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

Petition: **50-017-12-1-5-00005**
Petitioner: **Neil A. Cockbain**
Respondent: **Marshall County Assessor**
Parcel: **50-31-21-000-169.000-017**
Assessment Year: **2012**

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

Procedural History

1. The Petitioner initiated his 2012 assessment appeal with the Marshall County Assessor by filing a Petition for Review of Assessment by Local Assessing Official (Form 130) on September 24, 2012.

2. The Marshall County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on June 4, 2013, denying the Petitioner relief.

3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on July 22, 2013. He elected the Board's small claims procedures.

4. The Board issued a notice of hearing on September 15, 2014.

5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on October 16, 2014. She did not inspect the property.

6. Petitioner Neil Cockbain and Assessor Debra Dunning appeared *pro se*. Deputy Assessor Mindy Penrose was a witness for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a single-family residence located at 12219 Choctaw Island Trail in Culver.

8. The PTABOA determined the total assessment is $244,800 (land $81,400 and improvements $163,400).

9. On his Form 131 petition, the Petitioner requested a total assessment of $223,400 (land $60,000 and improvements $163,400). At the hearing, the Petitioner requested a total assessment of $226,800 (land $63,400 and improvements $163,400).

Record

10. The official record for this matter contains the following:

a) The Form 131 petition with attachments,

b) A digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit 1:	"Lake Latonka sales, 2012 payable 2013,"
Petitioner Exhibit A:	Property record card (PRC) for 12241 Choctaw Island Trail, the "Sunderlin property,"
Petitioner Exhibit B:	PRC for 12195 Choctaw Island Trail, the "Martin property,"
Petitioner Exhibit C:	PRC for parcel number 50-31-21-000-172.003-017, the "Plumlee property,"
Petitioner Exhibit D:	PRC for parcel number 50-31-21-000-176.000-017, the "Nannini property."
Respondent Exhibit A:	Letter from the Respondent to the Petitioner dated September 24, 2014, regarding corrections to the subject property's land dimensions, and requesting exchange of evidence prior to the Board's hearing,
Respondent Exhibit B:	Letter from the Respondent to the Petitioner dated February 19, 2013,
Respondent Exhibit C:	Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134), dated March 11, 2013,
Respondent Exhibit D:	Form 115 including PTABOA hearing minutes,
Respondent Exhibit E:	Form 131,
Respondent Exhibit F:	Photograph of the front of the subject property,
Respondent Exhibit G:	Beacon aerial maps of the subject property's neighborhood,
Respondent Exhibit H:	Multiple Listing Service (MLS) sales sheet for the November 2, 2000, sale of the subject property,
Respondent Exhibit I:	2012 Subject PRC prior to the correction of the lot's dimensions,
Respondent Exhibit J:	Plat map of the subject property's subdivision,
Respondent Exhibit K:	Proposed stipulation agreement for the 2012 assessment year, dated October 7, 2014,
Respondent Exhibit L:	2012 Land Order for West Township, Marshall County,
Respondent Exhibit M:	"Lake Latonka sales, 2012 payable 2013,"
Respondent Exhibit N:	Sales Disclosure Form, PRC, and Beacon aerial map for the property located at 12399 Spear Trail,

Respondent Exhibit O: Sales Disclosure Form, three PRCs, and Beacon aerial map for the property located at 18149 Tahoe Trail,
Respondent Exhibit P: Sales Disclosure Form, PRC, and Beacon aerial map for the property located at 12057 Rose Road,
Respondent Exhibit Q: Sales Disclosure Form, PRC, and Beacon aerial map for the property located at 12195 Choctaw Island Trail,
Respondent Exhibit R: Sales Disclosure Form, PRC, and Beacon aerial map for the property located at 18223 Tahoe Trail,
Respondent Exhibit S: Sales Disclosure Form, PRC, and Beacon aerial map for the property located at 18215 Tahoe Trail,
Respondent Exhibit T: Sales Disclosure Form, PRC, and Beacon aerial map for the unimproved property located on "Tahoe Trail,"
Respondent Exhibit U: Sales Disclosure Form, PRC, and Beacon aerial map for the property located at 18068 Cherokee Trail.

Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Hearing notice dated September 15, 2014,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

11. Ms. Dunning objected to Petitioner Exhibits A, B, C, and D on the grounds that even though she had requested them, they were not provided prior to the hearing. *See* 52 IAC 3-1-5(d) ([I]f requested not later than ten (10) business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing). While the Petitioner admitted that he did not submit the exhibits to the Respondent prior to the Board's hearing, he went on to state that they were all previously submitted at the PTABOA hearing. The ALJ took the objection under advisement.

12. While the Petitioner did not properly comply with the Respondent's evidentiary request, the Board's procedural rules allow for discretion when a party has not complied. *See* 52 IAC 3-1-5(f) ([F]ailure to comply with subsection (d) may serve as grounds to exclude evidence or testimony that has not been timely provided). The purpose behind the pre-hearing exchange is to allow parties to be better informed and to avoid surprises, and it also promotes an organized, efficient, and fair consideration of the issues at a hearing. Here, there is no dispute that the Petitioner submitted the evidence in question at the PTABOA hearing. Thus, the Respondent had previously seen the evidence. Further, it should come as no surprise that the Petitioner would submit the same evidence at the Board's hearing. Thus, the Respondent is in no way prejudiced by admitting the evidence. Therefore, Ms. Dunning's objection is overruled, and Petitioner Exhibits A, B, C, and D are admitted.

Contentions

13. Summary of the Petitioner's case:

a) The subject property's land assessment is too high. Even though the property's total assessed value decreased between 2011 and 2012, the land assessment increased from $66,700 to $81,400. *Cockbain argument.*

b) The Petitioner presented a spreadsheet of sale and assessment information in an effort to prove the land assessment is excessive.[1] The spreadsheet includes eight Lake Latonka sales that occurred prior to March 1, 2012. The spreadsheet also includes two sales that occurred after March 1, 2012. The Petitioner determined the average per square foot price for the eight properties that sold prior to March 1, 2012, was $4.33. In comparison, the subject property's 2012 land assessment came in at $5.26 per square foot. The subject property's 2012 land assessment should be $63,400. Further, the Petitioner's lot is not the only over-assessed lot in the neighborhood. The Faddons' and Gibbs' 2012 land assessments are $5.71 and $5.32 per square foot, respectively. *Cockbain testimony; Pet'r Ex. 1.*

c) The Petitioner also pointed to the comparable land assessments for four additional Lake Latonka properties that indicate the subject property is over-assessed. The Sunderlin property, located at 12241 Choctaw Island Trail, is assessed at $4.83 per square foot. The Martin property, a vacant lot located at Choctaw Island Trail, is assessed at $4.99 per square foot. The Plumlee property, another vacant lot located at Choctaw Island Trail, is assessed at $4.87 per square foot. Finally, the Nannini property, another vacant lot located at Choctaw Island Trail, is assessed at $4.11 per square foot. *Cockbain testimony; Pet'r Ex. A, B, C, D.*

d) The Petitioner concedes that his home is assessed "probably too low." However, his land assessment has increased even though "land is very stable." Thus, the Respondent needs to find a new way to accurately separate and accurately calculate land and improvement values. *Cockbain argument.*

14. Summary of the Respondent's case:

a) The subject property's total assessment is correct. By appealing only the land portion, the Petitioner has ignored the fact that the overall assessment at $244,800 is reasonable. This is especially true considering that he purchased the property in 2001 for $265,255. There is no way of knowing what the improvements or land would sell for individually. When examining vacant land sales, those sale prices do not include

[1] The Respondent also presented a version of this spreadsheet. On the Petitioner's version, Mr. Cockbain replaced the Respondent's *sale prices* per front foot and per square foot with his calculation of each sold property's *assessed values* per front and per square foot of land. In addition, Mr. Cockbain added two columns to the spreadsheet for his calculation of each parcel's total square footage and total price per square foot. *See also Resp't Ex. M.*

a well and septic system. Thus, an assessor must look at both the land and improvements together in determining a total value for a property. Nevertheless, the land is correctly assessed according to the Marshall County Land Order for the 2012 assessment year. *Dunning testimony; Resp't Ex. H, I, L.*

b) The land assessment is also reasonable compared to eight improved Lake Latonka properties that sold between June 26, 2009, and February 29, 2012. The Respondent abstracted the improvement value from the eight properties, and determined that the average land price per front foot was $1,275. The subject property's land is assessed at $876 per front foot. Even though lakefront properties are generally assessed using front footage, the Respondent also determined that the average price per square foot of the eight comparable sales was $6.56. The subject property's land is assessed at $5.26 per square foot. *Dunning testimony; Resp't Ex. M, N, O, P, Q, R, S, T, U.*

c) While the Petitioner relied on the same eight sales to compute an alternate average price per square foot, he divided each sold property's square footage by its assessed value rather than its sale price. That is not indicative of market value. *Penrose testimony; Resp't Ex. M.*

d) The Respondent also pointed to two recent sales of neighboring properties. The Faddon property sold for $378,620, on March 20, 2013. While the Gibbs property sold for $259,000, on September 27, 2012. Although the sales are too recent to be used to support the subject property's 2012 assessment, they do illustrate what properties are selling for in the immediate neighborhood. *Dunning testimony; Resp't Ex. M.*

e) The Respondent does concede that there is an error in the current assessment. Specifically, according to the plat map, the lot has 81 feet of actual frontage and 88 feet of effective frontage. The 2012 assessment reflects 90 feet of both actual and effective frontage. Thus, the Respondent concedes that the error should be corrected, thereby lowering the land assessment from $81,400 to $77,100. *Dunning testimony; Resp't Ex. A, J, K.*

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.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.

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 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 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.

18. Here, the Petitioner did not offer any argument that the burden should shift to the Respondent. The Petitioner did however state that he was only appealing the land assessment. The subject property's land assessment increased from $66,700 in 2011 to $81,400 in 2012. The total assessment, however, decreased from $282,700 in 2011 to $244,800 in 2012. *Resp't Ex. I.*

19. Generally, the Board has treated the burden-shifting statute as a threshold issue. It determines which party has the burden of proof prior to any analysis of the grounds raised in an appeal. Indiana Code § 6-1.1-15-17.2 does not expressly contemplate a separate analysis for land-only appeals. In applying the burden-shifting statute, the Board will disregard piecemeal approaches. As recently explained by the Board:

> In the context of the burden-shifting statute, the Board has held that when parcels are "purchased together and are effectively used together," the Board "views the two parcels as a single property." *Grabbe v. Carroll Co. Ass'r*, Ind. Bd. Tax Rev., Petition No. 08-002-10-1-1-00002, et al (May 10, 2012). Though one parcel did not increase 5%, when both parcels were considered together, the increase exceeded 5% and the burden shifted. The Board followed this rationale where "the house sits on both lots and could only be sold as a single property." *Budreau v. White Co. Ass'r,* Ind. Bd. Tax Rev., Petition No. 91-020-08-1-5-00058, et. al. (July 30, 2012). Similarly, the parcels will be grouped together if they are used and treated "as a single economic unit." *Waterford Dev. Corp v. Elkhart Co. Ass'r,* Ind. Bd. Tax Rev., Petition No. 20-015-08-1-4-00241, et. al. (Sept. 25, 2012).

James K. & Theresa D. Props v. Hamilton Co. Ass'r, Ind. Bd. Tax Rev., Petition No. 29-003-09-1-5-00088, et. al. (March 3, 2014).[2] In *Props,* the Board extended this approach to parcels not on appeal: "The Board finds that all parcels that form a single unit, whether on appeal or not, may be considered for purposes of applying the burden-shifting statute." This rationale was similarly followed in *Koziarz v. Marshall Co. Ass'r,* Ind. Bd. Tax Rev., Petition No. 50-017-12-1-5-00012 et. al. (May 22, 2014): "While the Petitioner only appeals the land assessments and not the improvement, he fails to rebut the Respondent's evidence that the parcels form a single economic unit." Based on the foregoing, the Board holds that the burden-shifting statute should be applied to the subject property's total assessment. Here, the total assessment decreased from 2011 to 2012. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

Analysis

20. The Petitioner failed to make a prima facie case for reducing the 2012 land 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 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. *Id*. Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id*. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed 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.

b) Regardless of the method used, a party must explain how the evidence relates to 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 Twp Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2012, assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).

c) Here, the Petitioner contends that his 2012 land assessment is too high. In support of his contention, he submitted a spreadsheet with assessment and sales data for eight comparable Lake Latonka properties. He calculated the total amount of square footage of land for each lot, and then divided that square footage by the property's assessed value attributable to the land. Using this methodology, he computed a requested land assessment of $63,400. The Petitioner also offered property record

[2] *See also Mac's Convenience Stores, LLC v. Hamilton Co. Ass'r,* Ind. Bd. Tax Rev., Petition No. 29-006-12-1-4-02050 (November 14, 2014)

cards for three vacant parcels and an improved neighboring property, which, according to his calculations, all have land assessments lower than his property.

d) The Petitioner purports to have used the sales-comparison approach to prove the value of his land. But to effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *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.* Here, the Petitioner failed to provide the analysis as required by *Long*.

e) Further, the Petitioner's spreadsheet utilized the assessment values rather than the sale prices as his unit of comparison. Therefore, the Board can infer that the Petitioner's analysis is actually a comparable assessment analysis rather than a sales-comparison analysis.

f) Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1).

g) However, the determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. In other words the proponent must provide the type of analysis that *Long* contemplates for the sales-comparison approach. Here the Petitioner failed to explain if his analysis was performed utilizing generally accepted appraisal and assessment practices. As such, his evidence lacks probative value.[3]

h) Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Nevertheless, here the Respondent admitted that she discovered an error in the subject property's effective frontage. According to the Respondent, the effective frontage should be corrected in turn lowering the land assessment from $81,400 to $77,100. The Petitioner did not dispute the Respondent's concession, nor did he offer an alternative value that was supported with probative evidence. The Board therefore accepts the Respondent's concession.

[3] According to the Petitioner's calculations, the subject property is assessed at $876 per front foot, well below the median of $1,084 per front foot.

Conclusion

21. The Board finds for the Respondent. The Board also accepts the Respondent's concession that the 2012 land assessment should be reduced to $77,100.

Final Determination

In accordance with these findings and conclusions, the 2012 land assessment shall be reduced to $77,100.

ISSUED: May 28, 2015

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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>.