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

Petition No.: **79-009-12-1-5-00001**
Petitioners: **James L. & Marjorie I. Dawson**
Respondent: **Tippecanoe County Assessor**
Parcel No.: **79-08-19-405-002.000-009**
Assessment Year: **2012**

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

Procedural History

1. The Dawsons appealed their 2012 assessment to the Tippecanoe County Property Tax Assessment Board of Appeals ("PTABOA"), which mailed notice of its determination on July 12, 2013.

2. The Dawsons then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board's small claims procedures.

3. On August 22, 2014, the Board held a hearing through its designated administrative law judge, Dalene McMillen. Neither she nor the Board inspected the property.

4. James L. Dawson and Jesse Wallenfang, sales data & appeals manager for the Tippecanoe County Assessor, were sworn as witnesses.

Facts

5. The property under appeal is a single-family home located at 362 Double Tree Drive in Lafayette.

6. The PTABOA determined the following values:

   Land: $26,100 Improvements: $134,300 Total: $160,400.

7. The Dawsons requested the following assessment:

   Land: $26,100 Improvements: $129,200 Total: $155,300.

Record

8. The official record is made up of the following:

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioners Exhibit 1:	Newspaper advertisement for 340 Double Tree Drive and exterior photographs of 340, 326 and 362 Double Tree Drive and 345 Razmic Way,
Petitioners Exhibit 2: [1]	Form 131 and attachments including: - Notification of Final Assessment Determination – Form 115-I PT, - Request for Review of Assessment, - Petition for Review of Assessment by Local Assessing Official – Property Tax Assessment Board of Appeals – Form 130, - May 4, 2012 receipt for $5,000, - Inspection record from the Tippecanoe County Building Commission, - 2012 property record card ("PRC") for the subject property, - 2012 PRC for Parcel No. 79-08-19-405-003.000-009 located at 340 Double Tree Drive, - 2012 PRC for Parcel No. 79-08-19-405-004.000-009 located at 326 Double Tree Drive, - 2012 PRC for Parcel No. 79-08-19-405-008.000-009 located at 345 Razmic Way,
Respondent Exhibit 1:	Burden of Proof Analysis,
Respondent Exhibit 2:	Copy of Ind. Code § 6-1.1-15-17.2,
Respondent Exhibit 3:	Two Petitions for Correction of an Error – Form 133-I for March 1, 2011,
Respondent Exhibit 4:	PRC for the subject property,
Respondent Exhibit 5:	Assessor's analysis of the Dawsons' comparable properties,
Respondent Exhibit 6:	Chapter 3, page 26 of the Real Property Assessment Guidelines,
Respondent Exhibit 7:	PRCs and sales disclosure forms for 362 Double Tree Drive, 326 Double Tree Drive, 340 Double Tree Drive, and 345 Razmic Way,

[1] Mr. Dawson offered the Form 131 petition and attachments as evidentiary exhibits at the hearing. Although he did not label them as exhibits, the Board refers to them collectively as Petitioners' Exhibit 2.

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer has must prove its assessment is incorrect and what the correct assessment should be. 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. 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 the assessment under appeal is correct. I.C. § 6-1.1-15-17.2 (a) and (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 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 …." I.C. § 6-1.1-15-17.2(d).

10. The burden-shifting provisions do not apply, however, is the assessment under review as based on "(1) structural improvements; (2) zoning; or (3) uses; that were not considered in the assessment for the prior tax year." I.C. § 6-1.1-15-17.2(c)

11. The Dawsons' assessment increased by more than 5% between 2011 and 2012, going from $108,100 up to $160,400. But the 2011 assessment valued the home as only 62% complete, while the 2012 assessment valued it as 100% complete. Thus, the 2012 assessment included significant structural improvements that were not considered in 2011. Under those circumstances, Ind. Code § 6-1.1-15-17.2 does not shift the burden of proof, which remains with the Dawsons.

Summary of Parties' Contentions

12. The Dawsons' case:

a. The Dawsons contend their assessment is too high compared to the assessments for similar properties at 326 Double Tree, 340 Double Tree, and 345 Razmic Way. Those three homes are in the Dawsons' neighborhood. Like the Dawsons' home, all three have brick fronts. Yet two were assessed as purely wood frame, while the third was assessed as having 1/6 masonry instead of 2/6 masonry like the Dawsons' home. Similarly, two of the three homes were given a quality grade of C+1, while the

Dawsons' home was graded at C+2.[2] And the home at 326 Double Tree has a screened-in porch and a larger garage than the Dawsons' home. That property was assessed at $166,100, and the other two were assessed at $155,300 and $166,500, respectively. *Dawson testimony; Pet'rs Exs. 1-2*.

b. The Dawsons' home is inferior to those other three homes. It has major problems with its roof and siding. The Assessor's errors, however, led her to undervalue the other homes. Had she assessed those homes properly, 345 Razmic Way would have increased from $166,500 to $170,600, 326 Double Tree would have increased from $166,100 to $173,400, and 340 Double Tree would have increased from $155,300 to $156,700. *Dawson testimony; Pet'rs Ex. 2*.

c. The Dawsons also determined that 340 Double Tree was assessed at 86% of its asking price, and that the other two comparable properties were assessed at 90% and 84% of their sale prices, while the Dawsons' property, which sold for $174,900 on May 11, 2011, was assessed at approximately 92% of its sale price. *Dawson testimony; Pet'rs Ex. 2.*

d. Considering all those things, the Dawsons believe their property should have been assessed for $155,300 instead of $160,400.

13. The Assessor's case:

a. The Assessor's witness, Mr. Wallenfang, agreed that the Dawsons' property is similar to the other three properties. He also agreed that the Assessor's office was inconsistent both in how it dealt with determining whether the homes were partially brick and in assigning grade factors. But it got those things right with the Dawsons' home. The errors were in how the other homes were assessed. *Wallenfang testimony*; *Resp't Ex. 6*.

b. To demonstrate that point, Mr. Wallenfang pointed to the properties' sale prices. The three comparable properties sold between June 25, 2010, and November 30, 2012, for $169,900, $185,189, and $199,475, respectively. Those sale prices all equate to over $100/sq. ft. of living area. By contrast, the $174,900 sale price for the Dawsons' property equates to approximately $96/sq. ft. And it was assessed for even less. *Wallenfang testimony; Resp't Exs. 5, 7.*

[2] In a written narrative, the Dawsons refer to the quality grades as "C-1" and "C-2." *Pet'rs Ex. 2*. By contrast, the property record cards show grades of "C+1" and "C+2." *Id.* The Dawsons' confusion is understandable. According to the 2011 Real Property Assessment Guidelines, a grade of C+1 should increase a home's un-depreciated replacement cost by 5% and a grade of C+2 should increase those costs by 10%, while a grade of C-1 should reduce those costs by 5%. *See* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, App. A at 4-8. Here, the C+2 grade applied to the Dawson's home appears to have *decreased*, rather than increased, the replacement cost, and the C+1 grade assigned to the other properties decreased their replacement costs by even greater percentages. *See Pet'rs Ex. 2*.

Analysis

14. The Dawsons failed to prove the assessment should be reduced. The Board reaches this conclusion for the following reasons:

    a. 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). A party's 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. *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 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).

    b. In seeking a lower value, the Dawsons offered assessment data for three properties located in their neighborhood. Parties may offer evidence of comparable properties' assessments to prove the value of a property under appeal, but comparability must be determined using generally accepted assessment and appraisal practices. I.C. § 6-1.1-15-18. Conclusory statements that a property is "similar" or "comparable" to another property are not enough. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Instead, one must compare the relevant characteristics of the purportedly comparable properties to those for the property under appeal and explain how any differences between the properties affect their relative market values-in-uses. *See id.* at 470-71.

    c. While the Dawsons compared their property to the other three properties in terms of a few characteristics, they did not offer the type of analysis normally required by generally recognized assessment or appraisal practices. Nonetheless, the Assessor's witness, Mr. Wallenfang, arguably cured at least some of the deficiencies in the Dawsons' comparison analysis by acknowledging the properties were similar.

    d. Even if one assumes the Dawsons' comparative assessment data carries at least some probative weight, that analysis is far less compelling than the property's sale price from only 10 months before the relevant March 1, 2012 valuation date. That sale price, which was almost $15,000 more than the assessment, persuades the Board that the property was not assessed for more than its true tax value. If anything, the property was likely assessed for too little.[3]

[3] The Assessor did not ask the Board to increase the assessment.

e. Of course, the Dawsons claim that other properties were under-assessed to an even greater degree than their property was. The Dawsons were unclear as to what, if any, relief that entitles them. Presumably, they seek an equalization adjustment based on a lack of uniformity and equality in assessments. When a taxpayer seeks such relief, one method he may adopt is to offer assessment ratio studies, "which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). A ratio study, however, is prepared according to professionally acceptable standards and based on a statistically reliable sample of properties. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000); *see also, Bishop v. State Bd. of Tax Comm'rs,* 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994) ("A sales assessment ratio study is a scientific comparison of the assessments of properties with the sale prices of a statistically reliable sample of properties that are actually sold in the taxing jurisdiction."). Simply pointing to the ratio of assessment to sale price for two other properties[4] falls well short of what is necessary to make such a case.

Conclusion

15. The Dawsons bought their property less than 10 months before the assessment date for approximately $15,000 more than its assessment. They therefore failed to prove their property was assessed in excess of its true tax value. Similarly, while two or three properties may have been assessed at lower percentages of their true tax values than the Dawsons' property was, such a small sampling does not suffice to make a case for an equalization adjustment based on a lack of uniformity and equality in assessments.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessment should not be changed.

[4] The Dawsons compared a third property's assessment to its ask price but did not say what that property actually sold for.

ISSUED: 4/13/15

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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>.