

REPRESENTATIVE FOR PETITIONER:

Paul Vercel, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Robert W. Metz, Director of Appeals, Lake County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Paul Vercel)	Petition No.: 45-030-12-1-5-00001
)	
Petitioner,)	
)	
)	Parcel No.: 45-12-05-377-013.000-030
v.)	
)	
)	
Lake County Assessor,)	
)	County: Lake
)	
Respondent.)	Assessment Year: 2012

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

November 16, 2015

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

ISSUE

1. Because the subject property's assessment increased by more than 5% between 2011 and 2012, the Lake County Assessor had the burden of proving the 2012 assessment was correct. Did he meet his burden?

PROCEDURAL HISTORY

2. Paul Vercel challenged his 2012 assessment. On August 19, 2013, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination reducing the assessment, although not by as much as Mr. Vercel wanted. Mr. Vercel then timely appealed to the Board.
3. On June 15, 2015, our designated administrative law judge, Ellen Yuhan ("ALJ"), held a hearing on Mr. Vercel's appeal. Neither she nor the Board inspected the property.
4. The following people testified under oath: Mr. Vercel; Robert W. Metz, director of hearing and appeals for the Lake County Assessor; and Nicole Ooms and Leslie Malerich, deputy assessors for Ross Township.
5. Mr. Vercel offered the following exhibits:
 - Petitioner Exhibit 1: Invoice for home improvements,
 - Petitioner Exhibit 2: Request for Preliminary Conference with the Township Assessor for 2007 assessment,
 - Petitioner Exhibit 3: July 11, 2013 letter from Deborah Johnson, hearing officer for the Lake County Assessor, to Mr. Vercel,
 - Petitioner Exhibit 4: Multiple Listing Service ("MLS") information for 7514 Lincoln Street,
 - Petitioner Exhibit 5: MLS information for 7508 Pierce Place,
 - Petitioner Exhibit 6: MLS information for 5510 Tyler Street,
 - Petitioner Exhibit 7: MLS information for 5360 Grant Street,
 - Petitioner Exhibit 8: MLS information for 7700 Madison Street,
 - Petitioner Exhibit 9: MLS information for 3715 W. 75th Court.

6. The Assessor offered the following exhibits:

- Respondent Exhibit 1: Form 115 dated August 19, 2013,
- Respondent Exhibit 2: Form 131 petition received October 1, 2013,
- Respondent Exhibit 3: October 24, 2015 hearing notice,
- Respondent Exhibit 4: October 29, 2014 letter from the Board's appeals coordinator granting continuance,
- Respondent Exhibit 5: December 30, 2014 hearing notice,
- Respondent Exhibit 6: January 5, 2015 hearing notice,
- Respondent Exhibit 7: Spreadsheet for five comparable sales with adjustments,
- Respondent Exhibit 8: Spreadsheet for five comparables with price per square foot,
- Respondent Exhibit 9: Map with locations for subject and comparable properties,
- Respondent Exhibit 10: Property record card ("PRC") and MLS information for the subject property,
- Respondent Exhibit 11: PRC and MLS information for 2647 W. 60th Drive,
- Respondent Exhibit 12: PRC and MLS information for 5990 McKinley Street,
- Respondent Exhibit 13: PRC and MLS information for 2461 W. 64th Place,
- Respondent Exhibit 14: PRC and MLS information for 6110 Buchanan Street,
- Respondent Exhibit 15: PRC and MLS information for 1801 Dale Drive.

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

- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Hearing sign-in sheet.

8. The subject property contains a single-family home located at 2572 W. 60th Drive in Merrillville.

9. The PTABOA determined the following assessment:

Land: \$31,000 Improvements: \$69,000 Total: \$100,000.

10. Mr. Vercel did not request a specific value.¹

¹ Mr. Vercel referenced the price he bought the property for in 2008 several times during the hearing. But he did not request that value or any other specific value either on his Form 131 petition or at the hearing.

OBJECTIONS

11. The Assessor objected to all of Mr. Vercel's exhibits on grounds that he had not provided copies of those exhibits in advance of the hearing. Mr. Vercel indicated that he did not see the hearing instructions when he received notice for the re-scheduled hearing. In any case, he believes his failure to exchange exhibits was a technicality. The ALJ took the objection under advisement, although she told the parties she thought we would ultimately exclude the exhibits.
12. Mr. Vercel elected to bring his appeal under our standard procedures. Those procedures require each party to give all other parties (1) a list of his witnesses and exhibits at least 15 business days before a hearing, and (2) copies of his documentary evidence at least five business days before the hearing. 52 IAC 2-7-1(b). Contrary to Mr. Vercel's belief, those exchange requirements are not technicalities. They are designed to avoid unfair surprise and to promote organized, efficient, and fair consideration of appeals. We may exclude evidence based on a party's failure to comply with our exchange rule where it appears that admitting the exhibits would prejudice the opposing party. *See* 52 IAC 2-7-1(f).
13. We sustain the Assessor's objection to Petitioner's Exhibits 1 and 4-9. Those exhibits mostly go to the substance of the appeal, and there is nothing to indicate the Assessor saw the exhibits in advance of the hearing or knew that Mr. Vercel intended to rely on them. We note that several of those exhibits (Pet'r Exs. 4-9) contain information about properties Mr. Vercel claims are comparable to the subject property. And there is some reason to believe that he offered evidence of purportedly comparable properties to the PTABOA. *See Bd. Ex. A* (Form 131 petition alleging that Debra Johnson, the Assessor's hearing officer, and the PTABOA ignored Mr. Vercel's "comparables"); *see also, Pet'r Ex. 3* (letter from the Assessor's hearing officer indicating that Mr. Vercel had submitted a "CMA report as documentation got comparable properties."). But Mr. Vercel did not indicate that Petitioner's Exhibits 4-9 were the same documents he offered at the PTABOA hearing or that they even involved the same properties. His failure to identify

and exchange the exhibits therefore created the type of unfair surprise our exchange rule is designed to prevent.

14. We overrule the Assessor's objection to Petitioner's Exhibits 1 and 3—Mr. Vercel's Request for Preliminary Conference with Township Assessor and a letter to Mr. Vercel from one of the Assessor's own hearing officers. Admitting those documents poses no danger of unfair surprise.

BURDEN OF PROOF

15. Generally, a taxpayer seeking review of an assessing official's determination must prove that a property's assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proving the assessment is correct to the assessor under certain circumstances, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. I.C. § 6-1.1-15-17.2(b). If an assessor fails to meet his burden and neither party offers probative evidence to show the property's actual true tax value, the assessment reverts to the previous year's level. *See id.*
16. In this case, the assessment increased by more than 5%, climbing from \$81,200 in 2011 to \$100,000 in 2012. The Assessor therefore has the burden of proof.

SUMMARY OF PARTIES' CONTENTIONS

A. The Assessor's Case

17. Based on a previous appeal, an obsolescence adjustment had been applied to the property to account for the home's condition. Representatives of the Ross Township Assessor's office inspected the property in connection with the 2012 general reassessment. They determined that the home was in good condition and that an obsolescence adjustment was no longer warranted. *Malerich testimony; Ooms testimony.*

18. According to the Assessor, the sales of five comparable properties support the assessment. The properties were within a mile of the subject property and all had tri-level homes. They sold between February 25, 2011, and June 19, 2012, for prices ranging from \$110,000 to \$140,000, or \$58 to \$75 per square foot of living area. The homes were built between 1961 and 1966, while the subject home was built in 1967. The comparable homes were between 1,616 and 2,069 square feet, while the subject home was 1,800 square feet. *Malerich testimony; Resp't Exs. 7-15.*

19. The Assessor's witness, Leslie Malerich, testified that the sale prices were adjusted to account for differences between the subject property and the comparable properties in terms of home size, number of bathrooms, fireplaces, and exterior features. She did not say who adjusted the prices, but she did testify that the adjustments "came up using sales in that area, subtracting different sales for the square footage and according to research about 25% of that for the square footage. Everything ... on here is market value with the adjustments according to our studies." The average adjusted sale price was \$124,500. Even without adjustments, the average price was \$68/sq. ft., which translates to a value of \$122,400 for the subject property. The average price for the last four sales was \$69/sq. ft., which translates to \$124,200 for the subject property. *Malerich testimony; Resp't Exs. 7-8.*

20. Although Mr. Vercel bought the property for \$79,000 in 2008, that sale was outside the period used for determining 2012 assessments. He sold the property for \$118,000 on June 21, 2013. The listing sheet from the Multiple Listing Service ("MLS") shows many upgrades to the home: a new roof that was six years old; central air, a furnace, and windows that were four years old; two remodeled bathrooms; newer kitchen cabinets; and hardwood floors. *Malerich testimony; Resp't Ex. 10.*

B. Mr. Vercel's Case

21. Mr. Vercel and the Assessor agreed to lower the assessment based on what Mr. Vercel paid for the property in 2008. At the PTABOA meeting, the hearing officer said the most

convincing evidence of the property's value was its June 2013 sale price of \$118,000. According to Mr. Vercel, that sale price cannot be used for an assessment date that was more than a year before the sale. Mr. Vercel also argued that the Assessor could not prove when he renovated the home. As shown by an invoice, the majority of the renovations were from 2013. *Vercel testimony*

22. Mr. Vercel found six sales of tri-level homes in the area that were roughly the same size as his home. They were not "REO properties,"² and they sold for less than his original assessment of \$79,900. *Vercel testimony*.

ANALYSIS

23. Indiana assesses real property based on its true tax value, which the 2011 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 by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party's evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to the Uniform Standards of the Professional Appraisal Practice ("USPAP") often will be probative. *See id.*; *see also*, *Kooshtard Property VI, LLC 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, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Kooshtard Property VI*, 836 N.E.2d at 506; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

² Mr. Vercel did not explain what the abbreviation "REO" stood for. We assume he meant "real estate owned," referring to properties acquired by lending institutions through foreclosure. *See* APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL (5th ed.) (defining real estate owned or "REO" property, in common usage, as "real estate that has been acquired by a lending institution through foreclosure of mortgage loans....").

24. A party must also explain how his evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012 assessments, the valuation date was March 1, 2012. *See* 50 IAC 27-5-2(c).
25. As explained above, the Assessor had the burden of proving the assessment of \$100,000 was correct. He claimed the property was worth at least that amount, and likely more. For support, he relied primarily on the sale prices for five properties within a mile of the subject property.
26. The sales-comparison approach, in which one "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market[,] is a standard valuation approach. 2011 MANUAL at 3. For comparative sales evidence to be probative in an assessment appeal, however, the comparability of the properties must be shown. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice; instead, one must identify the relevant characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d. at 471. Similarly, one must explain how any differences between the properties affect value. *Id.*
27. The Assessor showed that the five properties at issue were comparable to the subject property in various respects, including the style (tri-level) and age of the homes. His exhibits also show general comparability in terms of some other characteristics that likely affect value in the market, such as the number of bedrooms or lot size. On the other hand, while the Assessor showed that the properties were all within a one-mile radius of the subject property, he offered little to compare the desirability of the neighborhoods.
28. In any case, demonstrating general comparability is only part of the question. The Assessor or his witnesses also needed to explain how relevant differences between the

comparable properties and the subject property affected value. While the adjustments in the Assessor's spreadsheet may not differ much in appearance from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that his appraisal complies with USPAP. Thus, as the trier-of-fact, we may infer that the appraiser used objective data to quantify his adjustments in accordance with generally accepted appraisal principles, at least in the absence of evidence showing otherwise.

29. Here, the Assessor did not clearly identify who made the adjustments. Ms. Malerich testified about the spreadsheets, so it may have been her. We know little about her training and experience, much less about whether she followed generally accepted appraisal principles in quantifying the adjustments. At best, she offered a confusing statement about how the adjustment for differences in the sizes of the homes was calculated and generally referenced "studies" based on sales. Under those circumstances, the Assessor's sales data does not make a prima facie case that the assessment was correct. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated, or that its use as a deflator was a generally accepted appraisal technique).
30. The Assessor also pointed to the subject property's \$118,000 sale price. But that sale was from June 2013, more than 14 months after the relevant valuation date for this appeal. Because the Assessor did not explain how the sale related to the property's value as of the relevant date, the sale price lacks probative value. *See Long*, 821 N.E.2d at 471.
31. Mr. Vercel is therefore entitled to have the property's 2012 assessment revert to the previous year's level of \$81,200. He did not request, much less offer probative evidence to support, a lower value. Although he mentioned the price for which he bought the

property in 2008, he did not explain how that price related to the property's value as of the March 1, 2012 valuation date.³

CONCLUSION

32. The Assessor failed to make a prima facie case that the 2012 assessment was correct. The assessment must therefore revert to the previous year's level \$81,200.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order that the subject property's 2012 assessment be changed to \$81,200.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

³ We would reach the same conclusion even if we had not excluded Petitioner's Exhibits 4-9, which contained Mr. Vercel's comparative sales data. He did little to compare those properties to the subject property and did not even attempt to explain how any relevant differences affected value.

- 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 within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court Rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.