

REPRESENTATIVE FOR PETITIONER:

Gordon Medlock, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Frank Agostino, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Gordon E. Medlock Sr., Trust,	)	Petition No.:	71-003-12-1-5-00001
	)		
Petitioner,	)	Parcel No.:	71-04-16-260-008.000-003
	)		
v.	)	County:	St. Joseph
	)		
St. Joseph County Assessor,	)	Township:	Clay
	)		
Respondent.	)	Assessment Year:	2012

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**February 16 , 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. The Respondent had the burden to prove that the subject property's March 1, 2012, assessment was correct. Did the Respondent prove the 2012 assessment was correct?

## PROCEDURAL HISTORY

2. The Petitioner initiated his 2012 appeal with the St. Joseph County Assessor on May 4, 2012. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) failed to act on the Petitioner's Form 130. Thus, the Petitioner sought review with the Board. *See* Ind. Code § 6-1.1-15-1(k) and (o) (allowing a taxpayer to seek review by the Board if a county PTABOA does not hold a hearing within 180 days of the taxpayer filing its notice of review with the county or township assessor). The Petitioner filed a Form 131 with the Board on November 7, 2012.
3. On July 16, 2014, the Board's administrative law judge (ALJ), Jennifer Bippus, held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

## HEARING FACTS AND OTHER MATTERS OF RECORD

4. Gordon Medlock appeared *pro se*. County Attorney Frank Agostino represented the Respondent. Mr. Medlock and County Assessor Rosemary Mandrici were sworn and testified.
5. The Petitioner submitted the following exhibits:<sup>1</sup>

Petitioner Exhibit 1:	Plat map of Wellington Park Villas,
Petitioner Exhibit 2:	Property record card for the subject property along with notations made by the Petitioner,
Petitioner Exhibit 3:	Property record card for 16380 Wellington Parkway along with notations made by the Petitioner.
6. The Respondent submitted the following exhibits:

Respondent Exhibit 1:	Comparable property sales report,
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<sup>1</sup> Following the Petitioner's hearing, Mr. Medlock sent several emails detailing additional arguments to the Board. Portions of Mr. Medlock's communications were sent to both the Respondent and the Board. However, some communications were only sent to the Board. Mr. Medlock was notified by the Board on several occasions to discontinue improper *ex parte* communications with the Board. Mr. Medlock's emails are not marked as exhibits. Nor are they part of the record or considered in this final determination. *See* 52 IAC 2-8-8(a) ("[N]o posthearing evidence will be accepted unless it is requested by the administrative law judge or the board.") *See also* 52 IAC 2-3-4(a) ("[A]ll documents and other papers that are filed with or submitted to the administrative law judge or board regarding a matter governed by this article must also be served upon all parties or, if the party has a properly authorized representative, upon the authorized representative.")

Respondent Exhibit 2: Property record card for the subject property.

7. The following additional items are recognized as part of the record:
  - Board Exhibit A: Form 131 petition with attachments,
  - Board Exhibit B: Notice of hearing, dated May 30, 2014,
  - Board Exhibit C: Notice of Appearance by attorney Frank Agostino,
  - Board Exhibit D: Hearing sign-in sheet.
8. The property under appeal is a single family residence located at 51441 Harrington Drive, in Granger.
9. The subject property's current March 1, 2012, assessment is \$34,200 for the land and \$197,100 for the improvements (\$231,300 total).
10. On his Form 131 petition, the Petitioner requested an assessment of \$10,000 for the land and \$165,000 for the improvements (\$175,000 total). At the hearing, the Petitioner requested a negative 2% trend factor be applied to the 2011 stipulated value of \$168,400, resulting in a total requested assessment of \$165,032 for 2012.

#### **OBJECTIONS**

11. The Petitioner objected to Respondent Exhibit 1, the comparable property sales report. Mr. Medlock argued that the sales utilized by the Respondent are not located on the same street or close to the subject property's location. Further, Mr. Medlock argued that the Respondent ignored sales of properties that were not only more comparable but located closer to the subject property.
12. The Petitioner also objected to Respondent Exhibit 2, the subject property record card. Mr. Medlock argued that the exhibit incorrectly states the square footage of the home.
13. In response, the Respondent's attorney argued that the objections do not go to the admissibility of the documents. Mr. Agostino further argued that the documents in question are under the custody and care of Ms. Mandrici, who testified that they are accurate. The ALJ took the objections under advisement.

14. The Petitioner's objections go to the weight of the exhibits rather than to their admissibility. Further, specifically regarding Respondent Exhibit 2, Mr. Medlock offered this document as evidence himself. The Board overrules both of the Petitioner's objections. Thus, Respondent's exhibits 1 and 2 are admitted.

#### **JURISDICTIONAL FRAMEWORK**

15. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

#### **PETITIONER'S CONTENTIONS**

16. The subject property's assessment is too high. In their attempt to defend the assessment, the Respondent "cherry-picked" sales on Hendon Hall Court and Stratton Court. These sales are located too far from the subject property. The Respondent ignored "more comparable" sales located on Windsor Manor Court. *Medlock argument; Pet'r Ex. 1.*
17. The Respondent's assessments and trending factors appear to be inconsistent. For example, the property located at 16380 Wellington Parkway saw an increase in its assessment of 8%, while the subject property's assessment decreased by 2%. Properties located in the same neighborhood should have the same percentage of increase or decrease. *Medlock argument; Pet'r. Ex. 3.*
18. Regardless, the Respondent's analysis is based on an incorrect square footage for the subject property. While the Respondent's analysis indicates the home measures 2,234 square feet, she had an appraisal in her possession for "at least a year" indicating the home should be measured at 2,100 square feet. *Medlock argument.*

19. Finally, prior to a settlement agreement, the 2011 assessment was \$235,700. The current 2012 assessment is 2% lower than that. After reaching a settlement agreement for 2011, the 2011 assessment was lowered to \$168,400. That same negative 2% trending factor should be applied to the 2012 assessment. *Medlock argument; Pet'r Ex. 2.*

#### **RESPONDENT'S CONTENTIONS**

20. The subject property is assessed correctly. The 2012 assessment increased because there was a general reassessment in Indiana, and the cost schedules changed. The increase was not due to trending as it had been in the past assessment years. The subject property record card shows "Trend Val" as the reason for change on all of the prior assessment years. However, for the 2012 assessment year, the subject property record card indicates the reason for change is "Annual." *Agostino argument; Mandrici testimony; Resp't Ex. 2.*
21. Furthermore, five comparable property sales support the current 2012 assessment. All of the comparable properties sold between April 1, 2011, and February 13, 2012. Further, all five comparables are located in the subject property's neighborhood. One comparable property is located on Hendon Hall Court while the other four properties are located on Stratton Court. Adjustments were made to the sale prices for things such as roofing materials, lot size, the existence of central air, the number of bedrooms, the amount of living area, if the property had a basement, the existence of an attached garage, if the home had a porch, and finally, if the home included a deck. The adjustments were applied by the Respondent's computer program, which is "based on an analysis done by a staff member, who is also a broker." The value estimate resulting from this analysis for the subject property indicates a value of \$255,000 for the 2012 assessment year. Thus, the current assessment of the subject property reflects its appropriate market value-in-use. *Agostino argument; Mandrici testimony; Resp't Ex. 1.*

## BURDEN OF PROOF

22. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
23. 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 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 the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
24. Second, Ind. Code section 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 IC 6-1.1-15.” Under those circumstances, “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). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
25. Here, the parties agreed that the Respondent has the burden for 2012. Indeed, prior to the hearing, the parties stipulated to an assessment of \$168,400 for the 2011 assessment year. The current 2012 assessment is \$231,300. Thus, according to the burden shifting

provisions of Ind. Code §6-1.1-15-17.2, the Respondent has the burden to prove the 2012 assessment is correct.

### ANALYSIS

26. 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 a similar user, from the property." 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
27. Regardless of the method used, a party must explain how its evidence relates to 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 2012 assessments, the assessment and valuation date were March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).
28. In an attempt to prove the 2012 assessment is correct, the Respondent primarily relied on a "comparable property sales report." This report contains her estimate of the property's value using the sales-comparison approach. Specifically, the Respondent identified five purportedly comparable properties in the subject property's neighborhood, and adjusted their sale prices for differences between the comparable properties and the subject property. Using the five adjusted sales, the Respondent estimated a value for the subject property of \$255,000.

29. While the adjustments in the Respondent's analysis may not differ significantly from those made by a certified appraiser in an appraisal report, a certified appraiser's assertions are backed by his education, training, and experience. Here, the Respondent testified that she did not compute the adjustments in her analysis, but that "a staff member, who is also a broker" computed them and entered them into a computer program. The Board cannot simply infer that the Respondent's staff member is qualified to appraise property from that very limited description.
30. Moreover, the record lacks any basis for the adjustments themselves. Neither the document itself nor the Respondent's related testimony indicates how the adjustments were computed. The record is silent as to whether the staff member used objective data, where available, to quantify the adjustments, and whether the staff member complied with generally accepted appraisal principles. In fact, neither the document nor the Respondent's testimony even indicate whether the adjustments represent market value, cost, or some other measure.
31. Consequently, the Respondent did not make a prima facie case that the current 2012 assessment of \$231,300 is correct. Therefore, the 2012 assessment reverts back to the 2011 stipulated value of \$168,400. *See* Ind. Code § 6-1.1-15-17.2(a) and (b). That, however, does not end the Board's inquiry. The Petitioner requested that the assessment be further reduced, by 2%, from the 2011 value. Thus, the Petitioner has the burden of proving he is entitled to any additional reduction.
32. The Petitioner merely pointed to the percentage that the 2012 assessment had decreased from the 2011 level, prior to the 2011 stipulation. He offered no market-based evidence of his own. Thus, the Petitioner failed to make a prima facie case for any further reduction.
33. Finally, the Board will not make any ruling regarding the square footage of the subject property. The Petitioner argues that the Respondent incorrectly lists the square footage of the home on the property record card. However, the Petitioner failed to present any

specific probative evidence to support his calculation of the square footage. The Petitioner did reference an appraisal, but he failed to provide that to the Board. Consequently, without substantial evidence to the contrary, the Board will assume the Respondent has the square footage calculated correctly on the subject property record card.

#### **SUMMARY OF FINAL DETERMINATION**

34. The Respondent had the burden of proving the 2012 assessment was correct. She failed to make a prima facie case. The Petitioner sought an assessment lower than the 2011 stipulated value, but likewise failed to make a prima facie case. The Board orders the 2012 assessment be lowered to the 2011 stipulated level of \$168,400.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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

#### **- 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 of 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>>.