REPRESENTATIVE FOR PETITIONERS:
Stanley J. Reed, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Stanley J. & Teresa L. Reed,	)	Petition Nos.: 90-009-12-1-5-00015
	)	90-009-13-1-5-00015
Petitioners,	)	
	)	Parcel No.: 90-02-22-501-019.000-009
v.	)	
	)	County: Wells
Wells County Assessor,	)	Township: Jefferson
	)	
Respondent.	)	Assessment Years: 2012 and 2013

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

December 17, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (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

INTRODUCTION

1. The Respondent had the burden to prove that the subject property's March 1, 2012, assessment was correct. Did the Respondent prove the 2012 assessment was correct? The Board's determination on the 2012 assessment will determine who has the burden of proof for the 2013 assessment year.

PROCEDURAL HISTORY

2. The Petitioners initiated their 2012 and 2013 appeals with the Wells County Assessor on September 4, 2012, and August 28, 2013, respectively. The Wells County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 2012 appeal on August 16, 2013, and issued its determination for the 2013 appeal on October 29, 2013. The Petitioners timely filed their Form 131 petitions with the Board.

3. On September 18, 2014, the Board's administrative law judge, Joseph Stanford (ALJ), held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. County Assessor Richard Smith, Deputy Assessor Beth Singleton, certified appraiser Mark Rutsey, certified appraiser Kent Sprunger, and Stanley J. Reed were sworn as witnesses.

5. The Petitioners submitted the following exhibits:

Petitioners Exhibit 1:	Board's determination for the Petitioners' 2011 appeal: *Stanley J. & Teresa L. Reed v. Wells Co. Ass'r* (Ind. Bd. of Tax Rev. pet. no. 90-009-11-1-5-00015, May 28, 2013),
Petitioners Exhibit 2:	Appraisal of the subject property prepared by Kent B. Sprunger, with an effective date of March 20, 2012,
Petitioners Exhibit 3:	"Supplemental Addendum" to the appraisal of the subject property by Kent B. Sprunger, and a "market conditions addendum report" with several multiple listing service (MLS) sheets,
Petitioners Exhibit 4:	Beacon reports for the following properties: 1604, 1502, 1600, 1607, and 1608 Brook Court,
Petitioners Exhibit 5:	Two spreadsheets containing 2012 assessment data for the following properties: 1600, 1604, 1607, and 1608 Brook Court,
Petitioners Exhibit 6:	Petitioners' tax bill dated March 26, 2014,
Petitioners Exhibit 7:	2011, 2012, and 2013 PTABOA determinations for the subject property,

Petitioners Exhibit 8:	Letter from Beth Singleton to the Petitioners, dated August 20, 2013, with attachments,
Petitioners Exhibit 9:	Copy of refund check from the Wells County Treasurer, dated July 1, 2013.

6. The Respondent submitted the following exhibits:

Respondent Exhibit A:	2012 appraisal of the subject property prepared by Mark Rutsey, with an effective date of March 1, 2012,
Respondent Exhibit B:	2013 appraisal of the subject property prepared by Mark Rutsey, with an effective date of March 1, 2013,
Respondent Exhibit C:	Subject property record card,
Respondent Exhibit D:	Property record cards for the following properties utilized by the Petitioners' in their comparable assessment analysis: 1600, 1604, 1607, and 1608 Brook Court.

7. The following items are recognized as part of the record:

Board Exhibit A:	Form 131 petitions with attachments,
Board Exhibit B:	Notices of Hearing, dated July 31, 2014,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Notice of Appearance for attorney Brian Cusimano,
Board Exhibit E:	Assessor's Written Request for Transfer from the Small Claims Procedure to the Standard Hearing Procedure,
Board Exhibit F:	Order Transferring Administrative Appeal from the Small Claims Procedure to the Standard Hearing Procedure and Order Requiring Response to Discovery.

8. The subject property is a single-family home located at 1604 Brook Court, in Ossian.

9. The PTABOA determined that the March 1, 2012, assessment is $30,300 for land and $189,000 for improvements, for a total value of $219,300. The PTABOA determined that the March 1, 2013, assessment is $32,800 for land and $231,300 for improvements, for a total value of $264,100.[1]

10. On their Form 131 petitions, the Petitioners requested a 2012 assessed value of $30,300 for land and $165,700 for improvements, for a total value of $196,000. Further, the

[1] According to the Respondent, the value indicated on the 2013 Form 115 is incorrect. Specifically, due to a "typographical error," the total assessment of $231,300 was listed in the improvement section. *Smith testimony*. Indeed, the 2013 assessment indicated on the subject property record card is $32,800 for land and $198,500 for improvements, for a total of $231,300. *Resp't Ex. C* at 3.

Petitioners requested a 2013 assessed value of $32,800 for land and $161,200 for improvements, for a total value of $194,000. At the hearing the Petitioners requested a total value of $196,000 for both years under appeal.

OBJECTIONS

11. Mr. Cusimano made three objections at the hearing. First, Mr. Cusimano objected to the admission of Petitioners Exhibit 3 on the grounds that it is "new evidence" not submitted at the PTABOA hearing. Further, Mr. Cusimano argues the Petitioners failed to provide the exhibit to the Respondent prior to the hearing. In response to the objection, Mr. Reed stated that he had enough data to prove his case without the exhibit. Under the Board's procedural rule 52 IAC 2-7-1(b)(1), parties are required to submit documentary evidence to the other party at least five (5) business days before the hearing. The Petitioners did not comply with the Board's procedural rule. Thus, the ALJ sustained Mr. Cusimano's objection. The Board will adopt the ALJ's ruling and Petitioners Exhibit 3 is excluded from the record.

12. Mr. Cusimano's second objection was related to Mr. Reed's cross-examination of Mr. Rutsey during the Respondent's rebuttal. Specifically, Mr. Cusimano argued that Mr. Reed's questioning of how Mr. Rutsey determined the $10,000 adjustments for two comparable-property sales was outside the scope of his direct examination. Mr. Reed's response to the objection was, "if it's outside the scope of things, that's fine."

13. Indeed, while Mr. Rutsey discussed his adjustments during the Respondent's case-in-chief, and Mr. Reed had the opportunity to cross-examine him then, Mr. Reed's line of questioning was outside the scope of the rebuttal testimony. Thus, the ALJ sustained the objection. The Board will adopt this ruling.

14. Finally, Mr. Cusimano objected to the Petitioners re-opening their case after apparently completing it. Mr. Reed indicated that the Petitioners' case was complete, but then requested the opportunity to explain exhibits that had already been admitted. The ALJ took the objection under advisement and allowed Mr. Reed to continue. Mr. Cusimano

was also allowed the opportunity to re-cross-examine Mr. Reed regarding the additional testimony.

15. Mr. Cusimano's objection is overruled. While it did not follow normal procedure, the Respondent was not harmed by re-opening the Petitioners' case. Further, the Board notes that while Mr. Reed's additional testimony was considered, it had no bearing on the outcome of the case.

PETITIONERS' CONTENTIONS

16. The subject property is assessed too high. To prove this, the Petitioners submitted an appraisal performed by Kent Sprunger, a certified residential appraiser. The appraisal was performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). Relying mainly on the sales-comparison approach to value, Mr. Sprunger indicated that as of March 20, 2012, the subject property should be valued at $196,000. Further, Mr. Sprunger concluded that value was for both 2012 and 2013. *Reed argument; Sprunger testimony; Pet'rs Ex. 2.*

17. The Petitioners' home is very typical for its neighborhood. Mr. Sprunger concluded "it is about as uniform of a neighborhood that we have in Wells County." In completing his appraisal, Mr. Sprunger utilized what he concluded were the best comparable properties. Even so, he conceded it is sometimes difficult to find comparable properties. Mr. Sprunger was forced to utilize comparable properties that had a swimming pool, or did not have a basement, both of which differed from the subject property. *Sprunger testimony; Pet'rs Ex. 2.*

18. Additionally, four properties close to the Petitioners' home are similar. These four properties, however, are assessed lower than the subject property. Specifically, the property at 1600 Brook Court is assessed at $208,300. After deducting a swimming pool, assessed at $20,000, the assessment is approximately $188,000. The home at 1608 Brook Court is assessed at $215,300, but that equates to $196,500 after deducting the swimming

pool. The home at 302 Eagle Court is assessed at $162,500; however, this home lacks a basement. After adding the same basement adjustment applied to the subject property to the property at 302 Eagle Court, the assessment increases to $195,000. Lastly, the property located at 1607 Brook Court is assessed at $201,600. This property has a slightly larger first floor and garage than the subject property, but a slightly smaller basement. These four properties have seen their assessments either stay the same or decrease from 2011 to 2013. *Sprunger testimony; Pet'rs Ex. 4, 5.*

19. In contrast, the subject property's assessment has increased over that same time frame. After the Board's 2011 ruling reducing the assessment to $203,200, the assessed value has gone up 30% without explanation. Furthermore, the basement appears to have been added to the assessment for a second time according to an August 2013 letter from the Respondent. *Reed testimony; Pet'rs Ex. 1, 7, 8.*

20. The Respondent's appraisal contains some questionable adjustments. Those adjustments add up to approximately $20,000 and account for differences in condition between the subject property and the Respondent's purportedly comparable properties. This is notable because the Respondent's appraiser testified that the purported comparable homes were similar and the neighborhood was uniform. Eliminating those adjustments brings both appraisals to nearly the same value. Further, Mr. Sprunger inspected the interior of the subject property, while the Respondent's appraiser did not. *Sprunger argument (referencing Resp't Ex. A, B); Reed testimony.*

21. Finally, because both appraisers believe the market has been steady, the Petitioners' requested 3% decrease in value from the Board's 2011 determination is "nothing crazy" when compared to the Respondent's proposed 8% increase in assessed value. *Reed argument.*

RESPONDENT'S CONTENTIONS

22. The Respondent offered two USPAP compliant appraisals performed by Mark Rutsey, a certified residential appraiser. These appraisals had an effective date of March 1, 2012, and March 1, 2013. Mr. Rutsey was allowed only an exterior inspection; however, he did view photographs of the interior taken when the property sold in 2008. Further, Mr. Rutsey was able to view more recent pictures of the basement. However, this is a non-issue because appraisers generally cannot inspect the interior of the comparable properties they utilize in their appraisal. Mr. Rutsey estimated the subject property should be assessed at $220,000 for both 2012 and 2013. *Cusimano argument; Rutsey testimony; Resp't Ex. A, B.*

23. Mr. Rutsey testified that his first order of business in performing any appraisal is to define and analyze the subject neighborhood. Once he did that for the subject property, he determined that the subject property was typical, and in average condition, for its neighborhood. The house is "beautiful" and in good shape, and the yard is well-kept. *Rutsey testimony.*

24. While Mr. Rutsey considered all three approaches to value, he mainly focused on the sales-comparison approach. In choosing comparable properties, he testified that he focuses on four major factors. The first factor is the design of the house. The comparable properties should have the same number of stories and the same type of foundation or basement if at all possible. Second, the homes should be similar in age. The final two factors are quality of construction and condition. *Rutsey testimony.*

25. Quality of construction is "very important." In determining quality of construction, Mr. Rutsey looks at things such as the number and size of window openings, the pitch and type of roof, the attention to detail on the outside, the number of porches and overhangs, and the quality of materials. With regard to condition of comparable properties, most appraisers assume that the condition on the inside of a home is similar to the condition of the outside. *Rutsey testimony.*

26. Many top appraisers have written articles stating that they consider prior sale prices of a subject property to be a "fourth value" that they weigh. Of course, any such sale must be tested and represent market value. Here, the Petitioners purchased the subject property in 2008 for $214,000. The data indicates that over the past 12 years, the market of the subject property's neighborhood was at its lowest point in 2008. After 2008, the market has somewhat recovered. Thus, in 2012 and 2013, the subject property should have been worth more than the 2008 purchase price. *Rutsey testimony; Cusimano argument.*

27. Regarding the Petitioners' evidence, their appraisal contains a few errors that, while not affecting the final value significantly, may point to a lack of care. Specifically, Mr. Sprunger utilized a form normally used for mortgage refinance appraisals. Mr. Sprunger forgot to delete the language regarding the purpose of the appraisal. The effective date of the appraisal was March 20, 2012. However, the assessment dates under appeal are March 1, 2012, and March 1, 2013, respectively. Moreover, on at least one comparable, Mr. Sprunger utilized a listing price rather than the sale price. Because the sales price is likely lower, it suggests that Mr. Sprunger may not have selected properties that are the most comparable to the subject property. Overall, in the Respondent's appraisal, Mr. Rutsey selected superior comparable properties as comparable to the purported comparables in Mr. Sprunger's report. For instance, Mr. Rutsey selected comparable properties that were similar to the subject property in design and quality of construction. *Rutsey argument; Cusimano argument; Resp't Ex. A, B; Pet'rs Ex. 2.*

28. Finally, the assessments of the properties located near the subject property are not relevant to the subject property's value. Certified appraisers consider sales, not assessments. There are differences between the subject property and the surrounding properties, so the assessments would not be the same. Further, the Petitioners failed to offer any ratio studies or any other evidence indicating that they received disparate treatment. *Smith testimony; Cusimano argument* (*citing Thorsness v. Porter Co. Ass'r,* 3 N.E.3d 49 (Ind. Tax Ct. 2014); *Robert Fleetwood v. Monroe Co. Ass'r* (Ind. Bd. of Tax Rev. pet. nos. 53-005-10-1-4-00027 and 53-005-12-1-4-00102, January 16, 2014)).

BURDEN OF PROOF

29. Generally, the 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. Ass'r,* 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

30. First, Ind. Code § 6-1.1-15-17.2 "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 year." Ind. Code § 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 the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

31. Second, Ind. Code section 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, "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." Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

32. The parties agreed that the Respondent has the burden for 2012. The assessment increased more than 5% from 2011 to 2012, thereby placing the burden on the Respondent for 2012. The determination about who has the burden for 2013 depends on

the Board's determination for the 2012 appeal. Ind. Code § 6-1.1-15-17.2(b). Nevertheless, our final assessment determination depends on the weight of the evidence for both years, not who had the burden of proof.

ANALYSIS

33. Real property is assessed for 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, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id*. Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id*. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

34. Regardless of the method used, a party must explain how its evidence relates to 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); *see also Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012 assessments, the assessment and valuation date were March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f). And for 2013 assessments, the assessment and valuation date were March 1, 2013. *Id*.

35. Both parties offered certified appraisals done in conformance with USPAP standards. Here, the Board must weigh all the evidence to determine a correct assessment.

36. While both appraisers listed their opinion of the "site value" in their respective cost approach sections, neither appraiser developed either the cost approach or the income

approach. The Board notes that Mr. Sprunger's opinion of the site value is $25,000 and Mr. Rutsey's opinion of that value is $30,000. That difference has little, if any, significance because both appraisers focused entirely on the sales-comparison approach. There is no dispute about focusing on the sales-comparison approach.

37. The testimony from both appraisers and their appraisal reports provide probative evidence. The opinions of value utilizing the sales-comparison approach, however, differ by nearly $25,000. There appear to be two reasons for this difference. They chose only one common comparable property and their opinions about the condition of the subject property differ.

38. Selecting comparables, of course, is something appraisers normally do. The Board recognizes that process requires expertise and most often involves issues that are a matter of opinion, rather than questions with a "correct" or "incorrect" answer. The final outcome depends on the weight of the evidence and how effectively the arguments were presented. The Board must determine which evidence is most creditable. The Board recognizes the approach that each of these appraisers took in selecting comparable sales had both positive and negative aspects. This kind of analysis must be made on a case by case basis. There is no general rule that a particular aspect of comparison (such as location or size) is inherently more significant than any other aspect. In fact, neither party claimed there is such a rule or even argued there should be.

39. The Board concludes that here, the Respondent's appraiser, Mr. Rutsey, explained and defended his selection of comparables more effectively. Mr. Rutsey testified to a detailed set of criteria that he utilized to choose comparables, and it appears that he stuck to those criteria in both his 2012 and 2013 appraisal reports. Specifically, Mr. Rutsey noted that comparables should have the same number of stories and the same type of foundation or basement. The Petitioners' appraiser, Mr. Sprunger, on the other hand, offered much less detail as to how he selected his comparables, other than testifying that they were the best he could find. Among the comparables that were different, Mr. Rutsey chose two-story homes with basements, similar to the subject property. Mr. Sprunger chose one-story

homes without basements. The one-story homes without basements sold for much less, requiring Mr. Sprunger to make significant adjustments. Furthermore, it appears that Mr. Sprunger choose properties based on location because his purported comparables were within .02 miles from the subject property, even though the properties did not necessarily share other characteristics.

40. The appraisers selected one common comparable. It is located at 1623 Brook Court and sold for $208,500 on February 28, 2012. In some ways the adjustments each appraiser made to the sales price are similar. Mr. Rutsey, however, made a $10,000 adjustment for condition and quality of construction. It reveals the other major difference in the opinions. Mr. Sprunger considered that the subject property is in average condition and quality, while Mr. Rutsey considered it to be in good condition and quality.

41. Mr. Sprunger offered few specifics to support his opinion. Although he testified several times that the subject property was typical and average for its neighborhood and the neighborhood is very uniform. Mr. Rutsey offered more details during his testimony stating that he considers the details in construction, which are apparent in the subject property. Further, Mr. Rutsey testified that the yard and outside features of the home are well-kept. But he also testified that the subject property is typical and average for its neighborhood.

42. The Board finds strengths and weaknesses with the evidence both sides presented. In isolating the appraisers' adjusted sale price of the common comparable at 1623 Brook Court, Mr. Rutsey adjusted it to $220,500. Mr. Sprunger's adjusted sale price for that property was $204,235. (The Board notes that figure is over $8,000 higher than Mr. Sprunger's estimate of value for the subject property.) Overall, the Board finds Mr. Rutsey's opinion was a little better explained and a little more credible.

43. One other factor that sways the Board to Mr. Rutsey's opinion is his testimony and argument regarding the Petitioners' purchase price. The Petitioners purchased the subject property in 2008 for $214,000. True, that purchase was four years before the first

assessment date at issue here. While the Board does not necessarily agree with Mr. Rutsey that a four-year-old purchase price could be considered a "fourth value" in the appraisal of the subject property, his expert testimony relating that purchase price to at least a minimum value for 2012 and 2013 was convincing. Specifically, Mr. Rutsey explained that the Petitioners purchased the subject property when the neighborhood's market was at its lowest point. Further, Mr. Rutsey testified that the market has somewhat recovered since 2008. Therefore, the value of the subject property in 2012 and 2013 should be more than the purchase price of $214,000 and not less.

44. Mr. Sprunger's appraisal does not appear to even consider the Petitioners' purchase price. His appraisal and his testimony made no mention about why he believed the value of the subject property decreased by $18,000 in four years, *even though he testified that the market was at least steady*. Neither Mr. Sprunger nor Mr. Reed addressed this point, even after Mr. Rutsey testified and argued extensively about it. This failure has negative impact on the Petitioners' case.

45. While the Board finds Mr. Rutsey's appraisal more persuasive, the Petitioners also offered a rough assessment comparison at the hearing. Mr. Cusimano's argument that other properties' assessments are simply irrelevant in proving value is incorrect. Indeed, Ind. Code § 6.1-1-15-18(c)(2) allows a party to submit comparable property assessments to prove value. But other assessments do not automatically show the market value-in-use of the property under appeal. The party relying on those assessments must use generally accepted appraisal methods show that the other properties are comparable, and explain how any relevant differences affect the properties' value. Ind. Code § 6.1-1-15-18(c)(2); *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014); *see also Long supra* at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value).

46. Mr. Sprunger admitted he had only started working on this approach the night before the hearing. His comparison was not very thorough. It only included one or two points. It

overlooked what appear to be differences between the subject property and the comparables. Consequently, the attempt to compare other assessments lacks probative value in this case.

47. The Board ultimately finds Mr. Rutsey's appraisal is the most credible evidence of the correct market value-in-use for 2012 and 2013.

SUMMARY OF FINAL DETERMINATION

48. The Board orders the 2012 and 2013 assessments to be changed to $220,000.

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

_____
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>.