

REPRESENTATIVES FOR PETITIONER: John & Ruth Ann Loftus, *pro se*

REPRESENTATIVE FOR RESPONDENT: Andrew Baudendistel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

John & Ruth Ann Loftus,)	Petition:	15-020-18-1-5-01308-18
)		
Petitioners,)	Parcel No.:	15-06-24-302-039.000-020
)		
v.)	County:	Dearborn
)		
Dearborn County Assessor,)	Assessment Year:	2018
)		
Respondent.)		

June 4, 2019

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:

INTRODUCTION

1. John and Ruth Ann Loftus appealed the 2018 property tax assessment on their residence. They claimed that the increase in their assessment was excessive, unfair, and not supported by evidence from similar properties in the area. The Dearborn County Assessor presented an appraisal of the property that supported the assessed value, and the Loftuses did not present evidence to rebut the appraisal or offer sufficient evidence to support another value. Thus, we order no change to the assessment.

PROCEDURAL HISTORY

2. John and Ruth Ann Loftus appealed the 2018 assessment of their residential property. The Dearborn County Property Tax Assessment Board of Appeals (“PTABOA”) determined the following assessment:

Land: \$26,200 Improvements: \$161,400 Total: \$187,600

3. The Loftuses timely appealed to the Board. On March 7, 2019, the Board’s designated Administrative Law Judge, David Smith (“ALJ”), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property. John J. Loftus, Jr., Ruth Ann Loftus, Jeffrey D. Thomas (“Appraiser”), and Megan Acra, the Dearborn County Assessor, were sworn and testified.

4. The Parties offered the following exhibits, all of which were admitted without objection:

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|--------------------------|---|
| Petitioner’s Exhibit 1: | Form 11, Notice of Assessment, |
| Petitioner’s Exhibit 2: | Beacon photograph, |
| Petitioner’s Exhibit 3: | Photos of 968 Greentree Road, |
| Petitioner’s Exhibit 4: | Aerial photo, |
| Petitioner’s Exhibit 5: | Beacon information and assessment calculations, |
| Petitioner’s Exhibit 6: | Beacon information and assessment calculations, |
| Petitioner’s Exhibit 7: | Beacon information and assessment calculations, |
| Petitioner’s Exhibit 8: | Beacon information and assessment calculations, |
| Petitioner’s Exhibit 9: | Photos of 808 & 838 Greentree, |
| Petitioner’s Exhibit 10: | Photos of 858 & 868 Greentree, |
| Petitioner’s Exhibit 11: | Beacon information for 968 Greentree, |
| Petitioner’s Exhibit 12: | Subject property record card, |
| Petitioner’s Exhibit 13: | Beacon information for 987 Greentree, |
| Petitioner’s Exhibit 14: | Beacon information for 958 Greentree, |
| Petitioner’s Exhibit 15: | Beacon information for 798 Greentree, |
| Petitioner’s Exhibit 16: | Beacon information for 757 Greentree, |
| Petitioner’s Exhibit 17: | Beacon information for 492 Hickory, |
| Petitioner’s Exhibit 18: | Beacon information for 20343 Alpine, |
| Petitioner’s Exhibit 19: | Beacon information for 20898 Lakeview. |
| | |
| Respondent’s Exhibit 1: | Subject property record card, |
| Respondent’s Exhibit 2: | Thomas appraisal. |

5. The record also includes the following: (1) all pleadings, briefs and documents filed in the current appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

PETITIONER'S CONTENTIONS

6. The Loftuses argued that the 24% increase in their assessment over the prior year was excessive and unfair. They pointed to the assessments of other nearby houses that only increased by approximately 6% and questioned why those houses were in a different assessment neighborhood. They also presented exhibits that document values, taxes, and associated data for numerous properties they claimed were similar to the subject property. They argued that the disparity in the assessments was inequitable and not explained by the PTABOA or Assessor. *John & Ruth Ann Loftus testimony; Pet'r Exs. 1-19.*

RESPONDENT'S CONTENTIONS

7. The Assessor provided a general overview of the County's assessment process, which includes the accumulation of property sales data, correlation and assessment of the data, determination and assignment of a "market factor," and the determination of property value recommendations for all county properties under assessment. The Assessor submits the final list of all values to the DLGF for approval. She noted that the Loftuses purchased the subject property in 2015 for \$215,000. *Acra testimony.*
8. The Assessor also presented the testimony of Jeffrey Thomas, a certified general appraiser, who appraised the subject property for the 2018 assessment date. He certified that his appraisal complied with USPAP. He did not inspect the interior of the subject property. *Thomas testimony; Resp. Ex. 2.*
9. Thomas valued the property using the sales-comparison and cost approaches. For the sales-comparison approach, he selected three properties in the Hidden Valley neighborhood. They sold in 2017 for prices ranging from \$195,000 to \$223,500. After adjustment, he concluded to a reconciled value of \$203,000 under the sales-comparison

approach. He also performed the cost approach under which he valued the property at \$203,243. He reconciled these to a value of \$203,000. Based on this appraisal, the Assessor asked the Board to uphold the assessment of \$187,600. *Thomas testimony; Resp't Ex. 2.*

BURDEN OF PROOF

10. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. §6-1.1-15-17.2(a), (b) and (d). If the assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as corrected by an assessing official, stipulated to or determined by a reviewing authority) or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
11. The assessed value of the subject property in 2018 was \$187,600, which represented an increase of more than 5% over the 2017 assessed value of \$150,800. Both parties agreed that the burden for 2018 was on the Assessor.

CONCLUSIONS OF LAW

12. Indiana assesses property based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 3-1.1-31-6(f). 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). The DLGF defines "true tax value" as "market value-in-use" which it in turn defines as "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." 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-

compliant market-value-in-use appraisals often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005).

13. 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 (“USPAP”) 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 the year under appeal was January 1, 2018. Ind. Code § 6-1.1-2-1.5(a).
14. A taxpayer needs to show the assessment does not accurately reflect the subject property’s market value-in-use. *Id.* *See also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is.).
15. The Assessor presented the Thomas appraisal, arguing that it supports the current assessment. The Loftuses did not significantly impeach the Thomas appraisal, and we find the Assessor presented a prima facie case sufficient to support the assessment. We now turn to the Loftuses evidence.
16. The Loftuses primarily argued that the increase in their assessment was unfair. But this argument goes to the methodology used by the Assessor. Even if the Assessor made errors, simply attacking their methodology is insufficient. *Eckerling* at 678. Instead, a

taxpayer must use market-based evidence, such as a USPAP compliant appraisal, to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*

17. The Loftuses also argued that the increase in their assessment was inequitable as compared to their neighbors. To the extent this argument was a challenge to the uniformity and equality of his assessment we will address it. The Tax Court has previously held, “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*, 859 N.E.2d at 399 n.3. Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001).

18. When a ratio study shows that a given property is assessed above the common level of assessment, that 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 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). 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). Although the Loftuses presented some data of neighboring properties, they did not show that this data met the standards of a ratio study or constituted a statistically reliable sample.

CONCLUSION

19. The Assessor met her burden of proof by presenting a USPAP compliant appraisal that supports the current assessment. The Loftuses failed to rebut the appraisal or present

other reliable evidence supporting a different value. Thus, we order no change to the 2018 assessment.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order no change to the 2018 assessment of the subject property.

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>>.