

REPRESENTATIVE FOR PETITIONER:

Rutha M. Athalone, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kelly Hisle, Deputy County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Rutha M. Athalone,	)	Petition Nos.: 18-003-12-1-5-00452
	)	18-003-12-1-5-00453
Petitioner,	)	
	)	Parcel Nos.: 18-11-03-485-007.000-003
v.	)	18-11-03-481-008.000-003
	)	
Delaware County Assessor,	)	County: Delaware
	)	Township: Center
Respondent.	)	
	)	Assessment Year: 2012

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**September 23, 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**

**INTRODUCTION**

1. The Respondent had the burden to prove that the March 1, 2012, assessments were correct. Did the Respondent prove the 2012 assessments were correct?

## PROCEDURAL HISTORY

2. The Petitioner initiated her 2012 appeals for the above-captioned parcels with the Delaware County Assessor on November 28, 2012. On May 29, 2013, the Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued determinations denying the Petitioner any relief.<sup>1</sup> On July 9, 2013, the Petitioner timely filed Petitions for Review (Form 131s) with the Board.
3. On January 27, 2015, the Board's administrative law judge, Patti Kindler (ALJ), held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject properties.

## HEARING FACTS AND OTHER MATTERS OF RECORD

4. Petitioner Rutha M. Athalone and Deputy County Assessor Kelly Hisle were sworn and testified.
5. The Petitioner did not submit any exhibits.
6. The Respondent submitted the following exhibits:
  - Respondent Exhibit A: Property record card for subject parcel 18-11-03-481-008.000-003,
  - Respondent Exhibit 1: Property record card for subject parcel 18-11-03-485-007.000-003,
  - Respondent Exhibit 2: Property record card for 805 North Gavin Street,
  - Respondent Exhibit 3: Property record card for 920 North Turner Street,
  - Respondent Exhibit 4: Property record card for 1705 East Centennial Avenue.
7. The following additional items are recognized as part of the record:
  - Board Exhibit A: Form 131 petitions with attachments,
  - Board Exhibit B: Hearing notices, dated November 26, 2014,

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<sup>1</sup> The PTABOA determination for Parcel 18-11-03-485-007.000-003 was issued on May 29, 2013. However, the determination for Parcel 18-11-03-481-008.000-003 was dated May 9, 2013. Upon closer examination the PTABOA members signed the determination for both parcels on May 29, 2013. Further, it appears that the PTABOA hearings for the two parcels were held together, and the determinations were likely issued together. Thus, the Board assumes that the issue date printed on the determination for Parcel 18-11-03-481-008.000-003 is a typographical error, and should have been dated May 29, 2013. The Board therefore considers both Form 131s timely filed.

Board Exhibit C: Hearing sign-in sheet.

8. Parcel 18-11-03-485-007.000-003 is a 280-foot by 240-foot lot containing the Petitioner's one-and-a-half story home, located at 1705 North Wolfe Street in Muncie. Parcel 18-11-03-481-008.000-003 is an unimproved 120-foot by 280-foot lot located on the 1400 block of East Kohlmetz Street. Kohlmetz Street is an unused street dividing the two parcels.
9. The PTABOA determined that the March 1, 2012, assessment for parcel 18-11-03-485-007.000-003 is \$24,500 for land and \$29,400 for improvements, totaling \$53,900. The Petitioner requested a total assessment of \$20,900 (\$20,900 for land and \$0 for improvements) on her Form 131.
10. The PTABOA determined that the March 1, 2012, total assessment for parcel 18-11-03-481-008.000-003 is \$8,900. The Petitioner requested a total assessment of \$4,900 on her Form 131.

#### **OBJECTIONS**

11. The Petitioner objected to the admission of all of the Respondent's exhibits. She argued that the sales presented are not comparable to the subject property. Ms. Hisle responded by stating the Petitioner is receiving an influence factor to account for the condition of the subject property. The ALJ took the objection under advisement.
12. The Petitioner's objection goes to the weight of the evidence rather than its admissibility. Thus, the Board overrules the Petitioner's objection. The Respondent's exhibits are admitted.

### **JURISDICTIONAL FRAMEWORK**

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

### **PETITIONER'S CONTENTIONS**

14. The properties under appeal are assessed too high. The assessments were increased even though no “improvements” had been made to either property. The Petitioner’s home is in need of repairs. The vacant parcel consists of “the same trees, weeds, and shrubs, that [were] there when we purchased it.” *Athalone argument*.
15. The Respondent offered sales that are not comparable to the subject properties. While the Petitioner’s home is 100 years old, the Respondent utilized the sale of two homes less than ten years old. If the two homes utilized by the Respondent were “built somewhere else other than Whitely, they would be worth at least \$150,000.” *Athalone argument (referencing Resp’t Ex. 3, 4)*.
16. Further, there are several homes in the neighborhood that are vacant, desolate, and deteriorating. Homes are purchased through tax sales, but few are listed on the open market. The Respondent not only failed to consider the condition of the neighborhood, he also failed to consider the age and condition of the Petitioner’s home. *Athalone argument*.

### **RESPONDENT'S CONTENTIONS**

17. The properties under appeal are correctly assessed. The Petitioner failed to offer any proof that the assessments are incorrect. In fact, the assessment of the Petitioner’s home

decreased \$300 between 2011 and 2012. The 2012 land assessments for both properties increased to \$125 per front foot as a result of the 2012 reassessment and new base rates set by the Delaware County Land Commission. *Hisle argument; Resp't Ex. A, 1.*

18. The lot including the Petitioner's home benefits from a negative 40% influence factor because it has excessive frontage. While the other lot has a negative 50% influence factor because it is unimproved. *Hisle testimony; Resp't Ex. A, 1.*

19. The sales of three comparable properties, located in the same neighborhood, support the assessments under appeal. Granted, the subject properties are considerably larger than any of the three comparable properties utilized.

- The property located at 805 North Gavin Street sold for \$45,000 on October 25, 2011. This property includes a 1,596 square-foot one-and-a-half story home, detached garage, and a masonry stoop, all on a 40-foot by 194-foot lot.
- The 920 Turner Street property sold for \$55,000 on October 20, 2011. This home is smaller than the Petitioner's home. The home measures 1,080 square feet, has an open frame porch, central air, all on a 40-foot by 134-foot lot.
- Finally, the property at 1705 East Centennial Avenue sold for \$58,000 on November 23, 2011. This property also includes a 1,080 square foot home, an open frame porch, and one bathroom, all located on a 40-foot by 160-foot lot.

The sales prices for these properties ranged from \$28.20 to \$53.70 per square foot. Some of the comparable homes were older than the Petitioner's home, but this was accounted for by "applying the appropriate depreciation according to depreciation tables provided by the state." *Hisle argument; Resp't Ex. 1, 2, 3, 4.*

20. The Petitioner's residence, on the other hand, is a 2,304 square foot, one-and-a-half story home, with an enclosed frame porch, and situated on a 280-foot by 240-foot lot. The 2012 assessment for this property was \$53,900 or \$23.39 per square foot. Even though

this lot is larger than any of the comparables, it's per square foot assessment is lower.  
*Hisle argument; Resp't Ex. 1, 2, 3, 4.*

### **BURDEN OF PROOF**

21. 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 recently amended by P.L. 97-2014 creates two exceptions to that rule.
22. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
23. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

24. Here, the Petitioner failed to offer any evidence or argument that the burden should shift to the Respondent. Thus, at the hearing, the ALJ made a preliminary determination that the burden remains with the Petitioner.
25. During the hearing, however, the Respondent offered the subject parcels' property record cards into evidence. The property record cards indicate that both parcels' assessments increased by more than 5% from 2011 to 2012. *Resp't Ex. A, I*. Specifically, the parcel containing the Petitioner's home increased from \$46,100 in 2011 to \$53,900 in 2012, an increase of 16.9%. *Resp't Ex. I*. The unimproved parcel's assessment increased from \$3,700 in 2011 to \$8,900 in 2012, an increase of 141%.<sup>2</sup> *Resp't Ex. A*.
26. The Board cannot ignore the documentary evidence before it. It is apparent that the properties' assessments increased by more than 5% from 2011 to 2012. The Board overrules the ALJ's preliminary determination. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessments are correct.

#### ANALYSIS

27. 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.
28. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95

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<sup>2</sup> The record is not entirely clear that the two properties comprise one economic unit. If the Board were to assume that they do, the assessments together increased from \$49,800 in 2011 to \$62,800 in 2012, an increase of 26%. Thus, either way, the burden shifts to the Respondent to prove that the 2012 assessments are correct.

(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 that date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

29. Here, the Respondent attempted to prove the assessments were correct by offering sales information for three purportedly comparable properties. In doing so, the Respondent essentially relies on a sales comparison approach to establish the market value-in-use. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value.”); *see also Long*, 821 N.E.2d 466, 469.
30. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
31. In her sales-comparison analysis, Ms. Hisle attempted to compare her purportedly comparable properties to the Petitioner’s property. While she pointed to several differences, some quite substantial, she failed to make any adjustments for the differences. Conversely, Ms. Hisle claimed that the Guidelines’ depreciation tables account for the large difference in age.
32. Ms. Hisle’s mixture of market and cost-based methodologies does not persuade the Board that her analysis is based on generally accepted appraisal or assessment practices. Her comparison lacked the type of analysis contemplated by *Long*. Therefore, the sales data presented lacks probative value.



33. Regarding the land assessments, Ms. Hisle argues that the assessments are valid because they were based on rates developed by the Delaware County Land Commission for the 2012 reassessment. However, that does not prove the specific values of the two parcels in question.
34. Because Ms. Hisle did not offer probative evidence to show the market-value-in-use of the subject parcels, the Respondent failed to make a prima facie case that the 2012 assessments are correct. Therefore, the Petitioner is entitled to have the assessments returned to their 2011 levels of \$46,100 and \$3,700.
35. It is not entirely clear if the Petitioner requested assessments lower than the 2011 levels. For the vacant parcel, she clearly did not, because she requested an assessment of \$4,900. For the parcel containing the Petitioner's home, she requested an assessment of "\$20,900 for land." Even though the Petitioner acknowledged this parcel included her home, she indicated a requested assessment of "\$0 for improvements."
36. Likely, this stems from the Petitioner's apparent misunderstanding of the term "improvements." Specifically, the Petitioner repeatedly testified that the subject parcels were in the same condition as when she purchased them, and that she had "made no improvements." The value listed for improvements, however, does not mean the Petitioner made "improvements" to the property. For assessing purposes, an "improvement" is simply a building or other fixture situated on the land. *See* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 1 at 2 (incorporated by reference at 50 IAC 2.4-1-2). Thus, there is no dispute that parcel 18-11-03-485-007.000-003 includes an improvement as defined by the Guidelines.
37. In any case, the Petitioner failed to offer any probative evidence to support either the value she requested, or any other value. Thus, she is entitled to no further reduction.

**SUMMARY OF FINAL DETERMINATION**

38. The Respondent had the burden of proving the 2012 assessments were correct, but failed to make a prima facie case. Accordingly, the assessments must be reduced to the previous year's amount: \$46,100 for parcel 18-11-03-485-007.000-003 and \$3,700 for parcel 18-11-03-481-008.000-003.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.