

REPRESENTATIVE FOR PETITIONERS:
Sharon LeVeque, Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Debra A. Dunning, Marshall County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lawrence and Patsy Van Vooren,)	Petition Nos.: 50-005-10-1-5-00019
)	50-005-11-1-5-00019A
Petitioners,)	
)	Parcel No.: 50-43-06-000-034.000-005
v.)	
)	
Marshall County Assessor,)	County: Marshall
)	
Respondent.)	Assessment Years: 2010 and 2011

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

March 14, 2013

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioners' property was over-valued for the 2010 and 2011 assessment years.

PROCEDURAL HISTORY

2. Ms. LeVeque, on behalf of Mr. and Mrs. Van Vooren, the Petitioners, initiated an appeal of the property's 2010 assessment with the Marshall County Property Tax Assessment Board of Appeals (PTABOA) on September 16, 2010. The Marshall County PTABOA issued its assessment determination for the 2010 appeal on March 7, 2012.
3. Ms. LeVeque initiated the Petitioners' 2011 assessment appeal with the PTABOA.¹ The Marshall County PTABOA issued its assessment determination on December 4, 2012.²
4. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed their Form 131 Petitions for Review of Assessment for 2010 and 2011 on April 23, 2012, petitioning the Board to conduct an administrative review of the property's 2010 and 2011 assessments.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on December 19, 2012, in Plymouth, Indiana.

¹ None of the documents submitted by the parties indicates the exact date when Ms. LeVeque initiated the Petitioner's 2011 appeal.

² The PTABOA ruling appears to have been issued after the Petitioners filed their 2011 appeal with the Board.

6. The following persons were sworn at the hearing:

For the Petitioner:

Sharon LeVeque, taxpayer representative,³

For the Respondent:

Debra A. Dunning, Marshall County Assessor,
Mindy S. Relos, Marshall County Deputy Assessor.

7. The Petitioners presented the following exhibits for the 2010 and 2011 assessment years:⁴

- | | |
|---------------------------|---|
| Petitioner Exhibit 1 – | 2012 property record cards for the subject property, |
| Petitioner Exhibit 2-3 – | Property record card for 3253 Lake Shore Drive, Multiple Listing Service (MLS) information, and Craftsman cost valuation, |
| Petitioner Exhibit 4 – | Property record cards for 3608 West Shore Drive, MLS information, map from the Beacon website and Craftsman cost information, |
| Petitioner Exhibit 5 – | Property record cards for 4016 Liberty Street, MLS information and Craftsman cost valuation, |
| Petitioner Exhibit 6 – | Property record cards for 4010 West Shore Drive, map from the Beacon website, and calculation of land value, |
| Petitioner Exhibit 7 – | Property record card for 9036 Birch Drive, Craftsman cost information, excerpt of the sales disclosure form, |
| Petitioner Exhibit 8 – | Property record cards for 4006 Liberty Street, MLS information, map from the Beacon website and Craftsman cost information, |
| Petitioner Exhibit 9-10 – | Property record card for 8881 Sycamore Drive, MLS information and Craftsman cost information, |
| Petitioner Exhibit 11 – | Property record card for 8977 North Shore Drive and Craftsman cost information, |
| Petitioner Exhibit 12 – | Property record cards for 4215 Lake Shore Drive and Craftsman cost information, |
| Petitioner Exhibit 13 – | Property record card for 3654 West Shore Drive, MLS information and Craftsman cost information, |

³ Lawrence Van Vooren, the taxpayer, was present but did not testify. Ms. LeVeque testified that she was retained on a contingent basis.

⁴ The Respondent objected to the admission of the Petitioners' exhibits because the Petitioners' representative failed to exchange the exhibits five business days before the hearing. The Respondent attempted to follow the statutory time frame; however, she mailed the documentary evidence five days before the hearing, rather than five business days as required. The parties agreed to go forward with the hearing given that both parties were in violation of the Board's rules.

- Petitioner Exhibit 14 – Property record card for 4670 West Shore Drive, MLS information, e-mails and tax information,
- Petitioner Exhibit 15 – Excel spreadsheet of comparable sales,
- Petitioner Exhibit 16 – Property record cards for 4010 West Shore Drive.

8. The Respondent presented the following exhibits:

For 2010:

- Respondent Exhibit 1 – Form 130 petition,
- Respondent Exhibit 2 – Form 138 with Power of Attorney,
- Respondent Exhibit 3 – Letter from the County Assessor to Ms. LeVeque,
- Respondent Exhibit 4 – E-mails exchanged between Ms. Dunning and Ms. LeVeque,
- Respondent Exhibit 5 – E-mail requesting continuance of PTABOA hearing,
- Respondent Exhibit 6 – List of appeals filed for 2010 by Ms. LeVeque,
- Respondent Exhibit 7 – Form 115 with PTABOA determinations,
- Respondent Exhibit 8 – Form 131 petition,
- Respondent Exhibit 9 – Property record card for the subject property,
- Respondent Exhibit 10 – Photograph of the subject property,
- Respondent Exhibit 11 – Lake of the Woods land order,
- Respondent Exhibit 12 – Aerial photograph of Lake of the Woods showing the subject property and comparable properties,
- Respondent Exhibit 13 – Spreadsheet of comparable sales,
- Respondent Exhibit 14 – Comparable sale information for 4016 Liberty Street,
- Respondent Exhibit 15 – Comparable sale information for 4427 East Shore Drive,
- Respondent Exhibit 16 – Comparable sale information for 4345 Lake Shore Drive,
- Respondent Exhibit 17 – Comparable sale information for 4215 Lake Shore Drive.

For 2011:

- Respondent Exhibit 1 – Form 130 petition,
- Respondent Exhibit 2 – Form 114,
- Respondent Exhibit 3 – Form 115 with PTABOA determination,
- Respondent Exhibit 4 – Property record card for the subject property,
- Respondent Exhibit 5 – Form 131 petition,
- Respondent Exhibit 6 – Photograph of the subject property,
- Respondent Exhibit 7 – Aerial photograph of the subject property,
- Respondent Exhibit 8 – Land Order for Lake of the Woods,
- Respondent Exhibit 9 – Spreadsheet of comparable sales,
- Respondent Exhibit 10 – Comparable sale information for 4016 Liberty Street,
- Respondent Exhibit 11 – Comparable sale information for 4427 East Shore Drive,
- Respondent Exhibit 12 – Comparable sale information for 4345 Lake Shore Drive,
- Respondent Exhibit 13 – Comparable sale information for 4215 Lake Shore Drive,
- Respondent Exhibit 14 – Comparable sale information for 4532 West Shore Drive,
- Respondent Exhibit 15 – Comparable sale information for 3253 Lake Shore Drive,

- Respondent Exhibit 16 – Comparable sale information for 3961 Lake Shore Drive,
- Respondent Exhibit 17 – Comparable sale information for 4670 West Shore Drive,
- Respondent Exhibit 18 – Comparable sale information for 3654 West Shore Drive,
- Respondent Exhibit 19 – Comparable sale information for 3794 West Shore Drive.

9. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
 - Board Exhibit A – Form 131 Petitions,
 - Board Exhibit B – Notice of Hearing-Reschedule, dated October 24, 2012,
 - Board Exhibit C – Hearing sign-in sheet.
10. The subject property is a single-family home located at 8885 Sycamore Drive, in Bremen, Indiana.
11. The ALJ did not conduct an on-site inspection of the subject property.
12. For 2010 and 2011, the PTABOA determined the property's assessed value to be \$147,900 for the land and \$96,900 for the improvements, for a total assessed value of \$244,800.
13. For 2010 and 2011, the Petitioners contend the assessed value of the land should be \$99,800. The Petitioners did not contest the value of the improvements.

JURISDICTIONAL FRAMEWORK

14. The Indiana 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 Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PARTIES' CONTENTIONS

15. The Petitioners contend that the assessed value of their land was over-stated for the 2010 and 2011 assessment years based on sales of comparable properties. The Petitioners presented the following evidence in support of their contentions:
- A. The Petitioners' representative, Ms. LeVeque, contends that the Petitioners' land was over-valued based on sales of similar properties. *LeVeque testimony*. In support of this contention, Ms. LeVeque submitted a spreadsheet showing waterfront properties that sold between 2002 and 2011 and the property record cards for those properties. *Petitioner Exhibits 2-16*. According to Ms. LeVeque, the sales support a value of \$1,650 per foot of frontage on the lake. *LeVeque testimony*.
- B. Ms. LeVeque first submitted the property record card for 3253 Lake Shore Drive, which sold on April 29, 2011, for \$520,000. *LeVeque testimony; Petitioner Exhibits 2-3*. Ms. LeVeque testified that the property was originally listed for \$799,000, but sold for \$520,000 in what may have been a short sale. *Id.* According to Ms. LeVeque, she calculated the cost of the improvements at \$519,900 using the 2012 Craftsman National Building Cost Estimator; which in turn lead to a land value of \$100. *LeVeque testimony; Petitioner Exhibits 2-3 and 15*. According to Ms. LeVeque, this same piece of property sold as vacant land in 2004 for \$111,500, or \$1,186 a front foot. *LeVeque testimony; Petitioner Exhibits 2-3*. The assessor valued the land at \$171,800 or \$1,828 a front foot. *LeVeque testimony; Petitioner Exhibits 2-3 and 15*.
- C. Next, Ms. LeVeque testified that the property located at 3608 West Shore Drive is comprised of two parcels, Parcel No. 50-42-01-000-105.000-009 (Parcel No. 105) and Parcel No. 50-42-01-000-169.000-009 (Parcel No. 169). *LeVeque testimony; Petitioner Exhibit 4*. According to Ms. LeVeque, the property was on the market for

693 days at \$175,000 and a sale was pending as of September 20, 2010.⁵ *Id.* Ms. LeVeque testified that she took “Mrs. Dunning’s depreciation of \$49,500”⁶ away from the \$175,000, which left a value of \$125,500 – or \$1,394 per front foot.

LeVeque testimony. According to Ms. LeVeque, Parcel No. 105 was assessed at \$137,800 for the land while Parcel No. 169 was assessed at \$66,000 for the land, for a total of \$203,800. *Id.*

D. The Petitioners’ representative proceeded to present the sale of 4016 Liberty Street, which included three parcels, and sold for \$230,000 on January 24, 2008. *Petitioner Exhibits 5 and 15.* Ms. LeVeque contends the depreciated value of the improvements using the Craftsman cost tables was \$82,363, which leaves the market value of the land at \$147,637. *LeVeque testimony; Petitioner Exhibit 5.* According to Ms. LeVeque, one of the lots was a channel lot with 64 feet on the channel. *LeVeque testimony.* Together the parcels have 105 feet on the lake; therefore Ms. LeVeque estimated the property’s land value to equal \$1,406 per foot of frontage. *Id.*; *Petitioner Exhibit 15.* In rebuttal, Ms. LeVeque contends that she included the expired listing from MLS to show the condition of the property, which she considered in her cost approach. *LeVeque testimony.*

E. Ms. LeVeque testified that the property at 4010 West Shore Drive, which consists of two parcels, sold on September 28, 2010, for \$174,000. *LeVeque testimony; Petitioner Exhibits 6 and 15.* According to Ms. LeVeque, Parcel No. 50-43-12-000-026.000-009 (Parcel No. 026) is a lake front lot and Parcel No. 50-42-12-000-025.000-009 (Parcel No. 025) is a channel lot with a pole building. *Id.* Ms. LeVeque testified that she “corrected” the sizes of the lots and pulled the values from similar adjacent lots. *Id.* For example, Ms. LeVeque contends Parcel No. 025 would be 70.3 feet wide and equal to a neighboring lot which is assessed at \$37,700. *Id.* Ms. LeVeque then added \$11,800 for the pole building, resulting in a total estimated value

⁵ Ms. LeVeque contends that the sale fell through due to finances, which she argues proves that the market rejected the property even at a lower value per front foot. *LeVeque testimony.*

⁶ Presumably, Ms. LeVeque meant that she deducted the \$49,500 assessed value of the improvements from the sale value to estimate the land value. *See Petitioner Exhibit 4.*

- of \$49,500. *Id.* Ms. LeVeque contends Parcel No. 026 is a pie-shaped lot, which she calculated to be 84 feet by 195. *Id.* Ms. LeVeque testified that she subtracted the \$49,500 value for Parcel No. 025, from the sale price of \$174,000, resulting in a value of \$124,500 for the 84 feet of frontage on Parcel No. 026, or \$1,482 a front foot. *Id.* In rebuttal, Ms. LeVeque argued that the Respondent's witness claimed Parcel No. 026 was a channel property; however, it is assessed as "on water." *LeVeque testimony; Petitioner Exhibits 6 and 16.* Further, Ms. LeVeque argues the assessor changed the dimensions of the lot because there is a difference of 127 feet of frontage between the 2011 property record card and the 2012 property record card. *Id.*
- F. Ms. LeVeque next presented the sale of 9036 Birch Drive, which sold on December 23, 2009, for \$320,000. *Petitioner Exhibits 7 and 15.* According to Ms. LeVeque, this sale included \$25,500 of personal property, resulting in a net sales price of \$294,500. *LeVeque testimony; Petitioner Exhibit 7.* Ms. LeVeque calculated the depreciated cost of improvements using the Craftsman cost estimator at \$213,363, leaving the market value of the land at \$153,524, or \$1,532 per front foot. *Id.;* *Petitioner Exhibits 7 and 15.*
- G. Ms. LeVeque then submitted the sale of 4006 Liberty Street, which sold on July 20, 2012, for \$190,000. *Petitioner Exhibits 8 and 15.* According to Ms. LeVeque, this property consists of two parcels, one on the lake and one on the channel. *LeVeque testimony.* Ms. LeVeque calculated the cost of improvements at \$80,784. *Petitioner Exhibits 8 and 15.* Thus, according to Ms. LeVeque, the resulting land value is \$109,216, or \$1,606 per front foot. *LeVeque testimony; Petitioner Exhibit 15.*
- H. Ms. LeVeque testified that the property at 8881 Sycamore Drive, which is adjacent to the subject property, sold in 2006 for \$345,000. *LeVeque testimony; Petitioner Exhibits 9, 10 and 15.* According to Ms. LeVeque, the depreciated cost of improvements using the Craftsman cost tables is \$204,863. *Id.* Ms. LeVeque calculated that the sale price, less the improvements, resulted in a price per front foot of \$1,632. *LeVeque testimony; Petitioner Exhibit 15.* Ms. LeVeque contends that the

- land value is further supported by a previous sale of the property in 2002 for \$150,000, resulting in a front foot value of \$1,667. *Id.*
- I. Ms. LeVeque also submitted the vacant land sale of 8977 North Shore Drive, which occurred on July 28, 2003. *Petitioner Exhibits 11 and 15.* According to Ms. LeVeque, this property sold for \$120,000 or \$1,714 a front foot. *LeVeque testimony; Petitioner Exhibits 11 and 15.*
- J. Ms. LeVeque then presented a sale of an improved property at 3654 West Shore Drive, which sold for \$215,000 on November 30, 2011. *Petitioner Exhibit 13.* According to Ms. LeVeque, this property was completely rebuilt in 2000, as indicated in the MLS listing information. *LeVeque testimony; Petitioner Exhibit 13.* Thus, when she developed the cost approach, Ms. LeVeque testified that she used an effective age of 12 years and 15% depreciation, while the assessor used an effective year of 1985. *Id.* Ms. LeVeque calculated the land value to be \$134,232 or \$2,441 a front foot. *Petitioner Exhibit 15.*
- K. Finally, Ms. LeVeque submitted the sale of 4670 West Shore Drive, for \$250,000 in December of 2011. *Petitioner Exhibit 14.* According to Ms. LeVeque, this sale was not an arm's length transaction because the buyer and the seller were acquainted. *LeVeque testimony; Petitioner Exhibit 14.* Ms. LeVeque contends the buyer purchased this property to get it back from a tax sale. *Id.*
- L. In rebuttal, Ms. LeVeque contends that the Respondent's sale on 4016 Liberty Street shows only Parcel No. 50-43-07-000.027; while Ms. LeVeque contends this sale was for Parcel No. 025, Parcel No. 026 and Parcel No. 027. *LeVeque testimony; Petitioner Exhibit 15.* Further, Ms. LeVeque argues that the Respondent did not calculate a front foot value for this sale, or for any of its sales. *LeVeque testimony.* According to Ms. LeVeque, however, lake-front properties are bought and assessed based on their linear frontage on the water. *Id.*

M. Ms. LeVeque further contends that the Respondent made several errors in her analysis. *LeVeque testimony*. First, Ms. LeVeque argues that the Respondent used an incorrect front foot measurement on Parcel No. 50-43-07-000-163.000-005. *Id.* According to Ms. LeVeque, the second error made by the Respondent was that only one parcel number was shown on line 8 of Respondent Exhibit 13, when in fact three parcels sold. *Id.*; *Petitioner Exhibit 12*. Additionally, Ms. LeVeque contends she used 105 front feet for her calculation, while the Respondent only indicated 80 feet of frontage for this property. *Id.*; *Petitioner Exhibit 15*. Moreover, Ms. LeVeque calculated the improvements for this property at \$80,768 and deducted that value from the \$229,100 sale price – resulting in a land value of \$142,100, or \$1,776 per front foot. *Id.*; *Petitioner Exhibits 12 and 15*.

N. In addition, Ms. LeVeque argues that the properties used by the Respondent as comparable sales, located at 4532 West Shore Drive and 3961 Lake Shore Drive, are only 40 feet wide. *LeVeque testimony*. Therefore Ms. LeVeque argues, they are not comparable to the subject property, which is 55 feet wide. *Id.*

O. Finally, Ms. LeVeque requested that the Board look carefully at the cost approach used to value the improvements. *LeVeque testimony*. Ms. LeVeque contends, for example, that the assessor valued the property at 3253 Lake Shore at \$58.30 a square foot. *Id.*; *Petitioner Exhibits 2-3*. According to Ms. LeVeque, however, the property is a luxury home that would be impossible to build for that price in 2008, 2009, or 2010. *LeVeque testimony*. Further, Ms. LeVeque contends, the assessor must have “manipulated” the grade and condition of the properties, because the assessor has never been inside the houses. *Id.*

16. The Respondent contends the property’s assessed values were correct and equitable in 2010 and 2011. The Respondent presented the following evidence in support of the assessment:

A. Ms. Dunning testified that, for the 2010 assessment, she used the sales of four waterfront properties to calculate the base rate for the land in the Petitioners’

property's neighborhood. *Dunning testimony*. In support of this contention, Ms. Dunning submitted a spreadsheet summarizing the sales and the property record cards, maps, and sales disclosure forms for each property. *Respondent Exhibits 13-17 (2010)*. According to Ms. Dunning, she used the 2010 cost tables to estimate the value of any improvements – rather than the 2012 Craftsman cost tables. *Dunning testimony*. Ms. Dunning then extracted the improvement values from the sale prices and calculated the land price per square foot. *Id.*; *Respondent Exhibit 13 (2010)*. Based on the four sales, the average price per square foot was \$19.35; whereas the subject property was assessed for only \$12.23 per square foot in 2010. *Id.*

B. In addition, Ms. Dunning contends that the sales used for the 2010 assessment and six additional sales in 2010 and 2011, support the property's 2011 assessed value.

Dunning testimony. In support of this contention, Ms. Dunning submitted a spreadsheet summarizing the sales and the property record cards for each property, maps of the properties' locations, and sales disclosure forms for each sale. *Respondent Exhibits 9-19 (2011)*. According to Ms. Dunning, all of the properties were buildable, waterfront lots that are comparable to the subject property. *Dunning testimony*. Ms. Dunning contends that the ten sales averaged \$20.39 per square foot, while the subject property was assessed for only \$12.23 per square foot in 2011. *Id.*; *Respondent Exhibit 9 (2011)*. Ms. Relos, the Marshall County Deputy Assessor, testified that the assessor used square foot values because the Petitioners' representative referenced square foot values on all the properties included in Petitioner Exhibit 15. *Relos testimony*.

C. In response to the Petitioners' case, Ms. Relos argued that the Petitioners' evidence should be given little weight. *Relos testimony*. According to Ms. Relos, the Petitioners used the 2012 Craftsman cost tables while the appeals at issue were for 2010 and 2011. *Id.* Ms. Relos argued that the "Craftsman cost estimator is overstating its values, which in turn lowers the land values." *Id.* For example, the Petitioners' representative calculated a cost of \$519,900 for the house located at 3253 Lake Shore Drive, which left only \$100 for the land value. *Id.* To the contrary, Ms.

Relos argued, using the 2011 assessed value for the improvements and the abstraction method, results in a land value of \$314,200 or \$2,419 a front foot. *Id.*

- D. Ms. Relos further contends that the Petitioners' representative incorrectly included Parcel No. 50-42-07-000-025.000-005, which had an assessed value of \$44,000 in the sale of 4016 Liberty Street. *Relos testimony.* According to Ms. Relos, the sale actually included Parcel No. 50-43-07-000-033.000-005, which had an assessed value of only \$6,600. *Id.; Respondent Exhibit 14 (2010).* Moreover, Ms. Relos contends the Petitioners' representative's use of a -22% depreciation factor, was incorrect. *Relos testimony.* Ms. Relos contends that, when the age of the improvements was entered into the Craftsman cost estimator, the system showed 46% depreciation. *Id.* According to Ms. Relos, this changed the value of the improvements to \$64,932, which in turn changed the land value from \$1,406 a front foot to \$2,464 a front foot. *Id.*
- E. Ms. Relos contends that the property at 4010 West Shore Drive contains a pie-shaped lot with approximately 10 feet located on the lake front. *Relos testimony; Petitioner Exhibit 6.* According to Ms. Relos, given that only a small section of the property is located on the lake, it would not be a desirable lake front property. *Id.* Thus, its market value would be as a channel lot and it would not be comparable to the subject property. *Id.* Ms. Relos further contends that the state guidelines instruct the assessor how to value a pie-shaped lot. *Id.* According to Ms. Relos, "when assessing a triangle lot where the apex is the front foot, you use a factor of 35% to determine the effective frontage and to calculate that, the rear line of this comparable is 130 feet, so you would take 130 feet times 35% to come up with the 46 feet effective frontage." *Id.* Ms. Relos argues that the Petitioners' representative stated that the assessor used the middle measurement of lot 158, to calculate the depth of the parcel; however, lot 158 is a rectangle. *Id.*
- F. Similarly, Ms. Relos argues that the Petitioners' representative overstated the value of the improvements located at 9036 Birch Drive, by deriving her value from the Craftsman method. *Relos testimony; Petitioner Exhibit 7.* Ms. Relos testified that

she used the 2011 assessed value of the improvements and deducted that from the net sale price of \$294,500. *Id.* Thus, according to Ms. Relos, the resulting land value is \$155,900, which equates to \$13.34 per square foot, or \$1,695 per front foot. *Id.* However, Ms. Relos argues, the assessed value of the property's land is \$11.59 per square foot, or \$1,471 a front foot. *Id.*

- G. In addition, Ms. Relos argued that the sale of the property located at 4006 Liberty Street occurred in July of 2012, which is after the assessment date for both the 2010 and 2011 assessment years; thus it would not be used for trending until March 1, 2013. *Relos testimony.* Moreover, Ms. Relos contends, the Petitioners' listing information is not correct. *Id.* According to Ms. Relos, the Petitioners' listing expired and the property was relisted on February 20, 2012. *Id.* Ms. Relos further argues the Petitioners' representative incorrectly states that, according to the Craftsman cost estimator, the 49 year old house should receive 35% depreciation. *Id.* But if the home located at 4016 Liberty Street is 35 years old and receives 46% depreciation, then a 49 year old house should receive more than 35% depreciation. *Id.*
- H. Ms. Relos contends the sale of 8881 Sycamore Drive occurred in 2006; however, the Petitioners' representative did not trend the sale to the 2010 or 2011 assessment dates. *Relos testimony.* Ms. Relos further contends that she is unsure of the accuracy of the Craftsman cost estimator due to previous examples in which the values were overstated. *Id.* Ms. Relos testified that she used the 2011 assessed value of the improvements, which was \$131,000, and deducted that from the \$345,000 sale price - indicating a market value for the land at \$2,610 per front foot and \$17.63 per square foot. *Id.* According to Ms. Relos, the current land assessment for this property is \$2,485 per front foot and \$16.79 per square foot. *Id.*
- I. Similarly, Ms. Relos argues that the sale of 8977 North Shore Drive occurred eight years prior to the assessment dates under appeal, and the Petitioners' representative failed to make any adjustments to trend the sale to the relevant assessment dates. *Relos testimony.*

J. Finally, Ms. Relos contends that the assessed value of the improvements at 3654 West Shore Drive is only \$39,800 for 2011, which is less than half of what the Petitioners list as the depreciated cost for the improvements. *Relos testimony*. Ms. Relos further contends that when you deduct the assessed value of the improvements from the \$215,000 sales price, it results in a land value of \$3,185 a front foot or \$23.25 a square foot. *Id.* According to Ms. Relos, this property is assessed below its market value at \$2,470 a front foot or \$18.04 a square foot. *Id.*

BURDEN OF PROOF

17. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment was wrong 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). Pursuant to Indiana Code § 6-1.1-15-17.2, however, the burden of proof shifts to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here, the Petitioners' representative and the Respondent agreed that the assessed values of the subject property were the same for 2009, 2010, and 2011. The Petitioners, therefore, have the burden of proof.

ANALYSIS

18. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment 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. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market-value-in-use appraisal prepared according to USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party 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.

19. Here, the Petitioners' representative argued that the Petitioners' land was over-valued for 2010 and 2011 based on her comparable sales analysis. In making this argument, the Petitioners' representative essentially relies on a sales comparison approach to establish the market value-in-use of the property. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.") In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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.*
20. In support of her argument, Ms. LeVeque submitted sales and cost information for thirteen waterfront properties that sold between July 2002 and July 2012. For the improved properties, Ms. LeVeque calculated the cost of the improvements using the 2012 Craftsman cost estimator and abstracted the improvement value from the sales price to arrive at the market value of the land for each property, resulting in front foot values that ranged from \$1 to \$2,489. Based on the sales, the Petitioners' representative contends the subject property's land should be valued at \$1,650 a front foot, resulting in an assessed value of \$99,800 for the land for 2010 and 2011.
21. The Petitioners' representative, however, made no attempt to show how the properties were similar or how the properties differed. Ms. LeVeque only testified that her sales were all lake-front properties. But whether properties are similar enough to be

considered “comparable” depends on a number of factors including the size, shape, topography, accessibility and use of the properties. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972) (“One need only examine the multitudinous factors which make separate tracts of land similar or dissimilar to realize that the variation in the character of land is limitless. No two tracts of land are identical”). And in fact the Petitioners’ representative calculated front foot values ranging from \$1 to \$2,489 – which suggests that the properties differed substantially. Nor did Ms. LeVeque offer support for her conclusion that the subject property’s land should be valued at \$1,650 a front foot based on sales ranging from \$1 to \$2,489 per front foot.

22. Even if Ms. LeVeque had sufficiently shown that her sales were comparable to the subject property, the method she used to extract the land value from the sales price is questionable. First, Ms. LeVeque applied 2012 cost tables to sales that occurred up to ten years earlier – which over-stated the improvement values and, in return, underestimated the land values on her comparable sales. Moreover, the amount of depreciation Ms. LeVeque applied to the various sales was inconsistent throughout her entire presentation. For example, the property at 3608 West Shore Drive was 51 years old as of 2012, and Ms. LeVeque applied 59.5% depreciation; whereas the property at 4215 Lake Shore Drive, which was 62 years old and has the same grade and condition according to the property record cards, was given a 50% depreciation.
23. In addition, Ms. LeVeque’s analysis erred on several specific sales. For example, the property located at 4016 Liberty Street sold on January 24, 2008, for \$230,000. According to the Petitioners’ representative, this sale involved three parcels: Parcel No. 50-43-07-000-025.000-005, Parcel No. 50-43-07-000-026.000-005 and Parcel No. 50-43-07-000-027.000-005. But the sale did not actually include 50-43-07-000-025.000-005. According to the sales disclosure form, the three parcels sold were Parcel No. 50-43-07-000-026-000-005, Parcel No. 50-43-07-000-027.000-005 and Parcel No. 50-43-07-000-033.000-005. Parcel No. 50-43-07-000-033.000-005 is only 20 feet by 23 feet, which is significantly smaller than the 33 feet by 80 feet size of Parcel No. 50-43-07-000-025.000-005. Thus, Ms. LeVeque’s inclusion of Parcel No. 50-43-07-000-025.000-005

significantly over-estimated the size of the land, which then underestimated the price per front foot or price per square foot value of the property.

24. Similarly, according to the Petitioners' representative, the sale of 4215 Lake Shore Drive was comprised of three parcels: Parcel No. 50-43-07-0000-201.000-005, Parcel No. 50-43-07-000-202.000-005 and Parcel No. 50-43-07-000-251.000-005. *Petitioner Exhibits 12 and 15*. However, the sales disclosure form shows that the sale was only for two parcels as shown on the sales disclosure form submitted by the Respondent. *Respondent Exhibit 13 (2011)*. Parcel 50-43-07-000-251.000-005 was not part of that sale, but sold separately for \$20,900 on the same date, October 8, 2009. And when she abstracted the improvements from the sale price, Ms. LeVeque calculated the depreciated cost of improvements to be \$78,088 on Exhibit 12, but used \$87,000 on Exhibit 15.
25. Finally, Ms. LeVeque used sales that were too remote in time to be probative. For example, she presented four sales that occurred between 2002 and 2006: the vacant land sale of 3253 Lake Shore Drive; two sales for 8881 Sycamore Drive; and the vacant land sale of 8977 North Shore Drive. Because she made no attempt to relate the various sale prices to the subject property's market value-in-use as of the relevant valuation dates, the sales have little probative value.
26. Here, the Petitioners' representative failed to discuss how the properties she submitted as comparable sales were similar to the subject property or how they differed. The Petitioners' evidence did little to quantitatively or qualitatively show how the differences between the properties affected their relative values. Furthermore, the Petitioners' evidence lacked credibility based on the method Ms. LeVeque used to abstract the land value and the number of errors in her data. The Board therefore finds that the Petitioners failed to raise a prima facie case that their property was over-valued for the 2010 or the 2011 assessment years.
27. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy*

Diversified Indus. LTD v. Department of Local Government Finance, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

28. The Petitioners failed to raise a prima facie case that their property was over-assessed for the 2010 or the 2011 assessment years. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value for the Petitioners' property should not be changed for the 2010 or 2011 assessment years.

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, 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>>