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

Petitions:	**03-005-16-1-5-01867-16**
	03-005-17-1-5-00802-17
Petitioner:	**Laurance J. Warford Revoc. Living Trust**[1]
Respondent:	**Bartholomew County Assessor**
Parcel:	**03-96-09-120-000.246-005**
Assessment Years:	**2016 & 2017**

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

Procedural History

1. The Petitioner initiated its 2016 and 2017 assessment appeals with the Bartholomew County Assessor on July 1, 2016, and May 8, 2017, respectively.

2. On September 16, 2016, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 2016 assessment year denying the Petitioner any relief.

3. On May 25, 2017, the Petitioner signed a Standard Form Agreement to forego the PTABOA hearing for the 2017 assessment year.

4. The Petitioner timely filed Petitions for Review of Assessment (Form 131s) for each year and elected the Board's small claims procedures.

5. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated hearing on November 29, 2018. She did not inspect the property.

6. Certified tax representative Milo E. Smith appeared for the Petitioner. County Assessor Lew Wilson and local government representative Virginia Whipple appeared for the Respondent. Certified tax representative Dean Layman was a witness for the Respondent. All of them were sworn.

7. The property under appeal is an attached row-type single-family residence located at 5104 Sanibel Drive in Columbus.

8. For the 2016 assessment year, the PTABOA determined the total assessment was $344,100 (land $50,000 and improvements $294,100). For the 2017 assessment year, the

[1] According to the property record card, the property is titled to Laurance J. Warford Revocable Living Trust (1/2 interest) and Marsha B. VanNahmen (1/2 interest). *See Pet'r Ex. 1.*

parties agreed that the assessment remained at $344,100 (land $50,000 and improvements $294,100).

9. For 2016 the Petitioner requested a total assessment of $331,400. For 2017 the Petitioner requested a total assessment of $331,500.

10. The official record for this matter includes the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1:	2016 subject property record card,
Petitioner Exhibit 2:	2017 subject property record card,
Petitioner Exhibit 3:	A Department of Local Government Finance (DLGF) Memorandum regarding annual adjustments (trending) guidance dated February 4, 2009,
Petitioner Exhibit 4:	A copy of the DLGF's formula for calculating the neighborhood factor,
Petitioner Exhibit 5:	Spreadsheet including the parcel number, owner, address, neighborhood, sale date, sale price, assessed values and neighborhood factors for all the "villas" located in the Villas of Stonecrest (Stonecrest),
Petitioner Exhibit 6:	Copy of the 2013 International Association of Assessing Officers' (IAAO) Standard on Ratio Studies, Appendix D page 56,
Petitioner Exhibit 7:	Two pages from the DLGF's website entitled *Neighborhood Factor Example* and *Cost Approach Neighborhood Factor Problem*,
Petitioner Exhibit 8:	Spreadsheet of Stonecrest properties with the heading *Assessors goal stated at latest meeting in the Club House was to achieve an assment (sic) equal to 98% of original cost*,
Petitioner Exhibit 9:	Spreadsheet listing Stonecrest sales used for the development of the Petitioners' neighborhood factor for 2016,
Petitioner Exhibit 10:	Spreadsheet listing Stonecrest sales used for the development of the Petitioners' neighborhood factor for 2017.
Respondent Exhibit A:	Curricula Vitae for Virginia Whipple and Lew Wilson,
Respondent Exhibit B:	"Statement of Professionalism,"
Respondent Exhibit C:	2015 subject property record card,
Respondent Exhibit D:	2016 subject property record card,
Respondent Exhibit D.1:	2017 subject property record card,
Respondent Exhibit E:	Photograph of the subject property,

Respondent Exhibit F:	Comparison of sale prices to assessed values for Stonecrest properties,
Respondent Exhibit G:	E-mail from Joe Thompson to Mr. Wilson dated August 8, 2018,
Respondent Exhibit H:	Sales disclosure,
Respondent Exhibit I:	Paired sales analysis,
Respondent Exhibit J:	Property record cards for properties utilized in Petitioner's Exhibit 9,
Respondent Exhibit K:	Property record cards for properties utilized in Petitioner's Exhibit 10.

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 our ALJ; and (3) these findings and conclusions.

Contentions

11. Summary of the Petitioner's case:

a. The subject property is assessed too high. The Assessor engaged in sales chasing because he based the assessments for all the properties in Stonecrest on their sale prices. Sales chasing results in assessments that are not uniform. *Smith argument; Pet'r Ex. 3.*

b. According to the Assessor, his goal was to achieve an assessment equal to 98% of each home's original cost. The only way to accomplish that is to use the individual sales, which amounts to "sales chasing and violates all the laws, rules and regulations of the IAAO and the DLGF" and results in assessments that are not uniform and equal. *Smith argument; Pet'r Ex. 8.*

c. The subject property is "one of 141 condominiums" located in the Stonecrest neighborhood. All of the units were constructed by the same builder with similar quality and materials with the option to upgrade. The Assessor has applied "neighborhood factors based on the cost of each individual unit" rather than being applied to the entire neighborhood. The neighborhood factors for the individual units range from .99 to 1.87. There are twenty different neighborhood factors in the Stonecrest neighborhood. The subject property's 1.40 factor is not uniform with the other properties. *Smith argument; Pet'r Ex. 1, 2, 5.*

d. Indiana Code § 6-1.1-4.5 explains the procedures for the annual adjustment of the assessed value of real property. The DLGF further explains how to determine the neighborhood factor. The neighborhood factor is to be expressed mathematically, with a single factor for each neighborhood. It is "impossible" to promote a uniform and equal assessment when the assessor applied twenty different neighborhood factors to the Stonecrest neighborhood. *Smith argument; Pet'r Ex. 3, 4, 7.*

e. In an effort to calculate accurate assessments, the Petitioner presented a listing of 2015 and 2016 sales in the Stonecrest neighborhood. The sales ranged from $111 per square foot to $170 per square foot. In an effort to "compromise in trying to determine what a fair neighborhood factor should be," the Petitioner established a median neighborhood factor of 1.34. By following the DLGF's neighborhood factor example and using the median neighborhood factor of 1.34 from the Stonecrest sales, the subject property's 2016 assessment should be lowered to $331,400. For 2017, the application of a 1.34 neighborhood factor would result in an assessment of $331,500. *Smith testimony; Pet'r Ex. 5, 7, 9, 10.*

12. Summary of the Respondent's case:

a. The Respondent did not engage in "sales chasing" in developing the assessments for the Stonecrest neighborhood. Instead, the assessments were based upon the cost approach. The Petitioner "confuses" sales chasing with using all the properties' sales to determine their individual assessed values. The Respondent did not use sales from Stonecrest in a ratio study as the Petitioner alleged. In fact, the Respondent did not use a neighborhood factor in determining the Stonecrest assessments, instead he relied on the "actual new construction sale price" of each property. The number listed in the column for the neighborhood factor on the property record card is not the neighborhood factor, it was the "only column" available to adjust the assessments to "approximately 90% of each property's sale price." Each Stonecrest property is valued individually based on the buyers own choice of amenities and the quality of the interior amenities in the homes. This is a "true example of market value-in-use." *Whipple argument.*

b. The subject property sold for $350,000 on December 17, 2013. The Respondent found the only way to arrive at equitable values for the Stonecrest neighborhood was to use the builder's cost approach and trend it to the appropriate date using paired sales analysis. The Respondent presented a list of over twenty sales within Stonecrest that sold twice, and he relied on these sales to trend the subject property's 2013 sale. The paired sales analysis indices a median increase of 0.0020 per month. Approximately twenty-four months elapsed between the subject property's 2013 sale and the 2016 valuation date. The paired sales analysis for 2016 was adjusted by 0.0728 to arrive at an adjusted sale price of $375,480. The paired sales analysis for 2017 was adjusted by 0.0788 to arrive at an adjusted sale price of $377,600.[2] *Wilson testimony; Resp't Ex. I.*

c. The Petitioner is ultimately arguing about methodology when this appeal is about market value-in-use. The Tax Court has previously stated that simply challenging the methodology used to assess a property typically does not suffice to rebut the presumption that the assessment is correct. Furthermore the data used to determine the Petitioner's purported neighborhood factor is "probably" from 2018, rather than

[2] According to the Respondent, twenty-six months elapsed between the 2013 sale and the 2017 valuation date, and he based his adjustment on that time frame. It appears the Respondent made a mathematical error because roughly thirty-six months elapsed between the 2013 sale and the 2017 valuation date. *See Resp't Ex. I.*

2016 and 2017, and is not applicable here. Finally, Mr. Smith cannot argue the uniform and equality of assessments because that is a "matter of law" as previously stated by the Board. *Whipple argument (citing Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) and *Coutar Remainder VI, LLC. v. Johnson Co. Ass'r,* Pet. No. 41-003-09-1-4-01392 (Ind. Bd. Tax Rev. October 30, 2012); *Resp't Ex. J, K.*

Burden of Proof

13. 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 amended by P.L. 97-2014 creates two exceptions to that rule.

14. 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).

15. 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). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

16. Here, the parties agree the burden is on the Petitioner for the 2016 assessment year. Thus according to Ind. Code § 6-1.1-15-17.2 the Petitioner has the burden to prove the 2016 assessment is incorrect. The burden for the 2017 assessment year will ultimately be determined by the Board's finding for the prior year.

Analysis

17. 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.

18. 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 the 2016 and 2017 assessments, the valuation date was January 1, 2016, and January 1, 2017, respectively. *See* Ind. Code § 6-1.1-2-1.5.

2016 Assessment

19. The Petitioner had the burden to prove the 2016 assessment was incorrect. The Petitioner mainly focused on the neighborhood factors within Stonecrest, arguing that they were improperly calculated and did not comply with the Guidelines. A taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana's new assessment system. *O'Donnell,* 854 N.E.2d at 94-95. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling,* 841 N.E.2d at 678. The only market-based evidence offered by the Petitioner was a list of sales in the Stonecrest neighborhood in an attempt to establish "an accurate neighborhood factor" and to prove the Assessor's neighborhood factors were improperly calculated. The Petitioner's focus on neighborhood factors failed to establish the actual market value-in-use for the subject property. The Petitioner's main argument is that the assessments are not uniform and equal because the Assessor used several different neighborhood factors to assess them.

20. 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)).

21. When a ratio study shows that 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).

22. Similar to the taxpayer in *Westfield Golf*, the Petitioner's argument is flawed. Here, the Petitioner failed to offer a ratio study that shows the subject property is assessed above the common level of assessment. Instead, the Petitioner's argument focused on the miscalculation of the neighborhood factor, one aspect of the overall assessment. This evidence is not sufficient to demonstrate the 2016 assessment violated the requirements of uniformity and equality. The Petitioner failed to offer any other type of evidence to show that the Respondent's methodology resulted in an assessment that does not accurately reflect the subject property's market value-in-use. For these reasons, the Petitioner failed to make a prima facie case showing a lack of uniformity and equality in assessments.[3]

23. The Petitioner also argues the assessment should be lowered because the Assessor's actions amounted to "sales chasing," which the Petitioner claims is prohibited by Indiana's assessing guidelines.

24. "Sales chasing" or "selective reappraisal" is the "practice of selectively changing values for properties that have been sold, while leaving other values alone." *Big Foot Stores, LLC v. Franklin Twp. Ass'r,* 818 N.E.2d 623 (Ind. Tax Ct. 2009) (citing *County of Douglas v. Nebraska Tax Equalization and Review Comm'n,* 635 N.W.2d 413, 419 (Neb. 2001)). Here, the Respondent testified that all of the assessed values of the homes in the Stonecrest neighborhood were based on their construction sale prices. According to the Respondent, this method was the best because it accounted for interior amenities and upgrades that were not visible from the exterior. There is no evidence the subject property's assessment increased while other properties' values remained unchanged. Nor did the Petitioner present any evidence that other properties were not similarly assessed close to their market values. Absent a showing that the Petitioner's property was assessed differently than other similar properties, the Petitioner failed to raise any cognizable claim.

25. The Board notes that assessing properties at or near their actual market values is the goal of Indiana's market value-in-use system. *See P/A Builders & Developers v. Jennings Co. Ass'r,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment

[3] The Respondent argued that Mr. Smith "cannot argue the uniform and equality of assessments because that is a 'matter of law' as previously stated by the Board." The Respondent is correct in that a tax representative cannot practice before the Board regarding claims of the constitutionality of an assessment or any other representation involving the practice of law. 52 IAC 1-2-1(b)(3) and (4). While Mr. Smith did not specifically say the assessment was unconstitutional, his argument regarding lack of uniformity and equality appears to be in reference to the Indiana Constitution. The Board is not saying whether Mr. Smith's argument does or does not cross the line.

system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is actually correct.") For these reasons, the Petitioner failed to make a prima facie case for a reduction in the 2016 assessment.

2017 Assessment

26. The burden remains with the Petitioner for 2017 and the Petitioner presented the same neighborhood factor evidence, albeit trended to the 2017 assessment year. For the same reasons as previously stated, the Petitioner failed to make a prima facie case for a reduction in the 2017 assessment.

Respondent's Evidence

27. This does not end the Board's inquiry because the Respondent requested the assessments be increased. The Board now turns to the Respondent's evidence.

2016 Assessment

28. In an effort to justify increasing the 2016 assessment, the Respondent focused primarily on the December 17, 2013, sale of the subject property. The Respondent is correct in asserting that a property's sale price may be compelling evidence of its true tax value, at least if the sale was at arm's length and other indicia of a market-value sale were present. The manual provides the following definition of "market value":

> [T]he most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed term, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgably, and for self-interest, and assuming that neither is under undue duress.

29. The Petitioner did not attempt to argue the sale was anything less than a true market-value sale and nothing on the sales disclosure form indicated otherwise. However, because the sale was roughly 24-months before January 1, 2016, it was necessary for the Respondent to explain how the purchase price was relevant. *See Long*, 821 N.E.2d at 471 (stating that any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, that required valuation date).

30. The Respondent relied on a paired sales analysis to time-adjust the sale price. The Respondent offered an analysis of twenty-four homes in the Stonecrest neighborhood that had re-sold. In doing so, the Respondent determined a median price difference per month at 0.0020. To account for the 24-month difference the Respondent multiplied the original

purchase price by 0.0728 and then added the result ($25,480) to the $350,000.[4] However, there are several problems with the paired sales analysis that undermine its credibility.

31. Although paired sales can be used to estimate a time adjustment, properties included in the analysis should be similar to the subject property in terms of location, age, and physical characteristics. To ensure they are representative of the subject property's market, and therefore, are an accurate reflection of the pricing pressures affecting the subject property's market value-in-use. Here, the Respondent failed to establish that any of the paired sales were actually similar to the subject property. While all of the properties included in the Respondent's analysis are from the subject property's neighborhood, the Board can at least infer that the properties are similarly located. Nevertheless, the Respondent failed to offer any testimony regarding the various differences in interior amenities included in the properties, even though the Respondent testified about how those amenities differ and influence each individual home's price immensely. Moreover, without additional supporting documentation there is no way of knowing whether the properties used in the paired sales analysis had been remodeled, upgraded, or what their interior condition was at the time they sold. The homes listed in the paired sales analysis differed in sales price by as much as $302,500. Such a wide variation in sale prices is indicative that all of the properties could not have been comparable to the subject property. The Respondent also failed to provide any supporting documentation for the paired sales, such as their property record cards or sales disclosure forms, which might reveal whether the properties have similar ages, amenities, or physical characteristics. Additionally, the evidence does not confirm if the sales included the value of personal property, financing, or leases, or whether they were truly open-market, arm's length transactions. This lack of evidence leaves the Board with insufficient information to discern even the most basic characteristics of the properties.

32. Moreover, the individual sale dates of the paired sales ranged from July 10, 2009, to June, 28, 2018. However, the period at issue for the 2016 assessment spans the time between the original purchase date by the Petitioner on December 17, 2013, and January 1, 2016. The Respondent failed to establish how paired sales analysis from such a broad time span is probative for the relevant time differential. Furthermore, the Respondent failed to explain how this rather basic paired sales analysis complies with generally accepted appraisal principles for time adjustments. Given the numerous issues discussed herein, the Respondent failed to show that the paired sales analysis is a reliable indication of the subject property's market value-in-use as of January 1, 2016.

33. As part of making a prima facie case, "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)). This requirement applies equally to an Assessor bearing the burden. While the Respondent attempted to rely on the subject property's original purchase price from 2013, the gap in time between the purchase date and the 2016 valuation date is roughly 24-months. The Respondent's paired sales analysis failed to credibly demonstrate how the original purchase price is relevant to the January 1, 2016, valuation date. Thus, the

[4] The Board notes that 0.0020 for 24-months does not mathematically produce a multiplier of 0.0728.

original purchase price is not probative of the market value-in-use of the subject property. Consequently, the Board finds that the Respondent failed to offer enough probative evidence supporting his request for an increase in the 2016 assessment. Accordingly, the 2016 assessment is to remain the same.

2017 Assessment

34. For the 2017 assessment, the Respondent presented the same paired sales analysis as he did for the 2016 assessment year, although it was adjusted it for the 2017 assessment year. For the same reasons as previously stated, the Respondent failed to make a prima facie case that the 2017 assessment should be increased. Therefore the 2017 assessment is to remain the same.

Conclusion

35. The Petitioner had the burden for both years under appeal. For 2016, the Petitioner failed to meet its burden of proof that the assessment should be lowered. The Respondent requested the assessment be increased, but also failed to meet his burden. Thus, the 2016 assessment will remain the same. For 2017, the Petitioner again failed to meet its burden of proof. The Respondent requested a value higher than the current 2017 assessment but failed to meet his burden. Thus, the 2017 assessment must remain the same.

Final Determination

In accordance with the above findings and conclusions, the 2016 and 2017 assessments will remain unchanged.

ISSUED: April 15, 2019

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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>.