

REPRESENTATIVE FOR THE PETITIONERS:

William Mullineaux, *pro se*

REPRESENTATIVE FOR THE RESPONDENT:

Melissa Tetrick, Analyst for the Marion County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

William & Mary Mullineaux	)	Petition No.:	49-407-17-1-5-00311-19
	)		
Petitioners,	)	Parcel No.:	49-01-34-128-002.000-407
	)		(4014899)
v.	)		
	)	County:	Marion
Marion County Assessor,	)	Township:	Lawrence
	)		
Respondent.	)	Assessment Year:	2017

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

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**November 8, 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. The Respondent had the burden to prove the subject property's January 1, 2017, assessment was correct. Did the Respondent prove the 2017 assessment was correct?

## **PROCEDURAL HISTORY**

2. The Petitioners initiated their 2017 assessment appeal with the Marion County Assessor on May 17, 2018. On February 22, 2019, the Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioners. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On August 14, 2019, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held a hearing. Neither the Board nor the ALJ inspected the property.

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. William Mullineaux appeared *pro se* and was sworn. Analyst Melissa Tetrick appeared for the Respondent and was sworn.
5. The Petitioners offered the following exhibits:
  - Petitioners Exhibit 1: Neighborhood assessment change comparison,
  - Petitioners Exhibit 2A: 2015 subject property record card,
  - Petitioners Exhibit 2B: 2017 subject property record card,
  - Petitioners Exhibit 3: Glossary for Property Appraisal and Assessment, page 149 definition for "Sales Chasing,"
  - Petitioners Exhibit 4: 50 IAC 27-2-11,
  - Petitioners Exhibit 5: 50 IAC 27-11-2,
  - Petitioners Exhibit 6: Department of Local Government Finance (DLGF) memorandum "2010 Ratio Study Review Process / Annual Adjustment Guidance" pages 1, 2, 8, and 9,
  - Petitioners Exhibit 7: DLGF presentation "What's Wrong With My Ratio Study,"
  - Petitioners Exhibit 8: DLGF presentation "Mass Appraisal Analysis & Benchmarks" page 44,
  - Petitioners Exhibit 9: Version A – Real Property Assessment Guideline – Appendix B – Residential and Agricultural Depreciation, page 5,
  - Petitioners Exhibit 10: Version A – Real Property Assessment Guideline – Appendix B – Residential and Agricultural Depreciation, page 12,

Petitioners Exhibit 11: United States Department of the Interior National Park Service / National Register of Historic Places Registration Form “Oaklandon Historic District” page 5,  
Petitioners Exhibit 12A: Map Indy 2010 aerial photograph of the subject property,  
Petitioners Exhibit 12B: Map Indy 2017 aerial photograph of the subject property,  
Petitioners Exhibit 12C: Furnace identification plate,  
Petitioners Exhibit 13: 2016 Stipulation Agreement dated February 19, 2019.

6. The Respondent offered the following exhibits:

Respondent Exhibit 1: Form 131, Notification of Final Assessment Determination (Form 115), and Taxpayer’s Notice to Initiate an Appeal (Form 130),  
Respondent Exhibit 2: 2017 and 2019 subject property record cards,  
Respondent Exhibit 3: Sales disclosure form dated September 3, 2015.

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

8. The property under appeal is located at 6421 Oaklandon Road in Indianapolis.

9. The PTABOA determined the total assessment is \$167,900 (land \$45,000 and improvements \$122,900).

10. The Petitioners requested a total assessment of \$119,100 (land \$47,000 and improvements \$72,100).

### **OBJECTIONS**

11. The Petitioners objected to all of the Respondent’s exhibits arguing the Respondent did not timely disclose the witness and evidence list at least 15 days before the hearing. Mr. Mullineaux did state the exhibits were received “on the five day deadline before the hearing.” The Respondent did not offer a response. The ALJ took the objection under advisement.

12. Because the Petitioners opted out of the Board’s small claims procedures, both parties were required to provide a list of witnesses and exhibits to be introduced at the hearing at

least 15 business days before the hearing and copies of documentary evidence at least 5 business days before the hearing. 52 IAC 2-7-1(b). 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 the hearing. Failure to comply with this requirement can be grounds to exclude evidence. 52 IAC 2-7-1(f).

13. The Respondent did not dispute the fact a witness and exhibit list was not timely provided to the Petitioners, but the documentary evidence was provided five days prior to the hearing. The Respondent's evidence consists of filings previously viewed or prepared by the Petitioners, a sales disclosure sheet for the subject property, and subject property record cards. The Petitioners are not prejudiced by the failure to list these exhibits 15 days before the hearing. Accordingly, the objection is overruled and the exhibits are admitted into the record.

#### **PETITIONERS' CONTENTIONS**

14. The subject property is over-assessed. The Petitioners purchased the subject property in 2015 for \$165,900. At the time of purchase, the property was not used as a residential property, it was a REMAX real estate office. The subject property has always been assessed residential, but the use was always commercial. *Mullineaux testimony; Pet's Ex. 2A, 2B.*
15. The Petitioners argue the Respondent engaged in sales chasing because the 2016 assessment was based on the property's sale price. Sales chasing violates all the laws, rules, and regulations set forth by the International Association of Assessing Officers (IAAO) and DLGF. The 2016 assessment was appealed, as a result of a settlement agreement, the 2016 assessment was reduced to the 2015 level of \$119,100, with a commercial circuit breaker cap of 3%.<sup>1</sup> In 2017, the Respondent again used the

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<sup>1</sup> Indiana provides credits that effectively cap property tax liability at a specified percentage of gross assessed value. Ind. Code § 6-1.1-20.6-7.5. The amount of the credit depends on the property's classification. Property defined as nonresidential real property under the tax-cap statute receives a 3% cap. *Id.*

property's sale price to increase the assessment to \$167,900 with no change in use to the property. *Mullineaux testimony; Pet'rs Ex. 1, 2A, 2B, 13.*

16. As evidenced by the 2015 and 2017 property record cards, a photograph of furnace identification plate, and aerial maps, no objective changes have been made to the subject property. The Respondent, however, made several subjective changes between 2015 and 2017. The grade was changed from D++ to C+, the effective year was changed from 1957 to 2000, depreciation was decreased from 45% to 16%, and the trending factor was changed from 0.80 to 0.85. These changes increased the assessed value from \$119,100 to \$167,900. *Mullineaux testimony; Pet'rs Ex. 2A, 2B, 12A, 12B, 12C.*
17. In an effort to prove the Respondent erred in calculating the effective age of the property, the Petitioners presented their own calculation based on the Real Property Assessment Guidelines (Guidelines). According to the Petitioners, the home was originally built in 1928, and a bedroom was added in 1993, making the average age 64, with an effective age of 1953. The effective age and grade assigned also affects the depreciation. According to the Guidelines, the depreciation on a 64 year old home in average condition with either a C+1 or D++ grade should be 42% or 47%. The Respondent erroneously applied a depreciation rate of 16%. *Mullineaux testimony; Pet'rs Ex. 9, 10.*
18. The Petitioners also prepared a "Neighborhood Assessment Change Comparison" utilizing 25 assessments within a one block radius. They analyzed the percentage of change in assessed values between 2016 and 2017. The percentage of change ranged from negative (25.74%) to 35.48%. The subject property's assessment increased 40.97%. *Mullineaux testimony; Pet'rs Ex. 1.*
19. Finally, the Petitioners argue the subject property is located in a primarily residential neighborhood, but the land base rate of \$7.00 per square foot is the same amount applied to primary commercial land located on Pendleton Pike and Highway 67. According to the Petitioners, commercial property located on Pendleton Pike is priced anywhere from \$2.00 per square foot to \$8.00 per square foot. This illustrates the inconsistencies in the

county's land order and how it is applied to commercial properties. *Mullineaux testimony.*

### **RESPONDENT'S CONTENTIONS**

20. The subject property is currently under-assessed. The Petitioners purchased the property on September 3, 2015, for \$165,900.<sup>2</sup> At the time of purchase the property was classified and assessed as a residential. However, the property is currently utilized in a business capacity as Palette & Paper. For 2016, the parties stipulated the property was put to commercial use and subject to the 3% tax cap. However, the land value was based on a residential classification. Therefore, the classification needs to be changed to commercial. *Tetrick testimony; Resp't Ex. 2, 3.*
21. Because the subject property is misclassified, several changes need to be made. First, the land must be reclassified as commercial, and that portion of the assessment increased from \$45,000 to \$132,600. The grade assigned to the improvements should be changed from C+ to D++ and the effective age year changed from 2000 to 1957. These changes lower the assessment of the improvements from \$122,900 to \$90,500. The tax-cap should remain at 3%. The county is requesting the total 2017 assessment be increased from \$167,900 to \$223,100. *Tetrick testimony; Resp't Ex. 2.*
22. In response to questioning, the Respondent stated the change in the land base rate of \$7.00 per square foot for commercial property was derived from the 2012 county land order based on sales in the subject property's neighborhood. This base rate was applied to the assessments of other commercial properties. *Tetrick testimony.*

### **BURDEN OF PROOF**

23. 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. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax*

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<sup>2</sup> The sales disclosure form indicates the conveyance date was July 20, 2015. The form was filed on September 3, 2015. *Resp't Ex. 3.*

*Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute creates two exceptions to that rule.

24. 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).
25. 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 is applicable to all appeals pending before the Board.
26. Here, the parties agree the total assessed value of the subject property increased by more than 5% from 2016 to 2017. Our ALJ stated that because the increase was more than 5% her preliminary ruling was that the burden was on the Respondent, a point that the Respondent never disputed. Accordingly, the Respondent has the burden of proving the 2017 assessment is correct.

#### **ANALYSIS**

27. 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 property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

28. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.
29. In an effort to support increasing the assessment, the Respondent focused on why the land should be reclassified from residential to commercial, a grade change from C+ to D++, and lowering the effective age 1957.<sup>3</sup> Even if we assume the Respondent is correct the land should be reclassified and changes be made to the improvements, those facts are not enough to meet the burden of proving the assessment would accurately reflect the property's market value-in-use if changed. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 678 (Ind. Tax Ct. 2006) (explaining that strictly applying assessment regulations does not necessarily make a prima facie case and referring to the types of market-based evidence that may be used in an assessment appeal).
30. The Respondent testified the proposed land rate change is the same rate applied to other commercial property in the area. While a party may offer evidence showing how comparable properties are assessed, "the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." Ind. Code § 6-1.1-15-18(c). This requires far more information than the Respondent

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<sup>3</sup> The Respondent did not argue the 2015 purchase of the subject property should reflect its market value-in-use. Even had the Respondent made this argument, it would have failed because the purchase was roughly 17 months removed from the relevant valuation date and the Respondent failed to relate the purchase price to the valuation date.



offered. *See Long*, 821 N.E.2d at 471 (holding that taxpayers seeking to show their property's value through sales data for other properties had to explain how the characteristics for their property compared to the other properties and how relevant differences affected value).

31. Here, the Respondent's burden is not merely to explain why the assessment was increased. Instead, the Respondent must offer probative evidence proving the subject property's market value-in-use. *See Ind. Code § 6-1.1-15-17.2*. The Respondent failed to offer enough probative evidence to prove the property's market value-in-use. For these reasons, the Petitioners are entitled to have the assessment returned to its 2016 level of \$119,100. This ends the Board's inquiry because the Petitioners did not request a lower value.

#### **SUMMARY OF FINAL DETERMINATION**

32. The Respondent had the burden of proving the 2017 assessed value was correct. The Respondent failed to make a prima facie case. The Board orders the 2017 assessment be reduced to \$119,100.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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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>>.