

REPRESENTATIVES FOR PETITIONERS: Mathew & Vanessa DuSablou

REPRESENTATIVE FOR RESPONDENT: Susan Bevers, Jackson County Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Mathew & Vanessa DuSablou	)	Petition:	36-008-18-1-1-00182-19
	)		
Petitioners,	)	Parcel:	36-66-34-300-045.004-008
	)		
v.	)	County:	Jackson
	)		
Jackson County Assessor,	)	Assessment Year:	2018
	)		
Respondent	)		

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Appeal from the Final Determination of the  
Jackson County Property Tax Board of Appeals

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**December 16, 2019**

**Final Determination**

The Indiana Board of Tax Review having reviewed the facts and evidence, now finds and concludes as follows:

**Introduction**

1. In this assessment appeal, the Jackson County Assessor offered a probative appraisal supporting the assessment of Mathew and Vanessa DuSablou's property. The DuSablou's failed to effectively impeach that appraisal or offer probative valuation evidence of their own. While they offered some anecdotal evidence that a few properties from the same county were assessed for lower percentages of their respective true tax values than the DuSablou's property, they did not offer the type of reliable statistical analysis necessary to make an actionable claim for a lack of uniformity and equality.

## **Procedural History**

2. The DuSablons contested their initial 2018 assessment of \$372,000. On December 11, 2018, the Jackson County Property Tax Assessment Board of Appeals issued its determination reducing the assessment to the following values:  

Land: \$28,500          Improvements: \$335,800          Total: \$364,300
3. The DuSablons timely filed a Form 131 petition with the Board. On September 18, 2019, our designated administrative law judge, Jeremy Owens (“ALJ”), held a hearing. Neither he nor the Board inspected the property.
4. The DuSablons appeared pro se. Susan Bevers appeared as counsel for the Assessor. The following people were sworn as witnesses: Jackson County Assessor Katie Kaufman; Richard L. Borges II, an appraiser hired by the Assessor; Mathew DuSablon; and Vanessa DuSablon. For ease of reference, we will refer to the DuSablons individually by their first names.

## **Record**

5. The official record includes the following:  

Petitioners Exhibit A: Property Record Card (“PRC”) for the DuSablons’ property  
Petitioners Exhibit B: PRC for 2774 N. Co. Road 950 E.  
Petitioners Exhibit C: PRC for 1795 N. State Road 11  
Petitioners Exhibit D: PRC for 8 N. State Road 11  
Petitioners Exhibit F: Form 115 notification  
Petitioners Exhibit G: PRC for 3839 N. Co. Road 925 E.  
Petitioners Exhibit H: PRC for 2754 N. Co. Road 1000 E.  
Petitioners Exhibit I: PRC for 6889 E. Co. Road 900 N.<sup>1</sup>

Respondent Exhibit A: Appraisal report by Richard Borges, II  
Respondent Exhibit B: PRC for 10420 E. Co. Road 250 N.

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<sup>1</sup> On a cover sheet submitted with their exhibits, the DuSablons indicated that they would be offering Borges’ appraisal report as Petitioners’ Exhibit E. They did not actually offer the report, although the Assessor offered it as Respondent’s Exhibit A.

Respondent Exhibit C: Form 115 determination  
Respondent Exhibit D: PTABOA hearing sign-in sheet

6. The record also includes the following: (1) all petitions, briefs, motions, or other documents filed in this appeal; (2) all notices and orders issued by the Board or ALJ; (3) an audio recording of the hearing.

### **Objections**

7. The DuSablons objected to Respondent’s Exhibit B—the property record card (“PRC”) for their property—on grounds that it contained incorrect information. The ALJ took the objection under advisement. We overrule it. Assuming the Assessor offered the PRC solely to establish facts about the property’s physical characteristics, the DuSablons’ objection would go to the weight we should afford to those factual assertions rather than to the exhibit’s admissibility. But the PRC was relevant for an independent purpose—to show how the property was assessed. If nothing else, that provides background information. *See Hill v. Gephart*, 62 N.E.3d 408, 410 (Ind. Ct. App. 2016) (explaining that relevant evidence “often includes facts that merely fill in helpful background information . . . even though they may only be tangentially related to the issues presented”).

### **Burden of Proof**

8. Generally, a taxpayer seeking review of an assessing official’s determination has the burden to prove that an assessment is incorrect and what the correct assessment should be. 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, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b), (d).

9. The DuSablons' assessment increased by more than 5% between 2017 and 2018. The parties therefore agreed that the Assessor had the burden of proof.

### **The DuSablons' Property**

10. Built in 2001, the DuSablons' home is located on a 10.28-acre parcel in a rural area outside Seymour. They bought the property for \$380,000 in December of 2014. It is located in an unplatted agricultural neighborhood.

### **Contentions**

#### **A. The Assessor's contentions**

11. After hearing the DuSablons' appeal, the PTABOA sent a field representative from Tyler Technologies, the company the Assessor has contracted to do field research on the property. The representative noted several discrepancies between what the PRC reported and what actually existed at the property. In some instances, correcting the discrepancies increased values assigned to certain features. In other instances, it decreased those values. The PTABOA adopted the field representative's corrections, the net effect of which was to lower the original assessment from \$372,000 to \$364,300. *Kaufman testimony; Resp't Ex. B.*
12. The Assessor hired Borges to appraise the property. He has 45 years of experience as a certified appraiser, and he holds several designations from the Appraisal Institute. *Kaufman and Borges testimony.*
13. Borges inspected the home's exterior and interior. His appraisal report indicates that the detached garage/shop had an overhead bay door with an automatic operator. At the hearing, Borges acknowledged that the photographs he took do not show the automatic operator and conceded that the reference could have been an error. He also referenced sheds when describing the property, but he explained that their contribution to the

property's value was so minimal as to not amount to even a rounding error. *Borges testimony; Resp't Ex. A.*

14. Although Borges considered all three generally accepted appraisal approaches, he decided against developing the cost or income approaches. In his view, the cost approach would have little meaning for a home—like the DuSablons' home—that is roughly 20 years old. Similarly, the income approach is used to value investment properties, and the DuSablons' do not rent the property out. Borges therefore based his analysis on the sales-comparison approach. *Borges testimony; Resp't. Ex. A.*
15. Borges began his analysis by identifying three comparable properties. Two were from the same township (Jackson) as the DuSablons' property and one was from Hamilton Township. All three were outside the city limits and were within two miles of the DuSablons' property. None were part of a platted subdivision. The sale prices ranged from \$247,500 to \$419,000. *Borges testimony; Resp't. Ex. A.*
16. Next, Borges adjusted the sale prices to account for relevant ways in which those properties differed from the DuSablons' property, including things such as lot size, age and condition, construction quality, and the number of bedrooms and bathrooms. For example, as the DuSablons pointed out, Borges' first comparable sale involved a newer house in a superior location. So he made negative adjustments of \$10,000 and \$20,000, respectively, to account for those differences. He similarly accounted for differences between the size and age of the home from his third comparable sale and the DuSablons' home. Although the sales required large gross adjustments, Borges explained that was unavoidable in a market segment with relatively few competitive sales over any particular timeframe. *Borges testimony; Resp't. Ex. A.*
17. The adjusted sale prices ranged from \$383,000 to \$442,500. Borges gave the greatest weight to two sales that required the smallest net adjustments. He settled on a market value-in-use of \$400,000 as of January 1, 2018. *Borges testimony; Resp't. Ex. A.*

## B. The DuSablons' Contentions

18. According to Vanessa, the DuSablons continually had to call the Assessor's office to correct errors. Those errors included:
- Adding the home's geo-thermal HVAC system, which was original to the property, to PRC;
  - Including the home's dormers as part of the second story when they are actually just attic space that is barely accessible;
  - Assessing mini-barns as permanent structures and valuing them for more than their purchase prices; and
  - Listing an unfinished basement utility room as finished space.

The PTABOA corrected the amount of finished area in the basement and reduced the age of a utility shed. But it also made other changes, such as adding a fireplace. The DuSablons testified that they did not make any improvements to the property other than some painting. Yet both the Assessor and the PTABOA substantially increased the assessment over the previous year's level. *Vanessa and Mathew DuSablons testimony.*

19. The DuSablons pointed to what they viewed as problems with the PTABOA's hearing and determination. Several fields on the Form 115 determination were left blank. According to the DuSablons, the PTABOA did not address their concern that taxes can increase yearly without any cap or ceiling. Nor did the PTABOA respond to their request for an unbiased assessment based upon comparable properties they presented at the PTABOA hearing. They pointed to three properties from Jackson Township, two of which (2774 N. County Rd. 950 E. and 8 N. State Rd. 11) they believed were more desirable than their property but were assessed for less. Those two properties featured amenities such as a chef's kitchen, a double-mirrored staircase, a pool and pool house, a pond, sidewalks, and a pergola. Yet both were assessed for significantly less than the DuSablons' property. The first one was assessed for only \$332,800, yet it sold for

\$512,500 in October 2017. The third property was located on a parcel that was roughly the same size as the DuSablons' site but was assessed for only \$287,100. That property's assessment actually decreased between 2017 and 2018. *Vanessa DuSablons testimony and argument; Pet'r Exs. B-D, F.*

20. As for Borges' appraisal, Vanessa believed that he compared "apples to oranges" because one of his comparable sales involved a newer home that was closer to town than the DuSablons' property, while another was on the other side of town and had an older, smaller home. Vanessa also claimed that the listing and purchase prices for that second property were unreasonably high. *Vanessa DuSablons testimony and argument; Pet'rs Exs. G-I.*

### **Analysis**

21. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value in use," which it in turn defines as "[t]he 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." MANUAL at 2.
22. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, a USPAP-compliant, market-value-in-use appraisal is often the best evidence of a property's true tax value. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer any other evidence that is relevant to a property's true tax value, such as actual construction costs, sales information for the property under appeal, and sales or assessment information for comparable properties.

MANUAL at 3; *see also Eckerling*, 841 N.E. at 674; I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals). Simply attacking the methodology used to compute an assessment or strictly applying the assessment guidelines normally does not suffice to make a case. *See Eckerling*, 841 N.E.2d at 678. In any case, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for the year under appeal was January 1, 2018.

23. The Assessor provided compelling valuation evidence in the form of Borges' USPAP-compliant appraisal opinion. Borges applied a generally accepted valuation methodology—the sales-comparison approach—to estimate the property's value as of the relevant January 1, 2018 valuation date. He explained why the properties he used were comparable to the DuSablons' property, and he adjusted their sale prices to account for relevant differences.
24. The DuSablons did little to impeach Borges' appraisal. They pointed to Borges' erroneous reference to an automatic overhead door operator. But the error did not affect his valuation conclusions. The DuSablons' also attacked Borges' sales-comparison analysis, claiming that differences in things like size, age, and location made the properties from his analysis incomparable to their property. Borges, however, adjusted the sale prices to account for those differences. The DuSablons did not offer anything to challenge the validity of those adjustments beyond Vanessa's flat assertion that she disagreed with them, which is precisely the type of conclusory assertion to which we cannot give any weight. The same is true for Vanessa's unsupported claim that the buyers from one of Borges' comparable sales paid more than market value.
25. The DuSablons also failed to offer probative valuation evidence of their own. They centered much of their presentation on identifying what they described as a history of errors by the Assessor and PTABOA in identifying their property's physical



characteristics. In some instances, they apparently agreed with what assessing officials ultimately identified, but complained that the officials had not included those things in prior assessments. In any case, the DuSablons' assertions all go to methodology used by the Assessor and PTABOA in computing the assessment rather than to proving the property's market value-in-use.<sup>2</sup>

26. As for the DuSablons' own attempts to compare their property to three other properties from Jackson Township, they failed to apply generally accepted appraisal or assessment practices. While Vanessa compared the properties in terms of a few characteristics, she ignored many others that affect value. And she did nothing to adjust for differences. That falls far short of the type of analysis required by generally accepted appraisal or assessment practices. *See, e.g., Long*, 821 N.E.2d at 471-72; (finding that sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value); *Indianapolis Racquet Club, Inc. v. Marion Cnty. Ass'r*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014) (rejecting claim based on assessments of other properties because the taxpayer failed to explain how they compared to its property or to account for distinguishing characteristics that would affect value).
27. Our inquiry does not end there. The DuSablons also pointed to the fact that four of the properties discussed during the hearing, including all three from Borges' appraisal, sold within months of January 1, 2018, for prices that were substantially higher than their 2018 assessments. We interpret that as a claim for relief based on a lack of uniformity and equality in assessments, although the DuSablons did not phrase it precisely in those terms.

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<sup>2</sup> The DuSablons' additional criticisms of the PTABOA's hearing and determination, such as the PTABOA failing to address all their arguments or leaving certain fields blank in its Form 115 determination are beside the point. Our hearings are de novo, and those criticisms do not address the issue before us: What is the property's true tax value?

28. Unlike the issue of valuation, where Ind. Code § 6-1.1-15-17.2 shifted the burden to the Assessor to prove that the assessment was correct, the DuSablons had the burden of proving an actionable lack of uniformity and equality. *See Thorsness v. Porter County Ass'r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (explaining that the predecessor to Ind. Code § 6-1.1-15-17.2 does not apply to claims based on a lack of uniformity and equality).
29. Uniformity and equality in assessment may be measured through an assessment ratio study. *Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such a study “compare[s] the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Thorsness*, 3 N.E.2d at 51 (citation omitted). Where a ratio study shows an actionable lack of uniformity, a taxpayer may be entitled to an equalization adjustment bringing its assessment to the common level shown by the study. In providing guidance about how to compile and evaluate the data necessary for a ratio study, the DLGF has incorporated into law the International Association of Assessing Officers’ (“IAAO”) Standard on Ratio Studies (July 2007). *See* 50 IAC 27-1-4; *see also*, *Thorsness*, 3 N.E.2d at 53-54 (*citing* to predecessor to 50 IAC 27-1-4).
30. In *Thorsness*, the taxpayer offered evidence showing that while his property was assessed at 99.9% of its sales price, six other properties in his subdivision were assessed at an average of 79.5% of their recent sales prices. *Thorsness*, 3 N.E.3d at 50. At the administrative level, we rejected the taxpayer’s claim on grounds that it neither conformed to professionally accepted standards, nor was based on a statistically reliable sample of properties. *Id.* Although the Tax Court recognized that the taxpayer’s evidence was relevant, it affirmed our conclusion that the evidence lacked probative value to show his assessment exceeded the common level of assessment for the township. *Id.* at 54.
31. While the DuSablons offered some evidence from which sales-to-assessment ratios might be drawn for three properties from Jackson Township and one property from Hamilton

Township, it falls far short of what is contemplated by the IAAO Standard and the DLGF's rules. Indeed, it is strikingly similar to what the taxpayer offered in *Thorsness*. As in *Thorsness*, the DuSablons' evidence does not suffice to show an actionable lack of uniformity and equality or entitle the DuSablons to an equalization adjustment.

### **Final Determination**

32. The Assessor met her burden by offering a USPAP-compliant appraisal in which Borges estimated the property's market value-in-use at \$400,000, although she did not ask us to increase the assessment above its current level of \$364,300. The DuSablons failed to impeach Borges' appraisal or offer probative valuation evidence of their own. They similarly failed to make a prima facie case for an equalization adjustment based on a lack of uniformity and equality. We therefore find for the Assessor and order no change to the assessment.<sup>3</sup>

We enter this final determination on the date first written above.

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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

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<sup>3</sup> The Assessor classified the land beyond a one-acre homesite as agricultural. Borges, however, treated the entire 10.28-acre parcel as residential in his appraisal. The DuSablons did not make any argument as to what, if any, effect that might have on whether Borges' appraisal was an appropriate indicator of the property's overall market value-in-use. We will not make that argument for them. We do note that Borges valued the property at \$35,700 more than it was assessed for. And as shown by his adjustments for differences in site size, he attributed relatively minor contributory value to land beyond the homesite.

**- 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>>.