

REPRESENTATIVE FOR PETITIONER:

William L. Demaree, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Tina Gleeson, Jefferson County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

William L. Demaree,	)	Petition No.:	39-007-13-1-5-00001
)		
Petitioner,	)	Parcel No.:	39-08-23-200-046.000-007
)		
v.	)	County:	Jefferson
)		
Jefferson County Assessor,	)	Township:	Madison
)		
Respondent.	)	Assessment Year:	2013

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

December 28, 2015

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

INTRODUCTION

1. Mr. Demaree sought a reduction in the assessment of a vacant land parcel in Jefferson County. In support of this, he testified about the sale of an adjacent parcel and provided evidence of property listings in Jefferson County. We find this evidence insufficient and order no change to the assessment.

PROCEDURAL HISTORY

2. William L. Demaree filed an appeal with the Jefferson County Assessor for a vacant land parcel located at 305 Demaree Drive in Madison. The Jefferson County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination on June 30, 2014, upholding the assessment of \$124,700 for land. Mr. Demaree then timely filed a Form 131 petition with the Board.
3. On October 7, 2015, our designated administrative law judge, Andrew Howell (“ALJ”), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.
4. The following persons were sworn as witnesses: William L. Demaree and Tina Gleeson, the Jefferson County Assessor.
5. Mr. Demaree presented the following exhibits:

Petitioner’s Exhibit 1:	Multiple Listing Service (MLS) listings from a real estate publication (pages 57 and 58),
Petitioner’s Exhibit 2:	MLS listings from a real estate publication (pages 45 and 46).
6. The Assessor presented the following exhibits:

Respondent’s Exhibit 1:	Document packet containing subject property record card (PRC), aerial map, PRC for parcel 39-08-23-200-047.000-007, PRC for parcel 39-08-17-000-004.006-006, 2013 annual adjustment narrative and Commercial Vacant Ratio Report.
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7. The following additional items are part of the record: (1) the Form 131 and attachments; (2) all notices and orders issued by the Board.

BURDEN

8. 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. If the taxpayer makes a prima facie case, the assessor must offer evidence to impeach or rebut the taxpayer's evidence.
9. Indiana Code § 6-1.1-15-17.2 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. Neither circumstance applies here. Mr. Demaree did not appeal the property's 2013 assessment. In addition, the assessment did not change between 2012 and 2013. Thus, Mr. Demaree has the burden of proof.

FINDINGS OF FACT

Summary of the Petitioner's Contentions

11. Mr. Demaree argued that the subject property's assessment is too high as compared to the sale of an adjoining property. He testified that the adjacent property was assessed at \$56,000 per acre for a total of \$274,900 for 4.89 acres. He noted that it sold on February 11, 2014, for \$320,000.¹ Based on that comparison, he posited that the subject property would sell for about \$73,620 per acre for a total of \$97,000 for 1.32 acres.² *Demaree testimony, Resp't Ex. 1.*

¹ The property record card submitted by the Assessor indicates the sale price was actually \$360,000.

² The \$73,620 per acre amount appears to be derived from the correct sale price of \$360,000.

12. Mr. Demaree also submitted evidence of real estate listings for two properties in Jefferson County. The first was for a parcel of similar size to the subject property. That property was listed for \$74,900. The second was for a parcel at the same location as his property, but twice the size. He testified that it was listed for \$199,500, but he thought that if the owners received an offer of \$100,000, they would probably accept it. The owners of this property also owned the previously discussed adjacent lot before they sold it in 2014. *Demaree testimony; Pet'r Exs. 1 and 2.*

Summary of the Assessor's Contentions

13. The Assessor testified that Jefferson County has had a depressed market. There was only one sale of commercial vacant land between 2009 and 2013. Because the sale of the parcel adjacent to the subject property took place in February 2014 that information was not available for the 2013 assessment and was not used in the ratio study analysis. After the sale, the County made the necessary adjustments to the subject property. *Gleeson testimony; Resp't Ex. 1.*

ANALYSIS

14. 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, for 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. *See Id.* 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, sales or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable

appraisal principles. MANUAL at 2, 3; *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).

15. In any case, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *See 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 2013 assessments, the valuation date was March 1, 2013. *See* I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

16. Mr. Demaree presented evidence of the sale and assessment of an adjacent lot. While a time-relevant sale of an adjacent property could be enough evidence to warrant a change in assessment, the sold property must have demonstrated comparability to the subject property. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long*, 821 N.E.2d at 471. Rather, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of a purportedly comparable property. *Id.* at 471. Mr. Demaree offered no evidence of the comparability of the sale property beyond that it was adjacent to the subject property. We find this insufficient. While location is an important factor, two adjacent properties may have vastly different values based on factors such as size, shape, access, visibility, topography, etc. The aerial photo presented by the Assessor also indicates that some of these factors may vary between the two properties. Without more explanation, we are unable to find this sale sufficient to warrant a change in assessment.³ The evidence regarding the 2013 assessment of the adjacent parcel fails for the same reasons.

17. Mr. Demaree also presented two listings of vacant land in Jefferson County. While real estate listings may be probative, they require the same sort of analysis as comparable sales. Mr. Demaree did testify about one aspect of comparability for each parcel (size

³ We note that we do not find the Assessor's use of the sale in making the 2014 assessment of the subject property to be an admission of comparability.

and location, respectively), but this is insufficient to demonstrate comparability under *Long*.

18. Mr. Demaree failed to make a prima facie case that the subject property was over assessed for 2013. 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. Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E. 2d 1215, 1221-22 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with these above findings and conclusions, the 2013 assessment for the subject property will not be changed.

This 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>>.