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

Petition No.: **64-021-16-1-5-00364-18**
Petitioner: **Martha Anne Gavagan**
Respondent: **Porter County Assessor**
Parcel No.: **64-04-32-156-004.000-021**
Assessment Year: **2016**

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

Procedural History

1. Petitioner initiated the 2016 appeal with the Porter County Property Tax Assessment Board of Appeals ("PTABOA"). The PTABOA issued its notice of final determination on February 2, 2018. On March 15, 2018, Petitioner filed a Form 131 petition with the Board.

2. Petitioner elected to have the appeal heard under the Board's small claims procedures. Respondent did not elect to have the appeal removed from those procedures.

3. Ellen Yuhan, the Administrative Law Judge ("ALJ") appointed by the Board, held the administrative hearing on June 27, 2018. Neither the ALJ nor the Board inspected the property.

4. Petitioner Martha Anne Gavagan was sworn as a witness. Terri Newhard and Peggy Hendron, Deputy Assessors, were sworn as witnesses for the Respondent.

Facts

5. The subject property is a single-family dwelling located at 1252 Trillium Drive, Chesterton.

6. The PTABOA determined an assessed value of $71,900 for the land and $125,600 for the improvements for a total value of $197,500.

7. Petitioner requested an assessed value of $48,800 for the land and $109,800 for the improvements for a total value of $158,600.

Record

8. The official record contains the following:

a. Exhibits:

Petitioner Exhibit 1:	Objection to assessment,
Petitioner Exhibit 2:	Form 115,
Petitioner Exhibit 3:	Form 11,
Petitioner Exhibit 4:	Gavagan Affidavit,
Petitioner Exhibit 5:	Heslin Affidavit,
Petitioner Exhibit 6:	Silverglade Affidavit,
Petitioner Exhibit 7:	Aerial map,
Petitioner Exhibit 8:	Land size/assessment comparison chart,
Petitioner Exhibit 9:	Curved land comparison chart,
Petitioner Exhibit 10:	Home assessment comparison chart,
Petitioner Exhibit 11:	Radtke- Kerr assessment/age comparison chart,
Petitioner Exhibit 12A-12F:	Property record cards ("PRCs") for Gavagan, Thomas, Heslin, Radtke, Jackson (2016), & Jackson (2012-2014),
Petitioner Exhibit 13:	Assessor's exhibit list of 10 homes,
Petitioner Exhibit 14:	Comparison of the 10 homes shown in Exhibit 13,[1]
Respondent Exhibit 1:	Subject PRC for 2016,
Respondent Exhibit 2:	Narrative for Wake Robin neighborhood,
Respondent Exhibit 3:	Comparable sales grid,
Respondent Exhibit 4:	Comparable properties' similarities/differences,
Respondent Exhibit 5:	PRC for 909 N 400 E (comparable 1),
Respondent Exhibit 6:	PRC for 601 Mississinewa (comparable 2),
Respondent Exhibit 7:	PRC for 829 N 400 E (comparable 3),
Respondent Exhibit 8:	Price per square foot sheet,
Respondent Exhibit 9:	Aerial of subject property with measurements,
Respondent Exhibit 10:	Land assessment recommendation,

b. These Findings and Conclusions.

c. All documents filed in the current appeal including the orders and notices issued by the Board or ALJ.

d. A digital recording of the hearing.

[1] Petitioner requested that her Brief in Support of the Review of Assessment (attached to the Form 131 petition) be considered in this determination.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving an assessment is wrong and proving what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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). A burden-shifting statute creates two exceptions to that rule.

10. 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).

11. 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 Ind. Code § 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).

12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. The assessment decreased from 2015 to 2016. Petitioner agreed she had the burden of proof.

Objections

14. Petitioner objected to Respondent's Exhibits 5, 6, and 7 because she did not have an opportunity to review them or compare them with homes in her neighborhood—but the assessor has had months to examine Petitioner's exhibits because she included them with her brief in March. Petitioner argued that if the Respondent was fair and aboveboard, copies of the evidence should have been provided automatically.

15. That argument, however, is inconsistent with our procedural rules about the exchange of evidence in small claims cases. In a small claims case, Petitioner could have requested any documentary evidence and the names of witnesses from the Assessor before the hearing. If 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. 52 IAC 3-1-5(d). The record does not indicate that Petitioner made such a request. Therefore, the Board overrules the objection.

Summary of Parties' Contentions

16. Summary of Petitioner's case:

a. Petitioner contends her land is over-assessed when compared to the size and the assessment of other properties in her immediate neighborhood. The subject land is .69 acre assessed at $71,900. Some larger properties have lower assessed values:

- The Diffenbach property across the street is .70 acre and is assessed at $66,100, or $5,800 less than the subject property.
- The Thoesen property, next door to the subject, is 1.32 acre and is assessed at $37,100, which is $34,800 less than her assessment.
- The Reeve property at 1261 Wake Robin is two houses away from her property. It is .73 acre and is assessed at $59,800.
- The Harsey property, also two houses away, is .78 acre and is assessed at $58,900, or $13,000 less than her property.
- The Alder property, one house away, is .81 acre and is assessed at $58,900.
- The Jackson property is .84 acre and is assessed at $64,600.

These assessments show there is no proportionality between the properties. *Gavagan testimony; Pet'r Ex.8; Brief.*

b. Petitioner testified that she was told the reason for the glaring differences in land assessment was based on the "goofy curve rule." Because the subject property is on a curve, her assessment is higher. According to Petitioner, this arbitrary and capricious rule causes inequity and unfairness between properties. For example, the Jackson property opposite her property is on a curve and is assessed $6,000 less than her property. The Heslin property, also on a curve, is across from the McDonald property. Both properties are approximately the same size, but Ms. Heslin is assessed at $83,500 and the McDonalds at $56,600. *Gavagan testimony; Pet'r Ex. 9; Brief.*

c. Petitioner also testified that her house is over-assessed when compared to other homes in her neighborhood. The subject property is a ranch with 2,540 square feet and a 440 square foot garage. These improvements are assessed at $125,600. That value is $49 a square foot. The Thomas home behind her property is 50 square feet bigger than the subject property and the garage is 1,008 square feet, but those improvements are assessed at $109,800. That value is $42 a square foot. The Radtke home is the largest house in the neighborhood with 3,328 square feet. It has a 660 square foot garage, four bedrooms, two baths and 11 porches, decks, patios and sheds.

The improvements are assessed at $95,100. That value is $28 a square foot. *Gavagan testimony; Pet'r Ex. 10; Brief.*

d. Petitioner testified that a PTABOA member told her the difference in assessed value between the Radtke home and the Gavagan home was because the Radtke home is 10 years older. Homes built in this neighborhood at the same time as the Radtke home are not assessed anything close to $28 a square foot. The Kerr home across the street from the Radtke home was built the same year as the Radtke home, but it is assessed at $65 a square foot. *Gavagan testimony; Pet'r Exs. 10 & 11; Brief.*

e. In attempting to support the assessment, Gavin Fisher offered a list of 10 home sales from 2015, but none of them are in Wake Robin Fields. Five of those homes are in Chesterton or Porter, towns that have sewers, gutters, sidewalks and curbs. The Gavagan home is in unincorporated Porter County. The remaining 5 homes are in Graham Woods, a subdivision across the road from Wake Robin Fields. Although these properties were built at approximately the same time, only one of those purported comparables is a ranch like the subject property. *Gavagan testimony; Pet'r Ex. 13; Brief.*

f. According to Petitioner, the assessor's list of sale prices should not be applied to the Gavagan property because it was not applied to other homes in the neighborhood. If it had been used, the other homes in the neighborhood would have higher assessments. Petitioner believes the list was created after the fact in order to bolster the Assessor's position. *Gavagan testimony; Pet'r Exs. 13 & 14; Brief.*

g. Finally, Petitioner contends there was a lack of due process at the PTABOA hearings. On one occasion, as Petitioner was making her presentation about the inequity of the Radtke assessment, PTABOA Chairman Sommers walked to the back of the room to converse with the Assessor. During his absence, another Board member, Nancy Kolasa offered explanations for the Radtke discrepancy—one based on age, the other based on an alleged glitch that was corrected. Neither argument was offered by the Assessor's representative. At another PTABOA hearing, Sommers refused to listen to her and turned his back to her when she was speaking about the inequity of assessments. This behavior does not provide an impartial setting or ensure due process. It creates a hostile environment. *Gavagan testimony; Pet'r Exs. 4-6; Brief.*

17. Summary of Respondent's case:

a. The subject neighborhood is valued based on a front foot base rate and not acreage. Unlike the subject property, most of the lots in this neighborhood are rectangular or square shaped. For a pie-shaped lot such as this one, the effective frontage must be determined. The subject property was measured again and the effective frontage was determined to be 181 feet with a depth of 171 feet. Applying negative influence factors for excess frontage (-5%) as well as for size and shape (-10%) would lower the 2016 land value to $64,800, which the Assessor "recommends." But the 2016 land value cannot be reduced to $48,800 (the 2017 value) because that 2017 value is

based on a different land order with different land rates and different guidelines for applying influence factors. *Hendron testimony; Resp't Exs. 9 & 10.*

b. The assessment considers the subject property to be in a neighborhood that has three subdivisions, Wake Robin Fields, East Wake Robin, and Brummitt Acres. The houses in that neighborhood range from 1,079 square feet to 3,513 square feet. Most were built between 1955 and 1979. Because there were few sales in that neighborhood, comparable sales from the Chesterton/Porter area were used. The sales are ranch-style houses in average condition with some brick construction. Respondent determined the characteristics that required adjustment based on market reaction. Differences between the comparable properties and the subject property were deemed either superior or inferior, but they were not quantified as dollar amounts. The adjusted sale prices per square foot ranged from $73.55 to $109.35. The reconciled range was $90-$91 per square foot. The subject property is assessed at $77.76 per square foot. *Hendron testimony; Resp't Exs. 2-8.*

c. Petitioner presented 2017 PRCs. While those cards show total assessed values for 2016, they do not reflect the actual 2016 land computations. Further, the improvement values could have changed because the local multiplier changes every year, depreciation could change, and items on the cost ladder can change. So, there could be differences between what is on the 2016 and 2017 PRCs. *Hendron testimony; Pet'r Exs. 12A-12F.*

d. The assessments are based on replacement cost new developed from the cost ladder for the type of house involved. Petitioner's house is a larger ranch house. The valuation for the subject property is more for that first floor square footage than the comparables because the comparables have less first floor area. Petitioner's house also has 4/6 brick construction and a basement. Those characteristics add to the cost. *Hendron testimony.*

Analysis

18. Petitioner failed to make a prima facie case that the 2016 assessment is incorrect or what a more accurate valuation might be. Nevertheless, Respondent offered proof that the land value should be reduced and we accept that concession. The Board reached its decision for the following reasons:

a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the 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 the market value-in-use of a property, a party may offer evidence that is consistent with the DLGF's definition of true tax value. An appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township 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 accepted 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. Regardless of the method used to prove a property's true tax value, a party must explain how its 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for 2016 was January 1, 2016. Ind. Code § 6-1.1-2-1.5.

c. Petitioner challenged her assessment by comparing it with assessments of purportedly comparable properties. Parties can use 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. But the determination of whether the properties really are comparable must be based on generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18(c); s*ee also Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r,* 15 N.E.3d 150 (Ind. Tax Ct. 2014). This requirement applies to both sales comparables and assessment comparables. In other words, the proponent must provide the type of comparability analysis that *Long* contemplates. *See Long*, 821 N.E.2d at 471.

d. The facts and analysis Petitioner presented are not sufficient for any meaningful conclusions about the accurate valuation of her property based on comparison with her neighbors' properties and their assessments.

e. Petitioner presented assessments for 13 properties in her neighborhood. She offered some evidence about lot sizes, the assessed values and the assessed value per square foot. But it is not enough for the Petitioner to merely show that her property is assessed for more per square foot than some of her neighbors. Again, meaningful comparison requires establishing specifics about similarities and differences and establishing how any differences impact the relative value of the comparable. The undisputed fact that the assessed values for these neighborhood lots were determined on a front foot basis makes this point particularly relevant. The evidence shows the subject property is "pie-shaped" with its frontage being on a curved street and that frontage for the subject property is relatively long. Although Petitioner's Exhibit 7 provides some information about the shape of a few other lots and Petitioner's Exhibit 9 purports to be a "curve land comparison," Petitioner's attempted comparison with the assessed values of other properties failed to deal with lot shape or front footage in a meaningful way. Petitioner mentioned the "goofy curve rule," but her arguments failed to recognize that she was attempting to compare land values determined on a front foot basis while ignoring how much frontage each lot has. And Petitioner failed to establish how her land value comparison of value per square foot proves anything meaningful in support of this case. We conclude that Petitioner's fundamental disagreement is with using front foot land valuation methodology. But

here she failed to provide substantial probative evidence that use of front foot valuation methodology has not resulted in an accurate valuation for the subject property.

f. Petitioner contends her improvements are over-assessed when compared to other homes in her neighborhood. She provided the "year built", but focused almost entirely on the square footage of each home in calculating an assessed value per square foot—trying to show that her assessment is too high. This sort of presentation is far too simplistic.[2] To repeat, the Petitioner's case does not contain the detail and analysis for any meaningful conclusion about the correct value of the subject property based on the purported comparables. The Board finds little, if any, probative value in Petitioner's presentation of property record cards and lists of assessment comparisons in an effort to show disparity. And we will not make that case for her. The Petitioner merely pointed to what she believes are inconsistent assessments between the purportedly comparable properties and the subject property. Whether the Petitioner offered the assessment information in an attempt to prove the subject property's true tax value, or to claim she was entitled to an equalization adjustment based on a lack of uniformity and equality, she failed to offer sufficient probative evidence or analysis on either point.

g. Petitioner's claim for an equalization adjustment based on a lack of uniformity and equality in assessments fails, because as the Tax Court explained in *Westfield Golf Practice Center,* the focus of Indiana's assessment system has changed from the application of a self-referential set of regulations to a question of whether a property's assessment reflects the external benchmark of market value-in-use. *See, Westfield Golf Practice Center, LLV v. Washington Twp. Assessor,* 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). One way to prove a lack of uniformity and equality under Article X, Section 1 of the Indiana Constitution is to present assessment ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id.* at 399 n.3. The taxpayer in *Westfield Golf Practice Center* lost its appeal because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id.* at 399. Here, the Petitioner's uniformity-and-equality claim fails for the same reason, she did not show the market value-in-use for any of the properties she based her claim on.

h. Petitioner did little more than challenge the Assessor's methodology in computing the assessment. She provided the assessed values for other properties, but the record lacks market-based evidence to compare with the assessments. The Tax Court has

[2] For example, Petitioner claimed the Thomas home and the Radtke home have more square footage than hers, but have lower assessed values. Respondent, however, offered evidence that the above-ground living area of the subject property is 2,540 square feet, which actually is more than the above-ground living area of the Thomas home (with 2,192 square feet) or the Radtke home (with 2,336 square feet). Petitioner did not dispute this distinction. She merely ignored it. This point illustrates the inadequacy of Petitioner's attempted comparisons with other properties.

held this type of showing is insufficient to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 678 (Ind. Tax Ct. 2006).

i. Petitioner complained that the PTABOA was biased and certain members did not listen to her arguments. The Board's proceedings are *de novo*. The PTABOA's conduct did not hinder the Petitioner's ability to present relevant evidence and argument during the Board's hearing. See Ind. Code § 6-1.1-15-4. Therefore, at this point the PTABOA's conduct is irrelevant.

j. Petitioner failed to make a prima facie case for changing the assessment. Where a Petitioner has not supported its 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).

k. Nevertheless, Respondent presented evidence that the land should be assessed at $64,800. The Board accepts the Respondent's explanation as a concession.

CONCLUSION

19. Petitioner failed to make a prima facie case for changing this assessment, but Respondent conceded the land value should be only $64,800.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2016 land value should be changed to $64,800.

ISSUED: September 6, 2018

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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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.