

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition Nos.:** 71-026-14-1-5-01683-17  
71-026-15-1-5-01684-17  
71-026-16-1-5-01685-17  
**Petitioner:** John Bourthourmieu  
**Respondent:** St. Joseph County Assessor  
**Parcel:** 71-09-08-481-017.000-026  
**Assessment Years:** 2014, 2015, & 2016

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

**Procedural History**

1. The Petitioner initiated his 2014, 2015, and 2016 assessment appeals with the St. Joseph County Assessor on November 13, 2014, November 29, 2015, and September 30, 2016, respectively.
2. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) failed to hold a hearing within 180 days, as required by Ind. Code § 6-1.1-15-1(k).
3. The Petitioner filed Petitions for Review of Assessment (Form 131s) with the Board on October 11, 2017. *See* Ind. Code § 6-1.1-15-1(o) (permitting taxpayers to appeal directly to the Board if the maximum time for a PTABOA to hold a hearing or issue a determination has elapsed). For all three years, he elected the Board's small claims procedures.
4. On February 27, 2019, the Board's designated administrative law judge (ALJ) Dalene McMillen held a consolidated hearing. Neither the Board nor the ALJ inspected the property.
5. Certified tax representative Sharon LeVeque appeared for the Petitioner and was sworn. Attorney Frank Agostino appeared for the Respondent. County Assessor Rosemary Mandrici and county employees Jason Kane and Patricia St. Clair were sworn as a witnesses for the Respondent.

**Facts**

6. The property under appeal is a single-family rental home located at 825 – 35<sup>th</sup> Street in South Bend.

7. The parties agreed to the following current assessments:

<b>Year</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2014	\$4,000	\$35,000	\$39,000
2015	\$4,000	\$34,900	\$38,900
2016	\$4,000	\$35,700	\$39,700

8. The Petitioner requested the following total assessments at the hearing:

<b>Year</b>	<b>Total</b>
2014	\$20,000
2015	\$20,500
2016	\$22,000

### **Record**

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

- a) A digital recording of the hearing.
- b) Exhibits:

#### **2014 appeal:**

- Petitioner Exhibit 1: Exhibit coversheet,
- Petitioner Exhibit 2: 2015-2018 subject property record card (PRC) page 1 of 2,
- Petitioner Exhibit 3: 2015-2018 subject PRC page 2 of 2,
- Petitioner Exhibit 4: Seven 2013 & 2014 multiple listing sales,
- Petitioner Exhibit 5: Real Estate Consulting Evaluation sheet prepared by Sharon LeVeque, page 1 of 3,
- Petitioner Exhibit 6: Real Estate Consulting Evaluation sheet prepared by Ms. LeVeque, page 2 of 3,
- Petitioner Exhibit 7: Real Estate Consulting Evaluation sheet prepared by Ms. LeVeque,
- Petitioner Exhibit 8: Real Estate Consulting Evaluation sheet prepared by Ms. LeVeque, page 3 of 3,
- Petitioner Exhibit 9: Location map of subject property and comparable properties 1-7,
- Petitioner Exhibit 10: Multiple listing sheet (MLS) for 2618 Vine,
- Petitioner Exhibit 11: MLS for 703 – 36<sup>th</sup> Street,
- Petitioner Exhibit 12: MLS for 3310 Wall Street,
- Petitioner Exhibit 13: MLS for 626 – 34<sup>th</sup> Street,
- Petitioner Exhibit 14: MLS for 622 South 33<sup>rd</sup> Street,
- Petitioner Exhibit 15: MLS for 501 – 27<sup>th</sup> Street,
- Petitioner Exhibit 16: MLS for 630 – 33<sup>rd</sup> Street.

**2015 appeal:**

- Petitioner Exhibit 1: Exhibit coversheet,
- Petitioner Exhibit 2: 2015-2018 subject PRC page 1 of 2,
- Petitioner Exhibit 3: 2015-2018 subject PRC page 2 of 2,
- Petitioner Exhibit 4: 2014 & 2015 Assessor's list of sales in neighborhood #7126604,
- Petitioner Exhibit 5: 2014 & 2015 Assessor's list of sales in neighborhood #7126604,
- Petitioner Exhibit 6: 2014 & 2015 Assessor's list of sales in neighborhood #7126604,
- Petitioner Exhibit 7: Real Estate Consulting Evaluation sheet prepared by Ms. LeVeque, page of 1 of 3,
- Petitioner Exhibit 8: Real Estate Consulting Evaluation sheet prepared by Ms. LeVeque, page 2 of 3,
- Petitioner Exhibit 9: Real Estate Consulting Evaluation sheet prepared by Ms. LeVeque, page 3 of 3,
- Petitioner Exhibit 10: Real Estate Consulting Evaluation sheet prepared by Ms. LeVeque,
- Petitioner Exhibit 11: Location map of subject property and comparable properties 1-9,
- Petitioner Exhibit 12: MLS for 821 – 26<sup>th</sup> Street,
- Petitioner Exhibit 13: Property detail report for 821 South 26<sup>th</sup> Street,
- Petitioner Exhibit 14: MLS for 709 South 27<sup>th</sup> Street,
- Petitioner Exhibit 15: Property detail report for 709 South 27<sup>th</sup> Street,
- Petitioner Exhibit 16: MLS for 1214 – 31<sup>st</sup> Street,
- Petitioner Exhibit 17: Property detail report for 1214 South 31<sup>st</sup> Street,
- Petitioner Exhibit 18: MLS for 1018 – 34<sup>th</sup> Street,
- Petitioner Exhibit 19: Property detail report for 1018 South 34<sup>th</sup> Street,
- Petitioner Exhibit 20: MLS for 505 South 27<sup>th</sup> Street,
- Petitioner Exhibit 21: Property detail report for 505 South 27<sup>th</sup> Street,
- Petitioner Exhibit 22: MLS for 3328 East Jefferson,
- Petitioner Exhibit 23: Property detail report for 3328 East Jefferson Square,
- Petitioner Exhibit 24: MLS for 517 South 25<sup>th</sup>,
- Petitioner Exhibit 25: Property detail report for 517 South 25<sup>th</sup> Street,
- Petitioner Exhibit 26: MLS for 625 South 27<sup>th</sup> Street,
- Petitioner Exhibit 27: Property detail report for 625 South 27<sup>th</sup> Street.

**2016 appeal:**

- Petitioner Exhibit 1: Exhibit coversheet,
- Petitioner Exhibit 2: 2015-2018 subject PRC page 1 of 2,
- Petitioner Exhibit 3: 2015-2018 subject PRC page 2 of 2,
- Petitioner Exhibit 4: 2015 Assessor's list of sales in neighborhood #7126604,
- Petitioner Exhibit 5: 2015 Assessor's list of sales in neighborhood #7126604,

Petitioner Exhibit 6: 2015 Assessor’s list of sales in neighborhood #7126604,  
 Petitioner Exhibit 7: Real Estate Consulting Evaluation prepared by Ms. LeVeque, page 1 of 3,  
 Petitioner Exhibit 8: Real Estate Consulting Evaluation prepared by Ms. LeVeque, page 2 of 3,  
 Petitioner Exhibit 9: Real Estate Consulting Evaluation prepared by Ms. LeVeque,  
 Petitioner Exhibit 10: Real Estate Consulting Evaluation prepared by Ms. LeVeque, page 3 of 3,  
 Petitioner Exhibit 11: Location map of subject property and comparable properties 1-9,  
 Petitioner Exhibit 12: MLS for 1214 – 31<sup>st</sup> Street,  
 Petitioner Exhibit 13: Property detail report for 1214 South 31<sup>st</sup> Street,  
 Petitioner Exhibit 14: MLS for 1237 South 30<sup>th</sup> Street,  
 Petitioner Exhibit 15: Property detail report for 1237 South 30<sup>th</sup> Street,  
 Petitioner Exhibit 16: MLS for 3321 Northside Boulevard,  
 Petitioner Exhibit 17: Property detail report for 3321 Northside Boulevard,  
 Petitioner Exhibit 18: MLS for 3328 East Jefferson,  
 Petitioner Exhibit 19: Property detail report for 3328 East Jefferson Square,  
 Petitioner Exhibit 20: MLS for 3506 Mishawaka Avenue,  
 Petitioner Exhibit 21: Property detail report for 3506 Mishawaka Avenue,  
 Petitioner Exhibit 22: MLS for 506 – 28<sup>th</sup>,  
 Petitioner Exhibit 23: Property detail report for 506 South 28<sup>th</sup> Street,  
 Petitioner Exhibit 24: MLS for 1024 South 26<sup>th</sup> Street,  
 Petitioner Exhibit 25: Property detail report for 1024 South 26<sup>th</sup> Street,  
 Petitioner Exhibit 26: MLS for 636 – 25<sup>th</sup> Street,  
 Petitioner Exhibit 27: Property detail report for 636 South 25<sup>th</sup> Street,  
 Petitioner Exhibit 28: MLS for 609 South 34<sup>th</sup>,  
 Petitioner Exhibit 29: Property detail report for 609 South 34<sup>th</sup> Street.

**Respondent Exhibits:**

Respondent Exhibit 1: 2014, 2015, & 2016 Form 131s,  
 Respondent Exhibit 2: Assessor’s records on 2014 appeal resolution,  
 Respondent Exhibit 3: 2015 “MLS defined spreadsheet;” location map; “Google map view;” and MLS sheets for the following: 729 – 32<sup>nd</sup>, 821 – 26<sup>th</sup> Street, 630 South 24<sup>th</sup> Street, 842 – 35<sup>th</sup> Street, 506 – 28<sup>th</sup>, 1213 South 32<sup>nd</sup> Street, and 1306 South 32<sup>nd</sup>,  
 Respondent Exhibit 4: 2016 “MLS defined spreadsheet;” location map; “Google map view;” MLS sheets for the following: 3321 Northside Boulevard, 1233 South 31<sup>st</sup> Street, 827 South 35<sup>th</sup> Street, 609 South 34<sup>th</sup>, 1005 – 33<sup>rd</sup> Street, 718 South 30<sup>th</sup>, 1001 South 33<sup>rd</sup>, and 726 South 31<sup>st</sup> Street,  
 Respondent Exhibit 5: 2015-2018 subject PRC.

- c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

### **Objections**

10. Mr. Agostino objected to Ms. LeVeque's statement that a real estate broker could "do an appraisal for a non-lender financial transaction and make adjustments based upon the amenities of the property." Mr. Agostino argued the statement is an "unsupported comment." Assuming, without deciding, that her comment is hearsay, our procedural rules allow us to admit hearsay, with one qualification: if the hearsay is objected to and does not fall within a recognized exception to the hearsay rule, we cannot base our determination solely on that evidence. *See* 52 IAC 2-7-3. Accordingly, the objection is overruled. With that being said, as discussed below, we do not base our determination on Ms. LeVeque's statement.

### **Contentions**

11. Summary of the Petitioner's case:

#### **2014 appeal:**

- a) The subject property is over-assessed. The subject property is a 600 square foot rental home located in an urban area. The home has one bathroom, two bedrooms, central air, enclosed frame porch, open frame porch, a utility shed, unfinished basement, lacks a garage, and was built in 1922. *LeVeque testimony; Pet'r Ex. 2, 3.*
- b) The Respondent erroneously claims the Petitioner signed a Joint Report by Taxpayer/Assessor (Form 134) agreeing to an assessed value of \$39,000 for the 2014 assessment year. According to Ms. LeVeque, she was hired in 2014 to represent the Petitioner and is unaware of any agreement. Additionally, no copy or proof of the Form 134 has been produced. *LeVeque argument.*
- c) In support of her position, Ms. LeVeque presented a Real Estate Consulting Evaluation report (Evaluation Report). In creating her Evaluation Report, Ms. LeVeque utilized the sales comparison approach and examined seven comparable properties. *LeVeque testimony; Pet'r Ex. 4, 5, 6, 7, 8, 9.*
- d) The seven comparable sales she examined are as follows:
- Comparable #1 is located at 2618 Vine Street. This property sold for \$10,000 on February 6, 2014. This property was adjusted to account for only 360 square feet of gross living area, no central air, and no basement. The adjusted sale price is \$15,400.

- Comparable #2 is located at 501 South 27<sup>th</sup> Street. The property sold for \$21,000 on August 8, 2013. Adjustments were made for a 320 square foot garage and no central air. The adjusted sale price is \$19,400.
- Comparable #3 is located at 703 South 36<sup>th</sup> Street. This property sold for \$19,000 on July 9, 2013. The only adjustment made for this property was to account for lack of central air. The adjusted sale price is \$20,000.
- Comparable #4 is located at 630 South 33<sup>rd</sup> Street and sold for \$20,699 on May 10, 2013. Adjustments were made to account for a 240 square foot garage and no central air. The adjusted sale price for this property is \$16,599.
- Comparable #5 is located at 622 South 34<sup>th</sup> Street. The property sold for \$22,050 on August 29, 2013. The only adjustment made for this property was to account for a 294 square foot garage.<sup>1</sup> The adjusted sale price is \$16,450.
- Comparable #6 is located at 517 South 27<sup>th</sup> Street. This property sold for \$21,500 on July 26, 2013. This property was adjusted to account for a 180 square foot garage. The adjusted sale price is \$16,900
- Finally, comparable #7 is located at 626 South 34<sup>th</sup> Street. The property sold for \$23,675 on May 10, 2013. This property was also adjusted to account for a 180 square foot garage. The adjusted sale price is \$19,075.

*LeVeque testimony; Pet'r Ex. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.*<sup>2</sup>

- e) Ms. LeVeque made adjustments to account for the differences between the subject property and the comparable properties for gross living area that were “larger or smaller than 72 square feet.” Adjustments were also made for lack of central air, lack of basement and if a garage was present. No adjustments were made for age, condition, porches, or sheds. *LeVeque testimony; Pet'r Ex. 5, 6, 7, 8.*
- f) In order to calculate the adjustments for the garage area, Ms. LeVeque utilized the Craftsman cost approach found on the Assessor’s property record cards. For central air and basement versus slab adjustments, she used regression analysis and paired sales analysis. Accordingly, the central air adjustment equated to \$1,000. *LeVeque testimony; Pet'r Ex. 5.*
- g) After adjustments were made to the properties, the sales prices ranged from \$15,400 to \$20,000. According to Ms. LeVeque, comparable #3 is the most similar to the subject property, as it only required an adjustment for the lack of central air.

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<sup>1</sup> According to the Evaluation Report, comparable #5 sold for \$22,050. However, the MLS indicates this property sold for \$20,000. *Pet'r Ex. 6, 14.*

<sup>2</sup> The Evaluation Report indicates Comparable #5 is located at 622 South 34<sup>th</sup> Street. The MLS lists the address as 622 South 33<sup>rd</sup> Street. According to Ms. LeVeque, “this is a typographical error on her Evaluation Report.” *Pet'r Ex. 6, 14.*

Accordingly, the subject property should be assessed at \$20,000 for the 2014 assessment year. *LeVeque testimony; Pet'r Ex. 5, 6, 7, 8.*

- h) Ms. LeVeque also examined the arrayed price per square foot of the seven comparable properties. The arrayed per square foot prices ranged from \$27.78 to \$39.20, with a median price of \$35.87 per square foot. Ms. LeVeque argues if you take the subject property's gross living area of 600 square feet times the median price of \$35.87, it indicates a value of \$21,522 without any market adjustments to account for differences. *LeVeque testimony; Pet'r Ex. 4.*
- i) In response to the Respondent's questioning, Ms. LeVeque testified she was appearing at the hearing in capacity as a tax representative, not as a licensed real estate appraiser. She also testified she was being paid on a contingency fee basis. *LeVeque testimony.*

**2015 appeal:**

- a) For 2015, Ms. LeVeque used the Assessor's data base to search for properties that sold between January 1, 2014, and February 27, 2015. The other parameters she searched were: the subject property's neighborhood code of #7126604, properties that sold for between \$100 and \$100,000, and property class code 510 – single-family residential property on platted lot. The search resulted in 19 properties that met the above mentioned criteria. *LeVeque testimony; Pet'r Ex. 4, 5.*
- b) Next, Ms. LeVeque prepared a spreadsheet utilizing the 19 sales. She analyzed the sales based on the year built, bathroom count, gross living area, bedroom count, and non-owner occupied properties. Ultimately, she calculated the per square foot sales price of only 14 properties. The prices per square foot ranged from \$5.17 to \$35.98 with a median price of \$21.80. *LeVeque testimony; Pet'r Ex. 6.*
- c) Ms. LeVeque then prepared an Evaluation Report selecting nine of the comparable sales. According to Ms. LeVeque, she did not consider any non-arm's length transactions, private sales, or properties not offered on the open market. She offered MLS sales sheets, location map, and the county's property detail reports for the nine comparable sales. These properties sold between December 20, 2013, and October 16, 2015. The unadjusted sale prices ranged from \$10,924 to \$50,000. Using the same criteria as described in the 2014 appeal, she adjusted the comparable properties for gross living area, garage size, central air, and basement area. The adjusted sale prices ranged from negative (\$376) to \$38,700. Ms. LeVeque opined "the lowest net adjustment on a comparable indicates it is the most comparable to the subject property." *LeVeque testimony; Pet'r Ex. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27.*
- d) Ms. LeVeque testified she did not make an age difference adjustment because "there was no support for it in the market." Also, she did not make adjustments for porches,

patios, or decks because “they are considered part of the functionality of a home.”<sup>3</sup>  
*LeVeque testimony; Pet’r Ex. 7.*

- e) Based on the Evaluation Report, Ms. LeVeque placed the most emphasis on comparable #1 located at 821 South 26<sup>th</sup> Street. This property had the lowest amount of adjustments, and yielded an adjusted sale price of \$20,500. *LeVeque testimony; Pet’r Ex. 7.*
- f) Ms. LeVeque argued that no emphasis should be placed on comparable #7 located at 517 South 27<sup>th</sup> Street, comparable #8 located at 517 South 27<sup>th</sup> Street, and comparable #9 located at 625 South 27<sup>th</sup> Street.<sup>4</sup> She argued these sales would be considered “outliers.” Accordingly, the subject property should be valued at \$20,500 for the 2015 assessment year. *LeVeque argument; Pet’r Ex. 7, 9, 10, 11.*
- g) In response to questioning from the Respondent, Ms. LeVeque testified that comparable #1 in her Evaluation report is a REO/foreclosure sale. With that being said, she went on to state that she considers the sale to be an arm’s length transaction because it was exposed on the open market for 65 days. *LeVeque testimony; Pet’r Ex. 12.*
- h) Ms. LeVeque further explained she did not include 625 – 31<sup>st</sup> Street because it sold as a “land contract, private sale.” According to Ms. LeVeque, she does not consider “land contract, private sales” to be arm’s length transactions. Additionally, she did not include 1018 – 34<sup>th</sup> Street because it sold as a “private sale.” *LeVeque testimony; Pet’r Ex. 6.*
- i) Ms. LeVeque argues the Respondent’s 2015 market analysis is flawed. The Respondent failed to make adjustments on the seven comparable properties to account for garages, gross living area, or condition. Additionally, some of the properties are not located in the subject property’s neighborhood and some were owner occupied and not investment properties. The Respondent has not sufficiently addressed in its analysis the difference between the subject property and the seven comparable properties, and as such it should be given no weight. *LeVeque argument (referencing Resp’t Ex. 3).*

### **2016 appeal:**

- a) For 2016, Ms. LeVeque utilized the Assessor’s data base to search for properties that sold between January 1, 2105, and February 27, 2016. The search parameters included: the subject property’s neighborhood code of #7126604, properties that sold

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<sup>3</sup> Ms. LeVeque also claimed that sizes were not indicated on the Assessor’s property record cards and she had “no way to measure” those items.

<sup>4</sup> Comparable # 7 and comparable #8 are the same property. This property initially sold on January 14, 2014, for \$10,924. After this sale, the property was rehabilitated with a new roof, flooring, plumbing, furnace, electric system, kitchen, bathroom fixtures, and cabinets. After the rehabilitation the property sold on October 30, 2014, for \$50,000.



- for between \$100 and \$100,000, and property class code 510 – single-family residential property on platted lot. The search yielded 20 properties that met the above mentioned criteria. *LeVeque testimony; Pet'r Ex. 4, 5.*
- b) Next, Ms. LeVeque prepared a spreadsheet utilizing the 20 sales. She analyzed the sales based on the year built, bathroom count, gross living area, bedroom count, and non-owner occupied properties. She calculated the sales price per square foot for six of the properties. Those values ranged from \$13.66 to \$38.56. *LeVeque testimony; Pet'r Ex. 6.*
  - c) Ms. LeVeque then prepared an Evaluation Report utilizing nine comparable sales from the subject property's neighborhood. She offered MLS sales sheets, location map, and the county's property detail reports. The nine comparable properties sold between March 25, 2014, and November 24, 2015. The unadjusted sale prices ranged from \$20,000 to \$40,000. Again, using the same criteria as described in the 2014 appeal, she adjusted the comparable properties for gross living area, garage size, central air, and basement area. The adjusted sale prices ranged from \$8,100 to \$37,500. *LeVeque testimony; Pet'r Ex. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29.*
  - d) Similar to what Ms. LeVeque did for the 2015 appeal, she did not make adjustments for age differences, porches, patios, or decks. *LeVeque testimony; Pet'r Ex. 7, 8, 9.*
  - e) Based on the Evaluation Report, Ms. LeVeque placed the most emphasis on comparable #2 located at 1237 South 30<sup>th</sup> Street. This property was adjusted to account for differences in gross living area and to account for a seller concession of \$2,500. The adjusted sale price of this property was \$21,925. *LeVeque testimony; Pet'r Ex. 7.*
  - f) Ms. LeVeque testified that she placed no emphasis on comparable #7 located at 1024 South 26<sup>th</sup> Street, comparable #8 located at 636 South 25<sup>th</sup> Street, and comparable #9 located at 609 South 34<sup>th</sup> Street. According to Ms. LeVeque these properties are "outliers." Accordingly, the subject property should be valued at \$22,000 for the 2016 assessment year. *LeVeque testimony; Pet'r Ex. 7, 9, 10.*
  - g) In response to questioning, Ms. LeVeque explained that she did not include 625 – 31<sup>st</sup> Street in her Evaluation report because it sold as a "land contract, private sale." She went on to state that she does not consider "land contract, private sales" to be arm's length transactions. Likewise, she did not consider 609 – 34<sup>th</sup> Street because it was an owner occupied property. *LeVeque testimony; Pet'r Ex. 6.*
  - h) Ms. LeVeque claims the Respondent's 2016 market analysis is also flawed. The Respondent failed to make adjustments to the eight comparable properties to account for garages or differences in gross living area. Some of the properties are not located in the subject property's neighborhood and some are owner occupied and not investment properties. The Respondent's analysis has not sufficiently addressed the

differences between the subject property and the eight comparable properties, and should not be given any weight. *LeVeque testimony (referencing Resp't Ex. 4).*

12. Summary of the Respondent's case:

**2014 appeal:**

- a) The subject property is correctly assessed. According to the Respondent, the Petitioner agreed to an assessed value of \$39,000 for the 2014 assessment year. The Form 134 was filed with the Auditor's office and the appeal was resolved on September 2, 2016, with a refund being issued. Accordingly, the agreement between the parties voids the 2014 appeal before the Board. *Agostino argument; Kane testimony; Resp't Ex. 2.*<sup>5</sup>
- b) Additionally, Ms. LeVeque failed to claim what the property should be assessed at when she filed the 2014 Form 131. *Agostino argument; Kane testimony; Resp't Ex. 1.*

**2015 appeal:**

- a) The 2015 assessment is correct. In an effort to support the current assessment, the Respondent presented a market analysis of seven comparable properties that sold between January 15, 2014, and November 1, 2014. The sales prices for these properties ranged from \$25,500 to \$55,500. Using the sales information, the median sale price is \$40,000. The comparable properties were selected based on the following criteria: arm's length transactions, gross living area, bedroom count, bathroom count, and location. All of these properties are located within a half mile of the subject property. The current assessment of \$38,900 is reasonable. *Kane testimony; Resp't Ex. 3.*<sup>6</sup>
- b) The Petitioner's 2015 Evaluation Report is flawed. Ms. LeVeque failed to support her adjustments and the majority of the properties she used were foreclosures or short sales and not representative of the open market. In fact, her "most comparable property" was a foreclosure sale. *Agostino argument (referencing Pet'r Ex. 7, 8, 9, 10).*

**2016 appeal:**

- a) The 2016 assessment is also correct. In an effort to support the current assessment, the Respondent presented a market analysis of eight comparable properties that sold between February 26, 2015, and November 24, 2015. These sales ranged from

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<sup>5</sup> The Respondent testified the original Form 134 was "archived by the county" and the Respondent was unable to retrieve a copy of it prior to the Board's hearing.

<sup>6</sup> Mr. Kane testified he is a real estate broker and not a licensed appraiser, Therefore he did not present a grid analysis or make adjustments to the comparable properties. Mr. Kane based his analysis on what he "would consider and look at if he were going to list the subject property for sale."

\$30,000 to \$66,000. Using the sales information, the average sale price is \$45,937 and the median price is \$45,250. The comparable properties were selected based on the following criteria: arm's length transactions, gross living area, bedroom count, bathroom count, and location. All of these properties are located within a half mile of the subject property. The current assessment of \$39,700 is reasonable. *Agostino argument; Kane testimony; Resp't Ex. 4, 5.*

- b) The Petitioner's 2016 Evaluation Report is flawed. Ms. LeVeque failed to support her adjustments, and a majority of the properties she used were foreclosures. In fact, her "most comparable property" was a foreclosure sale. Ms. LeVeque put emphasis on lower priced sales and ignored higher priced sales. For example, she ignored 625 – 31<sup>st</sup> Street that sold for \$50,000 on January 27, 2015. This property was similar in gross living area and the year it was built. Finally, she utilized the Craftsman cost approach from the Assessor's records to adjust properties in her sales comparison analysis. *Agostino argument (referencing Pet'r Ex. 7, 8, 9, 10).*

### **Burden of Proof**

13. 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 exception to that rule.
14. 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 tax 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 appeal taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
15. 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 for 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 has application to all appeals pending before the Board.
16. Here, the parties agree the burden is on the Petitioner for the 2014 assessment year. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply

and the burden remains with the Petitioner. Assigning the burden for 2015 and 2016 will ultimately be determined by the Board's finding for the prior year.

### Analysis

17. The Petitioner failed to make a prima facie case the 2014, 2015, and 2016 assessments are incorrect.
- a) Real property is assessed based on its market value-in-use. 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. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate 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.<sup>7</sup>
  - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (In. Tax Ct. 2005). For the 2014 and 2015 assessments, the valuation date was March 1, 2014, and March 1, 2015, respectively. *See* Ind. Code § 6-1.1-4-4.5(f). For the 2016 assessment, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.

#### **2014 assessment:**

- c) The Petitioner had the burden to prove the 2014 assessment was incorrect. In support of her position the subject property is over-assessed, Ms. LeVeque presented an Evaluation Report that utilized the sales comparison approach.<sup>8</sup> The Petitioner requested the 2014 assessment be reduced to \$20,000.
- d) With regard to the Petitioner's sales comparison approach, Ms. LeVeque argued the subject property was over-assessed based on the adjusted sales prices of seven purportedly comparable properties located in River Park. A 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." MANUAL at 3. In order to effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being

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<sup>7</sup> In Indiana, the gross rent multiplier (GRM) method is the preferred method of valuing real property that has one to four residential rental units. *See* Ind. Code § 6-1.1-4-39(b). However, in this appeal neither party addressed why the GRM method was not used in valuing the subject property.

<sup>8</sup> While Ms. LeVeque's report is similar to an appraisal, she prepared and signed the report as a tax representative and did not certify it was prepared in conformity with Uniform Standards of Professional Appraisal Practice (USPAP).

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*, 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.*

- e) While Ms. LeVeque provided the MLS sales sheets for the purportedly comparable properties, she failed to offer sufficient testimony relating their specific features and amenities to the subject property. Although she accounted for differences between the subject property and the purportedly comparable properties by making adjustments for gross living area, central air, basements, and garages she did little to show how the features and amenities of the purportedly comparable properties were actually similar to those of the subject property as required by *Long*.
- f) More importantly, Ms. LeVeque failed to establish that the purportedly comparable properties were actually comparable to the subject property, or that her adjustments conform to generally accepted appraisal principles. Thus, her sales comparison approach is not probative evidence of the property’s market value-in-use.
- g) Even if Ms. LeVeque had shown her purportedly comparable properties were in fact comparable to the subject property, her adjustments contain numerous errors and inconsistencies such that her estimate of value may or may not accurately reflect the subject property’s market value-in-use.
  - First, Ms. LeVeque failed to make adjustments for lot size, location, condition, age, basement finish, porches, decks, and/or sheds. She failed to adequately explain why no adjustment was required for these features or lack thereof.
  - In order to make adjustments to account for the existence of a garage, Ms. LeVeque testified that she used the Craftsman cost approach found on the Assessor’s property record cards. However, she failed to provide any substantial evidentiary basis for applying a cost approach adjustment to her sales-comparison analysis.
  - Ms. LeVeque also did little to explain how she arrived at a \$10 per square foot adjustment for gross living area or a \$1,000 adjustment for lack of central air. Additionally, she never explained how she arrived at a \$2,000 adjustment for the existence of a slab instead of a basement. She failed to adequately walk the Board through the calculation of these adjustments and instead relied on the assertion that they were applied consistently to all the purportedly comparable properties.
  - Finally, Ms. LeVeque stated she gave the most weight to the property that required the lowest net adjustments when the features were compared to the subject property. However, by her own admission, a property she relied the most

on was a foreclosure sale. Because of these errors, the Board is not convinced that Ms. LeVeque's sales comparison approach conforms to generally accepted appraisal principles, and ultimately not probative.<sup>9</sup>

- h) For these reasons, the Petitioner failed to make a prima facie case that the 2014 assessment is incorrect. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Therefore, the 2014 assessment is to remain at \$39,000.<sup>10</sup>

**2015 assessment:**

18. The burden remains with the Petitioner for 2015 and he presented the same Evaluation Report as he did for the 2014 assessment year, although it was related to the 2015 assessment year. For the same reasons as previously stated, the Petitioner failed to make a prima facie case that the 2015 assessment is incorrect. Therefore, the 2015 assessment is to remain at \$38,900.

**2016 assessment:**

19. Finally, the burden remains with the Petitioner for 2016 and he again presented the same Evaluation Report, albeit related to the 2016 assessment year. For the same reasons as previously stated, the Petitioner again failed to make a prima facie case that the 2016 assessment is incorrect. Therefore, the 2016 assessment is to remain at \$39,700.

**Conclusion**

20. The Petitioner had the burden for each year under appeal and failed to make a prima facie case that the assessments should be lowered. The Board finds for the Respondent.

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<sup>9</sup> This is of even greater concern because Ms. LeVeque testified that she is being paid on a contingency fee basis. Where an expert has a financial interest in the outcome of a case, such as with a contingent fee, that fact is an appropriate consideration in weighing the credibility of the expert's opinion. *See Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874, 877 (Ind. Tax Ct. 1993) (stating that the contingent nature of an expert witness's fee goes to the weight of the expert's testimony). An expert witness's opinion of value should be unbiased, and the fact that she is being paid a contingency fee diminishes her credibility.

<sup>10</sup> While the Respondent argued the Petitioner signed a Form 134, she never produced a copy of the agreement. In the end, this is a moot point because the Board finds for the Respondent and sustains purportedly agreed upon 2014 assessment of \$39,000.

## Final Determination

In accordance with these findings and conclusions, the 2014, 2015, and 2016 assessments are to remain the same.

ISSUED: May 28, 2019

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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>>.