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

Petition: **57-019-19-1-5-01198-19**
Petitioner: **Stanley D. Grey**
Respondent: **Noble County Assessor**
Parcel: **57-07-08-200-043.000-019**
Assessment Year: **2019**

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

Procedural History

1. The Petitioner initiated his 2019 assessment appeal with the Noble County Assessor on May 20, 2019.

2. On October 30, 2019, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level the Petitioner requested.

3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.

4. On August 26, 2020, Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.

5. Stanley Grey appeared *pro se* via telephone and was sworn. Attorney Ayn Engle appeared for the Respondent via telephone. Consultant Josh Pettit was on the call and sworn as a witness for the Respondent.

Facts

6. The property under appeal is a single-family residence located at 10314 North State Road 3 in Kendallville.

7. The PTABOA determined a 2019 assessment of $81,600 (land $28,600 and improvements $53,000).

8. The Petitioner requested a total assessment of $75,000 (land $28,600 and improvements $46,400).

Record

9. The official record for this matter is made up of the following:

a) A digital recording of the hearing.

b) Exhibits:

Petitioner Exhibit A:	2018 subject property record card,
Petitioner Exhibit B:	2019 property record card for parcel 57-04-15-300-259.000-011 (Walterhouse property),
Petitioner Exhibit C:	PTABOA sign-in sheet dated October 25, 2019,
Petitioner Exhibit D:	2007-2012 property tax information sheet for the subject property,
Petitioner Exhibit E:	2004 Multiple Listing Service (MLS) sale listing for the subject property,
Petitioner Exhibit F:	Photographs and sale listings for multiple properties; photographs of vehicles; photographs of the subject property,
Petitioner Exhibit G:	Original 2019 subject property record card with a note regarding the grade.[1]
Respondent Exhibit 1:	2019 subject property record card reflecting the PTABOA determination,
Respondent Exhibit 2:	Geographic Information System (GIS) photograph of the subject property,
Respondent Exhibit 3:	Google Maps photograph of the subject property.
Respondent Exhibit 4:	Valuation analysis prepared by Josh Pettit,
Respondent Exhibit 5:	Property record cards for the comparable properties used in Mr. Pettit's analysis,
Respondent Exhibit 6:	MLS sheets for the properties used in Mr. Pettit's analysis,
Respondent Exhibit 7:	Sales disclosures for the properties used in Mr. Pettit's analysis,
Respondent Exhibit 8:	GIS photographs of the Walterhouse property.

c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Objections

10. The parties made several objections, most of which were ruled on by the ALJ at the hearing. First, Ms. Engle objected to several statements made by Mr. Grey, arguing the

[1] At the hearing, Mr. Grey initially referred to the note regarding the property's grade as a separate exhibit, Exhibit H. However, in the evidence he forwarded to the Board, the note appears on the face of Exhibit G and was not separately labeled.

statements are hearsay. Specifically, Ms. Engle objected to Mr. Grey's testimony regarding a realtor's opinion of value for the Walterhouse property, alleged testimony at Mr. Walterhouse's PTABOA hearing, and what a PTABOA member allegedly told Mr. Grey regarding Mr. Pettit's appearance at the PTABOA hearing. Ms. Engle also objected to Mr. Grey's testimony regarding the dollar amount received from his insurance company for the replacement cost of his home.

11. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

> Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence: (1) is properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 4-6-9(d). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

12. In each instance, the ALJ ruled the testimony in question was hearsay and while the testimony may be entered into the record, it could not form the sole basis of our determination. The Board affirms the ALJ's rulings and the testimony is admitted.

13. Ms. Engle also objected to the two photographs of vehicles on the last page of Petitioner's Exhibit F, on the grounds that the pictures are irrelevant. In response, Mr. Grey stated he was offering the photographs as "a visual aid" of the general condition of property. The ALJ took the objection under advisement. While the objection goes more to the weight of the exhibit rather than its admissibility, the Board cannot find any relevance whatsoever to how the photographs effect the value of the subject property. Additionally, it is not clear when or where the photographs were taken. Therefore, we sustain Ms. Engle's objection and the two photographs of the vehicles in Petitioner's Exhibit F are excluded from the record.

14. Lastly, Ms. Engle objected to Mr. Grey's claim during his closing statement that it would cost "$16,500 to chip and seal" his driveway, because that evidence was not offered when he presented his case-in-chief. At the hearing, the ALJ sustained the objection. While Mr. Grey did not specifically state in his case-in-chief how much the repairs would cost, he did allude to driveway repairs. Further, the Respondent had the chance to respond to his statement during closing arguments. Accordingly, the ALJ's decision is reversed and the objection is overruled.

15. Mr. Grey objected to one of the purportedly comparable properties Mr. Pettit used in Respondent's Exhibit 4, even though the exhibit containing that property had been

admitted earlier. Specifically, Mr. Grey argued that the property located at 7822 East Cree Lake Drive South is partially off-lake and partially zoned commercial. In response, Ms. Engle argued Mr. Grey could address this point on cross-examination. The ALJ overruled Mr. Grey's objection, ruling that the objection goes to the weight of the evidence rather than its admissibility. The Board affirms the ALJ's ruling.

16. Finally, the Board notes none of the above rulings have any impact on this final determination.

Contentions

17. Summary of the Petitioner's case:

a) The subject property's assessment is too high. Because the home needs a number of repairs, an assessment of $75,000 would be "a fair deal." *Grey argument; Pet'r Ex. A.*

b) Mr. Grey opined that he overpaid for the property "by at least $20,000." According to the 2004 MLS listing, the property was well-maintained, but the property was not well-maintained. Other than the carpeting, the home is still in the same condition as it was when Mr. Grey purchased it in 2004. The cupboards are in poor condition, the windows have L-shaped brackets holding them together, there is no glass in the garage windows, and the driveway needs repair. Other properties that list for similar amounts are better maintained and have been updated. *Grey argument; Pet'r Ex. E, F.*

c) At a PTABOA hearing occurring on the same day as Mr. Grey's, a Petitioner named Mr. Walterhouse was successful in reducing his assessment of "bare ground" to a level below the purchase price. Mr. Walterhouse purchased his property for $150,000, but his assessment was reduced to $100,000. Thus, there was "a precedent established" and Mr. Grey should receive a similar "fair adjustment." *Grey argument; Pet'r Ex. B.*

18. Summary of the Respondent's case:

a) The property's assessment is correct. The Petitioner failed to offer any market data to support his requested assessment. He failed to prove his purportedly comparable properties are similar to his property, and he did not adjust the values for differences. In fact, the Walterhouse property is not comparable to the subject property. This particular property includes two parcels, one lakefront and a "rear lot that is off water." *Engle argument; Pettit testimony; Resp't Ex. 8.*

b) The Respondent presented an analysis prepared by Josh Pettit, a Level III Certified Assessor-Appraiser, supporting the current assessment. Mr. Pettit selected six comparable properties that sold within the recommended time frame. He adjusted for differences using the values in the Assessor's Computer Assisted Mass Appraisal

(CAMA) system, but Mr. Pettit conceded this "differs a little bit from a fee appraisal." According to Mr. Pettit, the property located at 1109 North Lima Road is the most comparable to the subject property. The adjusted price for this property is $89,500. Taking all six comparable properties into consideration, the indicated value for the subject property is somewhere between $85,000 and $88,000. While the analysis may support a higher value, the Respondent requests the current assessment of $81,600 be upheld. *Engle argument; Pettit testimony; Resp't Ex. 4.*

Burden of Proof

19. 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.E2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute creates two exception to that rule.

20. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

21. 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 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).

22. Here, the assessment decreased from $87,000 in 2018 to $81,600 in 2019. The Petitioner argued the burden should be on the Respondent because the property "has been over assessed since I bought this place." The ALJ explained the burden shifting provisions of Ind. Code § 6-1.1-15-17.2, and ultimately the Petitioner agreed the assessment did not increase between 2018 and 2019. Therefore, the burden-shifting statute does not apply, and the burden remains with the Petitioner.

Analysis

23. The Petitioner failed to make a prima facie case that the assessment should be reduced.

a) Real property is assessed based on its 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate 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.

b) Regardless of the method used, a party must explain how the 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. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.

c) In support of his position, the Petitioner offered sales listings for several properties. In doing so, we infer the Petitioner was attempting, at least to some extent, to employ the sales-comparison approach to value. For sales comparison data to be probative, the purportedly comparable properties must be sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not show comparability. *See Long,* 821 N.E.2d 466, 470. Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the purportedly comparable properties and how any relevant differences affect the properties' relative market values-in-use. *Id.* at 471.

d) Here, the Petitioner offered only listings, and not actual sale prices. Moreover, the record lacks any analysis of the comparability of the properties, or any analysis of how differences affect their relative values. Specifically, the Petitioner offered no market-based data showing how the purported differences in condition affect value.

e) Regarding the Petitioner's submission of the Walterhouse property record card and his claim that he was not treated the same as Mr. Walterhouse, we infer the Petitioner also may have been attempting to employ an assessment-comparison approach. Parties can introduce 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. Ind. Code § 6-1.1-15-18(c)(1). The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r,* 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales comparison approach. *Id.; see also Long,* 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly

comparable properties compared to their property or how relevant differences affect the value).

f) In this instance, the Petitioner offered only one purportedly comparable property, and did not explain how relevant differences between that property and the subject property affects the value. Further, Mr. Walterhouse's property record card indicates that while the *base rate* of his land is $100,000 per acre, Mr. Walterhouse's total 2019 assessment is $151,500.

g) Finally, to the extent the Petitioner attempted to argue his assessment is not uniform and equal, he failed to make a case. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment, one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Ass'r,* 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs,* 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs,* 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham,* 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

h) When a ratio study shows a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin v. Commonwealth Edison Co.,* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness v. Porter Co. Ass'r,* 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs,* 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John,* 702 N.E.2d 1034, 1040 (Ind. 1998).

i) Similar to the taxpayer's argument in *Westfield Golf*, Mr. Grey's argument is also flawed. Here, the Petitioner failed to offer a ratio study indicating the subject property is assessed above the common level of assessment. There is no evidence to establish the assessment violated the requirements of uniformity and equality.

j) For these reasons, the Petitioner failed to make a prima facie case for reducing the assessment. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment is not triggered. *Lacy*

Diversified Indus. v. Dep't of Local Gov't Fin., 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003). And here, while the Respondent submitted valuation evidence, the Respondent requested the current assessment be upheld.

Conclusion

24. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2019 assessment.

ISSUED: November 18, 2020

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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>.