

INDIANA BOARD OF TAX REVIEW
Small Claims
Amended Final Determination¹
Findings and Conclusions

Petition No.: 35-018-11-1-5-00007
Petitioners: Neil L. and Amy Jo Kissell
Respondent: Huntington County Assessor
Parcel No.: 35-06-33-200-025.401-018
Assessment Year: 2011

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. On August 4, 2011, Neil and Amy Jo Kissell filed a Form 130 petition contesting the subject property’s March 1, 2011, assessment. On October 10, 2011, the Huntington County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Kissells the relief they had requested.
2. The Kissells then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On July 10, 2012, the Board held a hearing through its designated administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn in:
 - a) Neil L. and Amy Jo Kissell
 - b) Terri Boone, Huntington County Assessor
Julie Newsome, Deputy Huntington County Assessor

Facts

5. The subject property is a single-family residential home on a 9.45-acre tract of land located at 2226 East Markle Road, in Huntington, Indiana.
6. Neither the Board nor the ALJ inspected the property at issue in this appeal.
7. For the March 1, 2011, assessment date, the PTABOA determined the assessed value of the subject property to be \$29,700 for the land and \$158,800 for the improvements, for a total assessed value of \$188,500.

¹ The Board issued this Amended Final Determination to correct two dates in its order.

8. On their Form 131 petition, the Kissells requested an assessed value of \$27,200 for the land and \$128,800 for the improvements, for a total assessed value of \$156,000.

Summary of Parties' Contentions

9. The Kissells' evidence and contentions:
- a) The Petitioner, Amy Kissell, argues that the Assessor did not assess the subject property accurately. *A. Kissell argument.* According to Ms. Kissell, the Assessor overstated the size of their house; she failed to consider both the property's location in a less desirable part of Union Township and the landlocked status of the rear portion of the home site; and she used one-story, two-story, and bi-level homes in assessing the property – which is a Cape-Cod home with unique angular upper level walls. *Id.* These factors resulted in an overstated assessment for the Petitioners' property. *Id.*
 - b) First, Ms. Kissell argues that the Assessor assessed their house with too much living area. *A. Kissell argument.* According to Ms. Kissell, an "All American Homes" brochure shows that their house has a total of 2,294 square feet. *A. Kissell testimony; Pet'rs Ex. 10.* The Assessor, on the other hand, assessed the house's first floor at 1,568 square feet of living area and the upper level with 1,425 square feet, for a total living area of 2,993 square feet. *A. Kissell testimony.* Thus, Ms. Kissell concludes, the Assessor assessed their home for 699 more square feet than it has. *Id.*
 - c) Additionally, she argues, the agricultural acreage located behind the home is "landlocked," which severely diminishes its value. *A. Kissell argument.* According to Ms. Kissell, the Assessor failed to recognize in her comparable sales analysis that their agricultural acreage could not be sold separately because it is not accessible from the road. *Id.* However, Ms. Kissell admitted that the Petitioners own the adjacent agricultural parcels. *A. Kissell testimony.*
 - d) Ms. Kissell also argues that the subject property is located in an area of the township where property values are lower. *A. Kissell testimony; Pet'rs Exs. 6, 7, 9.* According to Ms. Kissell, the parcel to the west of their property contains a mobile home and is valued at \$42,200, and the parcel to the east is valued at only \$82,700. *Id.* But in her sales-comparison analysis, the Assessor compared the Petitioners' property to homes located in much more desirable locations. *A. Kissell argument.* For example, Ms. Kissell argues, one purportedly comparable property is located in a subdivision rather than in an agricultural area. *A. Kissell testimony; Pet'rs Ex. 13.* And another purported comparable property is a bi-level brick home, while the subject property is a Cape-Cod style home. *Id.* Even the Assessor's own consultant stated that the best comparable properties for their property would be other rural Cape-Cod homes. *A. Kissell testimony.*

- e) Finally, the Kissells offered their own sales-comparison analysis to show that their property was over-valued for the 2011 assessment year. *Pet'rs Ex. C*. In support of this contention, Ms. Kissell presented the following sales:
- 4009 West 400 South, Huntington, which sold for \$97,000 on March 11, 2011. According to Ms. Kissell, she added \$24,000 to the sale price because the property has less acreage and \$4,060 because the house is smaller than the subject property, resulting in an adjusted sale price of \$125,060. *Pet'rs Ex. C-1*.
 - 5600 West 400 South, Huntington, which sold for \$149,500 on June 19, 2009. According to Ms. Kissell, she added \$13,350 to the sale price because the comparable property has less acreage than the subject property and she subtracted \$6,360 because the house is bigger than the subject property. She also subtracted \$10,000 from the sale price to account for the property's outbuildings, resulting in an adjusted sale price of \$146,490. *Pet'rs Ex. C-2*.
 - 8707 North 200 West, Huntington, which sold for \$168,000 on August 6, 2009. According to Ms. Kissell, she subtracted \$10,140 from the property's sale price because it is a larger parcel than the subject property and she subtracted \$790 because it contains a bigger house, resulting in an adjusted sale price of \$157,070. *Pet'rs Ex. C-3*.
 - 9889 West 800 North, Huntington, which sold for \$174,000 on October 27, 2011. According to Ms. Kissell, she added \$1,350 to the sale price because the property has a smaller land tract than the subject property and she added \$400 because the house is smaller than their house. In addition, Ms. Kissell testified that she subtracted \$10,000 from the sale price to account for property's outbuildings, resulting in an adjusted sale price of \$165,750. *Pet'rs Ex. C-4*.

According to Ms. Kissell, the mean adjusted value of the four comparable sales was \$149,593. *A. Kissell testimony; Pet'rs Ex. 4*. Removing the third sale from the equation because the Assessor argued the transaction was an invalid "short sale," resulted in the mean value dropping to \$145,766. *Id.* Thus, Ms. Kissell argues, the subject property's assessment should be around \$150,000 for 2011. *A. Kissell argument*.

10. The Assessor's evidence and contentions:

- a) The Assessor's witness argues that the subject property is a well-maintained single-family residential property consisting of 2,293 square feet of living area. *Newsome testimony*.
- b) Ms. Newsome argues that similar properties that have sold in rural Union Township support the subject property's assessed value. *Newsome argument; Resp't Ex. 16*. Out of fourteen Union Township properties that sold between March 2, 2010, and February 29, 2011, Ms. Newsome testified, the Assessor chose the following:

- 4841 East 531 North, Roanoke, which sold for \$197,000 on September 24, 2010, is a residential property with 1,989 square feet of living area, located on a 1.869-acre rural tract, approximately eight miles from the subject property. *Resp't Ex. 12.*
- 3822 North 200 East, Huntington, which sold for \$164,750 on April 23, 2010, is a rural residential property with 1,902 square feet of living area and a partial unfinished basement, located on a 2.03-acre tract, approximately three miles from the subject property.² *Resp't Ex. 13.*
- 5925 North Mayne Road, Huntington, which sold for \$137,000 on April 23, 2010, is a rural residential home with 1,816 square feet of living area and a partially-unfinished basement, located on 2.54 rural acres approximately seven miles from the subject property. *Resp't Ex. 14.*
- 2550 East 200 North, Huntington, which sold for \$179,900 on May 26, 2010, is a rural residential home with 2,424 square feet of living area. It is more than 100 years old, but has an effective construction date of 1965. It sits on 2.778 acres, and is located within two miles of the subject property. *Resp't Ex. 15.*

Ms. Newsome testified that the Assessor adjusted the sale prices for differences between the comparable properties and the subject property in terms of the size of the lot and the location of the property, the number of baths and bedrooms in the house, the age, condition, grade, and living area of the house and whether the house had a fireplace, central air conditioning or a garage. *Newsome testimony; Resp't Ex. 16.* According to Ms. Newsome, the adjusted sale prices ranged from \$85.01 to \$129.55 per square foot, but the Assessor chose a value of \$105.71 per square foot for the subject property because the first sale required the fewest adjustments. *Id.* Applying the \$105.71 per square foot value to the subject property's 2,293 square feet of living area, results in a value of \$243,058 – which Ms. Newsome argues is higher than the property's 2011 assessment. *Id.*

- c) Finally, the Assessor argues that Union Township agricultural land sales support the value of the agricultural portion of the subject parcel. *Newsome argument.* According to Ms. Newsome, a 72.729-acre parcel on Mayne Road sold for \$244,850 or \$3,366.61 per acre on December 20, 2010; a 3.87-acre parcel on Orion Circle sold for \$32,078 or \$8,288.89 per acre on May 5, 2010; and a 149.169-acre property consisting of four parcels, located on 400 East, sold for \$806,600 or \$5,407.29 per acre on June 2, 2011. *Id.; Resp't Ex. 17.*

² The first page of Respondent Exhibit 13, titled "Sale Comparable #2," states that the second comparable sold for \$137,000. But that appears to be a typographical error. The sales disclosure on the second page of the same exhibit shows the property's sale price was \$164,750, which is also the price that the Assessor indicated on her comparable sale analysis. *See Resp't Ex. 16.*

Record

11. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1:	Outline of the purpose of the appeal
Petitioners Exhibit 2:	Form 11, Notice of Assessment
Petitioners Exhibit 3:	Form 131 petition
Petitioners Exhibit C-1:	Multiple Listing Service (“MLS”) report for 4009 West 400 South
Petitioners Exhibit C-2:	MLS report for 5600 West 400 South
Petitioners Exhibit C-3:	MLS report for 8707 North 200 West
Petitioners Exhibit C-4:	MLS report for 9889 West 800 North
Petitioners Exhibit 4:	Analysis of comparable sales with mean value
Petitioners Exhibit 5:	Subject property’s location data and adjacent property values
Petitioners Exhibit 6:	Plat map showing the subject property and neighboring properties
Petitioners Exhibit 7:	Beacon property data for the adjacent property located at 2170 East Markle Road
Petitioners Exhibit 8:	Beacon property data for the subject property
Petitioners Exhibit 9:	Beacon property data for the adjacent property located at 2266 East Markle Road
Petitioners Exhibit 10:	“All American Homes” brochure for “the Easton” house
Petitioners Exhibit 11:	Statement regarding the Assessor’s comparable properties
Petitioners Exhibit 12:	Aerial map with the rear portion of the subject parcel outlined
Petitioners Exhibit 13:	The Assessor’s sales-comparison analysis from the PTABOA hearing with the subject property’s living area highlighted
Respondent Exhibit 1:	Respondent’s exhibit list
Respondent Exhibit 2:	Respondent’s list of witnesses
Respondent Exhibit 3:	Hearing notice
Respondent Exhibit 4:	Form 131 petition
Respondent Exhibit 5:	Form 115
Respondent Exhibit 6:	Form 130 petition
Respondent Exhibit 7:	Description and analysis of the subject property
Respondent Exhibit 8:	Subject property’s property record card

- Respondent Exhibit 9: Photograph of the subject property
- Respondent Exhibit 10: Aerial photo with the Petitioners' parcel outlined
- Respondent Exhibit 11: Analysis of the approaches to value
- Respondent Exhibit 12: Description, photograph, property record card ("PRC"), and sales disclosure form for the property located at 4841 East 531 North, Roanoke
- Respondent Exhibit 13: Description, photograph, PRC, and sales disclosure form for the property located at 3822 North 200 East, Huntington
- Respondent Exhibit 14: Description, photograph, PRC, and sales disclosure form for the property located at 5925 North Mayne Road, Huntington
- Respondent Exhibit 15: Description, photograph, PRC, and sales disclosure form for the property located at 2550 East 200 North, Huntington
- Respondent Exhibit 16: Assessor's sales-comparison adjustment grid with location map
- Respondent Exhibit 17: Grid showing three Union Township agricultural land sales
- Respondent Exhibit 18: Assessor's Conclusion
- Respondent Exhibit A: May 22, 2012, Memorandum from the DLGF regarding assessment and appeal changes

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Hearing notice
- Board Exhibit C: Hearing sign-in sheet
- Board Exhibit D: Assessor's pre-hearing list of witnesses and exhibits

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.³ That statute shifts the burden to the assessor in cases where the assessment under appeal represents an increase of more than 5% over the previous year's assessment for the same property.

³ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

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.

13. Here the subject property's property record card shows that the county or township assessor assessed the property for \$178,700 on March 1, 2010. The PTABOA determined the property's March 1, 2011, value to be \$188,500 – which represents an increase of more than 5% over the 2010 assessment. The Assessor therefore has the burden of proving that the subject property's March 1, 2011, assessment was correct. To the extent that the Petitioners seek an assessment below the previous year's level, however, the Petitioners bear the burden of proving a lower value for their property.

Discussion of the Merits

14. The Assessor did not meet her burden of proving that the subject property's assessed value was correct for 2011. The Board reached this conclusion for the following reasons:
 - a) 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.” MANUAL at 2. A party's evidence in a tax appeal must therefore be consistent with that standard. *See 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 Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b) Here, the Assessor relied on her analyses of residential home sales and agricultural land sales in Union Township. The sales-comparison approach is a generally accepted appraisal methodology 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 effectively use a sales-comparison analysis as evidence in a property assessment appeal, however, the proponent 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 Twp. Assessor*, 821 N.E.2d at 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the appealed property's

characteristics and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, she must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- c) The Assessor's sales-comparison analyses did not meet the threshold requirements for those analyses to carry probative weight. True, in her residential sales-comparison analysis, the Assessor examined how her four properties compared to the subject property in some areas. For example, she compared the homes in regard to the number of bedrooms and bathrooms; by whether the house had a fireplace or garage; and by foundation type and finish, age, condition, and size. And she made adjustments to account for differences in those characteristics. But she did not establish how she determined the amounts for those adjustments.
 - d) While the adjustments in the Assessor's analysis may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training, and experience to estimate a reliable quantification. Here, there is no evidence that either the Assessor or Ms. Newsome are certified appraisers. Moreover, the Assessor did not certify that she complied with USPAP in performing her analysis. The Board therefore finds that the Assessor's sales-comparison analysis is insufficiently reliable to be probative of the property's market value-in-use.
 - e) And the Assessor's agricultural land sales analysis fares no better. In fact, the Assessor made no adjustments whatsoever to her purported comparable properties in that analysis. Thus, the Board finds that the subject property's assessment must revert back to its March 1, 2010, level of \$178,700.
15. The Kissells failed to meet their burden of proving that the subject property's assessment should be reduced below its March 1, 2010, level. The Board reached this conclusion for the following reasons:
- a) Like the Assessor, the Petitioners here also offer a sales-comparison analysis. But the Kissells' analysis suffers from the same problems as the Assessor's evidence. Other than explaining that all of the properties are Cape Cod or two-story homes located on rural tracts, the Kissells' did little to show how the four properties on which they based their analysis actually compared to the subject property. And like the Assessor, while the Kissells adjusted the sale prices of their comparable properties for the size of the house and lot and whether the property had outbuildings, they offered no explanation for the amount of their adjustments. *See Long*, 821 N.E.2d at 470.
 - b) Further, a party must explain how its evidence relates to the property's market value-in-use 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), *see also Long*, 821 N.E.2d at 471. Otherwise, the evidence lacks probative value. *Id.* Here, the relevant valuation date was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f) (2011). But only the Kissells' first sale, which was March 11, 2011, bears any relationship to that valuation date. The Kissells' second and third sales occurred on June 19, 2009, and August, 6, 2009, respectively – which are more than a year and a half before the valuation date. And their fourth sale occurred on October 27, 2011 – which is more than ten months after the valuation date. Without some explanation of how the sales related to the March 1, 2011, valuation date, the Kissells' sales-comparison analysis lacks probative value. *See Long*, 821 N.E.2d at 471 (holding that an appraisal that estimated a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). Thus, the Petitioners' sales comparison analysis fails to raise a prima facie case for a further reduction in the value of their property.

- c) The Petitioners also argue that their property was over-assessed based on the Assessor's measurements of their house. This too fails to raise a prima facie case for a reduction in the assessed value of their property. The Petitioners presented some evidence that their house had 2,294 or 2,296 square feet of living area. The property record card, however, indicated that their house's first floor was assessed with 1,568 square feet of living area and the upper level was assessed with 1,425 square feet of living area, for a total living area of 2,993 square feet. But the upper level was assessed as a "half story." According to the Guidelines, assessors are to "measure the exterior of each full or partial floor." GUIDELINES, Chap. 3 at 9. Thus, the exterior measurement of the second floor would arguably be equal to the area of the floor below that it covers, regardless of the fact that some of the area would not be useable living space. The difference in value then is made up for in the cost tables where a "half upper story" is valued significantly lower than a full upper story. *See* GUIDELINES, App. C., Sch. A. Therefore, the Board cannot determine from the evidence that the Assessor erred in assessing the Petitioners' house.
- d) Even if the Kissells had sufficiently shown that the Assessor erred in assessing the living area of their home, the Board notes that a petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*").

Conclusion

16. Because the subject property's assessment increased by more than 5% from March 1, 2010, to March 1, 2011, the Assessor bore the burden of proving that the property's March 1, 2011, assessment was correct. The Assessor's failure to do so means that the property's assessment must be reduced to its March 1, 2010, level of \$178,700. The Kissells, however, failed to prove any lower value.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now orders that the subject property's March 1, 2011, assessment be reduced to \$178,700.

ISSUED: December 13, 2012

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.