REPRESENTATIVE FOR PETITIONER:
Ward W. Miller, pro se

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

WARD W. MILLER,	)	Petition Nos.: 76-006-14-3-5-02163-17
	)	76-006-14-3-5-02169-17
Petitioner,	)	76-006-15-3-5-02166-17
	)	76-006-15-3-5-02168-17
v.	)	76-006-16-3-5-02164-17
	)	76-006-16-3-5-02167-17
STEUBEN COUNTY ASSESSOR,	)	76-006-17-1-5-02165-17
	)	76-006-17-1-5-02170-17
Respondent.	)	
	)	Parcel Nos.: 76-03-33-430-128.000-006
	)	76-03-33-430-129.000-006
	)	
	)	County: Steuben
	)	
	)	Assessment Years: 2014, 2015, 2016, and 2017

Appeal from the Final Determination of the
Steuben County Property Tax Assessment Board of Appeals

March 13, 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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Miller claims that his taxes for the 2014, 2015, and 2016 assessment years were illegal as a matter of law because his land assessments were not calculated using a uniform and equal rate. However, the Form 133 correction of error process he employed does not allow for challenges to an assessment's legality. We therefore dismiss his petitions for 2014-2016. Although he timely appealed his 2017 assessments using the proper Form 130/131 process, Miller nevertheless failed to prove a lack of uniformity and equality. He also failed to offer any probative market-based evidence reflecting his properties' market value-in-use. Because the Assessor offered an appraisal that does, we order the 2017 assessments changed to the values from the appraisal.

PROCEDURAL HISTORY

2. On May 8, 2017, Miller filed Form 133 petitions seeking to correct an error in his properties' 2014, 2015, and 2016 assessments. That same day, Miller also filed Form 130 petitions challenging his properties' 2017 assessments. On October 25, 2017, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued Form 115 determinations upholding the following assessments for each year, which Miller timely appealed to us using Form 131 petitions[1]:

Year	Parcel Number	Lot Number	Land	Improvements	Total
2014	76-03-33-430-128.000-006	Lot 70	$265,600	$0	$265,600
2015	76-03-33-430-128.000-006	Lot 70	$265,600	$0	$265,600
2016	76-03-33-430-128.000-006	Lot 70	$265,600	$0	$265,600
2017	76-03-33-430-128.000-006	Lot 70	$236,100	$0	$236,100

[1] Miller appealed the denial of his 2014-2016 appeals to us using Form 131 petitions, but he had initiated his county-level appeals on Form 133 petitions. We therefore consider his Form 131 petitions for those years to be a continuation of the Form 133 appeals filed below.

Year	Parcel Number	Lot Number	Land	Improvements	Total
2014	76-03-33-430-129.000-006	Lot 69	$308,900	$38,000	$346,900
2015	76-03-33-430-129.000-006	Lot 69	$308,900	$38,000	$346,900
2016	76-03-33-430-129.000-006	Lot 69	$308,900	$39,300	$348,200
2017	76-03-33-430-129.000-006	Lot 69	$274,600	$39,700	$314,300

3. On May 24, 2018, the Board's designated administrative law judge, Joseph Stanford ("ALJ"), held a consolidated hearing on the petitions. Neither he nor the Board inspected Miller's properties.

4. Ward W. Miller appeared pro se. Attorney Brian Cusimano represented the Assessor. Miller, Appraiser William F. Schnepf, Jr., and consultant Joshua D. Pettit testified under oath.

5. Miller submitted the following exhibits:

Petitioner Exhibit 1:	Aerial map of Lake James
Petitioner Exhibit 2:	2017 property record cards for Miller's parcels
Petitioner Exhibit 3:	Property record card for David Howard Biggs' property (Lot 32)
Petitioner Exhibit 4:	Aerial photograph of Lots 30, 31, 32, 69, and 70
Petitioner Exhibit 5:	Photograph of the frontage of Lots 30, 31, 32, and 69
Petitioner Exhibit 6:	Plat map of Lone Tree Point
Petitioner Exhibit 7:	Summary of property tax overpayments

6. The Assessor offered the following exhibits:

Respondent Exhibit A:	Appraisal report prepared by William F. Schnepf, Jr. (valuing Miller's two parcels separately)
Respondent Exhibit B:	Trended values for 2014-2016 using CPI index
Respondent Exhibit C:	Appraisal report prepared by William F. Schnepf, Jr. (valuing Miller's two parcels as one property)
Respondent Exhibit F[2]:	Property record card for the Coleman property
Respondent Exhibit G:	Property record card for the Wax property
Respondent Exhibit H:	Property record card for the Willig property
Respondent Exhibit I:	Property record card for Lot 69
Respondent Exhibit J:	Property record card for Lot 70

[2] The Assessor did not offer exhibits labeled D or E.

7. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in these appeals, including the parties' post-hearing briefs[3]; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

THE SUBJECT PROPERTIES

8. Miller owns Lots 69 and 70 in John W. Orndorf's Plat of Lone Tree Point. Lot 69 (Parcel No. 76-03-33-430-129.000-006) is located at 1200 Lane 105 Lake James in Angola. The 6,500 square foot lot is mostly rectangular and has 50 feet of frontage on Lake James. It is improved with a 1 ½-story home built in 1893 that contains approximately 1,320 square feet and has a 360 square foot screened porch. Lot 70 (Parcel 76-03-33-430-128.000-006) is an adjacent unimproved lot with 5,590 square feet and approximately 43 feet of frontage on Lake James. Both lots are located within Jamestown Township, and the Assessor has designated them as being within the Lone Tree Point Neighborhood. During the years at issue, the Assessor used a base rate of $6,600 per front foot to assess the land associated with Miller's two lots. *Miller testimony; Schnepf testimony; Pet'r Ex. 2; Resp't Exs. A, C, I, J.*

SUMMARY OF MILLER'S CASE

9. Miller's two properties have been assessed using a base rate of $6,600 per front foot for many years. Lot 32 is a property immediately to the south of and adjacent to Miller's Lot 69. The Assessor assessed Lot 32 using a base rate of $6,600 until June 17, 2014, when she inexplicably reduced it to $3,300 per front foot. Lot 32's land assessment was $310,500 in 2012 and 2013. With the base rate reduction, it suddenly dropped to $155,200 in 2014, and it stayed at that level in subsequent years. *Miller testimony; Pet'r Exs. 2, 3.*

[3] Miller's post-hearing brief consists of an "Affidavit in lieu of transcript" dated December 4, 2017, and two attachments: (1) an undated letter from Miller to the Assessor requesting a certified transcript of the PTABOA hearing; and (2) "Taxpayer's Memorandum to Steuben County Property Tax Assessment Board of Appeals…" received by the Steuben County Assessor on October 6, 2017.

10. The frontage of Lots 32 and 69 are visually indistinguishable, with a continuous seawall running across both lots and two other neighboring properties to the south. Lot 32 was platted as part of Lone Tree Point, but it is located in Pleasant Township instead of Jamestown Township. The Assessor has mischaracterized Lot 32 as being in the Lone Tree Point First Addition Neighborhood. The First Addition to Lone Tree Point was recorded in 1921 and includes Lots 125 to 166. None of the lots have water frontage. Nor has there been much in way of development on the 42 lots. There are a few garages, an abandoned cottage, a couple of parking lots, and 32 lots appear to have been incorporated into Pokagon State Park. *Miller testimony; Schnepf testimony; Pet'r Exs. 3, 4, 5, 6; Resp't Ex. C at 7.*

11. Inclusive of Lot 32, all 71 of the Lone Tree Point properties located in Pleasant Township now have base rates of $3,300 per front foot. According to their property record cards, at least 66 of those properties started receiving that rate on June 17, 2014. Miller also reviewed property record cards for an additional 82 properties in Pleasant Township with frontage on Lake James. With the exception of channel-front properties, none were assessed below $5,000 per front foot. And the base rates extended as high as $8,900 per front foot. He therefore concluded that nobody else in Pleasant Township with frontage on Lake James gets the preferential $3,300 base rate the 66 Lone Tree Point properties located in Pleasant Township started receiving in 2014. *Miller testimony; Pet'r Ex. 2.*

12. Miller also briefly discussed the sale of 1280 Lane 105 Lake James, which is only four lots south of Miller's Lot 69. The property is comprised of Lots 28 and 29 in Lone Tree Point, Pleasant Township, and it appears in Schnepf's appraisal as Comparable Sale No. 1. Miller described it as the most comparable to his properties, and Schnepf stated that the properties were all very similar in terms of their land. It sold on September 6, 2016 for a combined price of $545,000, or a little over $6,000 per foot for its 87 feet of frontage on Lake James. In 2017, the Assessor assessed Lots 28 and 29 at $114,200 and $128,700, respectively, using a base rate of $3,300 per front foot even though the buyers had just paid over $6,000 per foot to purchase them four months earlier. *Miller testimony; Schnepf testimony; Resp't Ex. C at 4.*

13. Miller contends the Assessor's base rate reduction for the Lone Tree Point properties in Pleasant Township created a disparity that violates Indiana's requirement that property be assessed using uniform and equal rates. He acknowledged that the half-dozen to a dozen Lone Tree Point properties located in Jamestown Township that he reviewed have the same or higher unadjusted base rates as his lots. But the Assessor has not explained why she reduced the assessments for the lots in Pleasant Township, or how the properties in that township differ from Miller's. *Miller testimony.*

14. Even though they are in different townships, Miller's properties are comparable to the properties in Pleasant Township. All of the Lone Tree Point properties have frontage on Lake James, views of the sunset, and a sand and gravel lakebed that allows for boating, fishing and swimming from the shore. Additionally, the properties all rely on the same utility services and wastewater system, and they all have private wells. And Lane 105, which is a private drive maintained by the cottage owners, provides the only access to the properties. *Miller testimony; Pet'r Exs. 1, 6.*

15. Miller does not question the valuation of his improvements on Lot 69. But he maintains that both of his properties should have been valued using the $3,300 base rate starting in 2014, and that he is therefore entitled to a refund for the excessive taxes he paid due to the unconstitutional assessments. For Lot 70, Miller added up his total tax bills for the four years under appeal and applied a 50% reduction to reflect the reduced base rate. Miller followed the same process for Lot 69, but he applied a 44.5% reduction because 89% of the property's value is attributable to the land. Those calculations produced refunds of $4,019.52 for Lot 70 and $4,690.86 for Lot 69, making his total refund request $8,710.38. *Miller testimony; Pet'r Ex. 7.*

SUMMARY OF THE ASSESSOR'S CASE

16. The Assessor argues that we should dismiss Miller's Form 133 petitions for 2014, 2015, and 2016 because Miller is challenging the Assessor's methodology in computing assessments. Form 133 petitions are only available to correct objective errors, not claims

requiring subject judgment. The issues Miller raises are not objective errors because they cannot be answered by a simple true/false finding. *Cusimano argument.*

17. Even if the Form 133 process were appropriate, the underlying facts do not support a reduction in Miller's assessments. The properties to which Miller compares his property are in different neighborhoods for assessing purposes, and he failed to prove that there are no differences between his properties and the properties in Pleasant Township. Miller also admitted that other properties in his own assessment neighborhood have similar or even higher base rates. *Pettit testimony; Cusimano argument.*

A. Schnepf's Appraisal

18. The Assessor hired Schnepf, principle in All Appraisals, Inc., to appraise Miller's properties. He is a licensed real estate appraiser in Indiana and Michigan. Schnepf personally inspected Miller's properties and prepared two appraisal reports with effective dates of January 1, 2017. The appraisals both contain identical land valuation analyses that Schnepf used to estimate the land value of Miller's two properties individually and as a single property. He used the first appraisal to value Lot 69 and its improvements as an independent property because he felt Lot 70 could be sold off separately. And in his second appraisal, Schnepf valued Miller's two properties as a single property. Schnepf certified that both appraisals were prepared in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Schnepf testimony; Resp't Exs. A, C.*

a. 2017 Land Valuations

19. For his land valuation analysis, Schnepf researched and analyzed sales on Lake James between 2009 and the date of his report. He selected ten sales and analyzed their sales prices per square foot ($/SF) and their sales prices per front foot ($/FF), giving both measures equal credibility. Schnepf's analysis led him to select unit prices of $39.00/SF and $5,800/FF for his valuation treating Lots 69 and 70 as a single parcel of land. Applying those unit prices to their site area and frontage produced values of $471,510

and $539,400, respectively, which Schnepf reconciled to a value conclusion of $505,000 (rounded) for Lots 69 and 70. *Schnepf testimony; Resp't Exs. A at 20-29, C at 20-29.*

20. Schnepf then valued their land separately using the same data and methods. Schnepf selected unit prices of $48.00/SF and $5,900/FF for Lot 69. His square foot pricing produced a value of $312,000, while his front foot pricing produced a value of $295,000. The weighted average of the two measures resulted in a reconciled value of $303,000 (rounded) for Lot 69. Schnepf followed the same process for Lot 70 using unit prices of $50/SF and $5,400/FF to reach a reconciled value of $275,000 (rounded). *Schnepf testimony; Resp't Exs. A at 20-29, C at 20-29.*

b. 2017 Valuation for Lot 69 and its Improvements

21. Schnepf's first appraisal values Lot 69 and its improvements as an independent property. He imported Lot 69's site value of $303,000 from his land valuation analysis. He used Marshall & Swift Residential Cost Handbook to select base costs for the improvements and determined a replacement cost new of $103,966. Schnepf applied 80% depreciation based on a 40-year effective age and a 50-year economic life, producing a depreciated cost for the improvements of $20,793. He then added in an "as-is" value for the site improvements of $15,000, resulting in an indicated value under the cost approach of $338,800. *Schnepf testimony; Resp't Ex. A at 4.*

22. Schnepf also performed a sales comparison approach to value Lot 69 and its improvements. He searched the Lake James lakefront market for sales of older dwellings on larger lakefront lots that occurred in 2015. Due to comparability issues with four of the six sales his initial search returned, he expanded his search to include sales from 2016 as well. He adjusted the three sales he selected for differences in seller concessions, site values, bath counts, gross living area, basements, heat, car storage, and fireplaces. After adjustments, his sales ranged in price from $318,000 to $362,700. Schnepf placed the most weight on Comps 1 and 2, producing a reconciled value of $330,000. *Schnepf testimony; Resp't Ex. A at 4, 7.*

23. Schnepf reconciled his two approaches and concluded to a reconciled value of $330,000 for Lot 69 and its improvements as of January 1, 2017. *Schnepf testimony; Resp't Ex. A at 7-8.*

c. 2017 Valuation for Lot 69 and 70 as a Single Property

24. Schnepf's second appraisal values Lot 69 (and its improvements) and Lot 70 as a single property. He imported his $505,000 value conclusion for Lots 69 and 70 from his land valuation analysis. But the remainder of his cost approach analysis is identical to the one he performed when valuing Lot 69 only, using the same base costs, replacement cost new, depreciation, and site improvement values. Applying those values to the combined attributes of Miller's two properties resulted in an indicated value under the cost approach of $540,800. *Schnepf testimony; Resp't Ex. C at 4.*

25. Schnepf's sales comparison approach similarly mirrors his valuation of Lot 69 and its improvements. He relied on the same three comparable sales, and he made the same adjustments for differences in seller concessions, bath counts, gross living area, basements, heat, car storage, and fireplaces. However, the adjustments for site size were significantly altered due to the inclusion of both of Miller's lots. After adjustments, his sales ranged in price from $520,000 to $564,700. Schnepf again placed the most weight on Comps 1 and 2, and reconciled to a value of $530,000. *Schnepf testimony; Resp't Ex. C at 4, 7.*

26. Schnepf reconciled his two approaches and concluded to a reconciled value of $530,000 for Lot 69 (and its improvements) and Lot 70 as a single property as of January 1, 2017. *Schnepf testimony; Resp't Ex. C at 7-8.*

d. Trending for 2014-2016 Assessment Years and Summary

27. Schnepf then trended his 2017 value conclusions back to 2014, 2015, and 2016 using the Consumer Price Index ("CPI"). He felt that the lakefront real estate market had an insufficient volume of sales to determine any measurable change in values, so he used the

CPI because it was the best, most reliable data available. Schnepf's value conclusions are summarized as follows:

2014

Lot 69 and 70 together	$514,487
Lot 69 separately	$320,340
Lot 70 separately	$266,951

2015

Lot 69 and 70 together	$522,693
Lot 69 separately	$325,450
Lot 70 separately	$271,209

2016

Lot 69 and 70 together	$523,216
Lot 69 separately	$325,776
Lot 70 separately	$271,480

2017

Lot 69 and 70 together	$530,000
Lot 69 separately	$330,000
Lot 70 separately	$275,000

Schnepf testimony; Resp't Exs. A, B, C.

B. OTHER TESTIMONY

28. Pettit is a certified Level III assessor/appraiser. He has worked on ratio studies, annual adjustments, and new construction within Steuben County for some time. Properties in and around Lake James are stratified by neighborhood, but the names of the neighborhoods do not necessarily match the plat names. And each neighborhood is trended individually. *Pettit testimony.*

29. The properties located to the south of Miller's properties are located in a different neighborhood and a different township than his. The Assessor assessed similar properties located in the same township and neighborhood as Miller's properties at the same $6,600 per front foot. Pettit was unaware of what event triggered the base rate reduction for the

Lone Tree Point properties in Pleasant Township, but he assumed it was based on sales. *Pettit testimony; Resp't Exs. F, G, H.*

ANALYSIS AND CONCLUSIONS OF LAW

A. OBJECTIONS

30. Neither party objected to any of the documentary evidence included in record. However, the Assessor did object to a question Miller posed to Schnepf regarding why the Assessor assigned a property to a certain neighborhood, claiming that it called for speculation. Our ALJ sustained the objection and we adopt his ruling.

31. The Assessor also objected to a claim Miller made in his closing statement. Specifically, Miller claimed the Assessor took the position at the PTABOA hearing that the name of a neighborhood was absolutely immaterial to the rate of assessment. The Assessor argued that Miller's statement should be stricken from the record because it did not reflect testimony given during our hearing, and was in fact contrary to the testimony presented. Miller responded that he was not referring to testimony from our hearing; he based his comment on testimony at the PTABOA hearing that he documented in his "Affidavit in lieu of transcript." Our ALJ took the objection under advisement.

32. We agree that Miller did not base his statement on testimony offered during our hearing, but his underlying argument goes to the heart of his assessment challenge. We therefore overrule the objection.

B. DISMISSAL OF 2014-2016 APPEALS

33. Before reaching the merits of Miller's petitions, we need to first address whether his 2014-2016 appeals are properly before us. On May 8, 2017, Miller filed six Form 133 petitions with the Steuben County Auditor claiming that his 2014-2016 assessments are illegal as a matter of law because the Assessor did not apply a uniform and equal rate of assessment. Specifically, Miller complains that both of his properties should have been valued using the same $3,300 base rate that Lone Tree Point properties in Pleasant

Township started receiving in 2014, and that he is entitled to a refund for the excessive taxes he paid during those years.

34. We conclude that Miller used the wrong procedure to challenge his assessments. During the 2014-2016 tax years, a taxpayer had two ways to challenge an assessment: (1) the general appeal procedures laid out under Ind. Code § 6-1.1-15-1, which we refer to as the Form 130/131 procedure (named for the forms generally used to prosecute those appeals at the local and state level), or (2) the correction-of-error process under Ind. Code § 6-1.1-15-12, for which a Form 133 petition was used. The Form 130/131 procedure was only available to challenge a current year's assessment; it could not be used to challenge assessments from prior years. *Lake County Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1233 (Ind. 2005).

35. By contrast, the correction-of-error process could be used to correct errors from prior years. Unlike the Form 130/131 procedure, however, the correction-of-error process was only available to correct a limited subset of errors, including the specific error alleged by Miller—that his "taxes, as a matter of law, were illegal." I.C. § 6-1.1-15-12(a)(6); *see also*, *Muir Woods, Inc. v. O'Connor*, 36 N.E.2d 1208, 1210 (Ind. Tax Ct. 2015) ("[T]he types of errors that are correctable using a Form 133 appeal procedure are expressly limited; whereas, the types of errors correctable using a Form 130/131 appeal procedure are not.").

36. In *BP Amoco*, the Indiana Supreme Court reviewed the differences between the two procedures. Based on a regulation promulgated by the now-defunct State Board of Tax Commissioners, the Court found that a taxpayer had to challenge the legality of an assessment through the Form 130/131 procedure, and that the correction-of-error process was simply a vehicle for correcting the assessment once its illegality was determined:

> We think it apparent from the language and structure of Regulation 3-12 that appeals could not be made on Form 133 to challenge a "procedure or method used in determining [an] assessment" on grounds that the taxes were illegal as a matter of law. Such challenges to "the methodology used in

> generating an assessment" were required to utilize the "appeal provisions for that purpose" (i.e., Form 130). Said differently, if the Tax Court had decided a challenge on Form 130 to "a procedure or method used in determining [an] assessment…in favor of [the] taxpayer," that would have constituted a declaration that the taxes were illegal as a matter of law, and then the challenging taxpayer (and certain other taxpayers) would have been entitled to use Form 133 to have their assessments corrected and Form 17T to obtain refunds.
>
> …
>
> In short, appeals challenging the legality of assessments were required to be made on Form 130. Assessments determined to be illegal could be corrected (and refunds obtained) using Form 133. The names of the respective forms, set forth above, well illustrate the distinction: Form 130 is called a "Petition for Review of Assessment"; Form 133, a "Petition for Correction of Error."

BP Amoco, 820 N.E.2d at 1236 (emphasis added; internal citations omitted); *see also*, *Lake County Property Tax Assessment Bd. of Appeals v. U.S. Steel Corp*., 820 N.E.2d 1237, 1240 (Ind. 2005) (holding that the "legislative and regulatory scheme required [the taxpayer] to set forth in its contentions that local property tax officials had illegally reduced the aggregate assessed valuation in the relevant jurisdiction on Form 130, subject to the time limitations and other requirements of Indiana Code Section 6-1.1-15-1 and Indiana Administrative Code Title 50 Section 4.2-3-4.").

37. Both *BP Amoco* and *U.S. Steel* rely heavily on an administrative regulation that, while effective for the assessment years at issue in those cases, had been repealed by the time the Court issued its decisions. Nonetheless, the Court explained, "we do not discern anything in current law that is inconsistent [with the repealed provision] or the interpretation we give it today." *BP Amoco*, 820 N.E.2d at 1234. *U.S. Steel* also notes that the "legislative and regulatory scheme" required a Form 130/131 appeal when challenging the legality of the officials' actions. *U.S. Steel*, 820 N.E.2d at 1239 (emphasis added). Because the legislative scheme referenced in *U.S. Steel* largely remained intact through the times relevant to this case, and the repealed regulation is consistent with that law, we are bound by the Supreme Court's holdings in *BP Amoco* and *U.S. Steel*.

38. Miller contests the legality of his 2014-2016 assessments, but he needed to first pursue his claim using the Form 130/131 appeals process. Because Miller failed to timely challenge the legality of his 2014-2016 assessments under the Form 130/131 procedure, he cannot raise those challenges through Form 133 petitions. Even if we reached the merits of Miller's 2014-2016 appeals, he would nevertheless be unsuccessful for the same reasons we discuss in deciding his 2017 appeals below.

C. BURDEN OF PROOF

39. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I .C. § 6-1.1-15-17.2(b), (d).

40. Miller is challenging the assessment under the "uniform and equal" mandate contained in Article 10, Section 1(a) of Indiana's Constitution, to which the burden shifting statute does not apply. *Thorsness v. Porter County Assessor*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014). Even if it did, the assessments for both of Miller's properties decreased from 2016 to 2017. He therefore bears the burden of proof for 2017. To the extent the Assessor seeks to increase either assessment beyond its current level, however, she bears the burden of proving that higher value.

D. TRUE TAX VALUE

41. 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. § 6-1.1-31-6(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) and (e). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he 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. 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).

42. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2017, the valuation date was January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).

E. 2017 APPEALS

43. As discussed above, Miller has the burden of proving that his properties' 2017 assessments were incorrect and what the correct assessments should be. Miller argued that the Assessor's base rate reduction to $3,300 per front foot for the Lone Tree Point properties in Pleasant Township created a disparity that violates Indiana's requirement that property be assessed using uniform and equal rates.

44. Among other things, the "uniform and equal" mandate contained in Article 10, Section 1(a) of Indiana's Constitution requires the General Assembly to provide for a uniform and equal rate of assessment. Ind. Const. Art. X § 1(a). However, it 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).

45. In *Westfield Golf*, the Tax Court addressed the meaning of uniformity and equality in the context of Indiana's current assessment system. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 397 (Ind. Tax Ct. 2007). As the Court explained, before the switch to our current system, true tax value was determined under assessment regulations and bore no relation to any external, objectively verifiable

measurement standard. *Id.* at 398. Properties within the same neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id*. That changed under the new system, which incorporates market value-in-use as its external, objectively verifiable benchmark. The focus shifted from examining how assessment regulations were applied to examining whether a property's assessed value actually reflects that external benchmark. *Id*. at 399. Thus, "the end result—a uniform and equal *rate* of assessment—is required, but there is no requirement of uniform procedures to arrive at that rate." *Id*. (emphasis in original).

46. In a footnote, the Court in *Westfield Golf* explained that one method for proving a lack of uniformity and equality is to present assessment ratio studies, comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id*. at n. 3. Such studies, however, must 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).

47. When a ratio study shows that a given property is assessed above the common level of assessment, that property 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). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness*, 3 N.E.3d at 51.

48. The taxpayer in *Westfield Golf* lost because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties.

Westfield Golf, 859 N.E.2d at 399. Miller's focus was similarly misplaced. The majority of his evidentiary presentation focused on demonstrating the similarities between his property and the Lone Tree Point properties in Pleasant Township receiving the $3,300 base rate. However, Miller offered objectively verifiable data for only one of them–1280 Lane 105 Lake James (Comparable Sale No. 1 in Schnepf's appraisal). Although Miller presented information regarding its assessed value and its sale price, he did not even compute a ratio. He also failed to explain how a sample size of one is statistically reliable. And there is no indication that he prepared his analysis according to any professionally acceptable standards for ratio studies. Consequently, Miller's evidence is insufficient to demonstrate that his 2017 assessments violate Indiana's uniform and equal requirement.[4]

49. In his post-hearing brief, Miller made numerous additional claims and arguments related to the DLGF's Real Property Assessment Guidelines and the methodology employed by the Assessor when conducting mass appraisals. Miller also argued that (1) Ind. Code § 6-1.1-15-18(c) requires assessors to take comparable properties in adjacent taxing districts into consideration; (2) the DLGF's Guidelines prohibit variances of more than 20% in value for adjacent neighborhoods; and (3) 50 IAC 27-5-1(a) requires assessors to equalize assessments across townships to ensure equalization within the county. *Pet'r Brief at 3-4.* But a taxpayer cannot rebut the presumption that an assessment is correct by contesting the assessor's methodology. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."). To 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." *Id.*

50. Because Miller did not offer any probative evidence to establish the market value-in-use of his properties or a lack of uniformity and equality, he failed to make a prima facie case

[4] The Board does find it deeply troubling that the Assessor did not explain why the base rates are in fact so different. If Pleasant Township lots sell for less than Jamestown Township lots, providing that evidence would alleviate concerns of unequal treatment, whether she has the burden or not.

that his 2017 assessments were incorrect. That does not end our inquiry, however, because the Assessor seeks to raise the assessments.

51. In support of an increase, the Assessor offered Schnepf's appraisals. Schnepf is a licensed appraiser and he certified that his appraisals comply with USPAP. His two appraisals value Miller's properties both individually and as a single property. The Assessor has requested we adopt Schnepf's value conclusions from the appraisal valuing the properties individually (Exhibit A) because Schnepf thinks Lot 70 is excess land that Miller could sell off as a separate, buildable lot. However, properties are assessed at their current use, not their highest and best use. Lot 70 is currently used as a single economic unit with the adjacent property, and should be valued accordingly. Schnepf concluded that the value as a single unit is $530,000. We therefore order the 2017 assessments changed to a combined value of $530,000.

SUMMARY OF FINAL DETERMINATION

52. Miller failed to follow the proper procedure to appeal his 2014, 2015, and 2016 assessments. We therefore dismiss all six of his petitions for those years. As for 2017, Miller failed to make a prima facie case that his properties were assessed for more than their true tax values or there was a lack of uniformity and equality in his assessments. The Assessor, however, provided an appraisal that is probative evidence of a more accurate market value-in-use. Because Miller's lots should be valued as a single unit, we order their combined assessment changed to $530,000.

The Final Determination of the above captioned matter is issued on the date first written above.

_____
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>.