

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

**Petition:** 64-018-19-1-5-01167-19  
**Petitioner:** Linda J. Gernat  
**Respondent:** Porter County Assessor  
**Parcel:** 64-11-01-129-010.000-018  
**Assessment Year:** 2019

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Linda J. Gernat contested the 2019 assessment of her property located at 27 S. Kenworthy in Valparaiso. The Porter County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$84,000 (land at \$6,800 and improvements at \$77,200).
2. Gernat filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On September 16, 2020, Ellen Yuhan, our designated administrative law judge (“ALJ”) held a hearing on Gernat’s petition. Neither she nor the Board inspected the property.
3. Gernat appeared pro se. Steve Larock appeared as a witness for Gernat. The Assessor appeared by Terry Newhard, Assessment Specialist III and Peggy Hendron, Residential Real Estate Supervisor. All four were sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Respondent Exhibit 1: INCAMA note with changes made in 2018 for 2019 assessment
  - Respondent Exhibit 2: 2013 Multiple Listing Service (“MLS”) report with photographs and the 2014 property record card
  - Respondent Exhibit 3: 2016 reassessment note, exterior photographs and property record card
  - Respondent Exhibit 4: 2018 MLS report with photographs
  - Respondent Exhibit 5: Subject property record cards for 2018 and 2019
  - Respondent Exhibit 6: Property record card for 28 S. Kenworthy
  - Respondent Exhibit 7: Property record card for 30 S. Fish Lake

Respondent Exhibit 8: Property record card for 33 S. Kenworthy  
Respondent Exhibit 9: Sales disclosure form for 27 S. Kenworthy  
Respondent Exhibit 10: Department of Local Government Finance  
("DLGF") fact sheet  
Respondent Exhibit 11: Notes from the Board's website

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

### **OBJECTIONS**

5. Gernat objected to Respondent Exhibit 2 because she did not have access to those records when she purchased the property, and she had no way of knowing that the renovations depicted therein had not been taken into consideration for assessment purposes. The property's valuation should have been increased prior to 2019 to reflect them. Further, the roof was not 100% new nor was a new well installed as shown in the exhibit. Gernat also objected to Respondent Exhibit 6, a property record card for 28 S. Kenworthy because, while that property underwent renovations, it was only assessed at \$63,400 for 2019. Our ALJ took both of Gernat's objections under advisement.
6. Because we conclude that the exhibits were both at least minimally relevant to the issue at hand, we overrule Gernat's objections. To the extent Gernat disagreed with the reliability or accuracy of the information contained in the exhibits, she was free to try and impeach or rebut it. We note, however, that their inclusion does not affect the outcome of our determination.

### **BURDEN OF PROOF**

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. 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) and (d).
8. Here, the property's value increased by more than 5% from 2018 to 2019, and the Assessor agreed that he therefore bears the burden of proof.

## SUMMARY OF CONTENTIONS

9. The Assessor's case:

- a. Gernat's claim that the assessment of the improvements is incorrect is not supported by the evidence. The 2013 MLS report shows the subject property prior to the renovation. The 2018 MLS report shows the property after the renovation. The upgrades to the property, including the addition of air conditioning, warranted a change in grade and condition for the 2019 assessment. While Gernat contends the amenities shown on the MLS report are incorrect, she did not present any evidence to support that claim. *Newhard testimony; Resp't Exs. 1, 2, 4, 5.*
- b. Gernat maintains that certain properties are assessed at a lower valuation. Properties that Gernat used as examples were 28 S. Kenworthy, 30 S. Fish Lake, and 33 S. Kenworthy. 28 S. Kenworthy, which was assessed for \$63,400 in 2019, is not comparable to the subject property. It is a 2-story home with a smaller main level, and it is 27 years older than the subject property. 30 S. Fish Lake is older, has a lower grade and no air conditioning. It is in fair condition and needs updates. 33 S. Kenworthy, which was assessed for \$103,600 in 2019, is larger than the subject property and was remodeled at some time. *Newhard testimony; Resp't Exs. 6-8.*
- c. The subject property was not assessed based on its sales price. The increase was due to the changes to the property and trending. If the change had been based on the sales disclosure form, its assessed value would be \$105,000, not \$84,000. Gernat purchased the subject property for \$105,000 on June 29, 2018. It had been on the market for 148 days, and the buyer and seller were motivated and well-informed. Gernat also applied for and received funding from a financial institution, and the sales price was not affected by any special financing or concessions. *Newhard testimony; Resp't Ex. 9.*

10. Gernat's case:

- a. The Assessor is not assessing like properties in the same neighborhood equitably. For example, 28 S. Kenworthy sold for \$95,000 in January 2019 but it was only assessed for \$63,400. The subject property is comparable and should be assessed at the same value. *Larock testimony.*
- b. The roof is not 100% new as stated in the MLS report. After discovering a leak, a licensed roofing contractor estimated the roof had only five years of useful life. Further, the well is not new—only the pump was replaced. *Gernat testimony; Larock testimony.*
- c. Gernat was told during the initial appeal process that it would probably be in her best interest to just accept the Assessor's valuation because there was a possibility that the

valuation would go up as a result of proceeding with a hearing. That is coercion. *Larock testimony.*

### ANALYSIS

11. The Assessor established a prima facie case supporting the assessment. Gernat failed to impeach the Assessor's evidence and failed to offer more persuasive valuation evidence of her own. The Board reached this decision for the following reasons:
  - a. 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.
  - b. 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, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, 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 this appeal is January 1, 2019. Ind. Code § 6-1.1-2-1.5(a).
  - c. As discussed above, the Assessor has the burden of proving that the 2019 assessment is correct. The Assessor's offered the sales disclosure form documenting Gernat's purchase of the property. The purchase price of a property can be the best evidence of its value. *Hubler Realty Co. v. Hendricks Cty. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). In this case, the Assessor submitted evidence demonstrating that Gernat purchased the property for \$105,000 on June 29, 2018—approximately six months before the relevant valuation date. The Assessor also demonstrated that the subject was on the market for almost five months before Gernat purchased it. Additionally, the sales disclosure form documenting the transaction further confirms that this was a valid arm's-length transaction. Gernat did not dispute any of these facts or otherwise attempt to impeach the evidence regarding her purchase. We therefore conclude the \$105,000 purchase price is probative evidence of the property's market value-in-use as of January 1, 2019.

- d. The Assessor made a prima facie case supporting the 2019 assessment of \$84,000. The burden therefore shifts to Gernat to rebut the Assessor's valuation evidence.
- e. Gernat contends that the subject property was inequitably assessed compared to similarly situated properties in the area. She claims that her property should have an assessed value equal to that of 28 S. Kenworthy, which was assessed for \$63,400 in 2019. Taxpayers may introduce assessment comparison evidence to prove the market value-in-use of a residential property as permitted by Ind. Code § 6-1.1-15-18. But a party offering assessment data must also show the properties are comparable using generally accepted appraisal and assessment practices. Because Gernat failed to do so, her assessment comparison lacks probative value.
- f. Gernat also contends that the information from the MLS reports the Assessor presented are inaccurate with respect to the condition of the roof and the well. However, she failed to present any evidence demonstrating how these purported inconsistencies affect the value of her property.
- g. Finally, Gernat claims that a county employee attempted to coerce her into accepting the Assessor's original valuation by telling Gernat that an appeal might cause her assessment to increase. We note, however, as our ALJ did, that the Form 130 Gernat filed to initiate this appeal at the county level clearly states "[a]s a result of filing this petition, the assessment may increase, may decrease, or may stay the same."
- h. Because Gernat offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2019, she failed to rebut the Assessor's prima facie case.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2019 assessment.

ISSUED: December 14, 2020

---

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>>.