

REPRESENTATIVE FOR PETITIONER:

Sharon LeVeque, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:

Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Shult Properties, LLC,)	Petition No.:	71-018-07-1-5-01992
)		
Petitioner,)	Parcel No.:	18-2107-3999
)		
v.)		
)		
St. Joseph County Assessor,)	County:	St. Joseph
)		
Respondent.)	Assessment Year:	2007

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

December 10, 2012

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

Issue

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioner's property was overstated for the 2007 assessment year.

Procedural History

1. Benjie Shult of Shult Properties, LLC, filed an appeal with the St. Joseph County Assessor contesting the subject property's March 1, 2007 assessment.¹ On February 19, 2010, the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the property's assessment, but not to the level that Shult Properties had requested. Sharon LeVeque, Certified Tax Representative for Shult Properties, timely filed a Form 131 petition with the Board.² The Board has jurisdiction over this appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
2. On July 31, 2012, the Board's administrative law judge, Patti Kindler ("ALJ"), held a hearing on Shult Properties' appeal. Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

3. The following people were sworn in and testified:

For Shult Properties: Sharon LeVeque, Certified Tax Representative

For the Assessor: Rosemary Mandrici, St. Joseph County Assessor

4. Shult Properties submitted the following exhibits:

¹ The document containing Shult Properties' original appeal is not part of the record. While the parties agreed that Shult Properties filed an appeal, neither party could locate a copy of the written document.

² The Board determined that the Form 131 petition was timely and properly filed as the result of a hearing on the matter, held on June 22, 2011, before Senior Administrative Law Judge David Pardo.

Petitioner Exhibit 1:	Hearing notice
Petitioner Exhibit 2:	Form 115,
Petitioner Exhibit 3:	Appraisal report prepared by Ms. LeVeque
Petitioner Exhibit 4:	2007 Property Record Card
Petitioner Exhibit 5:	2011 Property Record Card
Petitioner Exhibit 6:	Ms. LeVeque's letter to the Board regarding the Form 130
Petitioner Exhibit 7:	2007 Portage Township rental properties
Petitioner Exhibit 8:	Portage Township rental properties for 2007-08 trending
Petitioner Exhibit 9:	Property Record Cards for eleven properties that sold multiple times

5. The Assessor submitted the following exhibits:

Respondent Exhibit 1: Comparable sales report

6. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A: Form 131 petition
Board Exhibit B: Hearing notice
Board Exhibit C: Hearing sign-in sheet
Board Exhibit D: Notice of Appearance for Mr. Agostino
Board Exhibit E: Respondent's list of exhibits and witnesses

7. The subject property is a single-family rental home located at 1418 Meade Street in South Bend, Indiana.

8. For 2007, the PTABOA determined the subject property's assessed value to be \$700 for the land and \$28,100 for the improvements, for a total assessed value of \$28,800.

9. Mr. Shult requested an assessment of \$17,000 based on the property's appraised value.

Objections

10. Ms. LeVeque objected to Respondent's Exhibit 1, because the Assessor did not provide her with a copy of that exhibit before the Board's hearing. In a non-small-claims appeal, the Board's procedural rules require each party to give all other parties: (1) a list of the witnesses and exhibits it intends to offer at the Board's hearing at least 15 business days

before that hearing, and (2) copies of documentary evidence and summaries of its witnesses' anticipated testimony at least five business days before the hearing. 52 IAC 2-7-1(b)(1) and (2). The Board may exclude evidence based on a party's failure to comply with those deadlines. 52 IAC 2-7-1(f). According to Ms. LeVeque, she was unable to confirm the sales that the Respondent claimed supported the subject property's assessed value or review the properties that the Respondent was claiming were comparable to the subject property.

11. Mr. Agostino did not dispute that he failed to provide a copy of the document to the Petitioner; instead he argued that Respondent's Exhibit 1 was a rebuttal exhibit. Consequently, Mr. Agostino contends, he was not required to provide Ms. LeVeque a copy of that exhibit before the hearing. But Respondent's Exhibit 1 is a comparable sales report that the Assessor prepared to support the property's assessed value. None of the comparable properties that the Assessor relied on in her report were used in Ms. LeVeque's appraisal. To the contrary, it was the Respondent's sole valuation evidence in support of the assessment. Therefore, Exhibit 1 was evidence in support of the Assessor's case in chief that was required by the Board's rules to have been exchanged at least five business days prior to hearing. Because Exhibit 1 was not provided by the Respondent to the Petitioner or the Petitioner's representative, and because the Petitioner was unfairly prejudiced by the Respondent's failure to exchange the document, Respondent's Exhibit 1 is not admitted into evidence in this proceeding.

Analysis

Parties' Contentions

A. Summary of Shult Properties' Contentions

12. Ms. LeVeque argued that the subject property, a single-family rental property, was assessed too high based on the property's appraised value. *LeVeque argument.*

According to Ms. LeVeque, she estimated the subject property's market value at \$17,000 as of January 1, 2007.³ *LeVeque testimony; Pet'r Ex. 3.*

13. Because the St. Joseph County multiple listing service ("MLS") did not have a class code for rental properties, Ms. LeVeque testified that, in preparing her appraisal, she searched only for vacant properties without mortgage or homestead exemptions. *LeVeque testimony.* According to Ms. LeVeque, she found 136 sales, which she claimed were not bank-owned or bank-transferred, that sold in 2006 for less than \$20,000.⁴ *Id.; Pet'r Ex. 3.* Based on the availability of 136 possible rental properties for under \$20,000, Ms. LeVeque argues, it would be unreasonable for an investor to pay more than that amount. *LeVeque argument; Pet'r Ex. 3.*
14. From her list of 136 neighborhood rentals, Ms. LeVeque testified that she chose nine properties to use as comparable sales in her appraisal. *LeVeque testimony; Pet'r Ex. 3.* According to Ms. LeVeque, each of the nine houses was within 200 square feet of the size of the subject property's house. *Id.* She also made adjustments to the comparable properties for differences in financing, living area, number of bathrooms and bedrooms, foundation and HVAC type, and the size of the garage. *Id.* However, Ms. LeVeque testified, she only considered six of the nine comparable properties in developing her final determination.⁵ *Id.* The adjusted sale prices for the six comparable sales ranged from \$8,700 to \$18,000. *Id.*
15. Ms. LeVeque also argued that the Assessor's development of the subject property's gross rental multiplier ("GRM") was ambiguous and unreliable. *LeVeque testimony.* First, Ms. LeVeque noted that one Portage Township rental report showed the GRM for the subject

³ Ms. LeVeque testified that she prepared the appraisal before she was hired to serve as Shult Properties' certified tax representative.

⁴ But Ms. LeVeque testified she considered repossessed properties because prudent investors are aware of lenders' websites for the purchase of income producing properties, and based on the theory of substitution they would choose to purchase the repossessed properties over private sales. *LeVeque testimony.*

⁵ Regarding the three comparables that Ms. LeVeque chose not to consider, she testified that she listed them because they were the only confirmed rental properties occupied by renters with tenant's rights listed in the MLS system. *LeVeque testimony; Pet'r Ex. 3.*

property at 6 and another report showed the GRM as an 8. *Id.*; *Pet'r Exs. 2, 7 and 8.* Despite the rental reports, the PTABOA chose a GRM of 4 to value the subject property, which was not listed on any of the Assessor's reports as an appropriate GRM for the subject property's neighborhood. *Id.*

16. Similarly, Ms. LeVeque questioned which sales the Assessor used to determine the GRM because some properties sold multiple times in a given year. *LeVeque argument.* In support of her contention, Ms. LeVeque offered thirteen property record cards in which a property had multiple sales in 2006. *LeVeque testimony; Pet'r Ex. 9.* For example, the property located at 1317 College sold twice on June 14, 2006, first for \$57,105, then for \$17,841, and sold again on September 19, 2006, for \$56,000. *Id.* Ms. LeVeque also argued that the PTABOA failed to use the correct rents for the subject property in calculating its value with the GRM. *LeVeque argument.*
17. Finally, Ms. LeVeque argued that the subject property's land contract sale for \$30,000, on April 1, 2010, is not relevant to the property's 2007 assessment. *LeVeque argument.*

B. Summary of the Assessor's Contentions

18. The Assessor argues that the Board should give little weight to the Petitioner's appraisal. *Agostino argument.* First, the Assessor's representative argues that Ms. LeVeque prepared her appraisal with an effective date of January 1, 2007, when the 2007 assessment's valuation date is actually January 1, 2006. *Id.* In addition, Mr. Agostino contends that, although Ms. LeVeque testified that her goal in valuing the subject property was to find sales of similar rental properties for comparables, she excluded the only three sales she verified as rentals from her reconciliation of value. *Id.* Third, Ms. LeVeque did not include the sale of the property at 1334 Meade Street, which sold for \$30,000 on June 14, 2006, from her own list of sales, even though it is located less than a block from the subject property on the same street. *Id.* According to Mr. Agostino, the Meade Street sale supports the subject property's \$28,800 assessment and is highly relevant to the property's value. *Agostino argument.*

19. Mr. Agostino also contends that Ms. LeVeque failed to consider the subject property's 2010 contract sale for \$30,000. *Agostino argument.* According to Mr. Agostino, the property's assessment history, along with neighborhood trending, shows that the market was static between 2007 and 2009. *Id.*
20. Further, Mr. Agostino argues that Ms. LeVeque's comparable sales were as much as eleven years older than the subject property, but she made no adjustment for the differences in age. *Agostino argument.* Moreover, Ms. LeVeque's list of 136 sales from which she derived her sales comparables included numerous sheriff sales and bank repossessions, which are not generally considered arm's length transactions. *Id.* In addition, Mr. Agostino questioned why Ms. LeVeque chose only properties that were vacant when the subject property was occupied with an income stream. *Id.*
21. Finally, the Assessor argues that the Petitioner's property was properly assessed. *Mandrici argument.* According to Ms. Mandrici, the county's gross rent multipliers were developed through an analysis of the sales and rents of properties that were identified as income producing. *Mandrici testimony.* Because using GRMs for single-family rental homes is a fairly new process in assessing, however, Ms. Mandrici testified that the multipliers were refined as more data was researched and analyzed. *Id.* Thus, despite earlier reports with other GRM values, Ms. Mandrici contends, the PTABOA's GRM of 4 for the Petitioner's property is correct. *Id.* Ms. Mandrici also confirmed that the PTABOA used a market rent of \$600 per month, which was developed from analyzing properties in the property's neighborhood, rather than the property's actual rent. *Id.*

Discussion

A. Burden of Proof

22. 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). 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 § 6-1.1-15-17.2.⁶ 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. 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.

B. Shult Properties' Case

23. In Indiana, assessors value real property based on its true tax value, which the 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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 Standard of Professional Appraisal Practice (“USPAP”) often will be probative. *See id.*; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) *reh'g den. sub nom.* 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.
24. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the appealed 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. *See id.*

⁶ 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.

(“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.”). For March 1, 2007 assessments, the valuation date was January 1, 2006. 50 IAC 21-3-3.

25. Here, the Petitioner contends its property was over-valued for the 2007 assessment year based on the property’s appraised value. In support of that contention, the Petitioner’s representative presented a valuation opinion stating that the subject property’s market value was \$17,000 as of January 1, 2007. Ms. LeVeque is an Indiana Certified Appraiser who certified that she prepared her appraisal in accordance with USPAP. She considered all three approaches to value and developed an estimate under one of them—the sales-comparison approach. Thus, her appraisal is generally probative of the subject property’s value as of the January 1, 2007—the date as of which she valued the property.
26. Although Ms. LeVeque’s valuation was as of January 1, 2007, all of the sales that she used in her sales-comparison approach occurred in 2006. And because she did not adjust those sales for the time-related difference between the sale dates and appraisal date, they bear some relationship to the property’s value as of its January 1, 2006, valuation date. Granted that relationship is not exact. But the Department of Local Government Finance’s rules for annual adjustments that were in effect at the time of this appeal instructed assessors to use sales from 2005 and 2006 in performing ratio studies for the March 1, 2007, assessment date. 50 IAC 21-3-3-(a) (“For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date.”). Thus, Ms. LeVeque’s valuation opinion bears enough of a relationship to the January 1, 2006, valuation date to make a prima facie case.
27. Once the Petitioner raises a prima facie case that its property was over-valued, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner’s case, the Respondent has the same burden to present probative evidence

that the Petitioner 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).

28. The Assessor's representative, Mr. Agostino, noted what he considered several inadequacies in the appraisal report, and specifically the sales that Ms. LeVeque used as comparables. He argued that Ms. LeVeque used comparable properties that were up to eleven years older than the subject property without any adjustment and he questioned her reasons for not considering the first three comparable sales that she listed. He argued that those three sales were the only verified rentals, and therefore likely the most comparable. And two of those sales, with adjusted sale prices of \$30,600 and \$25,500, supported the subject property's current assessment. But the Respondent presented no evidence to show that the two properties Ms. LeVeque excluded were somehow more comparable than the six properties she chose to use in her appraisal, except to argue that the excluded properties were the only "confirmed" rental properties in the appraisal. Because it is well within an appraiser's expertise to choose the sales he or she deems most comparable to the subject property and apply adjustments to those comparable properties to account for the differences between them, without probative evidence to the contrary, the Board finds Ms. LeVeque's comparable properties and the adjustments she made to those properties to be reasonable.
29. Further, Mr. Agostino noted that many of Ms. LeVeque's 136 sales were foreclosures and sheriff sales. However, Mr. Agostino failed to present evidence that any of the sales that Ms. LeVeque relied upon in her appraisal were sheriff sales or sales that did not reflect the properties' market values.
30. Ms. LeVeque's decision not to use the income approach to value the property even though she determined the property's highest and best use was as an income-producing property raises questions about the reliability of her valuation. And her choice to represent the Petitioner as a certified tax representative after preparing a valuation opinion for the property raises concerns about her credibility. But these are not the arguments that the Respondent's counsel raised in his case. In the end, while Mr.

Agostino's criticisms detract from the credibility of the Petitioner's appraiser's valuation, he gave the Board insufficient evidence to reject Ms. LeVeque's value based on any assumptions she made in reaching that value.

31. To the extent that the Respondent argues that the Petitioner's property was properly assessed for 2007 based on the gross rent multiplier method of valuation, the Assessor presented no evidence to support her use of a four-times multiplier or a \$600 per month "market rent." 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).
32. Similarly, while the Respondent contends that the property was sold on contract in 2010 for a price that supports the property's 2007 assessed value, the Respondent failed to present any evidence of that sale. And, in fact, the Petitioner's representative testified that the sale was a private contract sale between the Petitioner and the property's tenant. Absent evidence that the sale price represented the property's market value-in-use, a non-arms'-length transaction, such as the contract sale here, has little probative value. Moreover, the property's April 1, 2010, contract date is too far removed from the January 1, 2006, valuation date to be probative of the property's value without more evidence than Mr. Agostino's argument that, because the assessed value of the property did not change between 2007 and 2009, the Board should accept a 2010 sale as evidence of the property's value in 2007.

SUMMARY OF FINAL DETERMINATION

33. The Petitioner raised a prima facie case that its property was over-valued for the 2007 assessment year. The Respondent failed to rebut or impeach the Petitioner's evidence. The Board finds in favor of the Petitioner and holds that the value of the subject property was \$17,000 for the March 1, 2007, assessment date.

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

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>>.