

REPRESENTATIVE FOR PETITIONERS:
Tom Terry, Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Charles W. Ward, County Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Jerry J. & Linda J. Terry,	)	Petition No.:	18-035-13-1-5-00009
)		
Petitioners,	)	Parcel No.:	18-10-11-426-002.000-035
)		
v.	)	County:	Delaware
)		
Delaware County Assessor,	)	Township:	Mount Pleasant
)		
Respondent.	)	Assessment Year:	2013

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

January 15, 2016

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. Did the Petitioners prove that the subject property was overvalued for the March 1, 2013, assessment?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2013 appeal with the Delaware County Assessor on October 8, 2013. On March 26, 2014, the Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners relief. On May 12, 2014, the Petitioners filed a Form 131 petition with the Board.
3. On October 7, 2015, the Board's administrative law judge (ALJ), Joseph Stanford, held a hearing on the petition. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The following people were sworn and testified:

For the Petitioners: Tom Terry, tax representative,
Jerry Terry, Petitioner,
Jordan Macias, employee of Mr. Tom Terry.

For the Respondent: Charles W. Ward, county representative,
Kerry Wiggerly, PTABOA member,
Abby McDaniel, county employee.

5. The Petitioners offered the following exhibits:

Petitioners Exhibit 1: Appraisal of the subject property prepared by Scott Alexander, with an effective date of December 28, 2012, along with photographs of the property,
Petitioners Exhibit 2: Letter from Abby McDaniel to Jerry Terry, dated September 23, 2015, listing the Respondent's witnesses and exhibits and requesting the same.

6. The Respondent offered the following exhibits:

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Petitioners' deed of trust/mortgage recorded on June 20, 2005,
Respondent Exhibit 3: "Examples of evidence discussed in IBTR Final Determinations,"
Respondent Exhibit 4: "Analysis of comparable sales used by appraiser,"
Respondent Exhibit 5: Respondent's comparable sales and analysis,
Respondent Exhibit 6: PTABOA determination,

- Respondent Exhibit 7: “Relevant IBTR guidance,”
- Respondent Exhibit 8: Uniform Standard of Professional Appraisal Practice (USPAP) pages U-15 – U-20,
- Respondent Exhibit 9: “International Association of Assessing Officials (IAAO) standard on verification and adjustment of sales,”
- Respondent Exhibit 10: *909 Land Trust, c/o Steve Kollar v. St. Joseph Co. Ass’r, Ind.* Bd. of Tax Rev. pet. nos. 71-026-08-1-5-03765, 71-026-09-1-5-01864 (April 11, 2014),
- Respondent Exhibit 11: Photographs of the subject property,
- Respondent Exhibit 12: Certified mail receipt.

7. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 131 petition with attachments,
- Board Exhibit B: Hearing notice, dated July 23, 2015,
- Board Exhibit C: Hearing sign-in sheet,
- Board Exhibit D: Mr. Jerry Terry’s power of attorney appointing Mr. Tom Terry as representative.

8. The property under appeal is a single-family residence located at 805 North Cherry Wood Lane in Muncie.

9. The PTABOA determined the 2013 assessment is \$13,900 for land and \$127,300 for improvements (\$141,200 total).

10. The Petitioners requested an assessment of \$13,900 for land and \$84,600 for improvements (\$98,500 total).

OBJECTIONS

11. Both parties objected to the majority of the opposing party’s evidence. Specifically, Mr. Ward objected to the admission of Petitioners’ Exhibit 1. Mr. Ward also objected to the admission of Mr. Tom Terry’s testimony and to his representation of the Petitioners. Finally, Mr. Ward objected to the admission of Jordan Macias’ testimony. Mr. Ward objected because the Petitioners failed to provide a witness and exhibit list, and they failed to exchange evidence prior to the hearing as required by 52 IAC 2-7-1. Mr. Ward also objected to Petitioners’ Exhibit 1 on the grounds that it is hearsay. As discussed below, the ALJ overruled Mr. Ward’s objections with regard to Petitioners’ Exhibit 1 and

ultimately admitted the exhibit. The ALJ took the remaining objections under advisement.

12. When the Petitioners opted out of small claims proceedings, they became bound by the evidentiary exchange requirements. There is no dispute that the Petitioners failed to provide a witness and exhibit list 15 business days prior to the hearing, as required by 52 IAC 2-7-1(b)(2). Thus, at least in part, the Petitioners failed to comply with these requirements.
13. In raising his objection to Petitioners' Exhibit 1, Mr. Ward acknowledged that the Assessor's office received the appraisal in question "a month" prior to the hearing. In fact, Mr. Macias hand-delivered the exhibit to Ms. McDaniel in an "attempt to settle the case." Ms. McDaniel confirmed that she received the exhibit "around that time," but "the PTABOA would not permit her to enter into settlement negotiations." In effect, the Respondent received the appraisal before the deadline to provide a witness and exhibit list imposed by 52 IAC 2-7-1(b)(2), and prior to the five business-day exhibit exchange deadline imposed by 52 IAC 2-7-1(b)(1).¹
14. Mr. Ward argued that simply dropping off the appraisal "in hopes of a settlement" does not constitute a "formal exchange" of evidence, and that the appraisal should have included a formal cover letter explaining the purpose of the exchange. Mr. Ward further argued that the Petitioners' method of exchange left him with "no idea" that they would actually offer the appraisal at hearing.
15. The Board finds Mr. Ward's arguments in regards to the appraisal disingenuous. The Petitioners offered the appraisal at their PTABOA hearing and again offered the same appraisal in an attempt to initiate settlement negotiations. Accordingly, the Respondent should have had every indication that they would offer it at the Board's hearing. In fact it appears the Respondent did have some inclination that the Petitioners would present the

¹ 52 IAC 2-7-1(d) provides that the Board may waive the evidentiary exchange requirements for any materials submitted or made part of the record at the PTABOA hearing. Here, the Respondent did not dispute that the Petitioners offered the appraisal at the PTABOA hearing. The Board's decision to allow Petitioners Exhibit 1, however, does not hinge solely on the fact it was presented at the PTABOA hearing.

appraisal because he prepared an exhibit intended to rebut the sales utilized in the appraisal. *See Resp't Ex. 4*. Furthermore, as to the formal cover letter argument, Mr. Ward failed to point to any authority requiring a formal cover letter, or any other required method of exchange. Thus, Mr. Ward accomplished little in repeatedly advancing this argument other than diminishing his own credibility. Here, the Petitioners accomplished exactly what the Board's procedural rule requires, they provided the opposing party with a copy of their documentary evidence at least five business days before the hearing. *See* 52 IAC 2-7-1(b)(1).

16. Mr. Ward also objected to Petitioners' Exhibit 1 on the grounds that it is hearsay, stating several times that he "could not cross-examine a document." "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 not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 I.A.C. 3-1-5(b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

17. Petitioners' Exhibit 1 is hearsay. Nevertheless, effective July 1, 2015, Ind. Code § 6-1.1-15-4 was amended to include the following language:

(p) At a hearing under this section, the Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection. This exception to the hearsay rule shall not be construed to limit the discretion of the

Indiana board, as trier of fact, to review the probative value of an appraisal report.

Ind. Code § 6-1.1-15-4(p) (2015 Ind. Acts sec. 33, SEA 467). This statute creates an exception to the hearsay rule for an appraisal report. Accordingly, the Board adopts the ALJ's ruling overruling the objection, and Petitioners' Exhibit 1 is admitted.

18. Mr. Ward also objected to Mr. Tom Terry's representation of the Petitioners and any accompanying testimony of Mr. Tom Terry and Mr. Macias on the grounds that the Petitioners failed to provide a list of witnesses and exhibits prior to the hearing as required by 52 IAC 2-7-1(b)(2). The Petitioners admitted they did not comply with the requirements of 52 IAC 2-7-1(b)(2). As stated above, the ALJ took these objections under advisement.
19. Mr. Tom Terry and Mr. Macias offered little, if any, direct testimony. Further, the Board did not rely on any of their testimony in reaching its final determination. Nonetheless, to the extent that they offered testimony, the Board sustains Mr. Ward's objection and strikes the testimony of Mr. Tom Terry and Mr. Macias from the record because the Petitioners failed to comply with the requirements of 52 IAC 2-7-1(b)(2).
20. As to Mr. Tom Terry's representation of the Petitioners, Mr. Ward failed to point to any authority requiring the Petitioners to disclose the fact that Mr. Tom Terry would serve as their tax representative. Mr. Ward pointed to 52 IAC 2-7-1(b)(2) that requires a party to provide a list of witnesses and exhibits prior to the hearing, but this rule does not specifically require a party to list any potential representatives. Further, Mr. Tom Terry provided a duly executed power of attorney. *Bd. Ex. D.* Thus, as it relates to Mr. Tom Terry's actions in his role as the Petitioners' tax representative, the Board overrules Mr. Ward's objection. While the Board will not consider Mr. Tom Terry's testimony, his representation of the Petitioners is allowed.
21. Mr. Tom Terry, on behalf of the Petitioners, objected to Respondent's Exhibits 1-10 and the testimony of the Respondent's witnesses. Mr. Tom Terry based his objections on the

grounds that the Respondent failed to timely exchange its evidence and witness list prior to the hearing as required by 52 IAC 2-7-1. In response, Mr. Ward argued the Respondent made its “best attempt” to exchange the required documents in a “timely fashion.” In an effort to prove this, Mr. Ward offered a certified mail receipt indicating the documents were mailed. Mr. Ward went on to argue that the Board should not “quibble over one day or two.”² The ALJ took the objections under advisement.

22. Again, 52 IAC 2-7-1 provides that a party must provide the opposing party with a list of witnesses and exhibits to be introduced at the hearing at least 15 business days before the hearing, and provide the opposing party with a copy of their documentary evidence at least five business days before the hearing. 52 IAC 2-7-1(b)(1) and (2). Further, if the evidence exchange is completed via United States mail, the material must be deposited in the mail three days before the deadline in accordance with the provisions of 52 IAC 2-3-1. 52 IAC 2-7-1(c).
23. Here, the Respondent was required to deposit a witness and exhibit list in the mail by September 11, 2015. Further, the Respondent was required to deposit a copy of its documentary evidence in the mail by September 25, 2015. According to testimony, the Respondent mailed its witness and exhibit list on September 23, 2015. *McDaniel testimony*. According to a certified mail receipt, the Respondent mailed a copy of its documentary evidence on October 1, 2015. The Respondent missed both deadlines, and by more than “one day or two.”
24. Mr. Tom Terry’s objections are therefore sustained. With the following exceptions, Respondent Exhibits 1-10 and the direct testimony of the Respondent’s witnesses are excluded. The Board notes, however, that it does not consider all of the exhibits as strictly evidence. For instance, Respondent’s Exhibit 6, the PTABOA determination, is procedural in nature and therefore included as part of Board Exhibit A. Further, Respondent’s Exhibits 8-10 are items of which the Board may take judicial notice. *See*

² The Respondent did not offer any argument or testimony regarding if the exhibits had been previously offered at the PTABOA hearing. Accordingly, the Board will assume they were not previously offered.

52 IAC 2-7-4. While Mr. Ward did offer some direct testimony, his arguments as the Respondent's representative and his rebuttal testimony and argument, as well as Respondent's Exhibit 4 is admitted.³ As discussed below, neither the exclusion of the remaining exhibits, nor the exclusion of the direct testimony of the Respondent's witnesses, have any effect on the outcome of the final determination.

25. Finally, as it relates to these objections, the Board notes that neither Mr. Ward nor Mr. Tom Terry are attorneys, and as tax representatives they are prohibited from engaging in the practice of law. *See* 52 IAC 1-2-1(b)(4). Objections to evidence on legal grounds come close to crossing the line into the practice of law. Tax representatives are strongly cautioned against crossing the line in any appearances before the Board.

JURISDICTIONAL FRAMEWORK

26. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

27. The property's assessment is too high. In an effort to prove this, the Petitioners offered an appraisal prepared by Scott Alexander, a certified appraiser. Mr. Alexander certified that he prepared his appraisal in conformance with USPAP. He estimated the property's value at \$98,500, as of December 28, 2012. *J. Terry argument; Pet'rs Ex. 1.*

³ While the Board's procedural rules do not specifically exempt rebuttal evidence from the exchange requirements, the Board does recognize a general exception for rebuttal evidence. Rebuttal evidence is evidence offered to explain, contradict, or disprove the evidence presented by an adverse party. *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993). The Board may exclude evidence offered in rebuttal which should have been presented in the party's case-in-chief, but is not required to do so. *Id.* Here, the Board is willing to make an exception because Respondent's Exhibit 4 was specifically offered to challenge the validity of the comparable properties utilized in Mr. Alexander's appraisal.

28. The Petitioners originally sought an appraisal because they had declared bankruptcy. Mr. Alexander was selected to perform the appraisal because “he was the most reputable appraiser in Delaware County.” Mr. Alexander inspected the property, and thoroughly inspected a “structural defect.” Subsequently, he adjusted each comparable sale \$25,000 to account for the “defect.” The appraisal was presented to, and ultimately accepted, by a federal bankruptcy court. Further, the mortgage on the property is for “approximately the amount of the appraisal value.” *J. Terry testimony; Pet’rs Ex. 1.*
29. The aforementioned “structural defect” is in the second-story floor joists. According to building code, floor joists can be no further apart than ten inches. The joists in a portion of the second floor are spaced 22 inches. Consequently, the joists have “sunk under the weight of the wall.” A separation between the floor and the baseboard of the wall measures up to four inches. This defect adversely affects an upstairs bathroom and bedroom, and the downstairs family room. The defect has not been repaired, nor has an estimate for repairs been requested. Ultimately, the defect could lead one to conclude it is not safe to reside in the home. *J. Terry testimony; Pet’rs Ex. 1.*

RESPONDENT’S CONTENTIONS

30. The property’s assessment is correct. Three members of the PTABOA, including Kerry Wiggerly, inspected the property, paying particular attention to the alleged “structural defect.” *Ward argument; Wiggerly testimony.*
31. According to Mr. Wiggerly, the PTABOA’s inspection revealed sagging beams above the family room. The inspection also indicated a “separation” between the floor and the baseboard in the upstairs bedroom. Mr. Wiggerly estimated the amount of the separation to be “half-inch to three-quarters of an inch.” *Wiggerly testimony; Resp’t Ex. 11.*
32. Accordingly, Mr. Wiggerly opined that the home suffers from a “settling issue.” But Mr. Wiggerly stated that he is not a structural engineer and he is not qualified to testify about structural defects. A structural engineer should be consulted to determine the best

remedy. Mr. Wiggerly stated he has “no idea” what the property is worth, but he did concede the defect could affect the assessed value “to some degree.” *Wiggerly testimony.*

33. The appraisal is not probative. First, neither the effective date nor the sales utilized in the sales-comparison approach are close enough to the relevant valuation date. Additionally, the sales utilized are located outside of the Petitioners’ neighborhood when sales located in a closer proximity to the property were available. In fact, Mr. Alexander ignored sales located on the same street as the subject property. Further, Mr. Alexander utilized foreclosure sales and land contracts. According to USPAP and IAAO guidelines these sales should be avoided when possible. *Ward argument (referencing Pet’rs Ex.1); Resp’t Ex. 8, 9.*
34. Another shortcoming is that Mr. Alexander failed to provide any explanation as to how he determined the \$25,000 adjustment for the “structural defect.” In any event, an appraiser is not a structural engineer and therefore lacks the qualifications to make that type of determination. *Ward argument (referencing Pet’rs Ex.1).*
35. In an effort to support the current assessment, the Respondent offered its own sales-comparison approach utilizing “more appropriate sales.” Mr. Ward selected two sales located on North Cherry Wood Lane, two sales located on West Timbercrest Lane, and one sale located on North Parkwood Drive. The sale prices ranged from \$51.93 per square foot to \$67.61 per square foot. The average cost per square foot equated to \$60.96. The subject property is currently assessed at \$141,200 or \$47.38 per square foot. Thus, the assessment is arguably “too low.” *Ward argument; Resp’t Ex. 5.*

BURDEN OF PROOF

36. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 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). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

37. First, Ind. Code § 6-1.1-15-17.2 “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 year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, 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(b).
38. 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 IC 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.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.
39. Here, the Petitioners concede they have the burden of proving the property’s value. Indeed, the assessment increased from \$137,200 in 2012 to \$141,200 in 2013, an increase of only 2.9%. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with the Petitioners.

ANALYSIS

40. 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.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may 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.

41. Regardless of the method used, a party must explain how its evidence relates 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); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2013 assessments, the assessment and valuation dates were March 1, 2013. *See Ind. Code § 6-1.1-4-4.5(f).*
42. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. Here, the Petitioners had the burden of proof and presented a USPAP compliant appraisal of the property prepared by Scott Alexander, a certified appraiser. Mr. Alexander estimated the value at \$98,500 as of December 28, 2012. Therefore, the Petitioners established a prima facie case that the assessment should be reduced to \$98,500.
43. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
44. As previously discussed, the majority of the Respondent's testimony and documentary evidence, other than that intended to rebut the Petitioners' evidence, was excluded from the record for failure to comply with 52 IAC 2-7-1(b)(1) and (2). While the Respondent

failed to offer any argument regarding rebuttal evidence, the Board finds that the specific exhibits used to rebut the Petitioners' evidence and related testimony were not required to be shared under 52 IAC 2-7-1(b)(1) and (2) and are ultimately allowed.

45. The Respondent attempted to impeach Mr. Alexander's appraisal in many ways. First, Mr. Ward argued the appraisal's effective date of December 28, 2012, rendered it unreliable for a 2013 assessment appeal. The appraisal's effective date is slightly over two months removed from the March 1, 2013 valuation date. Given the closeness of those dates, the Board finds the appraisal probative of the value as of March 1, 2013.⁴
46. Next, the Respondent argued that Mr. Alexander utilized inappropriate comparable sales in his sales-comparison approach. Specifically, Mr. Ward argued the sales were located outside the subject property's neighborhood. Mr. Ward went on to argue that Mr. Alexander ignored relevant sales within the subject property's neighborhood. Finally, Mr. Ward took umbrage with the use of a foreclosure and a land contract sale in Mr. Alexander's appraisal.
47. Certainly, location can be an important factor in choosing a comparable property. But it is not the only factor. An appraiser also considers the size, age, condition, and type of structure, among many other things. Evidently, in choosing his comparables, Mr. Alexander considered the similarities in these other factors made up for the fact that they were located further from the subject property. As a certified, licensed appraiser, Mr. Alexander is well-qualified to make that determination. And the same is true of his choice to use a foreclosure sale and a land contract. Moreover, the Respondent failed to offer any evidence as to how Mr. Alexander's choice of "wrong" comparable sales affected his estimated value.

⁴ Further, while it was excluded from the record, Mr. Ward conceded through testimony and evidence that he believed property values were "relatively flat" during the period in question. *Ward testimony; Resp't Ex. 5*. Regardless, the Respondent failed to offer any evidence that the property's value would have materially changed in two months.

48. The Respondent also argued that Mr. Alexander’s decision to adjust each sale by \$25,000 to account for the “structural defect” was unsupported and unreliable. Mr. Ward further argued that Mr. Alexander is “unqualified” to make such a determination.
49. The Board agrees that Mr. Alexander’s failure to more precisely explain how he arrived at such a large adjustment detracts from the appraisal’s credibility. But it does not completely deprive it of probative value. Indeed, there is no dispute that the property suffers from a problem that may significantly impact its market value-in-use. Further, while Mr. Alexander is likely not a structural engineer, his task in completing the appraisal was not to diagnose the problem and estimate how much it would cost to fix. Instead, his task was to determine, given the existence of the problem as it stood on the appraisal date, how much less a potential buyer might pay for the property. Again, as a certified appraiser, Mr. Alexander is qualified to make that determination.
50. Thus, while Mr. Alexander’s appraisal is not perfect, it has some probative value. The Respondent offered other evidence as an attempt to prove the value, but that evidence was excluded because the Respondent could have, and should have, exchanged that evidence in a timely manner in accordance with 52 IAC 2-7-1(b)(1) and (2). And for the following reasons, even if the Board were to consider that evidence, it does not suffice to make a persuasive case for the value claimed by the Respondent.
51. The Respondent offered an analysis of comparable sales as a competing sales-comparison approach. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

52. Mr. Ward selected his purportedly comparable properties because they are located in the same neighborhood, and some on the same street, as the subject property. However, the purportedly comparable properties are of various sizes and story heights, and there is no evidence as to their relative conditions or many other important factors. Mr. Ward failed to discuss how the properties he submitted were similar to the subject property or how they differed. Most notably, he did not account for the subject property's "structural defect." In fact, both he and Mr. Wiggerly testified that they were not qualified to either diagnose that problem or estimate its impact on the property's value. Further, Mr. Ward failed to provide any indication his analysis conforms to generally accepted appraisal principles and USPAP. Thus, even if the Board had considered Mr. Ward's sales-comparison analysis, it does not prove a more credible market value-in-use.
53. For these reasons, the assessment must be reduced to \$98,500 for March 1, 2013.

SUMMARY OF FINAL DETERMINATION

54. The Petitioners had the burden of proving the 2013 assessment was incorrect. They made a prima facie case. The Respondent failed to rebut the Petitioners’ prima facie case. Therefore, the Board finds for the Petitioners and orders that the March 1, 2013, assessment be reduced to \$98,500.

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 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>>.