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

Petitions: **03-016-14-1-5-20615-15**
03-016-15-1-5-00310-15
Petitioner: **Albert H. Schumaker II**
Respondent: **Bartholomew County Assessor**
Parcel: **03-84-11-130-001.200-016**
Assessment Years: **2014 and 2015**

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 2014 and 2015 assessment appeals with the Bartholomew County Assessor on November 17, 2014, and August 10, 2015, respectively.

2. On October 30, 2015, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued a determination for both years denying the Petitioner any relief.

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

4. The Board issued notices of hearing on May 31, 2018.

5. On July 18, 2018, Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearing. Neither she nor the Board inspected the property.

6. Certified tax representative Milo E. Smith appeared for the Petitioner. Bartholomew County Assessor Lew Wilson appeared for the Respondent. Local government representative Virginia Whipple and certified appraiser Jonathan Scheidt were witnesses for the Respondent. All of them were sworn.

7. The property under appeal is a lake-front lot including a dock and boat house located at 5481 South Poplar Drive in Columbus.

8. The PTABOA determined the following values:

Assessment Year	Land	Improvements	Total
2014	$375,100	$20,800	$395,900
2015	$375,100	$14,200	$389,300

9. The Petitioner requested the following values:

Assessment Year	Land	Improvements	Total
2014	$320,700	$20,800	$341,500
2015	$320,700	$14,200	$334,900

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

a) A digital recording of the hearing,

b) Exhibits:

Petitioner's exhibits for both 2014 and 2015:

Petitioner Exhibit 1:	2013 subject property record card,
Petitioner Exhibit 2:	2014 subject property record card,
Petitioner Exhibit 3:	2015 subject property record card,
Petitioner Exhibit 4:	Plat of Poplar Drive with the subject property highlighted,
Petitioner Exhibit 5:	Plat of Poplar Drive and Grandview Lake with the subject property highlighted,
Petitioner Exhibit 6:	Geographic Information System (GIS) plat of the subject property with measurements and e-mail from the GIS Mapping Division Head Jeff Lucas dated July 17, 2018,
Petitioner Exhibit 7:	2002 REAL PROPERTY ASSESSMENT GUIDELINES (GUIDELINES) page 43,
Petitioner Exhibit 8:	2014 subject property record card with Petitioner's calculations for the requested 2014 assessment,
Petitioner Exhibit 9:	2015 subject property record card with Petitioner's calculations for the requested 2015 assessment,
Petitioner Exhibit 10:	Indiana Code § 6-1.1-4-14,
Petitioner Exhibit 11:	Property record cards for the following properties: 5461 South Poplar Drive; 5451 South Poplar Drive; Poplar Drive; 5421 South Poplar Drive.

Respondent's exhibits for 2014:

Respondent Exhibit A:	Curricula Vitae for Mr. Wilson, Ms. Whipple, and Mr. Scheidt,
Respondent Exhibit B:	"Statement of Professionalism",
Respondent Exhibit C:	2013 subject property record card,
Respondent Exhibit D:	2014 subject property record card,
Respondent Exhibit E:	Aerial photograph of the subject property,
Respondent Exhibit F:	Aerial photograph of the "subject area" with the subject property highlighted,

Respondent Exhibit G: Real Estate Appraisal report of the subject property prepared by Mr. Scheidt with an effective date of March 1, 2014, and March 1, 2015.

Respondent's exhibits for 2015:

Respondent Exhibit A: Curricula Vitae for Mr. Wilson, Ms. Whipple, and Mr. Scheidt,
Respondent Exhibit B: "Statement of Professionalism",
Respondent Exhibit C: 2014 subject property record card,
Respondent Exhibit D: 2015 subject property record card,
Respondent Exhibit E: Aerial photograph of the subject property,
Respondent Exhibit F: Aerial photograph of the "subject area" with the subject property highlighted,
Respondent Exhibit G: Real Estate Appraisal report of the subject property prepared by Mr. Scheidt with an effective date of March 1, 2014, and March 1, 2015.

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.

Contentions

11. Summary of the Petitioner's case:

a) The subject property's 2014 and 2015 assessments are too high. The appeals were initiated because of a "discrepancy in the measurement of the depth of the subject property's lot." Because of the "discrepancy," the Assessor applied an incorrect depth factor to assess the lot. The lot should be measured according to the following calculation "119.7 feet of lake frontage with 100 feet of road frontage and 75.4 feet of depth on the east side and 102.5 feet of depth on the west side." The property record card erroneously states the lot is "141 feet deep." According to the lot depth tables listed in the Guidelines the appropriate depth factor for a lot that averages 90 feet is .77. The Assessor used a depth factor of .94. Using the correct measurements and depth factor, the lot should be assessed at $320,700 for each year under appeal. *Smith argument; Pet'r Ex. 2, 3, 4, 5, 6, 7, 8, 9.*

b) If the taxpayer and the assessor cannot agree on the size of a parcel then the assessor shall ask the county surveyor to do a survey. Here, the Petitioner is currently being assessed for "approximately 6,654 square feet of land that the taxpayer doesn't own." *Smith argument (citing* Ind. Code § 6-1.1-4-14(c)*; Pet'r Ex. 10.*

c) The Petitioner presented several property record cards for "similar" lots located on Grandview Lake to show a lack of uniformity and equality in assessments. For example, the property located on Poplar Drive has similar improvements with "about

the same frontage and more depth" than the subject property but is only assessed for "around" $350,000.[1] *Smith testimony; Pet'r Ex. 11*

d) Because the Petitioner initiated an appeal, he has been "singled out" in that the Respondent hired an appraiser. No other "comparable lake lot" is assessed based on an appraisal. Accordingly, the properties in this neighborhood are not uniformly assessed. *Smith testimony; Pet'r Ex. 11.*

e) The Respondent's appraisal is flawed for the following reasons:

- Mr. Scheidt did not determine the frontage or depth for the purportedly comparable lots.

- The subject property's square footage is erroneously listed as 11,892.

- Adjustments were not made to the first sale to account for differences in lot sizes. This lot is "over twice the size" of the subject property. Additionally, adjustments were not made to sales two and three to account for the fact these lots are "substantially larger" than the subject property.

- Finally, Mr. Scheidt failed to consider the topography and incline of the purportedly comparable lots.
  Smith argument (referencing Resp't Ex. G).

12. Summary of the Respondent's case:

a) The subject property is currently under-assessed. In support of this argument, the Respondent offered a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal prepared by certified residential appraiser Jonathan Scheidt. Mr. Scheidt valued the property as of March 1, 2014, and March 1, 2015, utilizing the sales comparison approach to value. Based on his appraisal, Mr. Scheidt estimated the total value of the property to be $480,000. *Whipple testimony; Resp't Ex. G.*

b) Mr. Scheidt testified extensively regarding his appraisal report. The subject property includes a boat house and a dock but lacks a "dwelling." According to Mr. Scheidt, "historically, there have been limited vacant lot sales on Grandview Lake in any year (and) for this reason, expanded search parameters are required." Therefore he was forced to examine sales from as far back as 2010. Ultimately, Mr. Scheidt relied on sales from 2010, 2012, and 2013 in developing his sales comparison approach. Mr. Scheidt examined sales of improved properties between 2014 and 2015 to determine if the values were constant during that period. In determining if market values were stable on the lake between 2014 and 2015, Mr. Scheidt examined two lots with similar improvements and determined that "there was no indication for a value increase between March 1, 2014, to March 1, 2015." The median value for water

[1] According to the property record card, this lot has 102 feet of frontage and the 2015 assessment is $358,700. *Pet'r Ex. 11.*

access lots in 2014 was $314,900 and the median value for water access lots in 2015 was $317,400. Mr. Scheidt also opined that there was no time adjustment warranted for any of the comparable sales because values have remained stable from 2010 through 2015 according to his research. *Scheidt testimony; Resp't Ex. G.*

c) Mr. Scheidt made several adjustments to account for differences between the subject property and his comparable sales. He applied two adjustments to the first comparable sale, a positive $25,000 adjustment to account for an inferior view and a positive $50,000 adjustment to account for the lack of improvements similar to the subject property. Mr. Scheidt also applied a positive $50,000 adjustment to his second sale because it also lacked improvements. Finally, Mr. Scheidt made a negative $70,000 adjustment to his third sale to account for the existence of a home, garage, and dock.[2] Ultimately, Mr. Scheidt determined the first comparable sale deserves the most consideration based on its "recency" of sale. *Scheidt testimony; Resp't Ex. G.*

d) Under cross examination, Mr. Scheidt explained that he did not make any adjustments to account for lot size or topography because as long as a dwelling can be built on a lot the "location and view are the primary drivers for the sale of Grandview lots." Mr. Scheidt argued that the "data does not suggest that there is a variance" in the value of the lots around the lake as it pertains to square footage or even topography. Further, Mr. Scheidt stated he did not examine the frontage and depth of each lot in making his adjustments. Instead, Mr. Scheidt testified that he relied on the overall square footage of the lots. *Scheidt testimony; Resp't Ex. G.*

Burden of Proof

13. 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.E2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exception to that rule.

14. 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).

15. 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

[2] Mr. Scheidt explained in order to arrive at this adjustment he valued property as improved at $120,000. He then testified he subtracted the subject property's improvements value of $50,000, to arrive at a negative adjustment value of $70,000

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 for 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.

16. Here, the parties agree the assessed value of the subject property increased by more than 5% from 2013 to 2014. In fact, the total assessment increased from $341,800 in 2013 to $395,900 in 2014. Accordingly, 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. Assigning the burden for the 2015 assessment year will depend on the Board's findings from 2014.

Analysis

17. The Respondent failed to make a prima facie case the 2014 and 2015 assessments are correct.

    a) 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.

    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 (In. Tax Ct. 2005). For 2014 and 2015 assessments, the valuation date was March 1 of the respective year. *See* Ind. Code § 6-1.1-4-4.5(f).

    c) The burden was on the Respondent to prove the 2014 assessment is correct. In an effort to prove that, the Respondent offered a USPAP compliant appraisal prepared by certified residential appraiser Jonathan Scheidt. Mr. Scheidt developed the sales comparison approach to determine the market value-in-use of the subject property to be $480,000 as of March 1, 2014, and March 1, 2015.

d) The Board has previously held an appraisal performed in conformance with generally recognized appraisal principles is often the preferred way to establish a prima facie case. *Meridian Towers,* 805 N.E.2d at 479. Here, the Petitioner argued the appraisal was flawed for the following reasons: Mr. Scheidt failed to make any adjustments to account for "large differences" in lot sizes; he did not consider the frontage or depth of his purportedly comparable properties; he failed to consider topography; and he erroneously listed the subject property's square footage. The Board will examine these criticisms in turn.

e) The Board agrees that Mr. Scheidt's adjustments and lack of detail regarding purportedly comparable properties hurts his credibility. The Petitioner mainly criticized the appraisal on the grounds that Mr. Scheidt failed to make any adjustment to account for differences in square footage even though, for example, the second purportedly comparable property was over twice as large as the subject property. Mr. Scheidt's testimony that the data does not suggest a variance in lot value based on square footage is not supported with any substantial evidence. Mr. Scheidt admitted that there are "limited lake sales", and perhaps too few to support his statements regarding lot size. Furthermore, the Board notes that Mr. Scheidt did not explain why he chose to use square footage rather than frontage to adjust the lake lots, when the value of lake land is generally tied to lake frontage. More alarming, Mr. Scheidt did not know the frontages and depths of the comparable lots listed on his appraisal report and did not have that data with him at the hearing. The Board recognizes that the appraisal process requires expertise and most often involves issues that are a matter of opinion, rather than questions with a "correct" or "incorrect" answer. More, however, Mr. Scheidt failed to support any of his "opinions" with sufficent market data.

f) The Petitioner raised the issue of topography. Mr. Scheidt opined that as long as a home can be constructed on the lot, it has utility and no adjustment is warranted. But the record does not show the topography of the subject property or the purportedly comparable properties, and the Petitioner failed to offer any evidence regarding any differences in topography. Again, Mr. Scheidt merely provided a conclusory statement.

g) The Petitioner argued that Mr. Scheidt overstated the square footage of the subject property's site by over 2,400 square feet. Under cross examination Mr. Scheidt testified that a 2,400 difference in square footage would have no effect on his final opinion of value because the site still has the necessary utility for constructing a home. Here, the Board finds Mr. Scheidt's opinion highly questionable and unsupported. According to Mr. Scheidt, all buildable vacant lots on the lake would sell for the same price whether or not they were similar in square footage, frontage and depth, and topography. Without more explanation, Mr. Scheidt's statements are vague and lack support, greatly reducing the credibility of his report.

h) Even though the Petitioner did not argue the sales Mr. Scheidt utilized were untimely, they are somewhat far removed from the relevant valuation dates. The sales were from 2010, 2012, and 2013. Mr. Scheidt did not time adjust any of the sales. Mr.

Scheidt contends that no time adjustment was warranted. His testimony was at times vague and based mostly on unsupported conclusions. In particular, Mr. Scheidt made several conclusory statements about the lack of any need for adjustments, but failed to back these statements with any market based evidence. Ultimately, the Board finds Mr. Scheidt's appraisal lacks probative value.

i) In finding that Mr. Scheidt's appraisal lacks probative value, the Board recognizes that he is a certified residential appraiser, and that he certified that he prepared his appraisal in conformity with USPAP. The Board will not lightly disregard such an appraisal. But even a recognized appraisal expert's testimony lacks probative value when it is conclusory. *See Inland Steel Co. v. State Bd. of Tax Comm'rs,* 759 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (finding that an expert's testimony that the Producer Price Index (PPI) should be used to convert obsolescence from 1993 dollars to 1985 dollars lacked probative value where the expert did not explain what the PPI represented, how it was calculated, or why it was appropriate). Where, as here, an appraisal report is highly conclusory and the opposing party has challenged the appraiser's valuation opinion, the appraiser must do more to explain the basic judgments underlying his opinion. Therefore, the Respondent failed to make a prima facie case that the current assessment is correct or that an increase is warranted. The Petitioner is entitled to have his 2014 and 2015 assessments reduced to the 2013 level of $341,800.

j) The Board's inquiry does not end here because the Petitioner requested a further reduction and offered his own valuation evidence. First, the Petitioner argued the subject property was over-assessed in comparison to four other properties. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1).

k) The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r,* 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, 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 properties. *Id*. at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

l) Here, the Petitioner failed to provide any of the required analysis. The Petitioner mainly focused on the property located on Poplar Drive because this property has "similar frontage." The Petitioner argued that even though the properties are similar, the Poplar Drive property was assessed for less. The Petitioner failed to provide any information on how the remaining three properties are comparable to the subject

property, and he failed to account for any differences. Additionally, his presentation of purportedly comparable assessments fails to point to a specific value for the subject property. For these reasons, the Petitioner's assessment comparison lacks probative value.

m) The Petitioner also made a claim for lack of uniformity and equality in assessments. 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)).

n) 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).

o) Similar to the taxpayer in *Westfield Golf*, the Petitioner's argument is flawed. Here, the Petitioner 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 Petitioner failed to compare the purportedly comparable properties' assessments to objectively verifiable data, such as sales price or market value-in-use appraisals. Instead, the Petitioner wanted the Respondent to use the same methodology to assess the subject property's land as 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 Petitioner failed to make a prima facie case showing a lack of uniformity and equality in assessments.

p) Finally, the Petitioner argued the subject property is over-assessed because the dimensions listed on the property record card are incorrect. In support of this argument, the Petitioner offered evidence of the purportedly correct dimensions prepared by the Bartholomew County GIS mapping division. In conjunction with this report, the Petitioner argued that because the lot's depth is incorrect, the .94 depth factor used in calculating the land value is also incorrect and should be changed to a depth factor of .77 according to the Guidelines. According to the Petitioner, once the land size and depth factor are corrected, the land should be valued at $320,700 for each year under appeal. The subject property may in fact be incorrectly measured. The land dimensions need to be re-measured and corrected. However, the Petitioner failed to provide any probative market value evidence to show how the change in land size affects the market value of the subject property.

q) Ultimately, the Petitioner has done little more than challenge the Respondent's methodology in computing the assessment of the land. The Petitioner failed to offer any market-based evidence to prove he was entitled to a further reduction in the assessments. Accordingly, the Board orders the 2014 and 2015 assessments be reduced to the 2013 level of $341,800.

Conclusion

18. The Respondent had the burden of proving the 2014 and 2015 assessments were correct. He failed to make a prima facie case, thus the assessments must be reduced to the 2013 level of $341,800. The Petitioner sought an even further reduction in the assessments but failed to make a case. Accordingly, the 2014 and 2015 assessments must be reduced to $341,800.

Final Determination

In accordance with the above findings and conclusions, the 2014 and 2015 total assessments must be reduced to $341,800.

ISSUED: October 16, 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>.