REPRESENTATIVE FOR PETITIONERS:
Ronald E. Milliken, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Frank J. Agostino, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

RONALD E. & CHRISTINE M. MILLIKEN,	)	Petition No.: 71-029-15-1-5-00957-16
Petitioners,	)	Parcel No.: 71-02-26-402-001.000-029
v.	)	
	)	County: St. Joseph
ST. JOSEPH COUNTY ASSESSOR,	)	Township: Warren
Respondent.	)	Assessment Year: 2015

September 13, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Respondent conceded the subject property's March 1, 2015, assessment should be reduced to the 2014 value, but the Petitioners sought an even lower value. Did the Petitioners prove a further reduction is warranted? Additionally, are the Petitioners entitled to tax refunds related to previous years' appeals?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2015 appeal with the St. Joseph County Assessor on October 13, 2015. St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) failed to hold a hearing within 180 days, as required by Ind. Code § 6-1.1-15-1(k).

3. The Petitioners filed their Petition for Review of Assessment (Form 131) with the Board on April 25, 2016. *See* Ind. Code § 6-1.1-15-1(o) (permitting taxpayers to appeal directly to the Board if the maximum time for a PTABOA to hold a hearing or issue a determination has elapsed).

4. On June 15, 2016, the Board's administrative law judge, Jennifer Bippus (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Ronald Milliken and St. Joseph County Chief Deputy Assessor Patricia St. Clair were sworn and testified.[1]

6. The Petitioners offered the following exhibits:

Petitioners Exhibit 1:	Photocopy of two envelopes addressed to Mr. Milliken from St. Joseph County Drainage Board and St. Joseph County Auditor,
Petitioners Exhibit 2:	Photocopy of two envelopes addressed to Mr. Milliken from the St. Joseph County Treasurer,
Petitioners Exhibit 3:	Email from Mr. Milliken to Surveyor's office, County Auditor Michael Hamann, and "jmcnamara" dated May 3, 2016,
Petitioners Exhibit 4:	Petitioners' 2014-pay-2015 tax bill,

[1] Patricia Henry from the St. Joseph County Auditor's Office appeared and signed the hearing sign-in sheet. However, she was not sworn and did not stay for the duration of the hearing. On May 26, 2016, the Board issued a subpoena in response to Mr. Milliken's motion, commanding County Auditor Michael Hamann to appear at the hearing and testify. *Bd. Ex. E.* Ms. Henry appeared in place of Mr. Hamann, who according to the Respondent, "was on vacation." Mr. Milliken agreed to proceed with the hearing without Mr. Hamann or Ms. Henry present. As such, any issue regarding Mr. Hamann's lack of testimony as it relates to this case is moot.

Petitioners Exhibit 5:	Petitioners' 2015-pay-2016 corrected tax bill,
Petitioners Exhibit 6:	Part of a newspaper article from South Bend Tribune, dated November 24, 2013,
Petitioners Exhibit 7:	A portion of a newspaper article from the South Bend Tribune, dated March 28, 2014,
Petitioners Exhibit 8:	A portion of an article entitled *City Sells Hall, Developer Plans Hotel for Old College Football Museum Site,* from the South Bend Tribune, dated April 16, 2015,
Petitioners Exhibit 9:	A portion of an article entitled *LaSalle Hotel Work Starts in April,* from the South Bend Tribune, dated March 14, 2015,
Petitioners Exhibit 10:	A portion of an article entitled *Two Companies to Expand in South Bend, Abatement Request Could Create 48 Jobs,* from the South Bend Tribune, dated October 30, 2014; and a portion of an article entitled *Chase Tower Assessment Reduced,* also from the South Bend Tribune, dated "2015,"
Petitioners Exhibit 11:	Plat map of the subject property's area from CONNECTEXPLORER,
Petitioners Exhibit 12:	Plat map of the subject property's area,
Petitioners Exhibit 13:	Plat map indicating the parcels located at the corner of Quince and Southport,
Petitioners Exhibit 14:	Plat map with subject property shaded,
Petitioners Exhibit 15:	Petitioners' sketch of subject property,
Petitioners Exhibit 16:	Property record card for Fairway LLC, located at 26663 US 20,
Petitioners Exhibit 17:	Property record card for parcel number 71-02-35-401-001.000-029.

7. The Respondent did not offer any exhibits.

8. The following additional items are recognized as part of the record:

Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Hearing notice, dated April 29, 2016,
Board Exhibit C:	Notice of Appearance for Frank Agostino,
Board Exhibit D:	Hearing sign-in sheet,
Board Exhibit E:	Petitioners' request for subpoena, and subpoena requiring Michael J. Hamann to testify.

9. The subject property is a vacant commercial lot located at 26552 US 20 in South Bend.

10. The subject property's 2015 land assessment is $10,400.

11. The Petitioners did not request a specific value at the hearing.[2]

OBJECTIONS

12. Mr. Agostino objected to portions of the Petitioners' documentary evidence and portions of Mr. Milliken's testimony. First, Mr. Agostino objected to the admittance of Petitioners' Exhibits 14, 15, 16, and 17, on the grounds that the exhibits were not submitted in advance of the hearing.

13. In response, Mr. Milliken stated the exhibits in question are records from the Assessor's office, and therefore the Respondent had knowledge of the records. Accordingly, he was under no obligation to provide the Respondent with copies of the exhibits prior to the hearing. The ALJ took the objection under advisement.

14. Because the Petitioners opted out of the Board's small claims procedures, both parties were required to exchange copies of their documentary evidence at least five business days prior to the hearing. 52 IAC 2-7-1 (b)(1). The exchange requirement allows parties to be better informed and to avoid surprises, and it also promotes an organized, efficient, and fair consideration of the issues at a hearing. Failure to comply with this requirement can be grounds to exclude evidence. 52 IAC 2-7-1(f). However, the Board may waive the evidence-sharing requirements for materials that were submitted or made part of the record at the PTABOA hearing. 52 IAC 2-7-1(d).

15. While it may be true the Petitioners obtained the exhibits from the Assessor's office, the Assessor has custody of thousands of records. It is not reasonable to conclude that the Assessor should have known which records the Petitioners were going to offer at the hearing. As the Petitioners choose to opt out of the Board's small claims procedures, they were well aware of the rules that pertain to such a decision. Thus, Mr. Agostino's objection is sustained and Petitioners' Exhibits 14, 15, 16, and 17 are excluded.

[2] According to the Petitioners' Form 131 they requested a total assessment of $9,800. At the hearing the Respondent conceded that the property should be assessed at $9,800; however, Mr. Milliken would not accept the Respondent's concession stating he "will take what the State says."

16. Mr. Agostino also objected to the testimony provided by Mr. Milliken "concerning the value of property." Mr. Agostino argued that Mr. Milliken did not establish he is "an expert in property." Mr. Agostino went on to argue Mr. Milliken lacks the proper license, credentials, and related education to be considered an "expert" in developing property values. In response, Mr. Milliken agreed that he is not an appraiser; but added he is an "expert in the history of the properties in the area." The ALJ took the objection under advisement.

17. The Board overrules Mr. Agostino's objection. It should come as no surprise that Mr. Milliken would testify in his own appeal. Further, Mr. Milliken did not purport to testify as a valuation expert, but more as a "historian" of certain areas in St. Joseph County. The Board's rules do not require a taxpayer to be identified as an expert in order to testify about the value of purportedly comparable properties. As the Tax Court has pointed out, a non-expert owner may testify as to the value of his property, although his opinion will only have probative force to the extent it is based on objective facts rather than speculation. *Lake of the Four Seasons Property Owners' Ass'n v. Dep't of Local Gov't Fin.*, 875 N.E.2d 833, 836 (Ind. Tax Ct. 2007).

18. Finally, Mr. Milliken objected to Ms. St. Clair's testimony regarding the subject property's classification. Mr. Milliken argued that Ms. St. Clair has the property classified as commercial vacant land, but that "she has no idea what the use is." The ALJ did not rule on the objection at the hearing. The Board overrules Mr. Milliken's objection, as he failed to state any legal grounds or basis for his objection.

19. The Board notes however, the decisions on the above objections do not affect the final determination.

JURISDICTIONAL FRAMEWORK

20. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax

exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

21. The subject property's assessment is too high. The property's assessment increased from $9,800 in 2014 to $10,400 in 2015 without explanation. *Milliken argument.*

22. The property's assessment is not uniform with the assessments of neighboring properties. The subject property is a corner lot assessed as a "commercial vacant lot."[3] Neighboring corner lots are also assessed as commercial, but are said to be located in "different neighborhoods." As such, the subject property is "a neighborhood of one." Thus, the properties have different assessments with the subject property having the highest assessment. A correct break-down of the subject property would be 0.5721 acres zoned commercial and 0.4579 acres zoned residential. *Milliken argument; Pet'rs Ex. 11, 12, 13.*

23. An adjacent property belonging to "Andy Place" is zoned agricultural even though "housing has been placed on part of it." This property's base rate value is much lower than the subject property's, even though they should be valued the same. Basing the assessment on zoning is "illegal," but if zoning is going to be used, it should be consistent. *Milliken argument; Pet'rs Ex. 14, 15.*

24. The property located at Southport and Quince Road measures 0.68 acres and is valued at $2,500. The base rate for this property is $3,700. This base rate should be applied to the subject property. *Milliken testimony; Pet'rs Ex. 17.*

25. Finally, the Petitioners' offered criticism of the practices, and even the ethics, of local officials. Specifically, Mr. Milliken testified that the county has "failed to issue tax

[3] According to Mr. Milliken, "the back ten lots of the subject property are residential lots."

refunds relating to previous Board appeals decided in the Petitioners' favor." Further, Mr. Milliken alleges the county is on a "fiscal cliff" due to "tax caps." Additionally, the Petitioners allege local officials are "giving away" properties similar to the subject property, or selling them for $1 to developers. The county is also "granting thousands of dollars in tax abatements." For these reasons, assessments are inflated and "the tax burden is not equitable" as it falls disproportionately on residential properties. *Milliken argument; Pet'rs Ex. 6, 7, 8, 9, 10.*

RESPONDENT'S CONTENTIONS

26. The Respondent accepted the burden of proof and conceded the assessment should revert back to the 2014 value of $9,800. In fact, she offered to stipulate to that amount, but the Petitioners declined. The Petitioners failed to establish that any lower assessment is justified. *Agostino argument.*

27. According to Ms. St. Clair, property classification does not affect the tax *rate*, but affects the tax *caps*. Residential, commercial, and industrial properties have different tax caps, which affect how much tax is owed. Additionally, each taxing unit has its own tax rate. Further, the neighborhood factor only affects the land value. *St. Clair testimony.*

28. Regarding the "Andy Place" parcel, Mr. Place is a developer and is receiving a "developer's discount" on the property. The parcel has been assessed as agricultural because that is how the property was valued when he purchased it. Mr. Place "is holding the real estate as inventory for resale and once the property is sold, the value will then change." The Petitioners are not developers and their land is valued accordingly. *Agostino argument; St. Clair testimony.*

BURDEN OF PROOF

29. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax*

Comm'rs, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

30. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

31. 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 at 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 is applicable to all appeals pending before the Board.

32. Here, the Respondent accepted the burden, conceding the assessment increased by more than 5% from 2014 to 2015. In fact, the total assessment increased from $9,800 to $10,400. Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2015 assessment is correct. To the extent the Petitioners seek an assessment below the 2014 value they have the burden to prove that they are entitled to a lower value.

ANALYSIS

33. 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.

34. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).

35. Here, the Respondent accepted the burden of proof and conceded that the assessment should revert back to the 2014 value of $9,800. Therefore, the assessment will at least be reduced to $9,800. *See* Ind. Code § 6-1.1-15-17.2(b). That determination does not end the Board's inquiry because the Petitioners requested an even lower assessment. The Petitioners have the burden of proving they are entitled to any further reduction. *See* Ind. Code § 6-1.1-15-17.2(b).

36. Much of the Petitioners' argument revolves around how the property should be assessed rather than what the value should be. In fact, the Petitioners did not even propose a precise value. Instead, they argued that their property's classification and neighborhood placement does not conform to other purportedly comparable properties. They argue these "errors" resulted in an unfair assessment.

37. In essence, the Petitioners attacked the Respondent's methodology in computing the assessment. Even if the Board were to assume the Petitioners are correct, they failed to

make a prima facie case for lowering the assessment below the 2014 value. Simply challenging the methodology used to assess a property does not suffice to. Instead, a taxpayer must offer probative market-based evidence to show the property's true tax value. *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers, LLC v. Jennings Co. Ass'r,* 842 N.E.2d 899, 900-01 (Ind. Tax Ct. 2006) (providing that Indiana's current assessment system focuses on whether the assessed value is actually correct, not the methodology).

38. The Petitioners offered very little in that regard. At best, they pointed to a property located at the corner of Southport and Quince arguing their property should be similarly assessed using a residential excess base rate of $3,700 per acre. The Board infers the Petitioners are attempting to present an "assessment comparison."

39. Parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal. The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. In other words the proponent must provide the type of analysis that *Long* contemplates for the sales-comparison approach. Conclusory statements that a property is "similar" or "comparable" to another property are not probative evidence. *Long*, 821 N.E.2d at 470-471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market value-in-use. *Id.*

40. Here, the Petitioners did not offer any of the required analysis. Further, they failed to offer any support for the notion that a comparison to only one property comports with generally accepted appraisal principles.

41. Additionally, the Petitioners' reference to various newspaper articles and quotes to support their conclusion that assessments are artificially inflated does nothing to prove their property's value. The Petitioners failed to provide any evidence to substantiate their allegations.

42. Finally, the Petitioners claim they have not received tax refunds for previous appeals that were decided in their favor. The Petitioners were not specific as to what appeals or what years they are referring. Even had they provided the specifics and made a case that they may be entitled to a refund, the Board only has the authority to review claims for refunds in very limited circumstances. Indiana Code sets out the grounds on which a taxpayer may seek a property tax refund and the procedures for doing so, including the procedures for appealing when a refund claim is denied. Ind. Code § 6-1.1-26-1 through Ind. Code § 6-1.1-26-4. Among other things, a refund claim must be filed with the county auditor on a form prescribed by the State Board of Accounts (Form 17T). Ind. Code § 6-1.1-26-1(1) and (3); *see also Hutcherson v. Hamilton Co. Ass'r,* 2 N.E.3d 138, 143 (Ind. Tax Ct. 2013). The claim must be based on one of three grounds: (1) taxes for the property were assessed and paid more than once for the same year, (2) the "taxes, as a matter of law, were illegal," or (3) there was a mathematical error in computing the assessment or taxes. Ind. Code § 6-1.1-26-1(4). Except for certain claims that must be approved by the Department of Local Government Finance, a refund claim must be approved by three county officials: the auditor, treasurer, and assessor. Ind. Code § 6-1.1-26-1(1). If the claim is disapproved by one of those officials or by the county commissioners, the taxpayer may appeal to the Board. Ind. Code § 6-1.1-26-3 and Ind. Code § 6-1.1-26-4. It does not appear that the Petitioners' claim here involves any of the circumstances contemplated by Ind. Code § 6-1.1-26-1.

SUMMARY OF FINAL DETERMINATION

43. The Respondent conceded that the 2015 assessment should revert back to the 2014 value of $9,800. The Petitioners apparently sought a lower value, but failed to make a prima facie case. It does not appear the Board has the authority to address the Petitioners' refund argument.

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