

REPRESENTATIVES FOR PETITIONERS:

Pearl W. & Peggy J. Speakman, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Linda Phillips, Tippecanoe County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Pearl W. & Peggy J. Speakman,	)	Petition No.:	79-004-10-1-5-00002
	)		
Petitioners,	)	Parcel No.:	79-07-28-427-013.000-004
	)		
v.	)	County:	Tippecanoe
	)		
Tippecanoe County Assessor,	)	Township:	Fairfield
	)		
Respondent.	)	Assessment Year:	2010

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

**August 9, 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**

**Introduction**

1. Because the subject property’s March 1, 2010 assessment increased by more than 5% over its assessment for the previous year, the Tippecanoe County Assessor had the burden of proof. While the Assessor offered sales data for other properties, her witness

did not explain how relevant differences affected the properties' relative market values-in-use. The Petitioners, Pearl and Peggy Speakman, were therefore entitled to have the 2010 assessment reduced to its 2009 level. But the Speakmans did not offer probative evidence to support any further reduction.

### **Procedural History**

2. On May 6, 2011, the Speakmans appealed the subject property's March 1, 2010 assessment. On January 11, 2012, the Tippecanoe County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the assessment, although not to the amount that the Speakmans had requested. The Speakmans then timely filed a Form 131 petition with the Board.
3. On June 11, 2013, the Board's administrative law judge, Dalene McMillen ("ALJ"), held a hearing on the Speakmans' petition. The following people testified under oath:
  - For the Petitioners: Pearl W. Speakman<sup>1</sup>
  
  - For the Assessor: Linda Phillips, Tippecanoe County Assessor  
Jesse Wallenfang, Sales Data & Appeals Manager for the  
Tippecanoe County Assessor
4. The Speakmans did not offer any exhibits.
5. The Assessor offered the following exhibits:
  - Respondent Exhibit 1 – Valuation History Screen for the subject property,
  - Respondent Exhibit 2 – Spreadsheet with sales data and other information for the subject property and five other properties,
  - Respondent Exhibit 3 – Notification of Final Assessment Determination – Form 115-I PT, dated January 11, 2012,
  - Respondent Exhibit 4 – 2010 property record card ("PRC") for the subject property showing PTABOA changes,
  - Respondent Exhibit 5 – 2009 PRC for the subject property,

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<sup>1</sup> Peggy Speakman was sworn as a witness but did not testify.

Respondent Exhibit 6 – The Speakmans’ original request for review of the assessment, file-stamped May 6, 2011, and tax bill for the subject property dated April 2, 2011.

6. The following additional items are part of the record:
  - Board Exhibit A – Form 131 petition with attachments,
  - Board Exhibit B – Notice of Hearing, dated April 23, 2013,
  - Board Exhibit C – Hearing sign-in sheet.
  
7. The PTABOA determined the following assessment:  
Land: \$27,000          Improvements: \$68,600          Total: \$95,600
  
8. The Speakmans requested the following assessment:  
Land: \$20,000          Improvements: \$58,000          Total: \$78,000
  
9. Neither the Board nor the ALJ inspected the subject property.

### **Parties’ Contentions**

#### **A. Summary of the Speakmans’ Evidence and Contentions**

10. The subject property contains a single-family home located at 923 South 22<sup>nd</sup> Street in Lafayette. The property was assessed too high in light of what two banks believed the property was worth when the Speakmans sought to refinance their loan. *P.W. Speakman testimony.*
  
11. In 2011, the Speakmans approached Chase Bank. But Chase would not refinance the Speakmans' loan until they replaced the home’s roof, painted its trim, and installed new light fixtures. Even then, Chase would only loan the Speakmans \$78,000. Regions Bank similarly indicated that the property was worth only \$78,000. Unfortunately, the Speakmans could not use Regions’ records in this appeal because Regions could not find them. *P.W. Speakman testimony.*

12. The subject property would be worth only \$68,000 if it were reassessed now. Six homes in the subject property's neighborhood were repossessed by the banks in 2010 and three or four homes were in the process of being repossessed at the time of the Board's hearing. In addition, the neighborhood is depressed. The local school closed, there are no curbs or sidewalks, and the street is only 24 feet wide, making it impossible to park more than one car. A nearby income-producing duplex sold for only \$48,000. *P.W. Speakman testimony.*
13. Finally, the subject home was improperly assessed for a full basement and a back porch. The home has never had a back porch, and for 15 years, the Speakmans have been taxed for a full basement instead of the partial unfinished basement that the home actually has. The Speakmans claim that they are entitled to a credit for the taxes that they overpaid on the basement. *P.W. Speakman testimony, argument.*

#### **B. Summary of the Assessor's Evidence and Contentions**

14. The PTABOA changed the underlying characteristics on which the assessment was based. The home had been assessed as having a full basement, which the PTABOA changed to a half basement and half crawl space area. It also changed the home's quality grade from C-1 to a D+2. Those changes reduced the assessment by \$2,800. *Wallenfang testimony; Resp't Exs. 2-3.*
15. To support the assessment, the Assessor's witness, Jesse Wallenfang, pointed to the sales of five properties that he characterized as similar to the subject property. The properties all sold between June 30, 2009, and December 8, 2009. Mr. Wallenfang compared the five homes to the subject home in terms of age, size, quality grade, condition, number of baths, story height, basement area, and the presence or absence of a garage. The properties sold for prices ranging from \$42.59 per square foot to \$76.39 per square foot, with a median of \$62.50 per square foot. The subject property was originally assessed at \$56.55 per square foot, which the PTABOA changed to \$54.94 per square foot. Both of

those assessments are below the median sale price for the five comparable properties.  
*Wallenfang testimony; Resp't Ex. 2.*

## Discussion

### A. Burden of Proof

16. 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). Indiana Code § 6-1.1-15-17.2, however, shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the same property's assessment for the previous year:

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 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.

17. The Assessor assessed the subject property for \$83,900 in 2009. For 2010, the PTABOA determined the property's assessment at \$95,600—an increase of more than 5%. The Assessor therefore has the burden of proving that the 2010, assessment was correct. To the extent that the Speakmans seek an assessment below the previous year's level, however, they bear the burden of proving that lower value.

## B. Analysis

18. The Assessor did not meet her burden of proving that the 2010 assessment was correct.

The Board reaches this conclusion for the following reasons:

- a. In Indiana, real property is assessed 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.” MANUAL at 2. A party’s evidence in a tax appeal must be consistent with that standard. *Id.* For example, a market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer sales data or actual construction costs for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5; I.C. § 6-1.1-15-18.
  
- b. The Assessor relied on Mr. Wallenfang’s analysis of five sales from the Speakmans’ neighborhood. The sales-comparison approach is a generally accepted appraisal method that “estimates the total value of [a given] property directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 3. In order to use a sales-comparison analysis as evidence in an assessment appeal, however, one must show that the properties on which that analysis is based 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). Instead, one must identify the appealed property’s characteristics and explain how those characteristics compare to the characteristics of the sold properties. *Id.* at 471. Similarly, one must explain how any relevant differences affect the properties’ relative market values-in-use. *Id.*

- c. Although Mr. Wallenfang compared the five sold properties to the subject property along several lines, he did not address how relevant differences affected the relative values. For example, he neither quantitatively adjusted, nor qualitatively analyzed, the comparable properties' sale prices to account for those differences. At most, Mr. Wallenfang simply pointed out that the subject property was assessed for less than the other properties' median sale price per square foot of living area. Without some explanation showing that such an analysis complies with generally accepted appraisal principles, the Board will not assume that it does.
  - d. Because the Assessor failed to meet her burden of proof, the 2010 assessment must be reduced to the previous year's level of \$83,900. That, however, does not end the Board's inquiry. The Speakmans asked for an assessment of \$78,000. And they have the burden of proving that they are entitled to that additional reduction. The Board therefore turns to the Speakmans' evidence.
19. The Speakmans did not meet their burden of proving that the assessment should be reduced below its 2009 level. The Board reaches this conclusion for the following reasons:
- a. Pearl Speakman testified that two banks believed the subject property was worth no more than \$78,000. But he offered nothing to show how either bank arrived at that number. Those valuation opinions are therefore entirely conclusory and carry no probative weight.
  - b. The Speakmans attached to their Form 131 petition copies of what appear to be portions of three pages from a six-page appraisal report estimating the subject property's value at \$78,000. *See Bd. Ex. A.* But the Speakmans did not offer those documents, or even refer to them, at the Board's hearing. Even if those documents were in evidence, the Board would give little or no weight to an appraisal report that

- is missing key parts. In any case, the appraisal report estimated the subject property's value as of December 27, 2011—more than 21 months after the relevant valuation date of March 1, 2010. And the Speakmans did not explain how the report related to the subject property's value as of that relevant valuation date. *See Long*, 821 N.E.2d at 471 (finding that taxpayers' evidence lacked probative value where they did not explain how it related to their property's market value-in-use as of the relevant valuation date).
- c. Mr. Speakman also pointed to various problems with the neighborhood. While some of those problems might have affected the market for their property, the Speakmans offered no probative evidence from which to quantify that effect or to otherwise show a value, or even a likely range of values, for it. Mr. Speakman did at least point to the sale of a nearby income-producing duplex. But he did even less to compare that property to the subject property than Mr. Wallenfang did for the five purportedly comparable properties in his sales-comparison analysis. The duplex's sale price therefore lacks probative value.
  - d. Finally, the Speakmans contend that they should receive a credit for the previous 15 years in which their home was incorrectly assessed as having a full basement. Those previous years' assessments, however, are not before the Board in this appeal.

#### **SUMMARY OF FINAL DETERMINATION**

- 20. Because the Assessor failed to make a prima facie case that the 2010 assessment was correct, the Speakmans are entitled to have that assessment reduced to the previous year's level of \$83,900. The Speakmans, however, failed to prove that they are entitled to any further reduction. Thus, the Board orders that the 2010 assessment must be changed to \$83,900.



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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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, 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>.**