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

Petitions:	**02-072-13-1-5-00146**
	02-072-14-1-5-00101
Petitioner:	**Mahendra Patel**
Respondent:	**Allen County Assessor**
Parcel:	**02-08-20-202-002.000-072**
Assessment Years:	**2013 & 2014**

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

Procedural History

1. The Petitioner initiated his 2013 and 2014 assessment appeals with the Allen County Assessor on May 22, 2014, and July 24, 2014, respectively.

2. On September 11, 2014, the Allen County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 2013 assessment year lowering the assessment, but not to the level requested by the Petitioner.

3. On November 13, 2014, the PTABOA issued its determination for the 2014 assessment year denying the Petitioner any relief.

4. The Petitioner timely filed Petitions for Review of Assessment (Form 131s) with the Board. For both years, he elected the Board's small claims procedures.

5. The Board issued notices of hearing on July 31, 2015.

6. Administrative Law Judge (ALJ) Joseph Stanford held the Board's consolidated administrative hearing on September 15, 2015. He did not inspect the property.

7. Mahendra Patel appeared *pro se*. Attorney F. John Rogers appeared for the Respondent. Mr. Patel and Senior Residential Appraisal Deputy Renee Buettner were sworn as witnesses.

Facts

8. The property under appeal is a single-family residence located at 4305 Foxknoll Cove in Fort Wayne.

9. For 2013, the PTABOA determined a total assessment of $185,000 (land $31,300 and improvements $153,700).

10. For 2014, the PTABOA determined a total assessment of $185,100 (land $31,300 and improvements $153,800).

11. For both years, the Petitioner requested a total assessment of $160,000 (land $25,000 and improvements $135,000).

Record

12. The official record for this matter is made up of the following:

a) Petitions for Review of Assessment (Form 131s) with attachments,

b) A digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit 1:	Summary of the Petitioner's testimony and argument,
Petitioner Exhibit 2:	Page one of the Purchase Agreement for the subject property dated March 30, 2014,
Petitioner Exhibit 3:	Multiple Listing Service (MLS) listing for the subject property,
Petitioner Exhibit 4:	Seller's Residential Real Estate Sales Disclosure for the subject property dated December 10, 2013,
Petitioner Exhibit 5:	List of appliances along with "buying price" created by the Petitioner, six pages of appliance details from various websites,
Petitioner Exhibit 6:	"Property History Detail" for the subject property compiled by Claire McGuffey of Century 21 Bradley.
Respondent Exhibit 1:	Respondent's "Position Statement,"
Respondent Exhibits 2-3:	Subject property record card,
Respondent Exhibits 4-6:	Sales Disclosure Form for the subject property dated April 23, 2014,
Respondent Exhibit 7:	Page one of the Purchase Agreement for the subject property dated March 30, 2014,
Respondent Exhibit 8:	Page one of the Seller's Residential Real Estate Sales Disclosure for the subject property dated December 10, 2013,
Respondent Exhibit 9:	MLS listing for the subject property,
Respondent Exhibits 10-12:	Sales-comparison analysis created by the Allen County Assessor.
Board Exhibit A:	Form 131 petitions with attachments,
Board Exhibit B:	Notices of hearing, dated July 31, 2015,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Notice of Appearance for F. John Rogers.

d) These Findings and Conclusions.

Contentions

13. Summary of the Petitioner's case:

a) The property's assessment is too high. The Petitioner purchased the property on April 17, 2014, for $185,000. The purchase price included "appliances and window dressings." These items should be deducted from the property's assessment. *Patel argument; Pet'r Ex. 1, 2, 4, 5.*

b) Specifically, the property included a new gas fireplace with a vent and blowers, a new built-in dishwasher, a new gas range, a new built-in refrigerator, a new microwave oven with a hood, and a new ceiling fan with lighting. The property also included new blinds, rods, and valances for the patio windows. The total cost new of these items, including sales tax and the approximate cost of installation, equates to $33,063. *Patel testimony; Pet'r Ex. 1, 4, 5.*

c) Accordingly, if the "new appliances and new window dressings" were deducted from the purchase price, the "building and land" was purchased for $151,937. Upon drafting the purchase agreement, the Petitioner requested that the selling broker separate the "cost of the contents." The broker refused due to the amount of "commission" she would receive. *Patel testimony; Pet'r Ex. 1, 2, 4, 5.*

d) There are other issues that negatively affect the value of the property. First, the home is located at the front of the subdivision on the corner of a busy intersection. The "heavy traffic" accounts for why the property was on the market for an extended amount of time. *Patel testimony; Pet'r Ex. 6.*

e) Second, the home is located on a steep hill leading to a retention pond. Thus, the property has "very little usable side and back yard." Further, the retention pond is not properly maintained. Because of this, an accumulation of "muck and trash" has materialized at the side of the property. Therefore, the property's land assessment should be reduced to account for this. *Patel argument.*

14. Summary of the Respondent's case:

a) The property is assessed correctly. The Petitioner purchased the property for $185,000, on April 17, 2014. Both the MLS listing and the purchase agreement indicate that standard fixtures were included with the purchase. These fixtures included items such as a dishwasher, microwave, refrigerator, air filter, and exhaust hood. There is nothing unusual for fixtures to be included in a purchase. The inclusion of standard fixtures in a sale does not affect the assessment. *Rogers argument; Buettner testimony; Resp't Ex. 1, 4, 5, 6, 7, 8, 9.*

b) The Respondent inspected the subject property on June 25, 2014. As a result, she increased the size of the home from 1,944 square feet to 1,979 square feet. She increased the size of the garage from 499 square feet to 521 square feet. Finally she noted that the home has "some" crown molding. *Buettner testimony; Resp't Ex. 2, 3.*

c) A sales-comparison analysis prepared by the Respondent indicates that the property's value "may be higher" than the purchase price. In her analysis, the Respondent utilized six comparable sales. All of the sales are located in the same neighborhood as the subject property. In fact, five of the properties are located on the same street. Of the six sales, all but one occurred in 2012, the remaining sale occurred in September of 2013. *Buettner testimony; Resp't Ex. 10, 11, 12.*

d) The sales were adjusted to account for certain differences between these properties and the subject property. The adjustments were derived from the Department of Local Government Finance's (DLGF) annually adjusted cost schedules. The cost schedules were tested against "real world Allen County sales from 2010 by J. Wayne Moore, Ph.D." Accordingly, Dr. Moore established "a median assessment-to-sales ratio of 1.03, and a coefficient of dispersion of 9.16." *Buettner testimony; Resp't Ex. 10, 11, 12.*

e) The sales-comparison analysis yielded an indicated value for the subject property of $201,500. Accordingly, the assessments should not be reduced for 2013 or 2014. If the Board "were so inclined" it could increase the 2014 assessment to $201,500 based on the sales-comparison approach. *Rogers argument; Buettner testimony; Resp't Ex. 10, 11, 12.*

Burden of Proof

15. 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.

16. 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 appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

17. 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.

18. Here, the Respondent stated the burden of proof for the 2013 assessment year rests with her. The Respondent went on to state that the 2013 assessment increased by roughly 9.5% over the 2012 level. Thus, the ALJ made a preliminary determination that the Respondent had the burden of proof for 2013. After an examination of the record, it appears the 2013 assessment increased by only 4.7% over the 2012 level. [1] The assessment of record for 2012 was $176,700 while the assessment of record for 2013 is $185,000. Nevertheless, because the Respondent was represented by counsel, and the Respondent's counsel accepted the burden, the Board will accept the Respondent's position on the burden of proof and place the burden on the Respondent for the 2013 assessment year.

19. The burden for the 2014 assessment year will ultimately be determined by the Board's finding for the prior year.

Analysis

20. The Board finds that the 2013 assessment shall be reduced to the 2012 level of $176,700 and that the 2014 assessment shall be set at $185,000.

    a) 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.

    b) 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 2013 assessment, the valuation date was March 1, 2013. *See* Ind. Code § 6-1.1-4-4.5(f). For a 2014 assessment, the valuation date was March 1, 2014. *Id.*

[1] The Respondent may have inadvertently utilized her original 2013 assessment of $194,600 in her burden calculation. However, the PTABOA reduced the 2013 assessment to $185,000.

c) As a preliminary matter, the Board will first address if the Petitioner has standing to appeal the assessments at issue. While the Petitioner appealed both the March 1, 2013, and March 1, 2014, assessments, there is no dispute that the Petitioner did not purchase the property until April 17, 2014.

d) A "party" to an appeal before the Board may include, among other things, the owner of the subject property, or the taxpayer responsible for the property taxes payable on the subject property. 52 IAC 2-2-13. Again, the Petitioner did not own the property on either assessment date in question. However, given the taxes based on both years' assessments were due after the Petitioner purchased the property, it is more likely than not that he was responsible for those taxes.[2] True, neither party offered conclusive evidence of this as neither party submitted the Petitioner's *entire* purchase agreement. The Petitioner did not explicitly testify that he was responsible for the taxes. But the Respondent did not argue that the Petitioner was not a legal party to the appeal, nor did she object to the Petitioner's appearance at the hearing. Thus, the Board can only assume that, as is typically the case in home purchase agreements, the Petitioner was responsible for some portion of the taxes payable for the 2013 and 2014 assessments. Therefore, the Board finds the Petitioner has standing. The Board now turns to the merits of the case.

e) The Board first considers the March 1, 2013, assessment. As explained above, the Respondent had the burden to prove the assessment was correct. The Respondent offered the purchase agreement indicating that the Petitioner purchased the property for $185,000, on April 17, 2014. Generally, the purchase price of a subject property can be the best evidence of its value. However, for the 2013 assessment, the date of that purchase is over a year removed from the relevant valuation date of March 1, 2013. Further, the Respondent failed to offer any evidence to relate the purchase price back to that date. Thus, for 2013, the purchase price lacks probative value.

f) The Respondent also offered a sales comparison analysis to support the 2013 assessment. In doing so, the Respondent essentially relies on a sales comparison approach to establish the market value-in-use. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also Long*, 821 N.E.2d 466, 469.

g) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable

[2] In 2013 and 2014, property was assessed as of March 1 of that year. Accordingly, the taxes based on those assessments are payable in May and November of the following year.

properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

h) First and foremost, the Respondent's analysis lacks an effective date. Next, the Respondent failed to support her adjustments with probative evidence. According to the Respondent, her adjustments came from the 2012 cost schedules produced by the DLGF. Included with that is a statement that "[t]hese new cost schedules were tested by Dr. Moore against real world sales in Allen County from 2010." Even if the Board were to accept that statement on its face, it does not necessarily prove that the cost schedule adjustments can be utilized to adjust sale prices in conformity with generally accepted appraisal practices.

i) Likewise in her analysis, the Respondent attempted to compare her purportedly comparable properties to the Petitioner's property. While she pointed to several differences, and made adjustments for the differences, she failed to persuade the Board that her analysis is based on generally accepted appraisal or assessment practices. The cost schedules utilized only consider costs that are specifically itemized on the property record cards. In computing adjustments for differences itemized on the property record cards, it is not clear that the Respondent considered all differences that are relevant. For example, when looking at two properties of the same size, the property record cards, relating mainly to the cost approach, fail to recognize the difference between a two-bedroom property and a three-bedroom property. Thus, at best, the Respondent's sales-comparison analysis incorporates adjustments that mix elements of the sales-comparison approach with elements of the cost approach. Ultimately, her comparison lacked the type of analysis contemplated by *Long*.

j) On its face, the Respondent's analysis does not appear to differ significantly from those made by a certified appraiser in an appraisal report. But a certified appraiser's assertions are backed by his education, training, and experience, as well as a certification that the analysis conforms to generally accepted appraisal principles and USPAP. Here, the Respondent's analysis is not enough to prove the market value-in-use of the subject property.[3]

k) Accordingly, the Respondent failed to make a prima facie case that the 2013 assessment is correct. The Petitioner is entitled to have his 2013 assessment returned to the 2012 level of $176,700. Because the Petitioner requested an even lower amount, the burden shifts to the Petitioner to prove that amount.

l) As it relates to the 2013 assessment, the Petitioner also presented the purchase agreement for the subject property. As discussed above, the purchase agreement is not probative evidence for the 2013 assessment year because it is over a year removed from the relevant valuation date of March 1, 2013. Further, the Petitioner failed to offer any evidence to relate his purchase price back to the relevant valuation date.

[3] For these same reasons, the Respondent's evidence does not support an increase in the 2014 assessment.

m) The Petitioner also attempted to offer documentation that the home contained roughly $33,000 in new appliances, which he contends should be deducted from the purchase price in determining his assessment. Further, he offered arguments that the property suffers from issues that detract from its value.

n) As stated above, the Petitioner contends that the cost of certain "contents" inside the home should be deducted from the assessment, apparently arguing that these items are personal property. Specifically, these items include a new gas fireplace with a vent and blowers, a new built-in dishwasher, a new gas range, a new built-in refrigerator, a new microwave oven with a hood, a new ceiling fan with lighting, and new blinds, rods, and valances.

o) The Petitioner, however, failed to offer any evidence or authority suggesting that the disputed items are personal property. To the contrary, the items the Petitioner pointed to are all either part of the real estate or built into the real estate. In fact, regarding the fireplace, the cost schedules specifically include it as part of the real property, as it is included in the property record card's pricing ladder. *See Resp't Ex. 3.* Further, the appliances the Petitioner pointed to are, for the most part, described as "built in." The Petitioner fails to persuade the Board that the purchase price included anything that is not normally or generally included in typical residential transactions.

p) Even if the Petitioner had shown that personal property was included in the transaction, it is insufficient to simply provide the original cost of those items as requested deductions from the assessment. Rather, the appropriate question is how much value the personal property added to the total selling price. Simply providing the cost assumes a dollar-for-dollar relationship between the cost new of the items and their market value in a property transaction. The Petitioner failed to offer any evidence proving such a relationship exists.

q) Finally, the Petitioner argues that several issues exist that negatively affect the property's value. Specifically, the Petitioner alluded to heavy traffic that passes by the property, steep hills, and a retention pond that he believes is not well maintained. Certainly, these factors could have an effect on the property's value. But merely noting those problems does nothing to conclusively prove the value or prove that the current assessment is wrong.

r) Thus, the Petitioner failed to make a prima facie case that the 2013 assessment should be reduced any further. Accordingly, the 2013 assessment shall only be reduced to the 2012 level of $176,700.

s) The Board now turns to the 2014 appeal. The Board must determine who has the burden for the 2014 appeal. Because the Respondent had the burden of proof for the 2013 appeal and failed to make a prima facie case, the 2013 assessment was reduced to the prior year's assessment. Because the 2014 assessment is higher than the now

corrected 2013 assessment, the Respondent bears the burden of proof for the 2014 appeal as well. Ind. Code § 6-1.1-15-17.2(d).

t) As it relates to the 2014 assessment, the Respondent offered the same purchase agreement and sales comparison analysis referred to above. Again, the purchase agreement states the Petitioner purchased the property on April 17, 2014, for $185,000. Generally, the purchase price of a subject property can be the *best evidence* of its value. As it relates to the 2014 assessment, the Petitioner's purchase of the property is slightly over a month past the relevant valuation date of March 1, 2014. That is close enough to the valuation date to provide probative evidence of the property's value. Therefore, the Respondent made a prima facie case that the 2014 assessment should be $185,000.[4] The Petitioner requested an amount lower than that, so the Board will again turn to the Petitioner's evidence.

u) The Petitioner presented the same evidence for 2013 and 2014. For the same reasons as discussed above, the Petitioner failed to present enough probative evidence to rebut the Respondent's prima facie case for the 2014 appeal. Accordingly, the 2014 assessment shall be set at $185,000.

Conclusion

21. The Board finds that the 2013 assessment shall be reduced to the 2012 level of $176,700. The Board finds that the 2014 assessment shall be reduced to $185,000.

Final Determination

In accordance with these findings and conclusions, the 2013 assessment will be reduced to $176,700 and the 2014 assessment will be reduced to $185,000.

ISSUED: December 14, 2015

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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

[4] This amount is slightly less than the current March 1, 2014, assessment of $185,100.

- 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 of 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>.