

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

Petition Nos.: 82-022-18-1-5-00681-19
82-022-19-1-5-00682-19
Petitioner: Robert Phillips
Respondent: Vanderburgh County Assessor
Parcel: 82-05-11-003-073.031-022
Assessment Years: 2018 & 2019

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 2018 and 2019 assessment appeals with the Vanderburgh County Assessor via Taxpayer's Notices to Initiate an Appeal (Form 130s).¹
2. On August 16, 2019, the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) issued Notifications of Final Assessment Determination (Form 115s) to the Petitioner. For 2018, the PTABOA lowered the assessment, but not to the level the Petitioner requested. For 2019, the PTABOA ordered no change to the assessment.
3. The Petitioner timely filed Petitions for Review of Assessment (Form 131s) with the Board, electing the Board's small claims procedures.
4. On August 27, 2020, Dalene McMillen, the Board's Administrative Law Judge (ALJ) held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.
5. Robert Phillips appeared *pro se* via telephone and was sworn. Attorney Nick Cirignano appeared for the Respondent via telephone. County employee Jacqueline Doty-Fox was sworn as a witness for the Respondent telephonically.

Facts

6. The property under appeal is located at 3312 North Saint Joseph Avenue in Evansville.

¹ The record is not clear when the Form 130s were filed. It appears both Form 130s were signed on July 6, 2019, but they are not file stamped. Further, only the first page of the Form 130s were submitted to the Board. The Respondent never raised an issue of timeliness and the Board will not raise the issue *sua sponte*.

7. For 2018 and 2019, the PTABOA determined a total assessment of \$27,600 (land \$24,800 and improvements \$2,800).
8. For 2018 and 2019, the Petitioner requested a total assessment of \$7,800 (land \$5,000 and improvements \$2,800).

Record

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

- a) A digital recording of the hearing.

- b) Exhibits:

- Petitioner Exhibit 1: Sales disclosure form and property record card for 3402 North Saint Joseph Avenue,
- Petitioner Exhibit 1A: Dwelling information sheet for 3402 North Saint Joseph Avenue,
- Petitioner Exhibit 2: Sales disclosure form and property record card for Moffett Lane,
- Petitioner Exhibit 2A: Dwelling information sheet for Moffett Lane,
- Petitioner Exhibit 3: Sales disclosure form and property record card for Saint Wendel Road,
- Petitioner Exhibit 3A: Dwelling information sheet for Saint Wendel Road,
- Petitioner Exhibit 4: Sales disclosure form and property record card for 2948 Osage Court,
- Petitioner Exhibit 4A: Dwelling information sheet for 2948 Osage Court,
- Petitioner Exhibit 5: Sales history sheet and property record card for 3300 Bromm Road,
- Petitioner Exhibit 5A: Dwelling information sheet 3300 Bromm Road,
- Petitioner Exhibit 6: Subject property record card,
- Petitioner Exhibit 6A: General property information sheet for the subject property,
- Petitioner Exhibit 6B: Dwelling information sheet for the subject property,
- Petitioner Exhibit 7: General property information sheet, dwelling information sheet, exterior features sheet, improvement summary sheet, sales history sheet, and owner information sheet for the subject property,
- Petitioner Exhibit 8-1: Aerial photographs of the subject property,
- Petitioner Exhibit 8-2: Aerial photographs of the subject property,
- Petitioner Exhibit 8-3: Aerial photographs of the subject property,
- Petitioner Exhibit 9: Plat map of the subject property,
- Petitioner Exhibit 10: Aerial map of the subject property and various emails between Mr. Phillips, the Respondent, and the Board,
- Petitioner Exhibit 11: Property record card for 3212 North Saint Joseph Avenue,

- Petitioner Exhibit 11A: “Last Sales Data” sheet for 3212 North Saint Joseph Avenue,
- Petitioner Exhibit 11B: Sales history sheet for 3212 North Saint Joseph Avenue,
- Petitioner Exhibit 11C: Dwelling information sheet for 3212 North Saint Joseph Avenue and various emails between Mr. Phillips, the Respondent, and the Board,
- Petitioner Exhibit 12: Sales history sheet for 3212 North Saint Joseph Avenue, 3402 North Saint Joseph Avenue, Moffett Lane, and Saint Wendel Road, along with various emails between Mr. Phillips, the Respondent, and the Board,
- Petitioner Exhibit 13: Property record card and sales disclosure form for 2501 Wittman Drive,
- Petitioner Exhibit 13A: Photograph of the subject property,
- Petitioner Exhibit 13B: Photograph of the subject property,
- Petitioner Exhibit 13C: Photograph of the subject property,
- Petitioner Exhibit 13D: Photograph of the subject property and various emails between Mr. Phillips, the Respondent, and the Board,
- Petitioner Exhibit 14: Property record card, dwelling information sheet, and sales history sheet for North Saint Joseph Avenue, along with various emails between Mr. Phillips, the Respondent, and the Board,
- Petitioner Exhibit 15: Maps for Vanderburgh County, 3312 North Saint Joseph Avenue, Moffett Lane, 11148 Saint Wendel Road, Old Henderson Road, 2501 Wittman Drive, and 5920 North Saint Joseph Avenue, and emails between Mr. Phillips, the Respondent, and the Board,
- Petitioner Exhibit 16: Various emails between Mr. Phillips, Jacqueline Doty-Fox, and Nick Cirignano, along with an ownership sheet for 3600 North Saint Joseph Avenue.²
- Respondent Exhibit A: Department of Local Government Finance (DLGF) – 2018 Ratio Study Guidance memorandum,
- Respondent Exhibit B: DLGF – 2019 Ratio Study Guidance memorandum,
- Respondent Exhibit C: Property record card and aerial flood zone map for Schaeffer Road,
- Respondent Exhibit D: Property record card and aerial map for Old Henderson Road,
- Respondent Exhibit E: International Association of Assessing Officers (IAAO) – Standard on Verification and Adjustment of Sales (Approved April 2020),
- Respondent Exhibit F: Property record card for Old Henderson Road.

² Petitioner’s Exhibit 16 was offered and entered into the record with no objection from the Respondent’s counsel. Later in the hearing Mr. Cirignano moved to strike Petitioner’s Exhibit 16 but failed to provide any grounds for his motion to strike. Therefore, the motion to strike is denied and Petitioner’s Exhibit 16 is admitted.

- c) 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) these findings and conclusions.

Objections

10. Mr. Phillips objected to Ms. Doty-Fox's testimony regarding the details surrounding the sales of 3402 North Saint Joseph Avenue and Moffett Lane. According to Mr. Phillips, Ms. Doty-Fox failed to provide all the pertinent facts regarding the sales and argued both are valid sales. In response, Mr. Cirignano argued the Petitioner's objection is "not a valid objection to evidence being offered." The ALJ took the objection under advisement. The Petitioner's objection goes more to the weight of the testimony rather than its admissibility. Accordingly, the Board overrules the objection, and the testimony is admitted.
11. Mr. Phillips also objected to Respondent's Exhibits D and F, property record cards and an aerial map for Old Henderson Road.³ According to Mr. Phillips, this is a recreational type property and not related to subject property. The Respondent did not offer a response. The ALJ took the objection under advisement. Once again, the Petitioner's objection goes to the weight of the evidence rather than admissibility. Accordingly, the Board overrules the objection and Respondent's Exhibits D and F are admitted.

Contentions

12. Summary of the Petitioner's case:
- a) The subject property is over-assessed. The two-acre property is located in a static neighborhood zoned agricultural, but the subject property is classified as a "code 511 family dwelling un-platted." The home listed on the property record card was removed in 2020, but a detached garage still remains. *Phillips testimony; Pet'r Ex. 6, 7, 8-1, 8-2, 8-3, 9, 10, 13A, 13B, 13C, 13D.*
- b) According to the Petitioner, 85% to 90% of the subject property is located in the AE flood zone. The flooding is attributed to the location of Locust Creek. The flood zone boundary line runs behind the detached garage. *Phillips testimony; Pet'r Ex. 9, 10.*
- c) To support his position, the Petitioner presented a sales disclosure form for 3402 North Saint Joseph Avenue. This home has three-bedrooms, two-bathrooms, a two-car garage, and is situated on two acres. The property sold on February 27, 2019, for \$20,000. Mr. Phillips opined that \$5,000 was attributed to the land and the remaining \$15,000 attributed to the home. *Phillips testimony; Pet'r Ex. 1, 1A, 6.*

³ The Respondent refers to this property several times as "the river camp."

- d) A second property located at 3212 North Saint Joseph Avenue consists of a home and 1.5 acres of land. Originally, it was a two-acre parcel, but 0.5 acres of swamp land was given away prior to the 2018 sale. The property sold on March 23, 2018, for \$18,000. Mr. Phillips opined that \$3,000 was attributed to the land and the remaining \$15,000 was attributed to the home. *Phillips testimony; Pet'r Ex. 11, 11A, 11B, 11C.*
- e) Mr. Phillips also offered the sale price per acre on several properties located in Vanderburg County:
- Moffett Lane is a 3.351-acre property located in an improving neighborhood in Center Township. It is not located in a flood zone. It sold on October 3, 2019, for \$5,400 or \$1,611 per acre.
 - Saint Wendel Road is a 2.78-acre property with 1.94-acres in German Township and 0.84-acres located in an adjoining township. It sold on June 26, 2019, for \$19,900 or \$7,158 per acre.
 - 2948 Osage Court is a 1.094-acre property located in a static neighborhood in German Township. It sold for \$7,000 on August 13, 2019.
 - 3300 Bromm Road is a 3.75-acres property with a home, detached garage, and utility shed. It is in a static neighborhood in German Township, but it is not located in a flood zone. It sold on May 8, 2020, for \$13,000 or \$3,466 per acre.⁴
 - 2501 Wittman Drive is a four-acre lot located in a static neighborhood. It is in flood zone X and sold for \$21,000 on August 11, 2017.
 - North Saint Joseph Avenue is a “skinny” property located between 5820 and 5920 North Saint Joseph Avenue. It includes 2.039 “legal” acres in a static neighborhood. It sold for \$6,000 on September 26, 2016.
 - 3402 North Saint Joseph Avenue is “three debris lots for a construction company.” These lots are located to the right of the subject property, ultimately affecting the value of the subject property. They sold for a total of \$20,000 on February 27, 2019.

Phillips testimony; Pet'r Ex. 1, 1A, 2, 2A, 3, 3A, 4, 4A, 5, 5A, 6, 13, 14, 15.

- f) At the time, the subject property consisted of a dilapidated home and a detached garage on two-acres of land. The land is assessed at \$24,800 or \$12,400 per acre. Mr. Phillips argues the land is assessed higher per acre than similar properties that sold in the same neighborhood. Based on comparable sales, the land assessment

⁴ It appears the Petitioner applied the total sale price only to the land and failed to account for any improvement value. *Pet'r Ex. 5, 5A.*

should be reduced to \$5,000. *Phillips argument; Pet'r Ex. 1, 1A, 2, 2A, 3, 3A, 4, 4A, 5, 5A, 6, 13, 14, 15.*

13. Summary of the Respondent's case:

- a) The subject property is correctly assessed. To support the current assessment, the Respondent presented two comparable properties. The first property, located on Schaeffer Road in German Township, is a nine-acre vacant lot. It is located in flood zone X and has various elevations that run from 430 feet to 510 feet. There is a "large gully" in the center of the property acting as a water trap. On November 5, 2018, it sold for \$75,000 or \$8,300 per acre. *Doty-Fox testimony; Resp't Ex. C.*
- b) The second comparable property is located on Old Henderson Road and consists of a dilapidated river camp on one acre of land located next to the Ohio River. The property sold on November 30, 2017, for \$27,500. The river camp was "torn down at the time of purchase," therefore the land sold for \$27,500 per acre. *Doty-Fox testimony; Resp't Ex. D, F.*
- c) The DLGF's 2018 Ratio Study Guideline instructs assessing officials to use valid sales of properties from January 1, 2017, to December 31, 2017, to establish 2018 assessments. While the DLGF 2019 Ratio Study Guideline states to use sales of properties from January 1, 2018, to December 31, 2018, to establish 2019 assessments. *Doty-Fox testimony; Resp't Ex. A, B.*
- d) The IAAO Standard on Verification and Adjustment of Sales outlines the criterion for measuring fairness, quality, equity, and accuracy of sales. If sales involve government agencies, financial institutions as the seller, sales between relatives, or sales between corporate affiliates these sales are considered invalid. A land contract sale is also often considered an invalid sale. Finally, a transaction between adjoining property owners might be considered an invalid sale. *Doty-Fox testimony; Resp't Ex. E.*
- e) It is important to understand the condition of a sale when identifying comparable sales, something the Petitioner failed to do. The Respondent claims the Petitioner's purportedly comparable sales are not valid for the following reasons:
 - Petitioner's Exhibit 1, the 3402 North Saint Joseph Avenue property was sold by a financial institution. The buyer was unaware at the time of purchase that the home was unlivable.
 - Petitioner's Exhibit 2, the Moffett Lane property was a transaction with a governmental agency. The property owner sold 0.179-acres out of the total 3.351-acres to Vanderburgh County for the purpose of widening Kansas Road. If the purchase price of \$5,400 is divided by the 0.179 acre it equals a sale price of \$30,000 per acre.

- Petitioner’s Exhibit 3, the Saint Wendel Road property was purchased by an adjacent homeowner. The transaction consisted of three parcels, one in Armstrong Township and two in German Township. According to the Respondent, German Township is a “very good market.” The purchase price reflects it was sold below market value and the sale occurred after the 2018 and 2019 valuation dates.
- Petitioner’s Exhibit 4, the 2948 Osage Court property sold on August 13, 2019, after the 2018 and 2019 valuation dates.
- Petitioner’s Exhibit 5, the 3300 Bromm Road property was a “guardian” sale between family members at a price well below market value. Additionally, the property sold after the 2018 and 2019 valuation dates.
- Petitioner’s Exhibit 11B, the 3212 North Saint Joseph Avenue property was originally a contract sale that occurred in 2013. The contract was paid off in 2018 and then sold on the same day to KCB Partners, LLC, for less money. KCB Partners, LLC, made “significant changes” to the property, increasing the market value and the property is currently rented for \$750 per month.
- Petitioner’s Exhibit 14, the North Saint Joseph Avenue property was a transfer from Westbrook Corporation to Carolina Court Inc. Because the president is the same for both companies, it is a “related party sale.”

Doty-Fox argument (referencing Pet’r Ex. 1, 2, 3, 4, 5, 11, 11B, 14).

- f) The Petitioner failed to prove the subject property floods. The Petitioner eludes to Locust Creek causing flooding issues on the property, but the purpose of the creek is to carry water off the property. The Respondent requests the assessments to remain the same. *Doty-Fox testimony.*

Burden of Proof

14. 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 creates two exceptions to that rule.
15. 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).

16. 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).
17. The parties agree the total assessment did not increase between 2017 and 2018.⁵ The Petitioner did not offer any argument the burden should shift to the Respondent. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with the Petitioner for 2018. Assigning the burden for 2019 will ultimately be determined by the Board’s finding for the prior year.

Analysis

18. The Petitioner failed to make a prima facie case for reducing the 2018 and 2019 assessments.
 - 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 property 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 the 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5. For the 2019 assessment, the valuation date was January 1, 2019. *Id.*
 - c) We must first address the Petitioner’s agricultural classification argument. The statutory and regulatory scheme of assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the DLGF to use distinctive factors such as soil

⁵ The record is not clear what the total assessment was for 2017. The subject property record card submitted by the Petitioner does not list 2017. *See Pet'r Ex. 6.*

productivity that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Ch. 2 at 77-78 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-4-4.5(e) (directing the DLGF to use a six-year, instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.

- d) Indiana Code § 6-1.1-4-13(a) provides that “land shall be assessed as agricultural land only when it is devoted to agricultural use.” “Agricultural property” is defined as land “devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, glossary at 1. The word “devote” means to attach the attention or center the activities of (oneself) wholly or chiefly on a specified object, field, or objective.” WEBSTER’S THIRD NEW INTERNATIONAL UNABRIDGED DICTIONARY at 620.
- e) The property is located in an area that is zoned agricultural, but Indiana assesses land as agricultural *only* when the land is *devoted to agricultural use*. *See* Ind. Code § 6-1.1-4-13(a) (emphasis added). Here, the Petitioner failed to provide probative evidence that the property is used for any agricultural purpose whatsoever. The subject property record card indicates the land was divided into the following types: 9-homesite, 91-excess residential, and 82-public road.⁶ The Petitioner failed to provide any probative evidence these current land classifications are incorrect. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- f) The Petitioner also presented sales prices for several properties located in Vanderburgh County. In particular, he presented what amounts to the price per acre of the land. The Board infers the Petitioner may be attempting to employ a sales comparison approach. A sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 3. In order to effectively use the sales comparison approach as evidence in property assessment appeals, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *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 properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use.

⁶ It is undisputed the home was still present in 2018 and 2019.

- g) While the Petitioner pointed to two properties near the subject property and several additional properties throughout Vanderburgh County, he failed to offer sufficient evidence relating their specific features and amenities to the subject property. More importantly, he made no attempt to make adjustments for any relevant differences between the properties. The Petitioner's evidentiary presentation therefore falls short of providing the level of analysis contemplated by *Long*.⁷
- h) Finally, the Petitioner argued the Respondent made an error in determining the land assessment because the property suffers from flooding. According to the Respondent, the Petitioner failed to provide proof that the property floods. The Respondent claims the purpose of Locust Creek is to provide drainage from any excess water on the property. The property record card indicates the Respondent applied a negative 46% influence factor to the homesite and a negative 73% influence factor to the excess residential land. The Petitioner failed to quantify the impact any flooding has on the value of the property. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. See *Indianapolis Racquet club, Inc. v. Washington Twp. Ass'r*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ([I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis"). Thus, the Petitioner failed to present a prima facie case for reducing the 2018 assessment.
- i) For the reasons stated above, the Petitioner failed to make a prima facie case that the 2018 assessment is incorrect. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Therefore, the 2018 assessment is to remain at \$27,600.

2019 assessment:

- 19. The burden remains with the Petitioner for 2019 and he presented the same evidence as he did for 2018. For the same reasons as previously stated, the Petitioner failed to make a prima facie case that the 2019 assessment is incorrect. Therefore, the 2019 assessment is to remain at \$27,600.

Conclusion

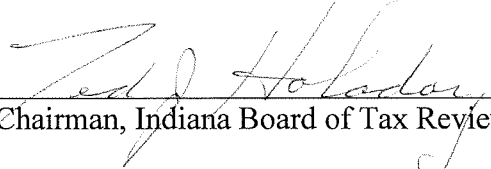
- 20. The Board finds for the Respondent.

⁷ Even if the Petitioner had provided a more thorough analysis, the sales he relied on may not have been valid arms-length transactions that occurred within the relevant time frame as pointed out by the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2018 and 2019 assessments.

ISSUED: November 24, 2020


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>.