

REPRESENTATIVE FOR PETITIONER:
Brian C. Heck, BECKMAN LAWSON, LLP

REPRESENTATIVE FOR RESPONDENT:
Kim Miller, Noble County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Barbara D. Watson,	)	Petition No.:	57-014-10-1-5-00013
)		
Petitioner	)	Parcel No.:	57-01-24-400-162.000-014
)		
v.	)	County:	Noble
)		
Noble County Assessor,	)	Township:	Perry
)		
Respondent.	)	Assessment Year:	2010

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

February 11, 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. In this assessment appeal, the Petitioners offered an appraiser’s valuation opinion which, while not perfect, is persuasive. And the Respondent offered no probative valuation

evidence of her own. The Board therefore finds that the subject property's assessment should be reduced in accordance with the appraiser's opinion.

Procedural History

2. The Petitioner sought review of the subject property's 2010 assessment. On March 28, 2011, the Noble County Property Tax Assessment Board of Appeals ("PTABOA") issued a determination lowering the assessment, but not to the level that the Petitioner requested. She therefore filed a Form 131 petition with the Board.
3. On November 19, 2013, the Board's administrative law judge, Joseph Stanford, held a hearing. Neither he nor the Board inspected the property.

Hearing Facts and Other Matters of Record

4. The following people were sworn in: David Buckner, Petitioner's husband; Dennis K. Kruse II, appraiser; Kim Miller, Noble County Assessor; David Button, PTABOA member; and Mary Beth Lemings, PTABOA member.
5. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1:	Notice of Assessment
Petitioner Exhibit 2:	Original appeal petition
Petitioner Exhibit 3:	PTABOA determination
Petitioner Exhibit 4:	Form 131 petition
Petitioner Exhibit 5:	Appraisal report prepared by Mr. Kruse
Petitioner Exhibit 6:	Beacon property report for subject property
Petitioner Exhibit 7:	Property record card for subject property
Petitioner Exhibit 8:	Property record card for 508 South Cavin Street
Petitioner Exhibit 9:	Photographs of subject home's interior walls
Petitioner Exhibit 10:	Photographs of tub
Petitioner Exhibit 11:	Photographs of exterior walls
Petitioner Exhibit 12:	Photographs of fence
Petitioner Exhibit 13:	Photograph of window
Petitioner Exhibit 14:	Photograph of steps
6. The Respondent submitted the following exhibits:

Respondent Exhibit 1:	Form 131 petition
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- Respondent Exhibit 2: PTABOA determination
- Respondent Exhibit 3: Appraisal report prepared by Mr. Kruse; property record cards for the subject property and comparable properties used in appraisal
- Respondent Exhibit 4: Beacon property reports for comparable properties presented to PTABOA
- Respondent Exhibit 6: Sales-comparison spreadsheet
- Respondent Exhibit 7: Sale listings for subject property
- Respondent Exhibit 8: Photographs of subject property; miscellaneous notes and property record cards for 506 S. Main Street and 508 S. Calvert
- Respondent Exhibit 9: Property record cards for five properties with handwritten notes regarding the percent difference between the property's asking price and sale price¹

7. 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 Brian C. Heck
- Board Exhibit E: Petitioner's motion for subpoena and copy of subpoena issued to Mr. Kruse

8. The PTABOA determined the following values:

Land: \$14,900	Improvements: \$233,200	Total: \$248,100
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9. The Petitioner requested an assessment of \$166,500.

Summary of the Parties' Contentions

A. The Petitioner's case

10. The subject property is assessed too high in light of its poor condition and an appraisal prepared by Dennis K. Kruse II, a certified appraiser. *Buckner testimony; Heck argument.*

¹ The Respondent's exhibit coversheet indicates that Exhibit 5 is a "POA," or Power of Attorney, but no exhibit is included.

11. The property, which is located at 601 South Main Street in Ligonier, has an approximately 3,800-square-foot home with a partially finished basement, an elevator and a sauna. It also has a detached garage with space above it, that the parties refer to as a carriage house, but that space is only used for storage. According to the Petitioner's husband, David Buckner, the property is significantly deteriorated. To support that claim, he pointed to the following issues:

- Both the home and the fence have a lot of rotting wood and peeling paint.
- Wallpaper has pulled apart because the walls have moved.
- A previous owner drilled some holes in the ceiling.
- The tub in the main bathroom is in deplorable condition.
- There is a broken window in the carriage house.
- The front steps need to be repaired because they are cracking.

Buckner testimony; Pet'r Exs. 6, 8; Resp't Exs. 6-7.

12. The Petitioner and Mr. Buckner have listed the property for sale by owner since 2002, most recently with an asking price of \$378,000. The listings have not generated any offers; once people find out the asking price, they hang up the telephone. Mr. Buckner set the asking price at such a high level because he has invested \$400,000 of his retirement savings into the house, and he wants to get at least some of the money back. When he and the Petitioner bought the property, the home was rotting, sagging in the middle, and leaking, and the plumbing and electrical systems were falling apart. *Buckner testimony.*

13. Mr. Kruse appraised the property at \$166,500, as of February 1, 2011, although he testified that his opinion would be the same for March 1, 2010. He prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"), and he developed two of the three generally accepted approaches to value—the sales-comparison and cost approaches. He did not have sufficient data to develop the income approach because most single-family homes are owner occupied. The home's more than

100 years old, which makes estimating depreciation difficult. Mr. Kruse therefore used the cost approach only as support for his conclusions under the sales-comparison approach. *Kruse testimony; Pet'r Ex. 5.*

14. For his sales-comparison analysis, Mr. Kruse used eight sales from Ligonier and Kendallville, and he included one listing for further support. He considered the markets for the two towns to be equal, believing that someone looking for an historic home might be willing to look in different towns. The properties sold between June 19, 2008, and December 27, 2010, for prices ranging from \$104,900 to \$300,000. Mr. Kruse considered adjusting the sale prices to account for various ways in which the comparable properties differed from the subject property, and he arrived at adjusted prices ranging from \$113,425 to \$179,775. The median adjusted sale price was \$166,500 and the average was \$153,000. Mr. Kruse ultimately relied on the median price in reaching his valuation conclusion.
15. Mr. Kruse acknowledged that the subject home is a little higher quality than some of the comparable homes. But condition is a more important factor when valuing homes of that age and the subject home is in only fair condition. While Mr. Buckner may have invested a lot of money in the home, that money apparently went to addressing issues with the foundation, wiring and plumbing. Those things are necessary for a livable house, but they do not have much contributory value. The same is true for the home's sauna and elevator. In fact, the elevator was installed more than 100 years ago, and Mr. Kruse testified that he would not use it.
16. The home's kitchen, which is one of the most important rooms in a house, is not a \$300,000 kitchen. The bathrooms are laid-out oddly and have not been re-done. The Petitioner would need to spend significant money on the home's interior to make the property attractive. The carriage house above the garage is not in good condition and is unusable. Mr. Kruse did not inspect the interiors of his comparable homes, relying instead on realtors' descriptions. As he explained in his appraisal report, both he and his peers typically rely on such information. *Kruse testimony; see also Pet'r Ex. 5.*

17. The Respondent testified that one of Mr. Kruse's comparable homes—508 South Cavin Street—is over 2000 square feet smaller than what is reflected in the appraisal. Even if the Respondent is correct, that fact would not significantly affect Mr. Kruse's valuation opinion. First, he took the home's size from its listing with the multiple listing service ("MLS"). The buyer might have paid less if the listing had accurately described the home's size. Second, the Cavin Street property has the highest adjusted sale price in Mr. Kruse's analysis, and correcting the size would not have affected the median adjusted sale price, which is what Mr. Kruse ultimately relied on in reaching his valuation conclusion. Indeed, he used eight comparable sales to lessen the chance that a problem with any one sale would affect his opinion. *Kruse testimony.*

B. The Respondent's case

18. There are several problems with Mr. Kruse's appraisal. His first two comparable sales involved properties that had been repossessed. His fifth comparable was actually an office when it was purchased. It was deteriorated and would have required significant investment to convert it back to a residence. Many of the homes were in worse condition than the subject home, which is assessed as being in good condition. Also, the subject home has an elevator and a sauna, neither of which is mentioned in Mr. Kruse's report. *Miller testimony and argument; Button testimony.*
19. Most importantly, Mr. Kruse treated 508 South Cavin Street as having 6,853 square feet. But the Respondent sent "Mary Beth"² to re-measure the home, which is actually only 4,631 square feet. Based on \$20/sq. ft. that Mr. Kruse uniformly used for his size adjustments, the adjustment for the Cavin Street property should have been only \$16,360 instead of \$60,000. That would have raised the property's adjusted sale price from \$179,775 to \$220,215. The Cavin Street property actually sold in May 2009, two years after the sale that Mr. Kruse used in his appraisal. When one excludes personal property

² The Board infers that the Respondent was referring to Mary Beth Lemmings, a member of the PTABOA.

that was involved in the transaction, the sale price was \$240,000. *Miller testimony; Resp't Ex. 9.*

20. The Petitioner has listed the subject property for sale with the asking prices ranging from \$373,000 to \$378,000. In Noble County, properties sell for an average of only 7.4% less than their list prices. And the Petitioner's listing advertises the carriage house as having second-floor living quarters with electric service and utilities, while Mr. Kruse's appraisal treats the building as one-car garage. The listing also says that the home has 17 rooms, instead of nine as reflected in the appraisal. The listing should carry more weight. *Miller testimony; Resp't Ex. 9.*
21. Finally, the Respondent offered a spreadsheet that appears to contain her own sales-comparison analysis in which she concludes that the subject property is worth \$233,446. She did not discuss the spreadsheet or explain her analysis. *See Resp't Ex. 6.*

Discussion

22. Because the assessment under appeal represents an increase of more than 5% over the previous year's assessment for the same property,³ the parties agree that the Respondent has the burden of proving that the assessment is correct. *See I.C. § 6-1.1-15-17.2.* But the Petitioner seeks a value even lower than the previous year's assessment, and she has the burden of proving that lower value. Ultimately, the Board must weigh the Petitioner's evidence, which consists mainly of Mr. Kruse's valuation opinion, against any probative evidence offered by the Respondent. Before doing so, some background on the standards used to assess real property and the types of evidence that may be probative in appealing such assessments is in order.
23. Indiana assesses 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

³ The assessment went from \$211,100 for 2009 to \$248,100 (PTABOA determination) for 2010. *Pet'r Ex. 7.*

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 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.* Actual construction costs or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles may also be probative. MANUAL at 5; *see also*, Ind. Code § 6-1.1-15-18. In any case, for evidence to have probative value, there must be some explanation relating it 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). For 2010 assessments, the valuation date was March 1, 2010.

24. Mr. Kruse prepared what he certified was a USPAP-compliant appraisal using two generally accepted valuation approaches. He valued the property as of a date less than a year after the relevant March 1, 2010 valuation date using sales that bracketed that date. Indeed, he testified that his opinion would be no different if he had valued the property as of March 1, 2010. Mr. Kruse's valuation opinion is therefore probative.
25. The Respondent attempted to impeach Mr. Kruse's opinion by arguing that at least two of his comparable sales were the result of repossessions, and that several others involved homes in worse condition than, and of inferior quality to, the subject home.
26. While Mr. Kruse acknowledged that some of the properties were "REO," presumably meaning that the sellers were financial institutions that had acquired the properties through foreclosure,⁴ the Respondent offered nothing to support the notion that generally accepted appraisal practices would require Mr. Kruse to automatically exclude those sales from his analysis. Indeed, Mr. Kruse's appraisal report indicates that all of the properties were exposed to the market, and he made adjustments to several of the properties based

⁴ *See Auerbach v. Great Western Bank*, 74 Cal. App. 4th 1172, 88 Cal. Rptr. 2d 718, 721 n.2 (1999) ("REO" stands for 'real estate owned' and means a property the bank acquired through foreclosure.")

on the conditions of sale, albeit none that appear to expressly account for the fact that the seller had acquired the property through foreclosure.

27. As to the second point—the purportedly inferior condition of some of Mr. Kruse’s comparable properties—the Respondent pointed mainly to the condition ratings reflected on the properties’ record cards, without really explaining the basis for those ratings. Mr. Kruse, by contrast, based his evaluation of the subject home’s condition on his own inspection. He reached his conclusion largely because of the home’s interior, which the Respondent’s rating does not appear to reflect. And Mr. Buckner’s photographs of the home at least partially corroborate Mr. Kruse’s assessment of its condition. While Mr. Kruse did not inspect the interiors of his comparable homes, he relied on data of the type commonly used by his peers in the appraisal profession.
28. Mr. Kruse acknowledged the Respondent’s third point—that some of the comparable homes were of inferior quality to the subject home. But he explained that it is difficult to find comparable properties when valuing a home as old as the subject home and that similarity in condition is the most important factor. Notably, the Respondent did not point to any properties that Mr. Kruse should have used in the place of the ones that she argued were of inferior quality.
29. The Respondent also pointed to what she considered to be factual errors in Mr. Kruse’s appraisal. For example, the home at 508 South Cavin Street is more than 2,000 square feet smaller than what was reflected in Mr. Kruse’s appraisal. At most, that discrepancy detracts only slightly from the reliability of Mr. Kruse’s valuation opinion. As Mr. Kruse explained, he used eight comparable sales in his analysis, which limits the influence of any single sale on his ultimate valuation opinion. And any increase in 508 Calvin’s adjusted sale price would not change the median, which was what he gave the greatest weight to in reaching his opinion. Mr. Kruse also credibly explained that the property’s MLS listing reflected the larger size and that the property might have sold for less had the listing reflected the home’s actual size.

30. Mr. Kruse, however, did not address testimony that another of his comparable sales—112 S. Orchard Street in Kendalville—was used as an office before the sale and that significant repairs were required to convert it to residential use. As already explained, Mr. Kruse used eight comparable sales in his analysis, which lessened the sale's impact on his ultimate valuation opinion. Nonetheless, his failure to address the property's pre-sale use as an office detracts at least somewhat from the reliability of his valuation opinion.
31. Finally, the Respondent pointed to discrepancies between the subject home's listing, which says that the property has 17 rooms, an elevator, and a sauna, and Mr. Kruse's appraisal, which describes the home as having only nine rooms and does not mention the elevator or sauna. Those discrepancies do little to undermine the reliability of Mr. Kruse's valuation opinion. As he credibly explained, the more-than-100-year-old elevator was unusable and the sauna would have little effect on the property's market value. As for the discrepancy in the number of rooms, it is unclear how many rooms the home actually has. Indeed, the property record card appears to identify 13 rooms, which differs from both the listing and Mr. Kruse's appraisal. In any case, the number of bedrooms and baths and the home's overall size appear to have been far greater factors in Mr. Kruse's analysis than was the total number of rooms.
32. In sum, the Respondent impeached Mr. Kruse's valuation opinion to a degree, but the Board still finds it reliable and generally persuasive as to the subject property's market value-in-use. The Board must therefore consider whether the Respondent offered any probative countervailing evidence of the property's market value-in-use.
33. She did not. At most, she offered a spreadsheet containing what appears to be something approximating her own sales-comparison analysis and pointed to the Petitioner's advertised asking prices. As to her spreadsheet, the Respondent did not explain how any of the properties compared to the subject property or how she arrived at her adjustments to the purportedly comparable properties' sale prices. From what little the Board can glean, it appears that she simply made purely cost-based adjustments for a few features

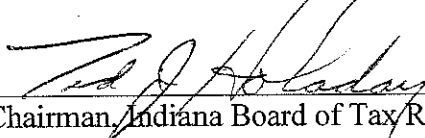
few features listed in the Department of Local Government Finance's guidelines for mass-appraisal assessments. Without more, the Board will not assume that the Respondent's analysis complies with generally accepted appraisal principles.

34. The Respondent's reliance on the Petitioner's asking prices is similarly unpersuasive. Mr. Buckner explained the discrepancy between the asking prices from the Petitioner's listings and the requested assessment—he and the Petitioner were not necessarily looking to move when they listed the property but were instead trying to recoup some of his investment. And Mr. Buckner testified without dispute that the listings had not generated any offers, or even any interest, over the course of more than 10 years. At most, the listings might tend to show that the property was worth no more than \$375,000. But they do not support any particular value below that level.
35. Because the Board is persuaded by Mr. Kruse's valuation opinion, it finds that the subject property's true tax value was \$166,500. The 2010 assessment must be reduced accordingly.

SUMMARY OF FINAL DETERMINATION

36. The Petitioner proved that the subject property's true tax value was \$166,500 for the 2010 assessment year. The Board therefore orders that the assessment be reduced to that amount.

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 within 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 Rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>>.