

REPRESENTATIVE FOR PETITIONERS:  
Sharon LeVeque, Tax Representative

REPRESENTATIVE FOR RESPONDENT:  
Debra Dunning, Marshall County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Timothy and Laura Turpin,	)	Petition No. 50-005-11-1-5-00033
	)	
Petitioners,	)	
	)	Parcel No. 50-43-07-000-128.000-005
	)	
v.	)	Marshall County
	)	
Marshall County Assessor,	)	German Township
	)	
Respondent.	)	2011 Assessment Year

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

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**January 24, 2014**

**FINAL DETERMINATION**

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

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

1. In this assessment appeal, Timothy and Laura Turpin failed to offer probative evidence to show their property’s market value-in-use as of the relevant valuation date. They offered vague and incomplete information about what they paid for the property 4½ years before

the valuation date. And while they offered sales data for other properties with manufactured homes, they did not show their property's market value-in-use by using generally accepted appraisal principles to analyze that data. Therefore, the Turpins failed to prove that their assessment should be reduced.

### **Procedural History**

2. On September 23, 2011, the Turpins appealed their 2011 assessment to the Marshall County Property Tax Assessment Board of Appeals ("PTABOA"). On December 4, 2012, the PTABOA issued its determination reducing the assessment, although not by as much as the Turpins had requested. The Turpins then timely filed a Form 131 petition with the Board.
3. On October 29, 2013, the Board's administrative law judge, Jennifer Bippus, held a hearing on the Turpins' petition. Neither she nor the Board inspected the property.

### **Hearing Facts and Other Matters of Record**

4. Certified tax representative Sharon LeVeque, Marshall County Assessor Debra Dunning, and Deputy Assessor Mindy Relos-Penrose testified at this hearing.
5. The Turpins submitted the following exhibits:

Petitioners Exhibit 1:	Property record card ("PRC") for the Turpins' property
Petitioners Exhibit 2A:	E-mail to Sharon LeVeque from Laura Turpin
Petitioners Exhibit 2B:	Breakdown showing a contractor's draws on a loan to the Turpins
Petitioners Exhibit 2C:	Contractor's Final Affidavit for Manufactured Home
Petitioners Exhibit 2D:	One page from a mortgage agreement with First Federal Savings Bank
Petitioners Exhibit 3A-C:	Printouts from a website with information regarding the sale of manufactured homes in Marshall County
Petitioners Exhibit 4A-I:	Multiple Listing Service ("MLS") sheets for nine properties
Petitioners Exhibit 5A-C:	MLS listing sheet and PRC for 5776 5 <sup>th</sup> Road, Bremen
Petitioners Rebuttal Ex. 1:	PRC for 4284 Lake Shore Drive, Bremen (3 pages)

6. The Assessor submitted the following exhibits:
  - Respondent Exhibit 1: Form 130 Short
  - Respondent Exhibit 2: Form 134 with attached e-mails
  - Respondent Exhibit 3: Form 115, Notice of Final Assessment Determination
  - Respondent Exhibit 4: Photograph of the Turpins' property
  - Respondent Exhibit 5: Three aerial photographs of the Turpins' property
  - Respondent Exhibit 6: Spreadsheet with base rate and other information for German Township
  - Respondent Exhibit 7: Form 130 Worksheet
  - Respondent Exhibit 8: PRC for the Turpins' property as of March 1, 2011
  - Respondent Exhibit 9: Spreadsheet entitled "Lake of the Woods – Off Water Neighborhood"
  - Respondent Exhibit 10: Beacon information, MLS listing sheet, sales disclosure form, and PRC for 4284 Lake Shore Drive
  - Respondent Exhibit 11: Beacon information, sales disclosure form, and PRC for 3774 Lake Shore Drive
  - Respondent Exhibit 12: Beacon information, sales disclosure form, and PRC for 4215 Lake Shore Drive
  
7. The following additional items are recognized as part of the record:
  - Board Exhibit A: Form 131 petition
  - Board Exhibit B: Hearing notice dated June 24, 2013
  - Board Exhibit C: Assessor's request for continuance dated July 1, 2013
  - Board Exhibit D: Letter granting continuance dated July 9, 2013
  - Board Exhibit E: Hearing notice dated August 28, 2013
  - Board Exhibit F: Hearing sign-in sheet
  
8. The PTABOA determined the following values:
 

Land: \$16,100	Improvements: \$139,200	Total: \$155,300
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9. The Turpins requested an assessment of \$82,689.

### **Objection**

10. The Turpins objected to Respondent's Exhibit 2. That exhibit contains a form (Form 134) that is designed to report the results of any preliminary conference between a taxpayer and assessor in which the parties attempt to informally resolve an appeal. The Form 134 lists what the Assessor believed the Turpins' assessment should have been and "UNK" in the space provided for what the Turpins were requesting. *Resp't Ex. 2.*

Attached to the Form 134 are e-mails between Ms. LeVeque and Ms. Relos-Penrose regarding whether Ms. LeVeque was willing to settle various appeals, although it is not apparent whether the Turpins' appeal was included in that group. The Turpins objected to the exhibit because Ms. LeVeque had not seen the Form 134 nor read the attached e-mails to see if they were complete or whether they had been altered. *LeVeque objection*.

11. The Board sustains the Turpins' objection, although not on the grounds that the Turpins raised. The Form 134 and attached e-mails are irrelevant to the issue on appeal—whether the subject property was assessed for more than its true tax value. At most, the documents relate to settlement negotiations between the parties, and the Board has repeatedly rejected attempts to use evidence of settlement negotiations to prove value. Indiana courts strongly favor settlement agreements. *Klebes v. Forest Lake Corp.*, 607 N.E.2d 978, 982 (Ind. Ct. App. 1993). Those agreements allow courts to operate more efficiently and the parties to resolve their disputes through mutual agreement. *Natare Corp. v. Aquatic Renovation Systems, Inc.*, 987 F. Supp. 695, 700 (S.D. Ind. 1997). For those reasons, Indiana law prohibits using statements made in settlement negotiations to prove liability for or the invalidity of a claim or its amount. *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005); Ind. Evid. Rule 408. Indeed, the Indiana Tax Court has refused to afford consummated settlement agreements any precedential effect in property tax appeals, because to do so “would have a chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom.” *Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 505 (Ind. Tax Ct. 2001) (granting a motion to strike a portion of a brief that referred to the settlement of a related appeal).

## **Parties Contentions**

### **A. Summary of the Turpins' case**

12. The Turpins contend that their property was assessed too high in light of what they paid for it and of the sale prices for other manufactured homes in Marshall County. *LeVeque argument*.

13. The property, which is located at 4727 West Shore Drive in Bremen, contains a 1,344-square-foot manufactured home built in 2006. It also contains a 12' x 16' shed, two enclosed porches, a deck, and a covered front porch. In the Turpins' view, the property should be assessed for no more than what they paid for it, which Ms. LeVeque alternately described as \$82,524 and \$82,689. *LeVeque testimony; Pet'rs Ex. 1.*
14. According to an e-mail from Laura Turpin, the Turpins got a loan of \$82,524 "for the property and the manufactured home." *Pet'rs Ex. 2A; see also, Pet'rs Ex. 2D.* The Turpins also offered what appears to be a list of draws on the loan taken by the contractor who built a foundation and placed the home at the property together with an affidavit affirming that the last draw was for \$10,860. The combined draws equal the loan amount. Ms. Turpin also told Ms. LeVeque that the Turpins bought the land from "their parents" for what Ms. Turpin "believe[d] to be around \$10,000." *LeVeque testimony; Pet'rs Exs. 2C-2D.*
15. In addition, the Turpins pointed to the sale prices for various other properties containing manufactured homes. According to Ms. LeVeque, manufactured homes sell for less than stick-built homes. She therefore used the MLS to compile a summary of sales from Marshall County involving manufactured homes that were similar in size to the Turpins' home. The summary included 16 properties with homes that were between 1,232 and 1,736 square feet. The properties sold over the last five years for prices ranging from \$22,000 to \$89,500. *LeVeque testimony; Pet'rs Exs. 3A-C.*
16. The Turpins also offered MLS listing sheets for nine of the sales included in Ms. LeVeque's summary. According to Ms. LeVeque, each sale was at arm's length after the property had been exposed to the open market. Ms. LeVeque compared those nine properties to the Turpins' property along the following lines:
  - **3799 Plymouth-LaPorte Trail, Walkerton.** This property sold for \$76,000 on March 18, 2009. Its home is similar to the Turpins' home in size and condition. It has a sun porch and a deck. It has a 1.4-acre lot, which is superior to the Turpins'

lot, and an additional pole barn. It is inferior to the Turpins' property in that the home is ten years older than the Turpins' home and does not have a covered front porch.

- **13351 Michigan Road, Plymouth.** This property was listed for \$89,000 and sold for \$80,000 on August 13, 2009. Its home is only 100 square feet smaller and eight years older than the Turpins' home. It is superior to the Turpins' property in that it has three acres of land, a built-in fireplace, and two sheds. It is inferior in that it does not have a covered or enclosed porch.
- **14370 Union Road, Culver.** This property was listed for \$79,000 and sold for \$72,000 on May 27, 2009. Its home is only 120 square feet smaller than the Turpins' home, but it is nine years older. It is superior to the Turpins' property in that it has a full basement, a 2.16-acre lot, and a two-car garage.
- **215 Franklin Street, Plymouth.** This property was listed at \$92,500, and it sold for \$85,000 on July 27, 2010, after being on the market for 165 days. It has a large deck and a lot that is similar to the Turpins' lot, but it does not have a front porch and the home is seven years older than the Turpins' home. On the other hand, the homes are the same size and condition, and they might even be the same model.
- **2102 Roy Street, Walkerton.** This property was listed for \$89,000, and it sold for \$85,000 on June 6, 2008. It has an attached two-car garage and a much larger lot ( $\frac{1}{4}$  acre) than the Turpins' lot. Its home is 216 square feet larger and only seven years older than the Turpins' home.
- **11200 East U.S. 6, Plymouth.** This property was listed for \$85,000 and sold for \$86,500 on August 22, 2008. It was on the market 460 days, and the seller made concessions of \$2,514. While it has a bigger home and lot than the Turpins' property, the home is ten years older than the Turpins' home and lacks an enclosed porch.
- **311 North Railroad Street, Argos.** This property sold for \$79,500 on May 14, 2010, although the seller paid \$2,160 in concessions. The home is 392 square feet larger than the Turpins' home, but it is six years older. The property also has an attached two-car garage and a larger lot ( $\frac{1}{2}$  acre) than the Turpins' lot.
- **2181 Roy Street, Walkerton.** This property was listed for \$78,900 and sold for \$82,000 on April 17, 2009, with the seller paying \$4,920 in closing costs. Its home is only four years older than the Turpins' home, so there is no measurable value difference based on age. The lot is superior to the Turpins' lot. Similarly, the home is larger than the Turpins' home and contains a fireplace.

- **15743 Michigan Road, Argos.** This property was foreclosed on and resold. But it was on the market 186 days and both the buyer and seller had their own agents. The home is 224 square feet larger than the Turpins' home, has a full basement and fireplace, and sits on ½-acre lot. On the other hand, it is 10 years older than the Turpins' home.

*LeVeque testimony; Pet'rs Exs. 4A-I.*

17. In addition, a property located at 5776 5<sup>th</sup> Road in Bremen sold in a conventional arm's-length transaction for \$78,500 in 2011. Although the sale followed a foreclosure, the property was on the market 193 days, both parties had their own broker, and the sale price was only slightly less than the list price. The home is similar in size to the Turpin's home and is only three years older. It has a two-car attached garage, a full basement, and a 1.35-acre lot. *LeVeque testimony; Pet'rs Exs. 5A - 5C.*
18. The Assessor challenged Ms. LeVeque's sales based on their distance from the Turpins' property. But in Ms. LeVeque's view, the distance between the properties is beside the point because manufactured homes are necessarily similar regardless of their location. Also, while some of Ms. LeVeque's comparable properties might have been involved in foreclosures, the sales that she relied on were arm's-length transactions where the property had been exposed to the open market. In any case, even if one throws out some of the sales, there are enough others to show that the Turpins' property is worth between \$75,000 and \$85,000. *LeVeque testimony.*
19. Ms. LeVeque also challenged the Assessor's sales-comparison analysis. One of the properties in the Assessor's analysis—4284 Lake Shore Drive—has a home that is twice the size of the Turpins' home, two lots, and a two-car attached garage. When Ms. LeVeque removed \$6,300 for the second lot and \$16,920 for the two-car garage, she came up with an adjusted sale price of \$136,780, or \$55.40 per square foot of living area. Applying that unit price to the Turpins' property yields a value \$74,500, which is consistent with the other manufactured home sales in Ms. LeVeque's summary. *LeVeque testimony; Pet'rs Rebuttal Ex. 1.*

20. The other two properties in the Assessor's analysis are not comparable to the Turpins' property. The first property—3774 Lake Shore Drive—is larger than the Turpins' property and has water access. The other is simply land with a two-car garage. Also, the Assessor used a sale of \$149,000 from 2010 for 3774 Lake Shore Drive. But that sale may not have been at arm's length because the property sold for just \$55,000 in 2004. *LeVeque testimony; Resp't Exs. 11-12.*

#### **B. Summary of the Assessor's case**

21. The Turpin's purchase price in 2006 is irrelevant. The issue on appeal is the market value-in-use as of March 1, 2011. *Relos-Penrose testimony.*

22. The property is located in an off-water assessment neighborhood across the street from a lake. David Turpin, who the Assessor believes may be related to the Turpins, owns an adjacent property to the south as well as a vacant waterfront lot across the street from the Turpins' property. The Turpins have a view of the lake through that vacant lot. *Dunning testimony; Resp't Ex. 5.*

23. Location drives value. Thus, it is important to look at sales from the same neighborhood when using the sales-comparison approach to estimate value. Ms. LeVeque, however, used sales from as far as 22 miles away from the Turpins' property as well as sales from rural areas. While Ms. LeVeque talked about various differences between her comparable properties and the Turpins' property, she did not prepare a spreadsheet or actually adjust any of the sale prices to reflect those differences. Also, several of Ms. LeVeque's sales were invalid because they involved foreclosures, were forced sales, or the seller was either a bank or the Department of Housing and Urban Development. The listing sheet for one of the properties—3799 Plymouth-LaPorte Trail in Walkerton—indicates that the seller was very motivated, and the property had sold for almost \$30,000 more just one year earlier. *Dunning testimony; Relos-Penrose testimony.*



24. As directed by the Department of Local Government Finance (“DLGF”), the Assessor used Schedule A of the Real Property Guidelines to assess the Turpins’ manufactured home. To support the land portion of the assessment, the Assessor offered a spreadsheet showing three comparable sales from the same off-water assessment neighborhood as the Turpins’ property. She extracted improvement costs from the sale price to arrive at a land value for each sale. The properties sold for a median price of \$282 per front foot or \$2.35 per square foot. By contrast, the Turpins’ property was assessed at only \$215 per front foot and \$1.79 per square foot. *Relos-Penrose testimony; Dunning testimony; Resp’t Exs. 8-12.*

## **Discussion**

### **A. Burden of Proof**

25. Generally, a taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that current assessment is incorrect and what the 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). In making its case, the taxpayer must explain how each piece of evidence relates to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1108, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board...through every element of the analysis”). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
26. The burden of proof lies with the assessor, however, where the assessment under review represents an increase of more than 5% over the value that the assessor determined for the same property in the immediately preceding year. *See I.C. § 6-1.1-15-17.2.* But the assessment under review is actually less than the assessment for the preceding year. Therefore, the Turpins have the burden of proof.

## B. Analysis

27. The Turpins' property, including their manufactured home, was classified and assessed as real property. The Turpins have not disputed that classification. Indiana assesses real property based on its true tax value, which is the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property. Evidence in a tax appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sales or assessment information for comparable properties, and any other evidence compiled according to generally accepted appraisal principles may also be probative.
28. In any event, for evidence to be probative, a party must explain how the 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). For 2011 assessments, the valuation date was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f).
29. The Turpins rely on two things to support their claim: (1) what Ms. LeVeque describes as the price the Turpins bought the property for in August 2006, and (2) sale prices for various other properties containing manufactured homes.
30. A property's sale price can be compelling evidence of its market value-in-use. But the Turpins bought their property more than 4½ years before the valuation date at issue in this appeal. And they failed to explain how their purchase price related to the market value-in-use as of the required valuation date.
31. Also, it is unclear what the Turpins actually paid for the property. It appears that they bought the land from their parents and then hired a contractor to place the manufactured home on a foundation. Neither of the Turpins actually testified. Their tax representative,

Ms. LeVeque, asserted that they paid a total of \$82,524 for the property. But she had no personal knowledge of that fact and offered little evidence to corroborate her assertions. At most, they offered a portion of a loan document and an e-mail from Ms. Turpin to Ms. LeVeque saying that the loan amount was for “the property and the manufactured home.” *Pet’rs Ex. 2*. But the contractor drew the entire loan balance, and nothing in the record indicates that the contractor was involved in buying the land.

32. In fact, the evidence about what the Turpins paid for the land was vague at best, consisting of Ms. LeVeque’s hearsay testimony that Ms. Turpin “believe[d]” the price was “around \$10,000.” *LeVeque testimony*. And the Turpins bought the land from their parents. Under those circumstances, the Board will not simply assume that the sale was at arm’s length or that the price is a reliable indication of value.
33. The Board turns to the Turpins’ sales evidence for other properties containing manufactured homes. A property’s value may be estimated directly by comparing it similar properties that have sold in the market. Indeed, that is what the sales comparison approach—one of the three generally accepted appraisal approaches—does. But to use that approach in an assessment appeal, one must show that the sold properties are comparable to the property under appeal. Conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the purportedly comparable properties and how any differences affect the properties’ relative market values-in-use. *See id.* at 471.
34. The Turpins offered summary data for 16 properties containing manufactured homes with between 1,232 and 1,736 square feet that sold in Marshall County during the five years leading up to the Board’s hearing. They also offered MLS listing sheets for a subset of nine sales from that larger group and a property record card for a tenth sale.

35. The Board need spend little time discussing the summary for the larger group of sales. That summary shows little more than the sale price for each property and the fact that the property contained a manufactured home.
36. The MLS sheets and property record card contain more data, and Ms. LeVeque compared the properties described in those documents to the Turpins' property in terms of at least some relevant characteristics. As the Assessor pointed out, however, Ms. LeVeque ignored one essential characteristic—location. See *Poracky v. State Bd. of Tax Comm'rs*, 635 N.E.2d 235, 237 (Ind. Tax Ct. 1994) (*quoting* JANATA PROPERTY TAXATION 234 (2d. ed. 1993) (“The location of [property] is of paramount importance with regard to its value.”). Ms. LeVeque brushed aside that concern by claiming that the value of a manufactured home does not differ based on where it is located. That might be true if one looks at the home by itself. But Ms. LeVeque's sales included both land and improvements without anything to show the portion of the sale price that was attributable to each component.
37. And while Ms. LeVeque made broad claims about the relative inferiority or superiority of the sold properties to the Turpins' property in terms of individual characteristics such as home size and age, lot size, and the presence of porches, garages or other improvements, she neither quantitatively adjusted the sale prices nor applied qualitative analysis techniques to account for those differences. She did not show that her analysis complied with generally accepted appraisal principles. Ultimately, Ms. LeVeque did not do much more than offer a good deal of raw data, which did not prove a value, or even a likely range of values, for the Turpins' property.
38. The Turpins failed to establish that their evidence proves a more accurate market value-in-use for the subject property as of March 1, 2011.

**FINAL DETERMINATION**

39. The Turpins failed to make a prima facie case for reducing their assessment. The Board therefore finds for the Assessor. The 2011 assessment will not be changed.

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 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>>.