be used to value the subject property.
 - e. Market value is defined as the most probable price that a property would sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interests, and assuming that neither is under undue duress. MANUAL at 5 & 6.
 - f. A sales disclosure form showed that on July 6, 2011, the subject property was acquired by Deutsche Bank through a sheriff sale. Further evidence showed that Deutsche Bank listed the subject property through the Lafayette Board of Realtors on November 11, 2011, for \$94,900. The bank reduced the price of the property on January 10, 2012, to \$85,500. Listing property with realtors is typically the way residential properties are sold. Therefore, the Board can infer that the property was widely advertised. Moreover, the property remained on the market for approximately 109 days – which suggests that the property had sufficient exposure to the market. *Petitioner Exhibit 5; Petitioner Exhibit 7.*
 - g. In addition, the Penquites testified the property was appraised for Lafayette Savings Bank. *Petitioner Exhibit 7.* The purpose of the appraisal was to establish the market value of the property for financing purposes. *Id.* The property was appraised for

² The Penquites mentioned the condition rating of their house, but presented no substantial evidence regarding the condition rating. Furthermore, they fail to rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that under the old assessment system, an assessed value was correct when the assessment regulations were applied correctly, but the new system shifts the focus from mere methodology to determining whether the assessed value is *actually correct*). The conclusory statement about the condition rating does not help to prove the assessed value must be changed.

\$80,000 as of March 8, 2012. *Id.* The appraiser is an Indiana Certified Appraiser who certified that he prepared the appraisal in accordance to USPAP. The appraiser relied on the sales comparison approach to value the property. *Id.* An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima face case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479.

- h. The Board finds that both the Penquites' purchase price and the appraised value were sufficiently contemporaneous with the statutory valuation date to be probative of the property's market value-in-use for the 2012 assessment year. Thus, the Penquites raised a prima facie case that their property was over-valued for the March 1, 2012, assessment date.
- i. Once the Penquites raised a prima facie case, the burden shifted to the assessing official to rebut the Penquites' 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 their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- j. Here, Mr. Wallenfang relied on his analysis of five comparable sales in the area to show the assessed value for the subject property. In order to effectively use a sales comparison analysis as evidence in a property assessment appeal, the proponent must show that the properties are truly comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Rather, 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 affect the relative market values-in-use. Mr. Wallenfang did not do this.
- k. Mr. Wallenfang presented insufficient evidence to show that the properties offered as comparisons were actually comparable to the property under appeal. He offered five properties that sold in the same area and simply compared living area, grade, condition, year built, number of bathrooms, story height and garage area of those homes to the subject property. He did not address how these differences affected the relative values. The evidence showed that the sale prices of properties in the area ranged from \$70.99 per square foot to \$96.33 per square foot in 2010 and 2011. Thus, the Board can infer that the properties in the Penquites' area varied a great deal. Because Mr. Wallenfang made no attempt to identify or value the differences between the compared properties, the Assessor's comparable sales analysis has little probative value. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan*, 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.

- l. Next, Mr. Wallenfang argues that the Board should give little weight to the Penquites' appraisal. Mr. Wallenfang attempted to impugn the appraisal report by questioning the appraiser's methodology and sources. First, Mr. Wallenfang argued the appraisal report was performed for Lafayette Savings Bank and not the Penquites. The Board finds that in the “Comments on Appraisal and Report Identification” section it states “Our client may extend a copy of this report to a third party.” In addition, the summary of salient features names the Penquites as the client and Lafayette Savings Bank as the lender. Mr. Wallenfang noted that the most significant error was that the appraiser only used comparable properties that were sold as a result of an estate sale, REO sales and short sales to establish the market value. However, the appraiser stated in his report that he searched for comparable properties considered to be most similar in effective age, size, quality, location and overall appeal. Plus, the “comparables appear to be the best available representative of the subject at this time.” Finally, Mr. Wallenfang pointed out that two of the comparable properties had prior sales that were not reported by the appraiser in his report. The Board finds that the appraiser pointed out in his report that he used the Tippecanoe County courthouse records and they did not appear to be updated on a regular basis.

- m. Likewise, Mr. Wallenfang argues the Penquites purchase price is not probative evidence. Mr. Wallenfang claims that Deutsche Bank was under undue stress to sell the property, therefore the Penquites' purchase price would not be considered an arms-length transaction or reliable in establishing the property's market value. The Assessor, however, did not credibly invalidate the Penquites' appraisal or purchase price. “Open-ended questions” and “conclusory statements” are not sufficient to rebut the Penquites' case. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005). It is well within an appraiser's expertise to choose how to best value a property. While the appraiser's appraisal report may have some weaknesses, it is still compelling evidence of the subject property's value. In addition, it supports the Penquites' purchase price. Thus, the Assessor's evidence fails to rebut or impeach the Penquites' prima facie case.

Conclusion

18. The Penquites presented probative evidence that the value of their property was \$80,000 in 2012. The Assessor failed to rebut or impeach the Penquites' evidence. The Board

therefore finds in favor of the Penquites and holds that the value of the subject property is \$80,000 for the March 1, 2012, assessment date.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed value of the Petitioners' property should be changed.

ISSUED: February 17, 2015

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>.