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

Petitions:	**45-035-07-1-5-00001**
	45-035-08-1-5-00001
	45-035-09-1-5-00001
	45-035-10-1-5-00001
Petitioner:	**Mirko Blesich**
Respondent:	**Lake County Assessor**
Parcel:	**45-11-34-201-011.000-035**
Assessment Years:	**2007-2010**

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioner appealed the subject property's assessments for 2007 through 2010. On April 24, 2013, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations reducing the property's assessment for each year, although not by as much as the Petitioner had requested.

2. The Petitioner then timely filed Form 131 petitions with the Board. He elected to have his appeals heard under the Board's small claims procedures.

3. On June 9, 2014, the Board held a hearing through its designated administrative law judge, Ellen Yuhan ("ALJ").

4. The Petitioner and Robert Metz, director of appeals for the Respondent, testified.

Facts

5. The subject property is a single-family home located at 9338 Mallard Lane, St. John. Neither the Board nor the ALJ inspected the property.

6. The PTABOA determined the following assessments:

Year	Land	Improvements	Total
2007	$44,500	$275,500	$320,000
2008	$44,500	$275,500	$320,000
2009	$44,600	$256,300	$300,900
2010	$44,600	$275,400	$320,000

7. The Petitioner requested the following assessments:

Year	Total
2007	$270,000
2008	$248,500
2009	$257,000
2010	$260,000

Record

8. The official record contains the following:

   a. The Form 131 petitions,

   b. A digital recording of the hearing,

   c. Exhibits:

   Petitioner Exhibit A: Summary of assessment history and information and arguments regarding appeal (2 pages),[1]
   Petitioner Exhibit B: Appraisal Report as of March 9, 2012,
   Petitioner Exhibit C: Multiple Listing Service ("MLS") information for 9434 Mallard Lane,

   Respondent Exhibit 1: Property record card,
   Respondent Exhibit 2: Spreadsheet with sales information for four properties,
   Respondent Exhibit 3: MLS information for 9230 Drake Drive,
   Respondent Exhibit 4: MLS information for 9023 Drake Drive,
   Respondent Exhibit 5: MLS information for 9013 Drake Drive,
   Respondent Exhibit 6: MLS information for 9410 Mallard Lane,

   Board Exhibit A: Form 131 petitions,

[1] The first page of this exhibit has the label "A" at the top and "B" at the bottom. To avoid confusion, the Board refers to the entire document as Petitioner's Exhibit A.

Board Exhibit B: Hearing notices,
Board Exhibit C: Hearing sign-in sheet,

d. These Findings and Conclusions.

Objections

9. The Respondent objected to Petitioner's Exhibit B—an appraisal report for the subject property—on four grounds: (1) it was performed for refinancing purposes rather than for a tax appeal; (2) the Respondent was not the intended user; (3) the appraisal's effective date was outside the timeframes at issue in the appeals, and (4) the Respondent did not receive a complete copy of the appraisal before the Board's hearing.

10. The Board overrules the Respondent's objections. The first three grounds go to the appraisal's weight, rather than to its admissibility. As to the final ground—that the Respondent did not have a complete copy of the appraisal before the hearing—the Board's procedural rules for small claims only require the parties to exchange copies of their exhibits if the opposing party timely requests them. *See* 52 IAC 3-1-5(d). The Respondent did not claim to have requested copies of the Petitioner's exhibits before the hearing.

Contentions

11. Summary of the Respondent's case:

    a. The Respondent's witness, Mr. Metz, created a spreadsheet with information about the sales of four properties that he described as comparable to the subject property. The properties sold between January 1, 2006, and October 1, 2006, for prices ranging from $114.43 to $136.57 per square foot of living area. He adjusted one sale price by 3%, because the home was more than 100 square feet smaller than the subject home. He did not make any other adjustments. The average sale price was $123.82, which when multiplied by the subject home's 2,522 square feet, yields a value of $311,200. *Metz testimony; Resp't Ex. 2.*
    .
    b. The Respondent would therefore agree to a value of $311,000. The property was assessed for $300,000 in 2006.[2] According to Mr. Metz, his estimate of $311,000 is in line with market appreciation during the intervening year. *Metz testimony and argument*.

[2] The Petitioner cited to the Board's determination in his appeal of the 2006 assessment year. The Board upheld the PTABOA's determination in that appeal. *See Blesich v. Lake County Assessor*, pet. no. 45-036-1-5-00001 (Ind. Bd. Tax Rev. Nov. 1, 2010). It appears that the PTABOA had reduced the original assessment from $321,800 to $300,000. *Id*. at *2 n. 1.

c. The Board should disregard the Petitioner's sales information. The Petitioner did not offer MLS sheets for any of the properties he referenced or otherwise confirm the sales. In any case, none of the Petitioner's sales was from the timeframe relevant to determining assessments for 2007. Only one was relevant for 2008, and the Petitioner did not adjust that property's sale price. *Metz testimony*.

d. Although the Petitioner offered an appraisal, the appraiser valued the property as of March 9, 2012—more than two years after the latest assessment date at issue in these appeals. *Metz testimony; Pet'r Ex. B.*

12. Summary of the Petitioner's case:

a. According to the Petitioner, 9410 Mallard, which is right down the street from the subject property, is the most comparable property that Mr. Metz identified. That property's sale price of $116 per square foot translates to a value of only $294,000 for the subject property. The remaining properties are not in the subject property's subdivision, although they are within approximately a quarter of a mile. *Blesich testimony; Resp't Ex. 2.*

b. The Petitioner offered sales, and in one case assessment, information for three properties:

- 9323 Mallard Lane. This property sold for $285,000, or $108 per square foot, on April 27, 2007. It sold again for $275,000 on May 5, 2009. It is larger than the subject home, with four bedrooms and a larger garage. The per-square-foot sale prices translate to the following values for the subject property: $273,780 for 2007, and $263,640 for 2009.

- 9434 Mallard Lane. This property, which is two doors south of the subject property, sold for $315,000 or $101.42 a square foot, on November 11, 2008. It has amenities that the subject property lacks, such as a finished basement, an enclosed sunroom, and a fenced yard. Its per-square-foot sale price translates to $257,000 for the subject property. If, as Mr. Metz claims, the sale is outside the timeline for the 2008 assessment, it still reflects the value for the 2009 assessment.

- 9301 Mallard Lane. This property sold for $286,000 on August 12, 2010. It was assessed at $282,400, or $111.75 a square foot. The per-square-foot sale and assessment prices translate to values of $254,300 and $283,286, respectively, for the subject property.

Blesich testimony; Pet'r Ex. A.

c. Based on the subject property's 2006 assessment of $300,000, and incorporating the year-to-year changes in the housing market, the property should be assessed as follows:

- 2007—$270,000 (10% decrease).
- 2008—$248,500 (8% decrease)
- 2009—$257,000 (4% increase).
- 2010—$260,000 (5% decrease).[3]

The Petitioner based his calculations on articles from the *The Wall Street Journal* and other sources, including an article from "The Times" in which the former Lake County Assessor, Hank Adams, indicated that home values in St. John had dropped by 15% between 2008 and 2011.[4] *Pet'r Ex. A.*

d. The Petitioner also offered an appraisal report in which Michael Golumbeck, a certified appraiser, estimated the property's market value at $275,000 as of March 9, 2012. Although the Petitioner acknowledged that the appraisal post-dates the 2010 assessment, he believes it speaks volumes about the property's value. *Blesich testimony; Pet'r Ex. B*.

ANALYSIS

A. Burden of Proof

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The taxpayer must explain how each piece of evidence relates to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board…through every element of the analysis"). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

[3] The yearly percentage changes do not all match the Petitioner's requested values. For example, the $3,000 dollar difference between 2009 ($257,000) and 2010 ($260,000) is less than 5%. And the change is an increase, not a decrease. *Pet'r Ex. A*.

[4] The Petitioner's exhibit indicates that a copy of the newspaper article quoting Mr. Adams is attached. The Petitioner, however, did not submit a copy of that article or of the other articles that he referenced. *See Pet'r Ex. A*.

14. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Thus, where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following assessment date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal regardless of the amount of the increase…" *See* I.C. § 6-1.1-15-17.2(d). These provisions may not apply if there was a change in the property's improvements, zoning or use, or if the assessment was determined using the income approach to value. *See* I.C. 6-1.1-15-17.2(c) and (d).

15. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence of the correct assessment. If neither party offers evidence that suffices to prove the property's correct assessment, it reverts to the previous year's value. *See* I.C. § 6-1.1-15-17.2(b).

16. The subject property was assessed at $300,000 for 2006 and the PTABOA determined a 2007 value of 320,000, which was more than a 5% increase. The Respondent therefore agrees that it has the burden of proof for 2007. Because a shift in the burden may be triggered by the results of an appeal of the previous year's assessment, allocating the burden of proof for the remaining years at issue (2008 – 2010) depends on the Board's determination for each preceding year. The Board therefore turns first to the Petitioner's appeal of the 2007 assessment year.[5]

B. Discussion

1. **2007 Assessment**

17. The Respondent failed to make a prima facie case that the 2007 assessment was correct, which entitled the Petitioner to have the assessment reduced to $300,000. The Petitioner failed to prove a lower value. The Board reaches these conclusions for the following reasons:

    a. Indiana assesses real property based on its true tax value, which is "the market value-in-use of a property for its current use, as reflected by the utility received by the

[5] The ALJ noted that, as things stood at the beginning of the hearing, the assessments under appeal for 2008 and 2009 were either the same as, or less than, what the PTABOA had determined for the immediately preceding year, but that the assessment for 2010 was over 5% more than what the PTABOA had determined for 2009. It therefore appeared that the Respondent would have the burden of proof in some years but not others. Nonetheless, the ALJ emphasized that the Board would ultimately determine who had the burden of proof and that the parties should therefore make their best case for each year.

owner or similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). 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 Professional Appraisal Practice will often be probative. *See Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501,506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sales or assessment information for comparable properties, and any other evidence compiled according to generally accepted appraisal principles may also be probative. MANUAL at 5; *see also*, I.C. § 6-1.1-15-18.

b. In any case, a party must explain how its evidence relates to the appropriate 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2007 through 2009, the valuation date was January 1 of the year preceding the assessment date. 50 IAC 21-3-3-(b). For 2010, the assessment and valuation dates were both March 1, 2010. I.C. § 6-1.1-4-4.5(f).

c. As explained above, the Respondent had the burden of proving that the property's 2007 assessment of $320,000 was correct. Her witness, Mr. Metz, estimated the property's value based on four sales involving properties he believed were comparable to the subject property. But he did little to show how those properties compared to the subject property beyond the size of the respective homes. And he did almost nothing to account for relevant ways in which the properties differed. That does not suffice to make a prima facie case showing the subject property's market value-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)(holding that taxpayers were responsible for their property's characteristics, how those characteristics compared to those of their purportedly comparable properties, and how any differences affected the properties' market values-in-use).

d. The Petitioner was therefore entitled to have the property's 2007 assessment revert to its 2006 level of $300,000. But the Petitioner sought an even lower value. The Board therefore turns to the Petitioner's evidence.

e. The Petitioner proceeded along three lines: (1) he offered sales and assessment information for four properties; (2) he calculated values based on changes in the housing market between 2006 and 2010; and (3) he offered an appraisal valuing the property as of March 9, 2012. None of those suffices to demonstrate the subject property's market value-in-use for any of the valuation dates at issue in these appeals.

f. The Petitioner's sales-comparison and assessment-comparison analysis fails for the same reasons as Mr. Metz's analysis—he did not do enough to show that the

properties were comparable or to account for relevant differences. At most, the Petitioner testified that the purportedly comparable properties were located near the subject property and that they had some amenities the subject property lacked. While that is a start, it is not the level of comparison contemplated by *Long* or by generally accepted appraisal principles. Also, none of the sales occurred within a year of the January 1, 2006 valuation date. While the Petitioner referred to market trends reported in articles from the *Wall Street Journal* and other unidentified publications, those vague references do not suffice to relate any of the sale prices to the relevant valuation date. The same is true for the quote from the article in "The Times" that the Petitioner attributed to the former Lake County Assessor. In fact, the Petitioner did not even offer copies of any of those articles.

g. Finally, as the Petitioner himself acknowledged, Mr. Golumbeck's appraisal was far removed from January 1, 2006 (and from the valuation dates for any of the assessments under appeal), and the Petitioner did nothing to relate it back.

h. Because the Petitioner failed to prove a lower value, the property's assessment for 2007 must be changed to $300,000.

2. <u>2008 – 2010 Assessments</u>

18. The Respondent failed to make a prima facie case that the 2008 – 2010 assessments were correct, which entitled the Petitioner to have each assessment reduced to $300,000. The Petitioner failed to prove a lower value for any of those years.

a. The Board's determination reducing the 2007 assessment to $300,000 means that the Petitioner successfully appealed the prior year and the Respondent again has the burden for 2008 under Ind. Code § 6-1.1-15-17.2(d). The Respondent offered only the evidence above, which the Board has already explained fails to make a prima facie case.[6] The Petitioner was therefore entitled to have the 2008 assessment reduced to $300,000.

b. As with 2007, the Petitioner sought a lower value for each year. But his evidence fails for largely the same reasons discussed in the Board's analysis for that year. Granted, unlike 2007 where all of the Petitioner's purportedly comparable sales occurred more than a year after the relevant valuation date, one of the sales occurred within a year of the January 1, 2007 valuation date that applies to the 2008 assessment year. But that does not change the other fatal problem with the Petitioner's sales data—he still failed to engage in the type of comparison analysis

[6] Mr. Metz did not even claim that his sales-comparison analysis was probative for any assessment year other than 2007.

necessary to translate that data into a reliable indicator of the subject property's market value-in-use.

c. The Respondent had the burden for 2009 because the Board reduced the 2008 assessment to $300,000, which is less, albeit barely, than the $300,900 determined by the PTABOA for 2009. Again, the Respondent failed to meet its burden, entitling the Petitioner to an assessment of $300,000. And for the reasons already discussed, the Petitioner failed to prove a lower value.

d. The Respondent had the burden for 2010 because the 2010 assessment of $320,000 is higher than the $300,000 that the Board determined for 2009. For the reasons already discussed, the Respondent failed to meet her burden and the Petitioner failed to prove a lower value.[7]

Conclusion

19. The Respondent failed to make a prima facie case that the assessments were correct, which entitled the Petitioner to have each assessment reduced to the previous year's level. The Petitioner failed to make a prima facie case for any further reduction. Each assessment must therefore be reduced to $300,000.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that each assessment under appeal (2007 – 2010) must be changed to $300,000.

ISSUED: September 4, 2014

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

[7] One of the Petitioner's purportedly comparable sales was within a year of the valuation date for the 2009 assessment year, and two were within a year of the valuation date for 2010. As discussed above, that does not change the fact that the Petitioner still failed to engage in the type of comparison analysis necessary to translate that raw sales data into a reliable indicator of the subject property's market value-in-use.

- 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>.