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

Petition: **32-022-13-1-5-00046**
Petitioner: **Malcolm Glover**
Respondent: **Hendricks County Assessor**
Parcel: **32-10-03-352-001.000-022**
Assessment Year: **2013**

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

PROCEDURAL HISTORY

1. Petitioner filed a Form 130 petition challenging his assessment. On July 8, 2014, the Hendricks County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination upholding the assessment.

2. Petitioner responded by timely filing a Form 131 petition with the Board. He elected to proceed under our small claims procedures. On November 17, 2015, Jacob Robinson, our designated administrative law judge ("ALJ"), held a hearing. Neither he nor the Board inspected the property.

3. The following people were sworn as witnesses: Petitioner, Julie Harger, Robert E. Cheek, Lester E. Need, Gordon McIntyre, and Allen Parsons appeared for Respondent.[1]

FACTS

4. The subject property contains a home located at 70 N. County Road 625 East in Avon.

5. The PTABOA determined the following assessment:

   Land: $57,200 Improvements: $218,000 Total: $275,200.

[1]Cheek, Need, McIntyre, and Parsons, all members of the PTABOA, appeared and professed to represent Respondent. Cheek both testified and made arguments for Respondent. McIntyre similarly made an objection on Respondent's behalf. There is no indication that either was authorized to represent Respondent in proceedings before the Board. *See* 52 IAC 2-2-4 (defining authorized representatives). Nevertheless, Julie Harger, an employee of Respondent, appeared at the hearing, and an assessor's full-time employee may be an authorized representative. *See id*. Harger acquiesced to the actions of Cheek and McIntyre, and we therefore treat them as her own. We caution Respondent to either appear in person or more clearly comply with our rules on representation in the future.

RECORD

6. The official record for this matter contains the following:

   a. A digital recording of the hearing

   b.

Petitioner Exhibit 1:	Printout of "Burden Shifting Language" from the Board's website
Petitioner Exhibit 2:	Form 115 Notification of Final Assessment Determination dated July 8, 2014
Petitioner Exhibit 3:	"State Appeal" #1
Petitioner Exhibit 4:	"State Appeal" #2
Petitioner Exhibit 5:	Appraisal of subject property prepared by Gary R. Owen, dated November 24, 2014
Petitioner Exhibit 6:	Comparable Property – 7814 E. County Road 200 N.
Petitioner Exhibit 7:	Comparable Property – 6817 E. County Road 200 N.
Petitioner Exhibit 8:	Comparable Property – 4305 Gibbs Road
Petitioner Exhibit 9:	Comparable Property – 5959 E. County Road 100 S.
Petitioner Exhibit 10:	Comparable Property – 1126 Richwood Drive
Petitioner Exhibit 11:	Comparable Property – 4963 Rutledge Road
Petitioner Exhibit 12:	Comparable Property – 806 Woodridge Court
Petitioner Exhibit 13:	Comparable Property – 1510 S. County Road 525 E.
Petitioner Exhibit 14:	Subject Property – 70 N. County Road 625 E.
Respondent Exhibit A:	Pictures of the subject property
Respondent Exhibit B:	Property record card for subject property
Respondent Exhibit C:	2010 MLS Listing for subject property
Respondent Exhibit D:	October 12, 2012 letter from Malcolm Glover to Township Gail L. Brown
Respondent Exhibit E:	Form 134 Joint Report by Taxpayer/Assessor dated February 9, 2014
Respondent Exhibit F:	Form 130 petition, dated April 11, 2014
Respondent Exhibit G:	"Appeal Determination by Property Tax Appeals Board," dated June 24, 2014
Respondent Exhibit H:	Form 115 Notification of Final Assessment Determination dated July 8, 2014
Respondent Exhibit I:	Form 131 petition, dated August 6, 2014
Board Exhibit A:	Form 131 petition
Board Exhibit B:	Hearing notice
Board Exhibit C:	Hearing sign-in sheet

   c. These Findings and Conclusions

OBJECTIONS

7. Respondent objected to the admission of Petitioner's Exhibits 3 and 4, which, according to McIntyre, are proposals justifying lower assessments ($264,000 and $240,000, respectively) that Respondent gave to Petitioner as part of settlement negotiations.

8. We have repeatedly rejected attempts to use evidence of settlement negotiations to prove value. Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.,* 820 N.E.2d 1222, 1227 (Ind. 2005). .

9. Respondent's own witness, Cheek, testified to most, if not all, of what is contained in the exhibits. Respondent therefore waived any objection to their admission. That does not mean either exhibit constitutes an admission that the subject property should be assessed at the amounts reflected therein. As explained below, Cheek (on Respondent's behalf) ultimately conceded that the assessment should be reduced, and we accept that concession. But he made that concession at the hearing independently of any offer made during the course of settlement negotiations.

CONTENTIONS

10. Summary of Petitioner's case:

    a. Although the PTABOA told Petitioner that a property's assessment equals its market value, it contradicted that proposition by saying the following in its determination: "The true tax value assessed against the property is not exclusively or necessarily identical to fair market value."[2] *Glover Testimony; Pet'r Ex. 2.*

    b. Petitioner offered an appraisal of the subject property prepared for refinancing purposes. Robert T. Miles, a trainee appraiser, worked under the direct supervision of a certified appraiser. Miles certified that he performed the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He estimated the property's value at $245,000 as of November 24, 2014. That valuation opinion included the value of all the improvements Petitioner had previously made to the property. *Glover Testimony; Pet'r Ex. 5.*

    c. Petitioner also offered sale and assessment information for eight nearby properties he asserted have homes that are very similar to the subject home, making them an "apples-to-apples comparison." He described the properties as follows:

        - Subject property: 3 bed, 2 bath, 2,000 square feet, 1.7-acre lot, built in 1994, sale price of $240,000, 2013 assessment of $275,200;

[2] The quotation is from the Indiana Supreme Court's decision in *State Board of Tax Commissioners v. Town of St. John,* 702 N.E.2d 1034, 1038 (Ind. 1998) (*Town of St. John V).*

- #1 – 7814 E. County Road 200 N.: 2 bed, 1 ½ bath, 2,204 square feet, 1-acre lot, built in 1966, sale price of $218,400, 2013 assessment of $152,900;
- #2 – 6817 E. County Road 200 N.: 4 bed, 2 bath, 1,900 square feet, 2 ½-acre lot, built in 1968, sale price of $195,000, 2013 assessment of $178,400;
- #3 – 4305 Gibbs Road: 3 bed, 2 bath, 1,830 square feet, 2-acre lot, built in 1991, sale price of $220,000, 2013 assessment of $174,900;
- #4 – 5959 E. County Road 100 S.: 3 bed, 2 bath, 1,882 square feet, 2 acre lot, built in 1972, sale price of $221,000, 2013 assessment of $186,800;
- #5 – 1126 Richwood Drive: 4 bed, 4 bath, 4,794 square feet, 1.7-acre lot, built in 1978, sale price of $240,000, 2013 assessment of $212,900;
- #6 – 4963 Rutledge Road: 3 bed, 2 ½ bath, 1,787 square feet, 2-acre lot, built in 1993, sale price of $242,900, 2013 assessment of $188,100;
- #7 – 806 Woodridge Court: 3 bed, 2 ½ bath, almost 2,500 square feet, built in 1975, sale price of $245,000, 2013 assessment of $203,000;
- #8 – 1510 S. County Road 525 E.: 3 bed, 4 bath, 3,600 square feet, 5.3-acre lot, built in 1977, sale price of $275,000, 2013 assessment of $202,000.

Glover testimony; Pet'r Exs. 6-14.

d. Petitioner admitted he might have been confused about how assessments are made when he asked for an increase. But the PTABOA owes homeowners the courtesy to tell them when they are not being realistic. Based on the information presented, Petitioner believes that the property's market value is clearly not $275,000 and contends that his assessment should be reduced to $219,000—the amount for which it was originally assessed in 2012. *Glover Testimony.*

11. Summary of Respondent's case:

a. Petitioner bought the property for $240,000 in 2010, but it had been listed for $289,900. According to Petitioner, he spent $43,000 on the roof, gutters, and other improvements to the home after he bought it. The Respondent originally assessed the property for $219,900 in 2012, which was a reduction from its 2011 assessment of $250,200. On October 12, 2012, however, Petitioner wrote Respondent a letter claiming that his assessment was too low and did not reflect the property's market value, which he believed was around $275,000. Respondent complied with Petitioner's request and the parties signed an agreement increasing the assessment to $275,200. *Cheek Testimony; Resp't Exs. B-F.*

b. The PTABOA felt the purchase price of $240,000 and the amount spent on improvements justified the $275,200 assessment. Normally, the cost of improvements would not lead to such a large percentage increase, but the PTABOA found that the difference between the list and sale prices probably stemmed from the need for those improvements. *Cheek testimony.*

c. The PTABOA performed a sales-comparison approach using three properties that sold around the period covered by Petitioner's 2013 appeal. They were "minor plats"

relatively close to the subject property. The PTABOA adjusted the sale prices for size and amenities, resulting in an average adjusted sales price of $267,800. The purchase price and the sales-comparison approach offer some support for lowering the value to $260,000. The PTABOA therefore feels the assessment should be reduced to that amount. *Cheek Testimony; Resp't Exs. G-H.*

BURDEN OF PROOF

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving a property's assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates an exception to that rule where (1) the assessment currently under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) a successful appeal reduced the previous year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id*. If he fails to do so, it reverts to the previous year's level or to another amount shown by probative evidence. See I.C. § 6-1.1-15-17.2(b).

13. The ALJ preliminarily ruled that Respondent had the burden of proof. But he based his ruling on the difference between the 2013 assessment and the original 2012 assessment. For purposes of the burden-shifting statute, however, the prior year's assessment is the assessment "(1) as last corrected by an assessing official; (2) as stipulated or settled by the taxpayer and the assessing official; or (3) as determined by the reviewing authority." I.C. § 6-1.1-15-17.2(a). After Respondent notified Petitioner of the original 2012 assessment, the parties entered into a written agreement to change the value to $275,200. That is the same as the 2013 value. The Petitioner therefore has the burden of proof.

ANALYSIS

14. Real property is assessed based on its "true tax value," which means "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 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* I.C. § 6-1.1-31-6(c). The cost, sales-comparison, and the income approaches are three generally accepted techniques to calculate market value-in-use. MANUAL at 2. Parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with USPAP. MANUAL at 3; *see also*, *Kooshtard Property VI, LLC v. White River Twp. Ass'r,* 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). But they must explain how their evidence relates to the property's value as of the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for 2013 assessments was March 1, 2013. I.C. § 6-1.1-4-4.5(f).

15. Petitioner offered Miles' appraisal in which he valued the property at $245,000. Miles certified that he performed the appraisal in accordance with USPAP, and he applied the sales-comparison approach. But he valued the property as of November 24, 2014—more

than 20 months after the relevant valuation date. Because Petitioner did not explain how the appraisal related to that date, it lacks probative value. *Long*, 821 N.E.2d at 471.

16. Petitioner also pointed to sale prices and assessments for other properties. If done properly, both types of comparisons may be used to show true tax value. *See* MANUAL at 3 (explaining that the sales-comparison approach, a generally accepted appraisal methodology, "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."); *see also* 6-1.1-15-18(c) (allowing parties to offer evidence of comparable properties' assessments to prove the market value-in-use of a property under appeal). But the party offering the sale or assessment data must show the properties are comparable. *Long*, 821 N.E.2d at 470-71. Conclusory statements do not suffice; instead, he must explain how the properties compare to each other in terms of relevant characteristics that affect market value-in-use. *Id*. at 471. He must similarly explain how relevant differences affect values. *Id.*

17. Petitioner's sales- and assessment-comparison evidence falls short of the type of analysis contemplated by *Long*. While he compared the properties in terms of several characteristics, he did not explain how relevant differences affected their values. He did not adjust any of the sale prices or assessments, either quantitatively or qualitatively.[3] Indeed, he did not even attempt to extract a value, or range of values. As the Tax Court has explained "it is the taxpayer's duty to walk the [Indiana Board and this] Court through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (*quoting Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). Without more, Petitioner's comparative sales and assessment data fails to make a prima facie case that the assessment under appeal is wrong or what the correct assessment should be.[4]

18. Thus, Petitioner failed to make a prima facie case for changing the assessment. Nonetheless, Cheek asked us to reduce the assessment to $260,000. Cheek did not show he was authorized to represent Respondent under our procedural rules. But Harger, who did meet those requirements, allowed Cheek to function as if he was the Respondent's representative. Through her silence, she acquiesced to Cheek's arguments and representations. We therefore treat Cheek's request as a concession by Respondent. Based on that concession, we find the assessment should be reduced to $260,000.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board orders that the 2013 assessment must be changed to $260,000.

[3] That includes adjustments for time-related market conditions. Only two of the properties sold within one year of the March 1, 2013 valuation date. *See Pet'r Exs. 6-13*.

[4] To the extent any of Petitioner's testimony might be viewed as suggesting we should reduce the assessment to the amount for which he bought the property in 2010, we disagree. First, he made several improvements to the home after he bought it. Second, he failed to explain how the sale price related to the March 1, 2013 valuation date as required by *Long*.

ISSUED: February 15, 2016

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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>.