

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

Petition: 50-005-12-1-5-00046
Petitioner: Gordon Guntner
Respondent: Marshall County Assessor
Parcel: 50-43-06-000-030.000-005
Assessment Year: 2012

The Indiana Board of Tax Review (the "Board") issues this determination, finding and concluding as follows:

Procedural History

1. Gordon Guntner (the "Petitioner") initiated this assessment appeal with the Marshall County Property Tax Assessment Board of Appeals (the "PTABOA") on October 29, 2012.
2. The PTABOA issued notice of its determination on September 25, 2013.
3. The Petitioner filed a Form 131 petition with the Board on November 6, 2013. The Petitioner elected to have the appeal heard under the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties on September 19, 2014.
5. On November 19, 2014, Ellen Yuhan, the Board's appointed administrative law judge (the "ALJ"), held the administrative hearing. The ALJ did not inspect the subject property.
6. Tax representative Sharon LeVeque was sworn and presented testimony on behalf of the Petitioner. Marshall County Assessor Debra A. Dunning, and Deputy Assessor Mindy Penrose, were sworn and presented testimony on behalf of the Marshall County Assessor (the "Respondent").

Facts

7. The subject property is single-family dwelling located at 8945 North Shore Drive in Bremen.
8. For 2012, the PTABOA issued a final determination on Form 115 valuing the land at \$197,600 and the improvements at \$128,200 for a total of \$325,800.

9. For 2012, the Petitioner requested a land value of \$119,150 and an improvement value of \$128,200 for a total of \$247,350, rounded to \$247,400.

Record

10. The official record contains the following:

- a. Digital recording of the hearing,
- b. Petitioner Exhibit A1 – Notice of Hearing,
Petitioner Exhibit B1-2 – Subject property record card (PRC),
Petitioner Exhibit C1-12 – Real Estate Value Estimate,
Petitioner Exhibit D1-5 – Multiple Listing Service (MLS) Report and PRC for 4006 Liberty Street,
Petitioner Exhibit D6-8 – MLS report and PRC for 9036 Birch Road,
Petitioner Exhibit D9-14 – MLS report and PRC for 4016 Liberty Street,
Petitioner Exhibit D15-17 – MLS report and PRC for 3966 West Shore Drive,
Petitioner Exhibit D18-19 – PRC for 3405 Lake Shore Drive,
Petitioner Exhibit D20-22 – MLS report and PRC for 3961 Lake Shore Drive,
Petitioner Exhibit E1 – Land sales grid,
Petitioner Exhibit E2-12 – PRCs for properties on land sales grid,
Petitioner Exhibit F1-44 – Rebuttal of Respondent Exhibit 13,
Petitioner Exhibit G1-4 – Rebuttal of Respondent Exhibit 12,
Petitioner Rebuttal Exhibit 6 – Rebuttal to Respondent Exhibit 5,

- Respondent Exhibit 1 – Exchange of Evidence Request,
Respondent Exhibit 2 – Form 138 Defect Notice,
Respondent Exhibit 3 – Power of Attorney,
Respondent Exhibit 4 – Form 115 and Minutes of PTABOA hearing,
Respondent Exhibit 5 – Subject PRC,
Respondent Exhibit 6 – PTABOA assessed value change and PRC,
Respondent Exhibit 7 – Photo of subject property,
Respondent Exhibit 8 – Aerial photo of subject lakefront property,
Respondent Exhibit 9 – Land order for German and North Townships,
Respondent Exhibit 10 – 2012 Form 131,
Respondent Exhibit 11 – 2012 Form 131 dated 10/16/2014,
Respondent Exhibit 12 – County letter to Mr. Guntner and proposed stipulation,
Respondent Exhibit 13 – Spreadsheet of comparable sales,
Respondent Exhibit 14 – Aerial photo of subject and comparable sales,
Respondent Exhibit 15 – Sales disclosure form and PRC for 4215 Lake Shore Drive,
Respondent Exhibit 16 – Sales disclosure form and PRC for 9036 Birch Road,
Respondent Exhibit 17 – Sales disclosure form and PRC for 3654 West Shore Drive,
Respondent Exhibit 18 – Sales disclosure form and PRC for 3253 Lake Shore Drive,

Respondent Exhibit 19 – Sales disclosure form and PRC for 3966 West Shore Drive,
Respondent Exhibit 20 – Sales disclosure form and PRC for 3961 Lake Shore Drive,
Respondent Exhibit 21 – Sales disclosure form and PRC for 3794 West Shore Drive,
Respondent Exhibit 22 (rebuttal) – PRC for parcel 50-43-06-000-284.000-005,
Respondent Exhibit 23 (rebuttal) – PRC for 3405 Lake Shore Drive,

Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing, dated September 19, 2014,
Board Exhibit C – Hearing sign-in sheet.

c. These Findings and Conclusions.

OBJECTIONS

11. The Respondent objected to Petitioner Exhibits G2 and G4 as hearsay because Mr. Guntner was not present to verify the documents. Petitioner Exhibit G2 is a duplicate of Respondent Exhibit 12 but with the addition of certain hand-written comments. Petitioner Exhibit G4 is apparently a letter of understanding of the facts authored by Ms. LeVeque and signed by her clients.
12. At its most basic level, the rule against hearsay is fairly simple. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid.801(c)). The Board’s procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 2-7-3. The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence into the record, but it is not required to allow it.

13. It is not clear who wrote the comments on Petitioner Exhibit G2 as they are not signed. Even if they had been signed by the Petitioner, the Petitioner was not present to attest to the facts. Similarly, with regard to Petitioner Exhibit G4, the Petitioner signed the letter but it was not notarized nor was the Petitioner there to attest to the facts or be cross-examined. Consequently, Petitioner Exhibits G2 and G4 will not be considered in this final determination. Further, the final determination would not differ regardless of the ruling on these exhibits because the exhibits were not probative with regard to the value of the subject property.

Burden

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a 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). A burden-shifting statute creates two exceptions to the rule.
15. First, Ind. Code § 6-1.1-15-17.2 (a) "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." Under Ind. Code § 6-1.1-15-17.2(b), "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."
16. Second, Ind. Code § 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 Ind. Code 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.
17. 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*.
18. There is no evidence in the record that the 2011 assessment was appealed. The PTABOA determination for 2012 was \$325,800. The 2011 assessment was \$320,500. Because the assessment increased by less than 5% from 2011 to 2012, the Petitioner has the burden to prove that the 2012 assessment is incorrect. The parties acquiesced at the hearing accordingly.

Contentions

19. Summary of the Petitioner's case:

- a. The Petitioner contends that the property is over-valued based on sales of similar properties. In support of this contention, Ms. LeVeque submitted a Real Estate Value Estimate with five sales of lakefront properties and one assessment of a lakefront property. She testified that she used the six comparable properties and adjusted them for differences in lot size, living area, garage size, exterior features, central air, and fireplaces. She made no time adjustments because the market was stagnant. The value estimate for the subject property is \$119,150 for the land and \$128,200 for the improvements, for a total value of \$247,350, rounded to \$247,400. *LeVeque testimony; Petitioner Exhibits C1-12.*
- b. Ms. LeVeque contends that Comparable No. 1, 4006 Liberty Street, is similar to the subject property in age and lot frontage. This property consists of two parcels. It sold in July of 2012 and illustrates current values with regard to the 2012 assessment. Lot adjustments were based on a median \$1,435 per front foot. She also adjusted for the following: living area at \$15 per square foot, garage size at \$2,500 per car, exterior features at \$4.25 for differences, enclosed porches at \$10 per square foot, and central air at \$2,000. These adjustment amounts are consistent throughout the report and are supported by research shown in the value estimate. *LeVeque testimony; Petitioner Exhibits C1-12, D1-5.*
- c. Ms. LeVeque testified that Comparable No. 2, 9036 Birch Road, sold in 2009 for \$294,500. This property was totally rebuilt in 2002. Because this property had a metal roof, new windows, and siding, she made a negative \$5,000 adjustment for condition and a negative \$3,000 adjustment for the year built. Adjustments for differences were made at previously discussed amounts. *LeVeque testimony; Petitioner Exhibits C1-12, D6-8.*
- d. Comparable No. 3, 4016 Liberty Street, sold in 2008 for \$230,000. This property consists of three parcels. This property is similar to the subject property because it has two water sites, one on the channel with pier space and also 105 feet of lake frontage. It is brick construction, similar to the subject, and was remodeled in 1977 which is only seven years prior to the construction of the subject. Adjustments for differences were made at previously discussed amounts. *LeVeque testimony; Petitioner Exhibits C1-12, D9-14.*
- e. Comparable No. 4, 3966 West Shore Drive, sold on June 9, 2011, for \$215,000. This property only has 50 feet of lake frontage compared to the subject's 81 feet of lake frontage. The depth, however, is 271 feet and thus the lot is comparable. Adjustments for differences were made at previously discussed amounts. *LeVeque testimony; Petitioner Exhibits C1-12, D15-17.*

Adjustments for differences were made at previously discussed amounts. *LeVeque testimony; Petitioner Exhibits C1-12, D15-17.*

- f. Comparable No. 5, 3405 Lake Shore Drive, is not a sale but an assessment. The assessor has valued the land at \$174,000 for 108 feet of lake frontage, or \$1,615 per front foot. The adjacent lot is assessed at \$120,800 for 91 feet of lake frontage, or \$1,327 per front foot. According to Ms. LeVeque, an average of the two values equals \$1,471 per front foot which is consistent with her lot adjustment of \$1,435. Adjustments for differences were made at previously discussed amounts. *LeVeque testimony; Petitioner Exhibits C1-12, D18-19.*
- g. Comparable No. 6, 3961 Lake Shore Drive, sold on July 1, 2011 for \$318,000. This property had a smaller lot but the house had been totally remodeled. Ms. LeVeque placed no weight on this sale as the lot adjustment was \$58,835 and this sale had the highest net adjustment of \$52,035, which makes it the least like the subject. She assumed this sale was an outlier in the market. *LeVeque testimony; Petitioner Exhibits C1-12, D20-22.*
- h. In support of her lack of time adjustments, Ms. LeVeque stated that she researched multiple sales in the subject neighborhood. The research revealed that there had been no measurable appreciation since the 2004-2008 “bubble.” Therefore, she made no time adjustment in her analysis.¹ *LeVeque testimony; Petitioner Exhibits C1-C3, C8.*
- i. With regard to her lot adjustment, Ms. LeVeque submitted a spreadsheet describing five properties. The spreadsheet included assessed values for three properties and sale prices for two properties. Ms LeVeque calculated a median price of \$1,435 per foot. *LeVeque testimony; Petitioner Exhibit E1-12.*
- j. Ms. LeVeque prepared a paired sales analysis to support her year-built adjustment. Of the eight paired sales, she found that row 5 minus row 4 was \$8,000 for 43 years, or a difference of \$186 per year. She determined the adjustment to be \$2,000 per every ten years. *LeVeque testimony; Petitioner Exhibits C1-C3, C10.*
- k. Petitioner Exhibit C11 documents the adjustment made for differences in square footage. Ms. LeVeque calculated a range of \$2.38, \$14.18, \$14.65, \$19.02, and \$6.77 per square foot of living area. She determined that \$15.00 per square foot would be an appropriate adjustment. *LeVeque testimony; Petitioner Exhibits C1-C3, C11.*
- l. Ms. LeVeque formulated a spreadsheet for exterior features adjustment. She determined the adjustment for a fireplace should be \$2,500 and central air

¹ Petitioner Exhibit C8 is titled “Time Adjustments.”

\$1.50 per square foot, and sheds at \$3.50 per square foot. She averaged the amenities and depreciated the average by 50%. She determined her adjustment for exterior features should be \$4.25. *LeVeque testimony; Petitioner Exhibits C1-C3, C12.*

- m. In rebuttal, Ms. LeVeque argues that, although the Respondent contends the property shown on Petitioner's Exhibit E2 is non-buildable, there is nothing from the building department stating it is a non-buildable lot. Regarding parcel 50-43-06-000-172.000-005 as described on Petitioner Exhibit E3, she used it in her analysis because it has similar frontage area as the subject property. *LeVeque testimony; Petitioner Exhibits E2 and E3.*
- n. Ms. LeVeque argues that she has used 4010 West Shore Drive in three appeals and has had three different property record cards. In 2010, this property sold for \$174,000 with two lots and a 1,600 square foot building, which has 800 square feet of living area and 800 feet of garage or storage. In 2010, parcel 50-42-12-000-025.000-009 ("parcel 025") was assessed at \$54,100 for land and \$9,500 for the building. She researched 800 to 900 square foot buildings and determined the building value should have been \$17,200 for the improved portion of the building and \$9,600 for the storage area, or \$26,800 for the entire building. This value, added to the \$54,000 land value, results in a value for parcel 025 of approximately \$80,000. The remainder of the \$174,000 sale price, or \$94,000, is attributable to parcel 50-42-12-000-026.000-009. This parcel has an effective frontage of 65.5 feet. Dividing \$94,000 by 65.5 feet equals \$1,435 per front foot. The county has the parcel described as 46 feet. Ms. LeVeque contends that the county did not take the mid-range of the parcel and simply used an arbitrary figure. *LeVeque testimony; Petitioner Exhibits E4-7.*
- o. Ms. LeVeque contends she was not aware of a settlement of \$325,800 with the PTABOA. Further, Respondent Exhibit 12 consists of a letter sent to Mr. Guntner regarding a stipulation for the 2012 assessment. Nothing was sent to Ms. LeVeque in the capacity of Mr. Guntner's tax representative. The negotiation took place between Ms. LeVeque's client and the Respondent and they agreed to a specific amount. Ms. LeVeque contends that the stipulation should not be part of this hearing because she did not agree to that stipulated amount. *LeVeque testimony; Respondent Exhibit 12.*
- p. According to Ms. LeVeque, the evidence shown in Respondent Exhibit 13 is misstated, miscalculated, and invalid for the following reasons:
- Sale #1. This sale shows only one parcel when actually there are two parcels. The improvement amount is also incorrect. It should be \$36,300 not \$23,600. This property sold in 2009 and in 2013. The 2013 sale is more indicative of the real market value as there is only a 16 month period between the 2013 sale and the March 1, 2012 assessment date as opposed to the 41 month period² between the 2009 sale and the March 1, 2012 assessment date.

² It is unclear as to how the 41 month period was calculated.

- Sale #2. This sale shows an incorrect improvement value. The improvements were assessed at \$138,600. Subtracting the improvement value from the sale price of \$294,500 results in a land value of \$155,900, or \$1,695 per front foot. However, this property was totally remodeled in 2002. Ms LeVeque used the Craftsman Cost Estimator to calculate an improvement value of \$149,172, which, when deducted from the sale price, resulted in \$145,328, or \$1,580 per front foot. The Craftsman cost is close to the assessed value with the exception of applicable depreciation, which would not be 34% for a home remodeled in 2002. This sale took place 27 months prior to the 2012 assessment.
- Sale #3. This sale took place on January 28, 2011 for \$215,000, less \$10,000 in points paid by the seller. The assessor shows the sale at \$215,000. This property was also totally remodeled. Ms. LeVeque used the Craftsman cost approach to calculate a replacement value of \$93,276. Subtracting the \$93,280 replacement cost from the sale price of \$205,000 results in a land value of \$111,720, or \$2,031 per front foot for the 55 feet of frontage.
- Sale #4. The Respondent states that on March 1, 2011 the cost to build this house was \$205,800 for 3,530 square feet of living area, or \$58.30 per square foot. For 2011, the subject property was assessed at \$56.65 per square foot. In 2004, this property sold for \$111,500 for 92 feet³ of water frontage and a house which the contractor tore down at a cost of \$3,500 for a total cost of \$115,000, or \$1,250 per front foot. In 2006, a new house was built and placed on the market for \$799,900. The new house sold after 1,331 days on the market for \$520,000. The cost to build that house with a 16% depreciation rate would be \$522,930. The house was built on this property during the real estate bubble and should not be used as a comparable.
- Sale #5. The information with regard to this sale appears to be correct for 2011. However, on March 15, 2012 this property sold for \$209,947 minus \$6,000 for personal property items for a total sale price of \$203,947. Subtracting the improvement value of \$106,500 results in a land value of \$97,447, or \$1,949 per front foot. This sale has more influence on the 2012 assessment as it sold 15 days from the March 1, 2012 assessment date.
- Sale # 6. The improvement value is \$131,600, not \$94,500.⁴ This lot is only 40 feet and not comparable to the subject property's 81 feet.
- Sale # 7. This sale is not a valid sale. It is a land contract with 100% of the purchase price financed. This is merely a strategy for obtaining a homestead credit. It is a private sale with no exposure time. There was also a transfer to a family member after the first sale in 2011 that took place on May 30, 2012.
- Rows 20-24. The Respondent states that she has the subject property assessed at \$191,600 for land and \$124,900 for a total assessed value of \$316,500. The correction as per the PRC is \$205,600 for land and \$128,200 for

³ Both the PRC and the entry on Respondent's Exhibit 13 indicate an effective frontage of 71 feet.

⁴ The PRC shows the land value as \$94,500 and the improvement value as \$131,600, which appears to agree with Respondent's Exhibit 13.

improvements for a total of \$333,800.⁵ The land is assessed at \$2,538.27 per front foot.

LeVeque testimony; Petitioner Exhibits F1-44.

20. Summary of the Respondent's case:

- a. Ms. Dunning testified that she assessed the property at \$2,440 per front foot, the base rate for Lake of the Woods. At the PTABOA hearing, Ms. LeVeque only appealed the land assessment and requested \$1,700 per front foot or a land assessment of \$137,700. The PTABOA moved to apply a -4% influence factor for excess frontage, reducing the land value to \$197,600, or a total assessment of \$325,800. *Dunning testimony; Respondent Exhibits 4 and 5.*
- b. For 2012, the Petitioner was actually billed on an assessed value of \$316,500. This was an error, but because the lower assessment benefited the taxpayer and the difference in taxes was only \$39, the county left the 2012 assessed value at \$316,500. *Dunning testimony; Respondent Exhibit 6.*
- c. Ms. LeVeque refused to have a preliminary conference prior to the PTABOA hearing so the Respondent did not have an opportunity to inspect the property to confirm that the structures on the PRC were correct. On October 1, 2014, the Respondent and Mr. Guntner reviewed the physical characteristics of his dwelling and corrected the size of the shed and the pricing for a fireplace opening. For 2013, the Respondent and the Petitioner signed a stipulation agreement agreeing to an assessed value of \$173,700 for the land and \$122,000 for the improvements for a total of \$295,700. *Dunning testimony; Respondent Exhibit 12.*
- d. The Petitioner did not use Ms. LeVeque as his representative for 2013 and 2014. The Respondent testified that she did explain to the Petitioner that Ms. LeVeque was his tax representative for 2012 pay 2013. She mailed the stipulation agreement for 2012 to the Petitioner because he requested it. He said he would take the agreement to Ms. LeVeque. The Respondent did not hear back from the Petitioner or Ms. LeVeque. Nonetheless, the Respondent was willing to stand behind the \$295,700 value because the physical characteristics were corrected in 2013 which is when the Respondent dealt with the Petitioner. The Respondent agrees that the physical characteristics of the improvements at issue would have been the same for 2012 as they were in 2013. *Dunning testimony; Respondent Exhibits 12.*
- e. The Respondent testified that a spreadsheet was prepared showing seven arms-length sales of lakefront parcels in the same neighborhood as the subject property. The sales occurred between September of 2009 and March 1, 2012. The spreadsheet was

⁵ The PRC shows a March 1, 2012 reassessment total of \$333,800 and also shows a March 1, 2012 total assessed value of \$325,800 which agrees with the determination of the PTABOA on Form 115.

prepared to show the price per front foot of properties that had sold as compared to the subject property. *Dunning testimony; Respondent Exhibits 13-21.*

- f. In preparing the spreadsheet, the improvement values were subtracted from the sale prices. The remaining values represent the portions of the sale prices attributable to the land. Each land value was then divided by the frontage of each property sold. The median price per front foot was \$2,955 and the average price per front foot was \$3,071. The subject's land value of \$191,600 divided by the front footage of 81 feet results in a value of \$2,365 per foot, which is lower than the median and the average of the sales. This indicates that, based on comparable sales, the land is not over-assessed. *Dunning testimony; Respondent Exhibits 13-21.*

- g. Ms. LeVeque submitted a second Form 131 for the 2012 assessment date on October 16, 2014. Ms. LeVeque has typed many statements that are untrue. She has stated issues that are her opinions and hearsay. Her statements are false, misleading, and intended to unduly influence the Board. She seems to be placing blame on the Respondent and misrepresents the procedures used to attempt to settle this appeal for the taxpayer. Ms. Dunning has requested that the duplicate Form 131 be withdrawn.⁶ *Dunning testimony; Respondent Exhibit 11.*

- h. The Respondent contends, with regard to the Petitioner's Real Estate Value Estimate, Comparable No. 3 has only 100 feet of effective frontage as opposed to the 105 feet shown. Comparable No. 5 is an assessment only and not a sale and it is also one part of a two-parcel property. The other parcel has 91 feet of effective frontage and a depth of 210 feet. It has the same base rate as the subject property but has a -30% influence factor applied to it. Ms. LeVeque states that no weight was given to Comparable No. 6 due to the large adjustments. The Respondent contends that if the adjustments were too large, a different comparable could have been chosen. She further contends that if Comparable No. 6 were disregarded for large adjustments then Comparable No. 4 and Comparable 5 should also have been disregarded. *Penrose testimony; Petitioner Exhibits C1-3.*

- i. The Respondent contends that on Petitioner Exhibit C8, which shows time adjustments, the sale at 4016 Liberty Street was not included, but was used as a comparable in the Real Estate Value Estimate. This property sold in October of 2006 for \$200,000 and then in January of 2008 for \$230,000. This indicates an appreciation of \$2,100 per month. *Penrose testimony; Petitioner Exhibit C1 and C8.*

⁶ It appears that while the second Form 131 may have been filed with the Respondent, it was not filed with the Board. Regardless, even if the second Form 131 was an attempt to amend the first Form 131, there are no substantive changes with regard to the second Form 131 as compared to the first Form 131. Consequently, the Board will only consider the first Form 131.

- j. Petitioner Exhibit C9 shows the large lot adjustments. According to the Respondent, lines 2, 3, and 6 are not sales but assessed values of lots with special circumstances and related influences to reduce their values. There are several sales used in the Real Estate Value Estimate that could have been used in the large lot adjustment and also several sales that were not used at all that could have been used. *Penrose testimony; Petitioner Exhibit C9.*
- k. The sale the Petitioner submitted on Petitioner Exhibit C9, line 2, is not comparable to the subject property because the PRC shows it is non-buildable. The property shown on line 3 is not indicative of a sale but of an assessed value. It is also only one parcel of a two-parcel property. The total frontage is 199 feet and not the 91 feet listed. This parcel is so large that it is receiving additional influence factors for excess frontage, depth, size, and shape. It is not comparable to the subject because the subject property is much smaller. *Penrose testimony; Respondent Rebuttal Exhibits 22 and 23.*
- l. The Respondent further contends that on Petitioner Exhibit C9, the property shown on line 4 has an incorrect lot size. It should be 46 feet by 253 feet. Having an incorrect front footage value affects the price per front foot. The property shown on line 5 has an incorrect assessed value and an incorrect lot size. The lot size should be 105 feet by 80 feet and the inaccuracy results in an incorrect price per front foot. The value of the property shown on line 6 represents an assessed value and not a sale and is not nearly as deep as the subject property. *Penrose testimony; Petitioner Exhibit C9.*
- m. There were four sales used in the Real Estate Value Estimate that were not included in the Petitioner's Exhibits C9 or E1. The values per front foot of the four excluded properties are as follows
- 4006 Liberty Street: \$1,778
 - 9036 Birch Road: \$2,182
 - 3966 West Shore Drive: \$2,170
 - 3961 Lake Shore Drive: \$4,660

All four amounts are above the value of \$1,435 per front foot chosen from the assessed values and the two older sales the Petitioner used. When trying to establish values, one should look at all of the valid sales in the neighborhood and choose those that are the most comparable. *Penrose testimony; Petitioner Exhibit C1-12.*

- n. Because there are several comparable sales available, assessed values should not be used, especially not those of non-comparable and non-buildable lots. The number of inaccuracies throughout the Real Estate Value Estimate calls into question the

credibility of the Petitioner as well as other evidence offered by the Petitioner.
Penrose testimony.

Analysis

21. The Petitioner failed to make a prima facie case for the 2012 requested assessed value. The Board reached this decision for the following reasons:
- a. For 2012, real property is assessed based on 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 approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. Other kinds of permissible evidence include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b. Regardless of the type of evidence, a party must explain how its evidence relates to the required valuation date. *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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.
 - c. The Petitioner presented a Real Estate Value Estimate indicating the value of the subject should be \$247,300 for 2012. Ms. LeVeque used the sales of five properties and the assessed value of one property to reach her estimate of value. She adjusted the comparable properties for the differences in lot size, living area, age, and exterior features.
 - d. The largest adjustments to the properties were for differences in lot sizes. To support her adjustment, Ms. LeVeque submitted a Land Sales Grid. However, three of the values were assessed values not sale prices. Other assessed values do not automatically show the market value-in-use of a property under appeal. The party relying on such assessments must (1) show that the other properties are comparable to the property under appeal, and (2) explain how any relevant differences affect the properties' relative values. *See* Ind. Code § 6-1.1-15-18(c)(2) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties are comparable); *see also Long*, 821 N.E.2d 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). The Petitioner did not explain how any differences between the properties affect their market values-in-use.

- e. For example, according to the corresponding PRC, the first property shown on the Land Sales Grid is a private beach. The property is non-buildable and received a -80% influence factor accordingly. Similarly, the second property shown on the grid received a -72% influence factor. The fourth property shown on the grid (one of the two sales enumerated in the exhibit), sold in 2008 which is four years before the March 1, 2012 assessment date.
- f. As shown in Respondent Exhibit 13, there were more recent sales in 2011 that could have been used to establish land value. Consequently, the Petitioner's evidence has little probative value.
- g. With regard to the year-built adjustment, Ms. LeVeque determined that such adjustment should be \$2,000 per every 10 years. Her analysis included in Petitioner Exhibit C10, however, indicates that adjustment could range from \$1,783 to \$15,000 for every ten years. There is no explanation as to why she selected \$2,000 from a fairly wide range of values.
- h. Further, while the adjustments in the Petitioner's sales comparison may not differ significantly from those made by a certified appraiser in an appraisal report, an appraiser typically certifies that the appraisal complies with Uniform Standards of Professional Appraisal Practice ("USPAP"). Here, there is nothing to show whether or not the sales comparison was prepared in compliance with USPAP. Consequently, the Board finds that the sales comparison is insufficiently reliable to be probative of the subject's market value-in-use and does not support a decrease in the 2012 assessment.
- i. The Petitioner failed to make a prima facie case. Consequently, the Respondent's duty to support the assessment with substantial evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003). Ms. Dunning, however, testified that the property had been inspected and, as a result, the 2013 assessed value was lowered to \$295,700. As the physical characteristics of the property would have been the same in 2012, she contends the 2012 assessed value should also be \$295,700. The Board agrees.

Conclusion

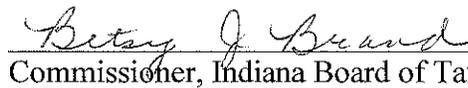
- 22. The Petitioner failed to offer probative evidence in support of a lower assessment for 2012. The Respondent, however, contends the 2012 assessment should be lowered to \$295,700. The Board accepts the Respondent's value of \$295,700 for the 2012 assessment date.

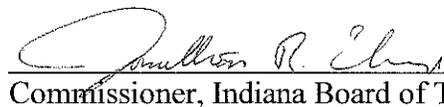
Final Determination

In accordance with the above findings of fact and conclusions of law, the 2012 assessed value should be changed.

ISSUED: 5-18-15


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>.