

REPRESENTATIVE FOR PETITIONER:

Mary Ciasto, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:

Heather Scheel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mary Ciasto & Christopher Nugent	)	Petition No.:	53-008-15-1-5-00065-15
)		
Petitioners,	)	Parcel No.	53-01-41-709-745.000-008
	)		(014-17097-45)
)		
v.	)	County:	Monroe
)		
Monroe County Assessor,	)	Township:	Perry
)		
Respondent.	)	Assessment Year:	2015

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

Issued: August 29, 2017

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. Petitioners initiated their 2015 assessment appeal and, on July 27, 2015, the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) issued its Notification

of Final Assessment Determination. Petitioners then timely filed a Form 131 petition on September 9, 2015, with the Board.

2. On May 31, 2017, the Board's designated administrative law judge ("ALJ"), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The property under appeal consists of 0.15 acres with a single-family home located at 1641 West Hennessey Street in Bloomington.
4. Mary K. Ciasto and Theodore L. Ciasto were sworn and testified for Petitioners. Attorney Heather Scheel represented Respondent. Ken Surface of Nexus Group was sworn and testified for Respondent.
5. Petitioners offered the following exhibits:

Petitioner Exhibit 1 – County Assessor's Document dated July 15, 2015,
Petitioner Exhibit 2 – Analysis of Petitioner Exhibit 1,
Petitioner Exhibit 3 – Summary of Tax Assessment Year 2015,
Petitioner Exhibit 4 – Overall Tax Assessment Analysis 2007 to 2015,
Petitioner Exhibit 5 – Random Sampling of 1 & 2 Story Residences Assessed in 2015,
Petitioner Exhibit 6 – Random Sampling of 1 Story Residences Assessed in 2015,
Petitioner Exhibit 7 – Questions to Assessor, dated July 15, 2015,
Petitioner Exhibit 8 – State Form 53569 (R11/12-16)/Treasurer Form TS-1A,
Petitioner Exhibit 9 - Analysis of Monroe County Assessor Office 2015 Comparables,

6. Respondent offered the following exhibits:

Respondent Exhibit A – Subject 2015 Property Record Card ("PRC"),
Respondent Exhibit B – Photograph of subject property,
Respondent Exhibit C – Sales comparison analysis,
Respondent Exhibit D – Monroe County 2015 ratio study,
Respondent Exhibit E – Map identifying location of comparable sales,

- Respondent Exhibit F – Sales disclosure form, PRC, and photograph for 3335 South Dawson Lane,
- Respondent Exhibit G – Sales disclosure form, PRC, and photograph for 1543 West Meeting House Lane,
- Respondent Exhibit H – Sales disclosure form, PRC, and photograph for 3201 South Dawson Lane,
- Respondent Exhibit I – Sales disclosure form, PRC, and photograph for 1578 West Meeting House Lane,
- Respondent Exhibit J – Page 7 of 2011 Real Property Assessment Manual (“Manual”),
- Respondent Exhibit K – Department of Local Government Finance (“DLGF”) 2015 Ratio Study Guidance memorandum, dated February 11, 2015,
- Respondent Exhibit L – Respondent’s rebuttal to Petitioners’ Exhibit 2,

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

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

8. The assessed value for 2015 is \$16,400 for the land and \$143,200 for the improvements, for a total of \$159,600.

9. Petitioners requested an assessed value of \$16,400 for the land and \$133,100 for the improvements for a total of \$149,500.

BURDEN OF PROOF

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.

11. 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 appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

12. 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,” 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).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The parties agreed that the assessment increased by more than 5% between 2014 and 2015 and that Respondent has the burden of proof.

SUMMARY OF RESPONDENT’S CONTENTIONS

15. The property under appeal is a one-story ranch home consisting of 1,497 square feet. It is built on a slab, has an open-framed porch, a wood deck, and a two-car garage. *Surface testimony; Resp’t Ex. A & B.*
16. Ken Surface of Nexus Group began by giving a general overview of the information contained on a PRC. He then explained that for the assessment process, the DLGF has developed guidelines outlining how to establish the market value-in-use for real property in Indiana. *Surface testimony; Resp’t Ex. A.*

17. Mr. Surface basically went through the elements undertaken in the development of a county's annual ratio study. He explained that the data used in such a study must yield results that fall within three sets of statistical parameters as determined by the International Association of Assessing Officers ("IAAO") to indicate that the study is accurate. First, the median value of the assessed values of the properties in the study divided by their sales prices must fall between 0.90 and 1.10. Second, the coefficient of dispersion ("COD"), which is the average deviation of a group of numbers from the median expressed as a percentage, should be below 15%. Third, the price related differential ("PRD"), which measures "vertical equity", should fall between 0.98 and 1.03. *Surface testimony.*
18. Mr. Surface explained that for 2015, the county presented eight properties that sold between January 1, 2014, and March 1, 2015. He explained that a ratio study itself is typically submitted on a township level, and that these particular eight sales simply represent a breakdown of sales in Petitioners' specific neighborhood. *Surface testimony; Resp't Ex. D.*
19. An analysis of the data for the eight sales resulted in a median value of 0.9976, a COD of 2.853%, and a PRD of 1.0024. Mr. Surface notes that these results fall well within the parameters as discussed above and thus validate the 2015 assessment. With regard to this study, Mr. Surface said "You can't get much better than these results." *Surface testimony; Resp't Ex. D.*
20. Mr. Surface noted that to lower a property's assessed value to its sale price would result in a lack of uniformity. Further, the IAAO prohibits "sales chasing" which it defines as "the practice of using the sale of a property to trigger a reappraisal of that property at or near the selling price." He argues that if the county practiced sales chasing, it would be treating sold properties differently than unsold properties, thus causing disparate treatment among taxpayers. *Surface testimony; Resp't Ex. J.*

21. Respondent also presented a sales comparison analysis. In the analysis, Mr. Surface used four purportedly comparable properties that happen to also be included in the group of eight sales comprising the ratio study discussed above. To support the purportedly comparable properties, he presented a plat map, sales disclosure forms, PRCs, and photographs. He chose the properties based on similar lot size, numbers of bedrooms and bathrooms, year built, living square feet, and garage area. The properties sold between June 24, 2014, and September 5, 2014. The unadjusted sale prices ranged from \$81.38 per square foot to \$84.89 per square foot, with an average of \$83.55 per square foot. The time-adjusted sale prices ranged from \$80.59 per square foot to \$84.28 per square foot, with an average of \$82.89 per square foot. The subject property's 2015 assessed value translates to \$84.13 per square foot. Thus, Mr. Surface argues Petitioners' property is being assessed fairly. *Surface testimony; Resp't Ex. C & E-I.*

22. In rebuttal testimony, Mr. Surface addressed the one-story home classification of the comparable property at 1584 West Edinburgh Bend. He stated there is a "very small portion" of the home that is two-story, but the home is not a traditional two-story home. Therefore, the county classified it as a one-story home. In support of his testimony, Mr. Surface submitted a photograph showing the property as well as three traditional two-story homes in the subject property's neighborhood. *Surface testimony; Resp't Ex. L.*

SUMMARY OF PETITIONERS' CONTENTIONS

23. Mr. Ciasto presented an analysis comparing the purchase prices and assessed values of four properties located in the subject property's neighborhood. He contends that in 2015, the subject property and a property at 1584 West Edinburgh Bend, which are one-story homes, were assessed at \$15,100 and \$4,600 higher respectively than their purchase prices in 2013 and 2014. On the other hand, three two-story homes located at 1642 West Hennessey Street, 1645 West Hennessey Street, and 3701 South Wickens Drive, were assessed at \$12,800, \$10,900 and \$2,800 less respectively than their purchase prices in

2009 and 2013.¹ Mr. Ciasto contends that the county has provided no explanation as to why two-story homes with more square feet of living area are assessed at far below their purchase prices, while one-story homes are assessed higher than their purchase prices. *T. Ciasto testimony; Pet'r Ex. 3.*

24. Mr. Ciasto claims that a random sampling of the subject property's entire neighborhood further revealed that between 2014 and 2015, one-story homes increased in assessed value from 6.2% to 7%. Two-story homes, on the other hand, only increased in assessed value from 1.7% to 2.4%. He contends that there are approximately 300 more two-story homes than one-story homes located in the Highlands subdivision. He contends that this further demonstrates inconsistencies in assessed values between one and two-story homes in the same neighborhood. *T. Ciasto testimony; Pet'r Ex. 5-6.*
25. To further demonstrate the disparity in treatment between one and two-story homes, Mr. Ciasto presented the 2007 to 2015 assessed values of twelve properties located on West Hennessey Street² plus the subject property. The assessed values of the five one-story properties increased from 23% to 30%, or an average of 26%. The assessed values of the eight two-story properties increased from 9% to 20%, or an average of 14%. Mr. Ciasto contends that Respondent's evidence showing the consumer price index for the same period of 2007 to 2015 indicated an increase of less than 15%. *T. Ciasto testimony; Pet'r Ex. 4.*
26. Mr. Ciasto contends that at the PTABOA hearing, Respondent submitted the sale prices and assessed values of eight homes in the subject property's neighborhood to substantiate the assessed value of the property under appeal. He first pointed out that seven of the eight properties are one-story homes like the subject property. However, the property at 1584 West Edinburgh Bend is a two-story home. Next, he testified that the one-story

¹ In response to questioning, Petitioner acknowledged that that the two-story homes used in Petitioner Exhibit 3 were classified in a different neighborhood than the subject property. Petitioner also agreed with Respondent that four of the sales occurred in 2009 and 2013, which were outside of the time frame of sales used by Respondent in establishing the 2015 assessed values. *M. Ciasto testimony.*

² Mr. Ciasto listed the 2006 assessed value for 1616 West Hennessey Street instead of the 2007 assessed value.

homes increased in assessed values from 6.10% to 6.70%, or an average of 6.50%, between 2014 and 2015. The two-story home's assessed value, on the other hand, increased by 11%. In comparison, the subject property's assessed value increased by 6.80%. Mr. Ciasto argues that Respondent has never explained the inconsistencies in the percentages of increase of properties in the same neighborhood. *T. Ciasto testimony; Pet'r Ex. 1-3.*

27. Mr. Ciasto stated that at the PTABOA hearing, he submitted a list of questions to Respondent for response. One such question was why a property next door to the subject property that has 459 more square feet of living area was assessed in 2015 for \$6,000 lower than the subject property, but sold three months prior to the subject property for \$164,500, or \$20,000 more. Mr. Ciasto claims Respondent failed to answer and likewise dismissed all of their questions. *T. & M. Ciasto testimony; Pet'r Ex. 7.*

28. While Petitioners agreed that some of Respondent's purportedly comparable properties have floor plans identical to that of the subject property, he contends Respondent's sales comparison approach fails to account for the importance of a property's location in a neighborhood. For example:

- 3335 South Dawson Lane is located on a cul-de-sac. It sold for \$155,000 in 2014 but its 2015 assessed value was \$158,000.
- 3201 South Dawson Lane is a larger corner lot. It sold for \$172,000 in 2014 but its 2015 assessed value was \$165,000.
- 1578 West Meeting House Lane is a larger corner lot. It sold for \$182,000 in 2014 but its 2015 assessed value was \$181,500.
- 1543 West Meeting House Lane is very similar to the subject property in location. It sold for \$156,000 in 2014 but its 2015 assessed value was \$151,600.

T. Ciasto testimony; Pet'r Ex. 9.

29. Mr. Ciasto requested that the Board take notice that the Treasurer's Form TS-1A "Special Message to Property Owner" is misleading as it implies that a person's taxes are capped

and cannot go up more than 1% a year. He argues that the taxes are a combination of the property's tax assessment and tax rate, which can increase by more than 1%.³ *T. Ciasto; Pet'r Ex. 8.*

Analysis

30. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's 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). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005) Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id; 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).
31. Regardless of the method used to prove a property's true tax value, 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. Dep't of Local Gov't Fin.*, 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).

³ Property "tax caps" are a result of Article 10 § 1 of the Indiana Constitution, which directed the General Assembly to limit a taxpayer's property tax liability (excluding taxes imposed after being approved in a referendum and certain other taxes in eligible counties) to between 1% and 3% of gross assessed value, with the different levels tied to the type of property at issue. The General Assembly has implemented that requirement through Ind. Code § 6-1.1-20.6-7.5. The Board has no control or jurisdiction over how the statute is written.

32. Here, Respondent had the burden to prove that the 2015 assessment was correct. First, Mr. Surface attempted to support the assessment by introducing the sale assessment ratio study data about eight properties in the subject property's neighborhood. That data had a median of 0.9976, a COD of 2.8533%, and a PRD of 1.0024. Mr. Surface contends those results are well within the DLGF guidelines and impliedly validate the assessment.
33. Respondent, however, failed to offer any support for the notion that a ratio study may be used to prove that an individual's property's assessment reflects its market value-in-use. Indeed, the INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARDS ON RATIO STUDIES, which 50 IAC 27-1-44 incorporates by reference, says otherwise:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination ... **However, the ratio study statistics cannot be used to judge the level of appraisal of an individual parcel.** Such statistics can be used to adjust assessed values on appealed properties to the common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARDS ON RATIO STUDIES
VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

34. Respondent also offered a sales comparison analysis regarding four purportedly comparable properties. The properties in the analysis were similar in year built, lot size, square feet, number of bedrooms and number of bathrooms. The properties sold between June 24, 2014, and September 5, 2014. The unadjusted sale price average was \$83.55 per square foot. After making an adjustment for time, the adjusted sale price average was \$82.89 per square foot. The assessed value of the subject property is \$159,600 which, when divided by its total square feet of 1,897, equates to a value of \$84.13 per square foot which, Respondent contends, is "equivalent" to the four purportedly comparable sales.
35. To effectively use the sales comparison approach as evidence in an 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.*

36. The type of analysis required is lacking from Respondent’s case. The evidence fails to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the property under appeal. While he did adjust for time, Mr. Surface did not adequately identify, quantify, or adjust for other specific differences between the purportedly comparable properties and the subject property.
37. Additionally, Mr. Surface failed to offer any evidence that simply comparing average square-foot values to determine value for the subject property comports with generally accepted appraisal principles. For these reasons, Mr. Surface’s sales comparison analysis lacks probative value.

SUMMARY OF FINAL DETERMINATION

38. For these reasons, Respondent failed to prove the 2015 assessment is correct. Petitioner did not request any further reduction below the 2014 assessed value. Therefore, the assessment must be reduced to the 2014 value of \$149,500.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>.