

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

Petition Nos.: 03-005-12-1-5-20466-15
03-005-14-1-5-20555-15
03-005-15-1-5-00303-15
03-005-16-1-5-00063-17
03-005-17-1-5-00780-17

Petitioners: Pamela B. Robertson & James Bolton

Respondent: Bartholomew County Assessor

Parcel No.: 03-95-28-430-001.500-005

Assessment Years: 2012, 2014, 2015, 2016, 2017¹

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

Procedural History

1. The Petitioners timely initiated their 2012, 2014, 2015, 2016, and 2017 appeals with the Bartholomew County Assessor. On October 6, 2015, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations for the 2012 and 2014 assessment years increasing both years' assessments. On October 29, 2015, the PTABOA issued its determination for the 2015 assessment increasing the assessment. On December 16, 2016, the PTABOA issued its determination for the 2016 assessment year upholding the current assessment. For 2017 the Petitioners signed a Standard Form Agreement to forego the PTABOA hearing on May 25, 2017. Accordingly, the PTABOA did not act on the 2017 appeal.
2. The Petitioners timely filed Form 131 petitions with the Board and elected to use the Board's small claims procedures.
3. On May 22, 2018, the Board's designated administrative law judge (ALJ) Patti Kindler held a consolidated hearing. Neither the Board nor the ALJ inspected the property.
4. Certified tax representative Milo E. Smith appeared for the Petitioner. County Assessor Lew Wilson and local government representative Virginia Whipple appeared for the Respondent. All of them were sworn.

¹ The Petitioners did not appeal their 2013 assessment.

5. The property under appeal is a single family residence located at 4452 Mallard Point in Columbus.
6. The PTABOA determined the following values for the property:

Year	Land	Improvements	Total
March 1, 2012	\$121,600	\$499,200	\$620,800
March 1, 2014	\$121,600	\$499,300	\$620,900
March 1, 2015	\$121,600	\$499,400	\$621,000
March 1, 2016	\$121,600	\$499,400	\$621,000
March 1, 2017	\$121,600	\$498,900	\$620,500 ²

7. The Petitioners requested the total assessment for each year under appeal to revert back the 2011 total assessment of \$481,200 (land \$121,600 and improvements \$359,600).
8. The official record for this matter includes the following:
 - a. A digital recording of the hearing.

b. Exhibits:

- Petitioners Exhibit 1-GIS: GIS map of eight properties located in Mallard Point along with a 3-page summary of properties assessments,
- Petitioners Exhibit 1-PRC: 2011-2017 subject property record cards (PRC),
- Petitioners Exhibit 1-1: 2012-2017 PRC for 4422 Mallard Point,
- Petitioners Exhibit 1-2: 2012-2017 PRC for 4432 Mallard Point,
- Petitioners Exhibit 1-3: 2012-2017 PRC for 4442 Mallard Point,
- Petitioners Exhibit 1-4: 2012-2017 PRC for 4453 Mallard Point,
- Petitioners Exhibit 1-5: 2012-2017 PRC for 4443 Mallard Point,
- Petitioners Exhibit 1-6: 2012-2017 PRC for 4433 Mallard Point,
- Petitioners Exhibit 1-7: 2012-2017 PRC for 4423 Mallard Point,
- Petitioners Exhibit 1-8: 2012-2017 PRC for 4413 Mallard Point.

Respondent Exhibits:

2012 appeal

- Respondent Exhibit A: Curricula Vitae for Mr. Wilson and Ms. Whipple,
- Respondent Exhibit B: "Statement of Professionalism,"
- Respondent Exhibit C: 2011 Subject PRC,

² As previously stated, the Petitioners waived the PTABOA hearing for 2017, so this is the assessment listed on the subject property record card.

Respondent Exhibit D: 2012 Subject PRC,
Respondent Exhibit E: Aerial photograph of the subject property,
Respondent Exhibit F: Sales disclosure dated October 31, 2011,
Respondent Exhibit G: Exterior photograph of the property.

2014 appeal

Respondent Exhibit A: Curricula Vitae for Mr. Wilson and Ms. Whipple,
Respondent Exhibit B: "Statement of Professionalism,"
Respondent Exhibit C: 2013 Subject PRC,
Respondent Exhibit D: 2014 Subject PRC,
Respondent Exhibit E: Aerial photograph of the subject property,
Respondent Exhibit F: Sales disclosure dated October 31, 2011,
Respondent Exhibit G: Exterior photograph of the property,
Respondent Exhibit H: "Market adjustment."

2015 appeal

Respondent Exhibit A: Curricula Vitae for Mr. Wilson and Ms. Whipple,
Respondent Exhibit B: "Statement of Professionalism,"
Respondent Exhibit C: 2014 Subject PRC,
Respondent Exhibit D: 2015 Subject PRC,
Respondent Exhibit E: Aerial photograph of the subject property,
Respondent Exhibit F: Sales disclosure dated October 31, 2011,
Respondent Exhibit G: Exterior photograph of the property,
Respondent Exhibit H: "Market adjustment."

2016 appeal

Respondent Exhibit A: Curricula Vitae for Mr. Wilson and Ms. Whipple,
Respondent Exhibit B: "Statement of Professionalism,"
Respondent Exhibit C: 2015 Subject PRC,
Respondent Exhibit D: 2016 Subject PRC,
Respondent Exhibit E: Aerial photograph of the subject property,
Respondent Exhibit F: Sales disclosure dated October 31, 2011,
Respondent Exhibit G: Exterior photograph of the property,
Respondent Exhibit H: "Market adjustment."

2017 appeal

Respondent Exhibit A: Curricula Vitae for Mr. Wilson and Ms. Whipple,
Respondent Exhibit B: "Statement of Professionalism,"
Respondent Exhibit C: 2016 Subject PRC,
Respondent Exhibit D: 2017 Subject PRC,

Respondent Exhibit E: Aerial photograph of the subject property,
Respondent Exhibit F: Sales disclosure dated October 31, 2011,
Respondent Exhibit G: Exterior photograph of the property,
Respondent Exhibit H: “Market adjustment.”

- 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 our ALJ; and (3) these findings and conclusions.

Contentions

9. Summary of the Petitioners’ case

- a. The subject property is over assessed. In 2012 the assessment increased by 23% when the Respondent changed the grade from an “A-1” to an “A” and raised the market adjustment from 104% to 120%. The market adjustment was changed back to 100% for assessment years 2013 through 2017, but the neighborhood factor was increased to 1.10 in 2013, and again to 1.21 for years 2014 through 2017.³ *Smith argument; Pet’r Ex. 1-PRC.*
- b. The subject property is not receiving a uniform and equal assessment when compared to the surrounding properties, as required by the manual. *Smith argument; Pet’r Ex. 1-GIS.*
- c. To illustrate the lack of uniformity in the subject property’s neighborhood, Mr. Smith presented a spreadsheet, aerial map, and property record cards for eight homes. When the Petitioners initiated their appeal, the Respondent tried to “use another set of guidelines” to change the assessments, but none of the neighboring properties were “changed” in a similar fashion. The eight neighboring properties saw a reduction in their neighborhood factor, while the subject property’s neighborhood factor was increased.⁴ *Smith testimony; Pet’r Ex. 1-GIS, 1-PRC.*
- d. The Respondent “suggests” once a property is appealed it will be assessed in a non-uniform way compared to similar properties in the neighborhood. In fact, the Respondent uses “another set of rules” to assess a property under appeal. *Smith argument.*
- e. The 2012 assessment should revert back to the prior year’s level of \$481,200. Accordingly, each subsequent year under appeal should also revert back to the 2011 level based on the Respondent’s admission he “used a sales price” to determine the assessment. *Smith argument.*

³ There was no neighborhood factor applicable to the 2012 assessment.

⁴ Mr. Smith also noted that seven of the comparable properties were graded “A-1” but the subject property is graded “A.”

10. Summary of the Respondent's case
 - a. The subject property is under assessed. The Petitioners began initiating these appeals in 2012 and when a property is appealed the Respondent "looks at the individual property and its value." It is no longer a mass appraisal assessment. *Whipple argument.*
 - b. The Petitioners purchased the subject property on October 28, 2011, for \$645,000. The sales disclosure form indicates the sale was an arm's length transaction and was marked as the buyer's primary residence. A sales price is often the best indication of value for a property. Because the sale of the subject property occurred in October of 2011, the Respondent did not trend the sale "because it was close enough to the 2012 assessment valuation date." Accordingly, the subject property should be assessed at \$645,000 for the 2012 assessment year. For the subsequent years, the Respondent "time-adjusted" the 2011 sale utilizing the Consumer Price Index (CPI). The Respondent compared the CPI on the date of sale to the CPI of the relevant valuation date. The difference was then calculated and applied to the sale price. The multiplier for 2014 was 10.063 and when applied to the sale price, this results in a value \$709,900. For 2015 the multiplier was 7.477 and when applied to the sale price, this results in a value of \$693,200. For 2016 the multiplier was 10.686 and again when applied to the sale price this equates to a value of \$713,900. Finally, for 2017 the multiplier was 16.609 and when applied to the sale price it results in a value of \$752,100. The assessments under appeal should be corrected to these indicated values accordingly. *Whipple testimony; Resp't Ex. H.*
 - c. The appeals are "on the value of the subject property, not how we got there." The Respondent did not "sales chase." The Petitioners initiated these appeals and the various assessments should be changed to reflect the market value-in-use of the subject property using the sale price "as an indication." *Whipple argument.*

Burden of Proof

11. 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 amended by P.L. 97-2014 creates two exceptions to that rule.
12. 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).

13. 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.
14. Here, the parties agree the total assessed value of the property increased by more than 5% from 2011 to 2012. In fact, the total assessment increased from \$481,200 in 2011 to \$620,800 in 2012. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the Respondent has the burden of proving the 2012 assessment is correct.
15. The Petitioners did not appeal the 2013 assessment. For 2014, the assessment increased by more than 5% from 2013. In fact, the total assessment increased from \$581,800 in 2013 to \$620,900 in 2014. Again, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the Respondent has the burden of proving the 2014 assessment is correct. To the extent the Petitioner requests an assessment below the 2013 level of \$581,800; they have the burden to prove that lower value. Assigning the burden for the 2015, 2016, and 2017 assessment years depends on the Board’s findings from 2014.

Analysis

16. Real property is assessed based on its “true tax value,” which means, “the 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.” 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. 2011 MANUAL at 2. 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.
17. 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. 2005); *see also Long v. Wayne Twp. Ass’r*, 841 N.E.2d 466, 471 (Ind. Tax Ct. 2006). For a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f). For the 2014 and 2015 assessments, the valuation dates were March 1, 2014, and March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f). For the 2016 and 2017 assessments, the valuation dates were January 1, 2016, and January 1, 2017, respectively. *See* Ind. Code § 6-1.1-2-1.5.

2012 Assessment

18. The Respondent had the burden to prove the 2012 assessment was correct. In order to prove his case, he relied exclusively on the October 28, 2011, sale price of the subject property. The Respondent is correct in asserting that a property's sale price may be compelling evidence of its true tax value, at least if the sale was at arm's length and other indicia of a market-value sale were present. The Manual provides the following definition of "market value":

[T]he most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither in under undue duress.

2011 REAL PROPERTY ASSESSMENT MANUAL at 5-6.

The sales disclosure form indicates there was no family or business relationship between the buyer and seller and no special circumstances surrounded the sale. Additionally, the Petitioners did not attempt to argue the sale was anything less than a true market-value sale. Because the sale occurred roughly four months prior to the relevant valuation date, the Board finds the sale is probative evidence of the market value-in-use for the 2012 assessment date. Accordingly, the Respondent made a prima facie case the 2012 assessment should reflect the value of the October 2011 sale. Thus, the 2012 assessment shall be increased to \$645,000.

2014 Assessment

19. The Respondent also had the burden to prove the 2014 assessment was correct. In an attempt to prove his case, the Respondent performed a calculation utilizing the CPI to time-adjust the property's 2011 sale. Granted, Mr. Smith did not argue that the CPI was an incorrect method for adjusting the sale price, but the Board is still troubled by the fact the sale was almost 28 months removed from the relevant valuation date. Aside from providing a CPI calculation, the Respondent failed to provide the Board with any other market based evidence that affirmatively related the October 2011 sale to the relevant valuation date. *See Nova Tube Ind. II, LLC, v. Clark Co. Ass'r*, 2018 Ind. Tax LEXIS 12 (Ind. Tax Ct. 2018) (*distinguishing from Fisher v. Carroll Co. Ass'r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017) (stating "the May 2014 sales data, only indicates the value of Nova Tube's property on the date of the sale because the Assessor did not trend that sale or provide other market-based evidence that affirmatively related the sales price to the March 1 valuation dates.") Additionally, the Respondent failed to indicate the analysis conforms to generally accepted appraisal principles. Consequently, the Respondent failed to make

a prima facie case that the 2014 assessment is correct. Therefore the Petitioners are entitled to have their assessment returned to its 2013 value of \$581,800.

2015 Assessment

20. The burden remains with the Respondent for 2015 and he presented the same CPI trended evidence as he did for the 2014 assessment year. For the same reasons as previously stated, the Respondent failed to make a prima facie case that the 2015 assessment is correct. Therefore the Petitioners are entitled to have their assessment returned to its 2014 value of \$581,800.

2016 Assessment

21. The burden remains with the Respondent for 2016 and he presented the same CPI trended evidence as he did for the 2014 assessment year. For the same reasons as previously stated, the Respondent failed to make a prima facie case that the 2016 assessment is correct. Therefore the Petitioners are entitled to have their assessment returned to its 2015 value of \$581,800.

2017 Assessment

22. The burden also remains with the Respondent for 2017 and he presented the same CPI trended evidence as he did for the 2014 assessment year. For the same reasons as previously stated, the Respondent failed to make a prima facie case that the 2017 assessment is correct. Therefore the Petitioners are entitled to have their assessment returned to its 2016 value of \$581,800.

Petitioners' evidence

23. This does not end the Board's inquiry because the Petitioners requested the assessments be reduced to the 2011 level of \$481,200 for each year under appeal. The Board now turns to the Petitioners' evidence. The Petitioners mainly focus on the disparity between the subject property's assessment and the assessments of neighboring properties. But the Petitioners' focus on the neighborhood factors and grades failed to establish the actual market value in use for the subject property. Instead, their argument is that the assessments within the same subdivision are not uniform and equal.
24. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should 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) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

25. When a ratio study shows that a given property is assessed above the common level of assessment, the property's 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 v. Porter Co. Ass'r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, 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).
26. Similar to the taxpayer in *Westfield Golf*, the Petitioners' argument is flawed. Here, the Petitioners failed to explain how its purportedly comparable properties are sufficient to draw any meaningful inference about the uniformity or equality of assessments within an assessing jurisdiction. The Petitioners failed to compare the purportedly comparable properties' assessments to objectively verifiable data, such as sales price or market value-in-use appraisals. Instead, the Petitioners wanted the Respondent to use the same methodology to assess the subject property as he used to assess the purportedly comparable properties. The Tax Court has rejected that type of claim. *See Westfield Golf*, 859 N.E.2d at 398-399 (rejecting taxpayer's uniformity and equality claim where taxpayer argued that its golf-ball landing area was assessed using a different base rate than the base rates used to assess landing areas at other driving ranges). The Petitioners failed to make a prima facie case showing a lack of uniformity and equality in assessments.

Final Determination

27. The Respondent had the burden for each year under appeal. The Respondent met his burden of proving the 2012 should be increased to \$645,000. For 2014, the Respondent failed to meet his burden of proof and this assessment shall revert to the 2013 level of \$581,800. Likewise, for 2015, 2016, and 2017 the Respondent failed to meet his burden of proof and each years' assessment shall revert back to \$581,800. The Petitioners attempted to prove each years' assessment should be reduced to the 2011 level, but they failed to make a prima facie case.

Issued: August 20, 2018

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>>.