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

Petition:	**27-020-18-1-4-01225-18**
Petitioners:	**Randy & Sara Ballinger**
Respondent:	**Grant County Assessor**
Parcel:	**27-08-29-300-011.000-020**
Assessment Year:	**2018**

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

Procedural History

1. The Petitioners initiated their 2018 assessment appeal with the Grant County Assessor on June 11, 2018.

2. On November 2, 2018, the Grant County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.

3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.

4. On January 9, 2019, Administrative Law Judge (ALJ) Dalene McMillen held the Board's administrative hearing. Neither the ALJ nor the Board inspected the property.

5. Randy Ballinger and Sara Ballinger appeared *pro se* and were sworn. Certified public accountant (CPA) Richard Brock was sworn as a witness for the Petitioners. Attorney Ayn K. Engle appeared for the Respondent. Property tax consultant Anthony (Tony) Garrison was sworn as a witness for the Respondent.

Facts

6. The property under appeal consists of 301.71 acres with two single-family residences, four pole barns, two utility sheds, two 18-hole golf courses, and what the parties refer to as the "clubhouses." The property is commonly referred to as Walnut Creek Golf Course and is located at 7453 East 400 South in Marion.

7. The PTABOA determined the total assessment is $619,700 (land $379,600 and improvements $240,100).

8. The Petitioners requested a total assessment of $405,296 (land $165,196 and improvements $240,100).

Record

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

   a) A digital recording of the hearing.

   b) Exhibits:

Petitioner Exhibit 1:	Petition for Review of Assessment (Form 131),
Petitioner Exhibit 2:	2018 Subject property record card,
Petitioner Exhibit 3:	Notification of Final Assessment Determination (Form 115),
Petitioner Exhibit 4:	Ten emails between Randy Ballinger, Gary Landrum, and Tony Garrison,
Petitioner Exhibit 5:	CPA's capitalization of income spreadsheet for 2013-2017, **(marked confidential),**
Petitioner Exhibit 6:	*Randy A. & Sara Ballinger v. Grant Co. Ass'r,* Pet. Nos. 27-020-16-1-4-02183-16 and 27-020-15-1-4-00346-15 (Ind. Bd. Tax Rev. April 17, 2018), **(pages 7-11 and 19 marked confidential),**
Petitioner Exhibit 7:	Green fees and cart fees for Walnut Creek Golf Course, Shady Hills, Arbor Trace Golf Club, and Winchester Golf Course,
Petitioner Exhibit 8:	Comparison spreadsheet and property record cards for the following: ⁕ Subject property, ⁕1520 West Chapel Pike, Marion, ⁕ 2500 East 550 North, Marion, ⁕ 2225 North Lagro Road, Marion, ⁕ 985 South Simpson Drive, Winchester, ⁕ 985 South Simpson Drive West 9, Winchester, ⁕ 9803 West 600 South, Andrews, ⁕ 5961 West Maple Grove Road, Huntington, ⁕ 5811 East Cummins Road, Montpelier, ⁕ 1605 West Water, Hartford City, ⁕ 3200 Timber Valley Drive, Kokomo,
Petitioner Exhibit 9:	2015, 2016, and 2017 U.S. Income Tax Return for an S Corporation (Forms 1120S) for the subject property **(marked confidential),**
Petitioner Exhibit 10:	Articles of Incorporation for Eastern Indiana Wifi Incorporated dated April 15, 2005,
Petitioner Exhibit 11:	2015, 2016, and 2017 W-2s and Earning Summaries; January 1, 2018, through March 23, 2018, earnings for Randy and Sara Ballinger; Summary of rent payments made by Walnut Creek Golf Course and Club Run to the Petitioners from June 30, 2000, through December 31,

	2005; Summary of rent payments made by "sign rent" and "building rent" to the Petitioners from June 30, 2000, through August 31, 2005, (**marked confidential),**
Petitioner Exhibit 12:	50 IAC 29-1-1 through 50 IAC 29-3-8 "Procedures for the Assessment of Golf Courses,"
Petitioner Exhibit 13:	Department of Local Government Finance (DLGF) course "2018 Level II – Income Approach to Valuing Golf Courses,"
Petitioner Exhibit 14:	Petitioners' written testimony.
Respondent Exhibit A:	Respondent's 2018 valuation summary,
Respondent Exhibit B:	DLGF memos "Golf Course Guidance" prepared by Barry Wood dated March 6, 2014, and March 2, 2015,
Respondent Exhibit C:	Golf course fees for Arbor Trace Golf Club, Meshingomesia Golf & Social Club, and Shady Hills,
Respondent Exhibit D:	2018 golf rates & specials for Walnut Creek Golf Course.[1]

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. Ms. Engle objected to Petitioners' Exhibit 4, a series of emails between Randy Ballinger and Gary Landrum as hearsay. The Petitioners did not offer a response. The ALJ took the objection under advisement. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801 (c)). The Board's procedural rules specifically address hearsay evidence:

> Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5 (b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but is not required to allow it.

[1] The Respondent's binder includes additional exhibits labeled Respondent's Exhibits E through I. These exhibits were not offered by the Respondent and the Board will not consider these exhibits.

11. The emails are hearsay because Mr. Landrum is not present to testify. The Petitioners did not argue the exhibit falls within any recognized exception to the hearsay rule. As such, Petitioners' Exhibit 4 is admitted to the record, but, in accordance with the Board's procedural rules, the Board's determination may not be based solely on the exhibit.

12. The Petitioners objected to Respondent's Exhibit A, the Respondent's 2018 valuation summary, on the grounds the exhibit "was part of the series of emails that they objected to." In response, the Respondent argued the author of Respondent's Exhibit A is present and able to testify. The ALJ took the objection under advisement. The objection goes to the weight of the evidence rather than its admissibility. Consequently, the objection is overruled and Respondent's Exhibit A is admitted.

Contentions

13. Summary of the Petitioners' case:

    a) The Petitioners own and utilize the subject property as a 36-hole golf course. They have been the sole owners of the property for roughly 50 years. *R. Ballinger testimony.*

    b) The Petitioners are not contesting the improvement value of $240,100 or the two residential land acres of $17,000 each, or $34,000 total, as listed on the property record card. The Petitioners are contesting the remaining land affiliated with the golf course. The Petitioners argue this land should be valued by utilizing the income capitalization approach to value. According to the Petitioners, the Respondent failed to provide her income capitalization approach at the PTABOA hearing, or prior to the Board's hearing, indicating how the golf course was valued. *R. Ballinger argument; Pet'r Ex. 2.*

    c) The Petitioners' witness, Richard Brock, CPA, valued the remaining 299.71 acres of property at $131,196.75 using the guidelines set forth under Indiana code. *R. Ballinger testimony; Brock testimony (referencing Ind. Code § 6-1.1-4-42, 50 IAC 29-3-7, and DLGF Level II course); Pet'r Ex. 1, 5, 9, 12, 13.*

    d) According to Mr. Brock's calculations, he lists Walnut Creek's gross income minus golf cart income, pro-shop income, and non-golf income.[2] Mr. Brock testified he excluded interest income, depreciation, and contributions from the expenses when calculating the negative net operating income (NOI) for the golf course. *Brock testimony; Pet'r Ex. 5, 9, 10, 11.*

    e) Once Mr. Brock determined there was a negative operating income, he calculated the property's value utilizing the proper procedures for assessing a golf course. He determined the gross income for 2017 was $491,936. Next, he subtracted golf cart

[2] The income from Eastern Indiana Wifi Incorporated, owned by Randy Ballinger, is included in the non-golf income category on Mr. Brock's spreadsheet.

income, pro-shop income, and non-golf income to arrive at an adjusted gross income of $306,738. The adjusted gross income was multiplied by 5% for a value of $15,336.90. Finally, the $15,336.90 was divided by the DLGF determined capitalization rate of 11.69% to reach a final value conclusion of $131,196.75. *R. Ballinger testimony; Brock testimony (referencing 50 IAC 29-3-7); Pet'r Ex. 5.*

f) In summary, the Petitioners contend the golf course capitalized income of $131,196.75, plus the two residential land sites of $34,000, equals a total land value of $165,196.75. When the non-contested improvement value of $240,100 is added, the 2018 total assessment of the subject property should equate to $405,296. *R. Ballinger testimony; Pet'r Ex. 14.*

g) In response to questioning by the Respondent, Mr. Brock testified his income approach calculation included "some" golf cart repair parts, clubhouse expenses, and real estate taxes. According to Mr. Brock, if those expenses were removed, the property would still have a negative net operating income. *Brock testimony.*

h) The Petitioners also submitted green fees and cart fees for two golf courses in Grant County and one in Winchester. The Winchester golf course is less than an hour drive from Walnut Creek and the two courses share "joint tournaments" four times a year. The Petitioners "list" higher fees than other Grant County public courses on their Walnut Creek website, because "the advertised price is a perception of the quality of the golf course." According to the Petitioners, they offer discounts for golfers in the Marion area, and "Grant County players" can play for $25.25, a rate that includes green fees and cart fees. This reduced rate is "very comparable to all the other county courses." *R. Ballinger testimony; Pet'r Ex. 7.*

i) In response to questioning by the Respondent, Mr. Ballinger testified police, firefighters, and Veterans play for free on Mondays. Additionally, senior citizens, juniors, and students are offered a reduced green fee rate. Mr. Ballinger argues that other golf courses in the area offer the same or similar discounts. Mr. Ballinger went on to argue this "could" increase the golf course income, but it would be "very little." *R. Ballinger testimony.*

j) The Petitioners submitted the assessments of twelve comparable and competing golf courses in Grant County, Randolph County, Huntington County, Blackford County, and Howard County. Two courses in Huntington County and Blackford County are no longer in business. One course in Howard County is not comparable to the subject property. One course located in Blackford County has only 9 holes. The remaining eight courses have 18 holes. According to the Petitioners, five courses located outside of Grant County have been valued utilizing the income capitalization approach "since the law was changed" and their assessed values have declined "significantly." According to the Petitioners, a golf course's income is dictated by location, competition, and condition of the course, so it produces a fair and equitable assessment. On the other hand, the Respondent assesses golf courses on a hole-by-

hole comparison basis, which produces unfair and inequitable assessments. *R. Ballinger argument; Pet'r Ex. 8.*

k) In response to questioning by the Respondent, Mr. Ballinger testified that the Shady Hills golf course was purchased in 2015 for $725,000. This golf course is in a better location than the subject property. Furthermore, the buyer stated he purchased the property with the "intention of building homes" however because of the economy in the city of Marion he continues to operate the property as a golf course.[3] *R. Ballinger testimony.*

l) The Respondent's value calculation of the golf course is flawed. The Respondent failed to use the "capitalization of income" method prescribed by the statute and administrative code. Instead, she used a hole-by-hole comparison of golf courses located in Grant County. The Petitioners argue golfers often travel in a 50 mile radius to play a well-kept golf course, therefore the Respondent limiting its comparison to Grant County results in an unfair and non-equitable assessment because she is not comparing golf courses of similar "grade quality and play length." As a result, the Respondent's comparison of golf courses in the same jurisdiction is "meaningless." *R. Ballinger argument (referencing Resp't Ex. A); Pet'r Ex. 3, 4, 13.*

14. Summary of the Respondent's case:

a) The subject property is correctly assessed. According to the Respondent, the property consists of two 18-hole golf courses, two residential homes, two clubhouses, and "various" outbuildings. Indiana Code § 6-1.1-4-42 defines the term "golf course" as an area of land and improvements that consists of a series of holes, each consisting of a teeing area, fairway, rough and other hazards, and a green with a pin and cup. *Garrison testimony; Engle argument.*

b) The DLGF has issued memorandums every year interpreting the definition of a golf course, but no change has been made to the definition found in the statute. When the DLGF memorandums and administrative code conflicts with statute, the county follows the language set forth in the statute. *Garrison testimony; Engle argument; Resp't Ex. B.*

c) To verify the current 2018 assessment, the Respondent reviewed the capitalization of income calculation submitted by the Petitioners. The Petitioners arrived at a value of $131,196.75 for 2017. First, the Petitioners capitalized income value is higher than the current "golf course yard improvement" of $12,900 for Walnut Creek and $18,800 for Club Run. Additionally, the Petitioners' 2017 value did not differ much from the 2014, 2015, and 2016 calculation submitted. Based on the Petitioners' capitalization method and two previous Board decisions for the subject property

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[3] The Respondent objected to Mr. Ballinger's testimony regarding Mr. Swan's reason for purchasing Shady Hills on the grounds of hearsay. Assuming, without deciding, that the testimony is hearsay, our procedural rules allow us to admit hearsay, but we cannot base our determination solely on that evidence. 52 IAC 2-7-3. Accordingly, the testimony is to remain a part of the record.

issued on September 27, 2014, and April 17, 2018, the Respondent did not change the assessed value of the golf course between 2017 and 2018. *Garrison testimony (referencing Pet'r Ex. 2, 5); Resp't Ex. A.*

d) Still, the Petitioners' income capitalization approach is flawed. They failed to support their golf course income or the excluded income for the golf carts and pro-shop or expenses. Without financial statements or tax schedules, the Respondent is unable to determine the accuracy of the revenue or expenses reported by the Petitioners. *Engle argument (referencing Pet'r Ex. 2, 5).*

e) The Respondent argues the Indiana statute clearly defines how to assess a golf course. The Board has issued a final determination on this same issue and held that the income capitalization approach applies only to the golf course and any remaining property and the improvements should be valued at its market value-in-use. *Engle argument (referencing Pet'r Ex. 6).*

f) The DLGF rules provide for uniform and equal assessments of golf courses of similar grade and quality. The Respondent presented evidence of per hole assessed value of three comparable golf courses located in Grant County as well as the subject property. The comparable courses assessed values range from $22,772.22 to $45,600 per hole. While the subject property is assessed at $17,213.89 per hole. The Petitioners' lower per hole assessed value could be attributed to having a 36-hole course versus the other courses that are only 18- holes, or what is known as "economies of scale." *Garrison testimony; Resp't Ex. A.*

g) For illustration purposes, the Respondent compared green fees and cart fees charged at three golf courses in Grant County to what the Petitioners charge at Walnut Creek. The Respondent argues that by charging more in cart fees, it takes away from the gross income of the golf course, thereby potentially decreasing the calculated value of the golf course. Also, by allowing players to play for free or reduced rates lowers the gross income. As such, this could result in an inequity in the assessment of golf courses in Indiana. *Garrison testimony; Resp't Ex. C, D.*

h) Even so, golf course valuations in Indiana are flawed. The current methodology does not value the fee simple interest but rather it values the business interest and how the property is managed by the owner. Because owners can manipulate their income it can produce inequitable assessments, which goes against fair and equitable assessment as required by statute. *Engle argument.*

Burden of Proof

15. 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.E2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exception to that rule.

16. 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).

17. 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 was effective March 25, 2014, and has application to all appeals pending before the Board.

18. Here, the parties agree the total assessed value of the subject property did not increase by more than 5% from 2017 to 2018. According to the property record card, the total assessment increased from $617,200 in 2017 to $619,700 in 2018. The Respondent argued the burden should remain with the Petitioners. The Petitioners did not dispute this fact. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioners.

Analysis

19. The Petitioners made a prima facie case for reducing the assessment.

    a) Real property is assessed based on its "true tax value," which means, "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." 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. 2011 MANUAL at 2. Generally, any evidence relevant to a property's true tax value as of the assessment date, including an appraisal prepared in accordance with generally accepted appraisal principles, may be offered in an assessment appeal. *Id.* at 3.

    b) However, there are exceptions to the rule. The Legislature has directed the DLGF to promulgate rules utilizing an income approach for determining the true tax value of a golf course. Ind. Code § 6-1.1-4-42(c). The statute defines a golf course as "an area of land and yard improvements that are predominately used to play the game of golf.

A golf course consists of the teeing area, fairway, rough and other hazards, and the green with the pin and the cup." Ind. Code § 6-1.1-4-42(b).

c) In promulgating rules on assessing golf courses, the DLGF did not elaborate on the definition of a golf course. Rather, 50 IAC 29-2-3 merely states that the term "golf course" has the meaning set forth in Ind. Code § 6-1.1-4-42(b).

d) The Board previously addressed the statute in *Albert Hall Ltd v. Huntington Co. Ass'r,* Pet. No. 35-004-10-1-4-00007, *et. seq.*, (Ind. Bd. Tax Rev., February 3, 2012). Relying on the plain language of the statute, the Board noted that the land and improvements consisting of a club house and lodge cannot properly be described as "a teeing area, fairway, rough and other hazards, or the green." *Id.* at 6. The Board concluded that the "property must be divided into two portions for purposes of measuring its true tax value." *Id.* at 7. The true tax value of the portion "used as a golf course is the amount yielded by applying the income capitalization approach," and the true tax value of the remaining portion is "the property's market value-in-use." *Albert Hall* was decided by the Board before the promulgation of 50 IAC 29 (August 30, 2012).

e) Here, the Petitioners do not challenge the assessments on the residential land, residences, clubhouse, and other buildings. They challenge the value of the course itself. In support of their position that the golf course is assessed incorrectly, the Petitioners presented an income capitalization analysis prepared by Richard Brock, CPA. Mr. Brock valued 299.71 acres of golf course property at $131,196.75 using the guidelines set forth under Ind. Code § 6-1.1-4-42.

f) The Petitioners are correct in their claim that the Respondent blatantly failed to value the golf course in accordance with Ind. Code § 6-1.1-4-42. According to the Respondent, she reviewed the "capitalization of income calculation submitted by the Petitioners" and found their "capitalized income value is higher than the current golf course yard improvement." But she did not present that income valuation to the Board. Based on that fact and two prior Board determinations, she did not change the assessed value of the golf course between 2017 and 2018. Additionally, the Respondent attempted to justify her position by stating "the taxpayers assessed value per hole is the lowest in the county." The problem with this rationale is that Ind. Code § 6-1.1-4-42 clearly states how golf courses are to be assessed, and the Respondent did not attempt to follow the statute. The statute is intended to give owners of golf courses a valuation based on its income, and that privilege was not afforded to the Petitioners. If the Respondent has objections to how "owners can manipulate their income" and thereby minimize their assessment, those objections can only be resolved by the legislature.

g) Turning to the Petitioners income capitalization analysis, we agree with the Respondent that it contains flaws. However, we are in the position where we must weigh the flaws made in good faith against the Respondent's failure to apply the income approach required by statute. Petitioners' 1120S forms offer only partial

accounting and provide only a scant amount of detail regarding the non-golf course income, golf cart income, and pro-shop income. Mr. Brock did provide testimony as to how he arrived at his final conclusion of value, albeit the testimony was vague at times. These problems diminish the creditably of the analysis. With that being said, the Petitioners attempted to provide golf course income data and valued the property in good faith and in accordance with Ind. Code § 6-1.1-4-42, something the Respondent did not attempt to do.

h) While we accept the Petitioners valuation, we also conclude the land located under the clubhouses and outbuildings is not entitled to an assessment through the modified income approach. This error can be remedied by including the land assessment attributed to the land beneath these buildings as listed on the subject property record card.[4]

i) Ultimately, the Respondent failed to correctly assess the golf course according to Ind. Code § 6-1.1-4-42. The Petitioners attempted, in good faith, to provide an accurate assessment of the golf course. After weighing the evidence, we find the Petitioners evidence probative, and the assessment must be changed to reflect that. The Petitioners concede to the $240,100 assessment of the improvements. The Petitioners also concede to the land assessment of $34,000 for two residential acres. Mr. Brock valued the remaining 299.71 acres. As previously stated, we must also include the two acres of land located under the clubhouses and outbuildings. The value assessed to those acres is $33,000. As a result, the only portion of the assessment that needs to be changed is the 297.71 acres of the golf course currently assessed at $312,600. The assessment of this acreage needs to be changed to $131,196 as reflected by Mr. Brock's analysis.

Conclusion

20. The Petitioners made a prima facie case for reducing the 2018 assessment. The Respondent is directed to reassess the property in conformity with these findings and conclusions. The 2018 total assessment must be reduced to $438,296.

[4] The two acres of land beneath the various outbuildings is currently assessed at $33,000. *See Pet'r Ex. 2.*

Final Determination

In accordance with the above findings and conclusions, the 2018 total assessment must be changed to $438,296.

ISSUED: April 9, 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>.