

REPRESENTATIVE FOR PETITIONERS:  
James O'Donnell, Tax Representative

REPRESENTATIVE FOR RESPONDENT:  
Frank Agostino, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

THOMAS and SALLY HAUCH,	)	Petition No.:	71-003-14-1-5-00901-16
	)		
Petitioners,	)	Parcel No.:	71-04-16-351-005.000-003
	)		
v.	)	County:	St. Joseph
	)		
ST. JOSEPH COUNTY	)	Year:	2014
ASSESSOR,	)		
	)		
Respondent.	)		

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

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**May 14, 2019**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### INTRODUCTION

1. The Assessor offered a valuation opinion for the Hauchs' property from appraiser Steven W. Sante. The Hauchs cast doubt on the reliability of some of Sante's underlying site data, but his appraisal is still credible. Because the Hauchs failed to successfully impeach the credibility of Sante's appraisal and failed to offer probative valuation evidence of their own, we find Sante's appraisal offers the best evidence of value. Accordingly, we order the 2014 assessment changed to reflect Sante's value conclusion.

### PROCEDURAL HISTORY

2. The Hauchs challenged the 2014 assessment of their residential property located at 16766 Orchard Ridge Court, Granger.<sup>1</sup> The St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination valuing the property at \$788,600 (\$84,800 for land, and \$703,800 for improvements).
3. On November 15, 2018, our designated administrative law judge, Joseph Stanford ("ALJ"), held a hearing on the petition. Neither he nor the Board inspected the property.
4. Tax representative James O'Donnell represented the Hauchs. Attorney Frank Agostino represented the Assessor. O'Donnell, Chief Deputy Assessor Patricia St. Clair, and Appraiser Steve Sante testified under oath.<sup>2</sup>
5. The Hauchs submitted the following exhibits:<sup>3</sup>

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<sup>1</sup> While the Hauchs' representative briefly discussed issues relating to a Form 133 appeal they filed for the 2013 assessment year, that claim was not before the Board and it will not be addressed.

<sup>2</sup> Neither Agostino nor Sante were present for the entire hearing. Both left during the Hauchs' case-in-chief. St. Clair represented the Assessor for the remainder of the hearing.

<sup>3</sup> The Hauchs did not offer exhibits labeled 6, 9, or 11. The Hauchs did, however, provide a copy of the Board's decision in *Michael, David & Joel Kloeppe v. Steuben Co. Ass'r*, Ind. Bd. of Tax Rev. pet. nos. 76-011-07-1-5-00092 & 76-011-08-1-5-00007 (December 22, 2011), which our ALJ accepted after taking "judicial notice" of it. We note that our decision here was not affected by the facts or material contained in that decision.

- Petitioners Exhibit 1: The Board’s decision in the Hauchs’ 2012 appeal
- Petitioners Exhibit 2: Subject property record card; street and aerial photographs of the subject property; map of Shamrock Hills
- Petitioners Exhibit 3: 2013 and 2014 Notice of Assessments
- Petitioners Exhibit 4: Thirty-four (34) property record cards for properties located in the subject’s assessment neighborhood (neighborhood code 7103061)
- Petitioners Exhibit 5: Page 54 from chapter 2 of Real Property Assessment Guidelines, and another unnumbered page
- Petitioners Exhibit 7: Property record cards for 51665 Ashton Court and 51719 Brittany Court; listing of sold properties
- Petitioners Exhibit 8: Various correspondence between James O’Donnell, County Assessor Rosemary Mandrici, and Appeals Manager Sue Tranberg
- Petitioners Exhibit 10: Appraisal prepared by Steve Sante
- Petitioners Exhibit 12: Aerial and street photographs of the subject property; various plat maps and sketches
- Petitioners Exhibit 13: Property record card, street and aerial photographs, warranty deed, and sketch for 17580 St. Patricks Court; plat map for Shamrock Hills
- Petitioners Exhibit 14: Property record card, street and aerial photographs, and quit-claim deed for 17530 Dannybrook Drive; plat map for Shamrock Hills
- Petitioners Exhibit 15: Property record card, street and aerial photographs, warranty deed, and sketch for 17521 Dannybrook Drive; plat map for Shamrock Hills
- Petitioners Exhibit 16: Plat map of Woodland Hills Estates

6. The Assessor submitted the following exhibits:

- Respondent Exhibit 1: 2013 Form 131 and Form 133
- Respondent Exhibit 2: 2014 Form 130 and Form 134
- Respondent Exhibit 3: 2014 Form 115 and Form 131
- Respondent Exhibit 4: 2013 Form 133 stamped “approved” and the Board’s decision in the Hauchs’ 2012 appeal
- Respondent Exhibit 5: Screenshots of ProVal memorandums
- Respondent Exhibit 6: Appraisal prepared by Steve Sante
- Respondent Exhibit 7: PTABOA hearing notice, dated January 15, 2016
- Respondent Exhibit 8: Multiple Listing Service (“MLS”) listing for the subject property for August 1, 2017 to September 16, 2017

- Respondent Exhibit 9: Screenshot showing the subject property's assessments from 2012 through 2018
- Respondent Exhibit 10: Photograph of the subject property
- Respondent Exhibit 11: Subject property record cards from 2012 through 2017

7. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

#### THE ASSESSOR'S CASE

8. The subject property's 2014 assessment should be set at \$770,000, according to an appraisal prepared by Steve Sante, a certified appraiser who holds MAI and SRA designations from the Appraisal Institute. Sante certified that his appraisal, which he prepared in March 2017, complies with Uniform Standards of Professional Appraisal Practice ("USPAP"). *Agostino argument; Sante testimony; Resp't Ex. 6.*
9. Sante described the subject as a single-family residential property with two finished levels and a full, half-finished basement. The dwelling has concrete foundation walls and a brick exterior. There is an in-ground swimming pool, a concrete driveway, and a 910-square foot garage. Inside, the walls consist of drywall with wood trim, and the floors are a mixture of carpeting, wood, and ceramic tile. Sante described its construction quality as very good, and its condition as average. *Sante testimony; Resp't Ex. 6.*
10. While Sante considered all three approaches to value—the cost, income, and sales-comparison approaches—he only developed the cost and sale-comparison approaches, and he relied almost exclusively on the sales-comparison approach in reaching his opinion of value. *Sante testimony; Resp't Ex. 6.*
11. Sante used the Marshall and Swift residential cost handbook to develop his cost approach. He selected cost estimates for average quality construction, applying pricing

of \$101.22/SF for the 6,116 square foot dwelling, \$29.73/SF for the 3,738 square foot basement, and \$36.86/SF for the 910 square foot garage. He also added in \$30,000 for the fireplace/patio, producing a total cost-new estimate of \$793,736. After applying depreciation of approximately 47%, the depreciated cost of the improvements was \$420,680. Adding in his estimated site value of \$132,000 and site improvements of \$138,000 resulted in an indicated value of \$690,700. *Sante testimony; Resp't Ex. 6.*

12. To develop his sales-comparison approach, Sante selected three comparable properties that sold between December 2013 and April 2014. He gathered data about the comparable properties from the Indiana regional MLS and, based on that data, made adjustments for differences between the comparable sales and the subject. *Sante testimony; Resp't Ex. 6.*
13. Specifically, Sante made a positive \$39,000 adjustment to Comparable #1 (17521 Dannybrook Drive), a positive \$53,000 adjustment to Comparable #2 (17530 Dannybrook Drive), and he made a positive \$59,000 adjustment to Comparable #3 (17580 St. Patricks Court). He made his adjustments by estimating the depreciated cost difference between the subject property and the comparable sale, which is consistent with USPAP principles. Sante used the same method to determine the adjustments for differences in room count and basement area. *Sante testimony; Resp't Ex. 6.*
14. Sante's only site adjustment was to Comparable #2. Its site is 139,828 square feet while the subject's site is 88,040 square feet. That difference warranted a negative \$39,000 adjustment (75 cents per square foot). According to Sante, the other two comparables have site sizes very similar to the subject and do not require adjustment. Additionally, based on a "match-pairs analysis," Sante made positive \$13,000 adjustments to Comparable #s 1 and 3 because they do not have in-ground swimming pools. Finally, he made a negative \$110,000 adjustment to Comparable #3 for being in good, rather than average, condition. *Sante testimony; Resp't Ex. 6.*

15. Sante settled on his \$770,000 final opinion of value primarily because Comparable #2 was so similar to the subject. It sold for \$750,000 on December 2, 2013, and Sante adjusted its sale price to \$769,800. During testimony, Sante claimed he erred in listing it as having two stories in his report. Sante made no adjustments for differences in the number of stories to any of the comparable sales, as he does not believe that such differences affect value. *Sante testimony; Resp't Ex. 6.*
16. The Assessor argued that the Hauchs failed to offer probative evidence of their property's value and instead merely criticized the methodology of Sante's appraisal. *Agostino argument.*

#### **THE HAUCHS' CASE**

17. The Hauchs appealed their 2012 assessment to the Board, and then filed a Form 133 for 2013 because their assessment increased by approximately 29%. The Hauchs were not informed as to whether the Form 133 was approved until after they filed a 2014 appeal. *O'Donnell testimony; Pet'r Exs. 1, 4.*
18. Regarding the 2014 appeal, the Hauchs questioned the propriety of allowing Steve Weldy, a PTABOA member, to make a motion for a value and also appear on behalf of the Assessor, as the Form 115 appears to indicate.<sup>4</sup> They also complained that they had requested a transcript of the PTABOA hearing, but did not receive it. *O'Donnell testimony; Pet'r Ex. 8; Resp't Ex. 3.*
19. The Hauchs argued that Sante's comparable properties are not actually comparable because they are located in a wealthier neighborhood that the Board previously determined was not comparable to the subject's neighborhood. O'Donnell instead looked at two sales located at 51719 Brittany Court and 51655 Ashton Court, respectively. They

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<sup>4</sup> Regarding Weldy's appearance, St. Clair asserted that Weldy did not appear on behalf of the Assessor, and that his name appears in that column on the Form 115 simply because there was no more space available where his name should have been listed.

are both five-bedroom homes like the subject, and they are similar in size and interior finish. O'Donnell performed a "grid analysis" utilizing those two properties as comparables, but he did not submit the grid because he did not want to be accused of acting as an appraiser. Based on these sales, O'Donnell arrived at a value for the subject property of \$730,000.<sup>5</sup> *O'Donnell testimony; Pet'r Ex. 7.*

20. The Hauchs argued that Sante relied on incorrect data for his comparable sales. They claimed that Sante's Comparable #1 is a one-story home rather than a two-story home. And a plat map for the property, which was certified by the County Surveyor, shows Comparable #1's site is 108,011 square feet rather than the 87,120 square feet listed in Sante's appraisal. *O'Donnell testimony; Pet'r Ex. 15.*
21. Regarding Comparable #2, the Hauchs pointed out that although Sante testified that he erroneously listed the dwelling as having two stories, it is in fact a two-story home. The Hauchs also criticized Sante for not making an adjustment for the attics. They further claimed that Comparable #2 has a full basement, while Sante lists it as having a partial basement in his report. *O'Donnell testimony; Pet'r Ex. 14.*
22. The Hauchs also claimed that Comparable #3 is a one-and-a-half story home rather than a two-story home as Sante indicated in his appraisal. The property record card for Comparable #3 lists it as having one story with an attic. Because one-story homes are valued differently than two-story homes, the Hauchs claimed Sante erred by not making an adjustment. And according to data from the title company, Comparable #3's site is 104,108 square feet, rather than the 88,040 square feet Sante used in his appraisal. Because of these errors, the Hauchs claimed Comparable #3 is not a legitimate comp. *O'Donnell testimony; Pet'r Ex. 13.*

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<sup>5</sup> In his closing argument, O'Donnell requested a value of \$700,000.

23. Finally, regarding the subject property itself, the Hauchs maintained that the plat maps certified by the County Surveyor show its site to be 75,857 square feet rather than the 88,040 square feet shown by Sante’s appraisal and the subject’s property record card. Because Sante used erroneous data in his appraisal, his value conclusion cannot be correct. *O’Donnell testimony; Pet’r Ex. 12, 16.*

## ANALYSIS AND CONCLUSIONS OF LAW

### A. OBJECTIONS

24. The Hauchs objected to Respondent Exhibit 8, an MLS sales listing for the subject property. They argued that the listing covered a period from August 1, 2017 to September 16, 2017, that is irrelevant to the 2014 valuation. The Hauchs similarly objected to the portions of Respondent Exhibit 11 (2012-2017 property record cards for the subject property) containing a reference to the sales price of the subject property on November 6, 2017. The Assessor argued that the evidence shows what the property “actually sold for.” She further argued that the parties had “prior conversations” that the Hauchs were “going to bring up deferred maintenance,” and that Exhibit 11 shows what the “property sold for after the deferred maintenance” was cured. Our ALJ took the objections under advisement. Because we find Exhibits 8 and 11 to be relevant to the issue before us, we overrule the Hauchs’ objections.<sup>6</sup>
25. The Assessor objected to Petitioner Exhibits 13, 14, and 15 because the Hauchs did not exchange them prior to the hearing. The Hauchs argued that the exhibits, which consist of property record cards, photographs, plat maps, and deeds for the properties used as comparable sales in Sante’s appraisal, are “rebuttal exhibits.” Specifically, they argued that the exhibits were intended to rebut the data in the Assessor’s appraisal, and claimed

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<sup>6</sup> We once again warn Mr. O’Donnell, who is not an attorney, that tax representatives are prohibited from engaging in the practice of law. *See* 52 IAC 1-2-1(b)(4). Objecting to evidence on legal grounds comes close to crossing the line into the practice of law.

that they did not receive Sante’s appraisal in time to timely exchange the “rebuttal exhibits.”

26. Our procedural rules require parties to exchange copies of documentary evidence at least five business days before a hearing. 52 IAC 2-7-1(b)(1). This requirement allows parties to be better informed and to avoid surprises. It also promotes an organized, efficient, and fair consideration of the issues. The Board may exclude evidence or testimony based on a party’s failure to comply with the exchange rule. 52 IAC 2-7-1(f).
27. In this case, the Assessor offered nothing to dispute or contradict the Hauchs’ assertion that they did not receive Sante’s appraisal in time to exchange the “rebuttal exhibits” within five business days of the hearing. And the Hauchs were specifically offering the exhibits to challenge the validity of the comparable-sales data contained in Sante’s appraisal. Because we conclude the Hauchs could not reasonably anticipate the need for these documents until receiving the appraisal, we overrule the Assessor’s objections and admit Petitioner Exhibits 13, 14, and 15.<sup>7</sup>

**B. BURDEN OF PROOF**

28. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b), (d).
29. Here, there is no dispute that the assessment increased by more than 5%. The Assessor therefore bears the burden of proof.

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<sup>7</sup> It is unclear from the record whether the Assessor truly objected to Petitioner Exhibit 16. To the extent the Assessor did object, we overrule the objection since the exhibit is simply a larger version of one of the plat maps admitted without objection as part of Petitioner Exhibit 12.

**C. TRUE TAX VALUE**

30. Indiana assesses property based on its “true tax value,” which is determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c) and (e). The DLGF defines “true tax value” as “market value-in-use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
31. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property’s value as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2014 assessments, the valuation date was March 1, 2014. Ind. Code § 6-1.1-2-1.5(a).
32. As discussed above, the Assessor has the burden of proving that the subject property’s 2014 assessment is correct. She offered a USPAP-compliant appraisal report prepared by Steven W. Sante, a certified appraiser. Sante primarily relied on the sales-comparison approach in estimating the subject property’s value to be \$770,000 as of March 1, 2014.
33. In an effort to impeach Sante’s appraisal, the Hauchs mainly pointed to alleged errors in Sante’s underlying data and argued that these errors make his appraisal unreliable. But the Hauchs failed to definitively demonstrate that the size of their lot is different than the 88,040 square feet relied on by Sante. Although the plat of the Hauchs’ lot has a marking indicating its square footage is 75,857, it appears that calculation may only account for

the area unencumbered by a drainage and utility easement and perhaps the building setback line. And none of the additional area calculations they offered to demonstrate the alleged error were prepared by a professional surveyor.

34. While it does appear that Sante relied on inaccurate site sizes for Comparable #'s 1 and 3, we conclude that these errors had little effect on Sante's final value conclusion given that he placed the most weight on Comparable #2 (which he properly adjusted for site size). And we find no merit to the Hauchs' claim that Sante listed Comparable #2 as having only a partial basement in his report. We similarly find no basis for the Hauchs' claim that Sante's comparable properties are not actually comparable to the subject because they are located in a "wealthier" neighborhood.
35. Finally, Sante's decision to compare the subject to two homes (Comp #'s 1 and 3) without full second stories does give us some pause, but the Hauchs did not offer any evidence to show that market participants value the designs differently. Thus, we credit Sante's explanation that differences in the number of stories did not affect value, making design-related adjustments unnecessary.
36. While there may be some issues with Sante's appraisal, they are not significant enough to undermine its credibility. We ultimately find Sante's value conclusion to be probative evidence of the subject property's market value-in-use. Accordingly, the Assessor made a prima facie case that the subject's 2014 assessment should be \$770,000. The burden therefore shifts to the Hauchs to rebut Sante's valuation.
37. The only valuation evidence offered by the Hauchs was a sales-comparison approach prepared by O'Donnell. But O'Donnell failed to show that the properties he selected are comparable using generally accepted appraisal and assessment practices. Conclusory statements that a property is "similar" or "comparable" do not suffice; instead, taxpayers must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind.

Tax Ct. 2005). Taxpayers must similarly explain how relevant differences affect values. *Id.* at 471. But O'Donnell did not even attempt to make adjustments for any relevant differences between the Hauchs' property and the two purportedly comparable properties. His sales-comparison approach therefore falls well short of providing the analysis contemplated by *Long*. Thus, it is not probative evidence of the subject's market value-in-use.

38. Because the Hauchs offered no probative market-based evidence proving their property's market value-in-use was lower than \$770,000, they failed to rebut the Assessor's prima facie case.

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

39. The Assessor made a prima facie case supporting a value of \$770,000 for the 2014 assessment. The Hauchs failed to offer any probative evidence supporting a reduction below that value. Accordingly, we find for the Assessor and order the 2014 assessment changed to \$770,000.

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