

REPRESENTATIVE FOR PETITIONER:

Robert Catania, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Terri L. Boone, Huntington County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Robert Catania	)	Petition No.: 35-005-15-1-5-00278-15
	)	
Petitioner,	)	
	)	
v.	)	Parcel No.: 35-05-22-300-116.510-005
	)	
	)	County: Huntington
	)	
Huntington County Assessor	)	Township: Huntington
	)	
Respondent.	)	Assessment Year: 2015

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

**JUNE 3, 2016**

**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

### PROCEDURAL HISTORY

1. Robert Catania (“Petitioner”) initiated his assessment appeal with the Huntington County Property Tax Assessment Board of Appeals (“PTABOA”). On October 16, 2015, the PTABOA denied Petitioner relief. On December 1, 2015, Petitioner filed a Form 131 petition with the Board. When he filed the Form 131, Petitioner elected to opt-out of the Board’s small claims procedural rules.
2. Ellen Yuhan, the Board’s designated administrative law judge (“ALJ”), held a hearing on March 8, 2016. Neither she nor the Board inspected the property.
3. Petitioner and Julie Newsome, the Huntington County Deputy Assessor, were sworn and testified.<sup>1</sup>
4. Petitioner offered the following exhibits:

Petitioner Exhibit 1:	Beacon property record card for 2068 Willow Bend,
Petitioner Exhibit 2:	Beacon property record card for 2076 Willow Bend,
Petitioner Exhibit 3:	Beacon property record card for 2071 Willow Bend,
Petitioner Exhibit 4:	List of easements on the property,
Petitioner Exhibit 5:	Photographs of the subject property,
Petitioner Exhibit 6:	Basis for appeal.
5. Respondent offered the following exhibits:

Respondent Exhibit 1:	Form 131,
Respondent Exhibit 2:	Form 115,
Respondent Exhibit 3:	Form 130,
Respondent Exhibit 4:	Subject property record card,
Respondent Exhibit 5:	Sales disclosure form for subject property,
Respondent Exhibit 6:	Listing for the subject property,
Respondent Exhibit 7:	Comparable sales,
Respondent Exhibit 8:	Aerial photograph of the subject neighborhood.
6. The following additional items are officially recognized as part of the record:

Board Exhibit A:	Form 131 petition,
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<sup>1</sup> Terri Boone, the Huntington County Assessor, was present but did not testify.

Board Exhibit B: Hearing notice,  
Board Exhibit C: Hearing sign-in sheet.

7. The subject property is a single-family dwelling located at 2073 Willow Bend Drive in Huntington.
8. For 2015, the PTABOA determined the assessed value to be:  
Land \$19,600      Improvements \$83,300      Total \$102,900.

### **OBJECTIONS**

9. Respondent stated that she had no objection to Petitioner's Exhibits 1, 2, and 3; however, Respondent objected to Petitioner's Exhibits 4, 5, and 6. According to Respondent, Petitioner violated the Board's evidence exchange rule by failing to provide an exhibit list or copies of the exhibits before the hearing. Under that rule, a party must provide all other parties copies of the documentary evidence at least 5 business days before the hearing, and a list of witnesses and exhibits at least 15 business days before the hearing. 52 IAC 2-7-1(b). The Board may exclude evidence based on a party's failure to comply with those deadlines. 52 IAC 2-7-1(f).
10. Petitioner claims he was not aware he was required to provide the items before the hearing. According to Petitioner, the comparable properties and the list of easements (Petitioner Exhibits 1-4) were new evidence. Regarding Petitioner Exhibit 5, when asked if he presented the photos at the PTABOA hearing, he replied "I presented pictures like that." Respondent agreed Petitioner presented pictures at the PTABOA hearing but contends she has no way of knowing if they are the same pictures presented at the Board hearing.
11. It was clear from the testimony that Petitioner Exhibit 4 had not been presented at the PTABOA hearing. Neither party was able to state specifically that the exact photographs in Petitioner Exhibit 5 were presented at the PTABOA hearing. Although Petitioner testified that similar photographs of his property were presented at the PTABOA hearing,

and Respondent acknowledged that photographs of the subject property were presented at the PTABOA hearing, both lacked knowledge about whether Petitioner Exhibit 5 contains the same photographs. Petitioner Exhibit 6 is essentially a summary of Petitioner's case and references the other exhibits.

12. The Board admits Petitioner Exhibits 1, 2, 3, 5, and 6 and excludes Petitioner Exhibit 4. The Board notes, however, that the singular admission or exclusion of any one of Petitioner's exhibits does not affect the ultimate determination in this matter.
13. Petitioner objected to Respondent Exhibit 8 on the grounds that two of the comparable sale properties were located far away and not in his community. Petitioner's objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board admits Respondent Exhibit 8 over Petitioner's objection.
14. Petitioner submitted an email to the Board on March 9, 2016. The email stated that Petitioner was requesting a new hearing due to the fact that the ALJ was too "friendly" with the Assessor and her assistant. In a letter dated March 10, 2016, the Board responded to Petitioner's email indicating that it would take the matter under advisement and investigate the claim accordingly. After thoroughly reviewing the record, we have determined that it is not necessary to hold a new hearing on this matter.

#### **BURDEN OF PROOF**

15. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). A burden-shifting statute creates two exceptions to that rule.
16. First, Indiana 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 appeals 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 Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “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).
18. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
19. In this case, the assessed value increased by approximately 2.8% from \$100,100 for 2014 to \$102,900 for 2015. Petitioner has shown no reason that the burden to prove the amount is correct should shift to Respondent.

#### **PETITIONER’S CONTENTIONS**

20. Petitioner contends several homes in his immediate neighborhood are situated on larger lots and were constructed more recently than the subject property, but their assessed values are lower. The subject’s land is assessed at \$19,600. The land at 2071 Willow Bend Drive is assessed at \$18,300. The land at 2068 Willow Bend Drive is assessed at \$19,000. Also, at 2076 Willow Bend Drive, Petitioner contends there are two full-sized lots but the owner is only being assessed for one. Furthermore, the house at 2068 Willow

Bend Drive was built in 2015 and is assessed only slightly more than the house on the subject property, which is thirteen years old. *Catania testimony.*

21. Petitioner contends he was not aware that seven companies had existing easements on the land when he purchased the property. These companies basically own a quarter of the property and maintain utilities in the backyard. They restrict endeavors such as planting trees and construction of a fence. *Catania testimony.*
22. After initially agreeing to purchase the property, Petitioner eventually changed his mind because he was unhappy with the location and certain defects he discovered. Nevertheless, the seller would not release Petitioner from the agreement. Therefore, he had no choice but to buy the house. *Catania testimony.*

#### **RESPONDENT'S CONTENTIONS**

23. The subject property is a one-story frame house on a slab foundation with an attached garage that was built in 2003. The house has 1,207 square feet of finished living area including three bedrooms, two full baths, and central air. Petitioner purchased the property on December 23, 2014, for \$114,400 after it had been on the market for 139 days. *Newsome testimony; Resp't Exs. 3, 5, and 6.*
24. According to Ms. Newsome, the three approaches to value were considered, but little or no weight was given to the cost approach or the income approach. The most reliable approach to value in this case is the sales comparison approach. *Newsome testimony.*
25. Ms. Newsome found sales of six purportedly comparable properties. The properties are all located in the subject neighborhood. All of the properties contain one-story homes on slab foundations with central air and attached garages. The finished living area for these properties ranged from 988 to 1,430 square feet. The homes were built between 1990 and 2014. The properties sold between May 2014 and October 2014, for prices ranging from \$75,000 to \$131,000, or \$74.43 to \$100.92 per square foot. *Newsome testimony; Resp't Ex. 7.*

26. Respondent contends that the per square foot sale range of the purported comparables supports the 2015 assessment, which should remain at \$102,900. *Newsome testimony*.

#### ANALYSIS

27. 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). Evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standards of the Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 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 acceptable 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).
28. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2015 assessment was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
29. Petitioner claimed neighboring properties that were newer and had larger lots had lower assessments. Petitioner did not explain how his property was similar to the purportedly comparable properties or how any differences affected the market value-in-use.

Furthermore, while Petitioner described the various easements on the property and the resultant restrictions, he did not specifically distinguish how they affect the overall assessed value.

30. To effectively use a comparison approach to prove a correct valuation, 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.* The Board agrees that the easements may mean the property has less value, but Petitioner must present evidence that quantifies that value.
  
31. Petitioner failed to make a prima facie case that the assessment is incorrect. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2015 assessed value will not be changed.

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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 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>>.