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

Petition: **41-017-14-1-1-20330-15**
Petitioners: **Charles D. & Rita D. Shrader**
Respondent: **Johnson County Assessor**
Parcel: **41-07-03-023-003.016-017**
Assessment Year: **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 Petitioners initiated their 2014 assessment appeal with the Johnson County Assessor on November 30, 2014.

2. On June 1, 2015, the Johnson County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioners.

3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board electing the Board's small claims procedures.

4. The Board issued a notice of hearing on August 3, 2016.

5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on September 26, 2016. She did not inspect the property.

6. Charles Shrader appeared *pro se*. Deputy Assessor Mike Watkins appeared for the Respondent. Both were sworn and testified.

Facts

7. The property under appeal is a single family residence located at 2851 North 700 East in Franklin.

8. The PTABOA determined the total assessment is $391,200 (land $52,600 and improvements $338,600).

9. On their Form 131, the Petitioners requested a total assessment of $344,000 (land $44,000 and improvements $300,000).

Record

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

a) Form 131 with attachments,

b) A digital recording of the hearing,

c) Exhibits:

Petitioners Exhibit 1:	2014 subject property record card,
Petitioners Exhibit 2:	Taxpayer's Notice to Initiate an Appeal (Form 130),
Petitioners Exhibit 3:	Notification of Final Assessment Determination (Form 115),
Petitioners Exhibit 4:	Beacon property report for the subject property,
Petitioners Exhibit 5:	Beacon property report for 6345 South 125 West in Trafalgar,
Petitioners Exhibit 6:	Beacon property report for 6844 East 50 South in Franklin,
Petitioners Exhibit 7:	Beacon property report for 2765 North 700 East in Franklin,
Petitioners Exhibit 8:	Beacon property report for 6867 Urmeyville Road in Franklin,
Petitioners Exhibit 9:	Beacon property report for 7431 East 350 North in Needham.
Respondent Exhibit 1:	2014 subject property record card,
Respondent Exhibit 2:	Sales disclosure form dated August 19, 2013,
Respondent Exhibit 3:	Subject property quitclaim deed combining two parcels of land dated September 30, 2013,
Respondent Exhibit 4:	Swimming pool building permit dated October 10, 2013,
Respondent Exhibit 5:	"Pole building" building permit dated September 25, 2013,
Respondent Exhibit 6:	Letter from the Petitioners to the Respondent dated September 7, 2016, requesting copies of documentary evidence prior to the hearing,
Respondent Exhibit 7:	Aerial photograph of subject property dated March 31, 2014,
Respondent Exhibit 8:	2013 subject property record card,
Respondent Exhibit 9:	Letter from the Respondent to the Petitioners dated September 6, 2016, requesting copies of documentary evidence prior to the hearing.
Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of hearing dated August 3, 2016,
Board Exhibit C:	Hearing sign-in sheet.

d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

a) The subject property's 2014 assessment is too high. The Petitioners purchased the property in August of 2013 for $435,000. The Petitioners argue the price they paid was "excessive" and was representative of a "market price" rather than a "market value." As a result of their purchase, the assessment of the subject property increased from $271,500 in 2013 to $391,200 in 2014. By utilizing the sale price rather than considering the values of comparable properties, the Respondent essentially performed "spot assessing." This "appears" to have been accomplished by "changing the effective date of construction from 1992 to 2008." *Shrader argument; Pet'rs Ex. 1, 4.*

b) The Petitioners' 3,800 square-foot home was built in 1992. The home consists of four bedrooms, two- and-a-half bathrooms, brick exterior, a pool, a detached garage, a pole building, but lacks a fireplace. *Shrader testimony; Pet'rs Ex. 1*

c) In an attempt to prove a more accurate value, the Petitioners examined the assessments of five nearby comparable properties. The first property, located at 6345 South 125 West, sold two months after the subject property for $396,000. This 3,512 square-foot home, built in 1994, has five bedrooms, four-and-a-half bathrooms, brick exterior, a fireplace, a pool, and a pole building. The "improvements" are assessed for $288,800. *Shrader testimony; Pet'rs Ex. 5.*[1]

d) The second property, located at 6844 East 50 South, is a 4,772 square-foot home with three bedrooms, three-and-a-half bathrooms, brick exterior, a fireplace, a pool, a pole building and two detached garages. This home was built in 1993. The "improvements" are assessed for $322,100. *Shrader testimony; Pet'rs Ex. 6.*

e) The third property, located at 2765 North 700 East, is a 3,072 square-foot home with three bedrooms, three full bathrooms, a fireplace, and pole building. This home was built in 1994. The "improvements" are assessed at $208,700. If the assessments of the Petitioners' pool and the detached garage were added to this property, the "improvements" would be assessed at $256,800. *Shrader testimony; Pet'rs Ex. 7.*

f) The fourth property, located at 6867 East Urmeyville Road, is a 3,076 square-foot home built in 1994. It has four bedrooms, two full bathrooms, a fireplace, brick exterior, and a "larger" pole building. The "improvements" are assessed at $222,700. If the Petitioners' pool and detached garage were added, the "improvements" would be assessed at $270,800. *Shrader testimony; Pet'rs Ex. 8.*

[1] While the Petitioners labeled this exhibit as a "sales comparison," Mr. Shrader actually did an assessment comparison.

g) The fifth property, located at 7431 East 350 North, is a 4,179 square-foot home with three bedrooms, three full bathrooms, a fireplace, two detached garages, and two pole buildings. The "improvements" are assessed at $215,800. If the Petitioners' pool were added, the "improvements" would be assessed at $226,100. *Shrader testimony; Pet'rs Ex. 9*.

h) Granted, no adjustments were made to account for various differences in amenities. But even if adjustments had been considered, the assessments of these comparable properties would still be "lower" than the subject property. Land value was not considered in the analysis as "some" of the comparable properties "contain much more agricultural land." Further, location factors, such as township or school district, were not considered as these do not "materially affect properties' values." *Shrader argument; Pet'rs Ex. 5, 6, 7, 8, 9.*

12. Summary of the Respondent's case:

a) The subject property is assessed correctly. Changes were made to both the land and improvements resulting in an increase in the 2014 assessment. Specifically, the land was changed to a one-acre home site with nine acres of agricultural land as a result of the Petitioners combining two properties. The acreage increased from 3.95 acres in 2013 to 10 acres in 2014. In addition, the Petitioners added a new pool, pool apron, and a pole building also contributing to the increase in the 2014 assessment. *Watkins argument; Resp't Ex. 1.*

b) The Petitioners purchased the property on August 19, 2013, for $435,000. In other appeals, the Board has held that "the purchase price of the property is often used to determine the value of the property as long as the sale is within the study period." This purchase alone, should prove the property is correctly assessed. *Watkins argument; Resp't Ex. 1, 2, 3, 4, 5.*

c) Finally, the property's effective date of construction was changed from 1992 to 2008 because it appeared from the sale listings that the home had been remodeled at some point. As a result, this changed the depreciation factor thus increasing the value of the property. *Watkins testimony.*

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.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions 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 appeals 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 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.

16. Here, the Petitioners argue the burden of proof should shift to the Respondent as the assessment increased from $271,500 in 2013 to $391,200 in 2014, as this is an increase in excess of 5%. However, the Respondent testified the assessment increased because the Petitioners added a new pool, pool apron, and pole building to the property. Additionally, the subject property was combined with another parcel increasing the acreage from 3.95 acres to 10 acres.

17. Under the plain language of Ind. Code § 6-1.1-15-17.2, the burden shifts to an assessor when the assessed value of the same property increases by more than 5%. In this case, what was assessed was not the *same* property for purposes of the burden shifting statute because both the land and improvements being assessed changed from 2013 to 2014. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioners.

Analysis

18. The Petitioners failed to make a prima facie case for reducing the 2014 assessment.

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

c) In an attempt to prove the subject property is over assessed, the Petitioners compared their assessment to the assessments of five purportedly comparable properties.[2] Parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. *See* Ind. Code § 6-1.1-15-18(c)(1). Here, four of the purportedly comparable properties are located within the same taxing district. However, one property is outside the taxing district and fails to meet the boundary requirements set forth under Ind. Code § 6-1.1-15-18(c)(1).

d) Nevertheless 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 provide the type of analysis that *Long* contemplates for the sales-comparison approach. *Id; see also Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected the value).

e) Here, the Petitioners failed to offer a reliable analysis. They failed to establish that the purportedly comparable properties they selected are actually comparable to the subject property. Additionally, they failed to make any adjustments to account for any differences between the properties they choose and the subject property. Further, their analysis fails to identify or support an indicated value. As such, their assessment analysis lacks probative value.

f) The Petitioners also allege that the purchase of the subject property triggered a change in the assessment from the Respondent. To this point, the Petitioners offered several arguments to support a reduction in the assessment. First, the Petitioners argue their purchase of the property was "excessive" and was representative of a "market price" rather than a "market value" and allege the Respondent increased the assessment to fall in line with the purchase price. Nothing in the record indicates the current assessment was made based on the Petitioners purchase price. As such, the

[2] The Petitioners implicitly raise the issue of a lack of uniformity and equality in assessments. As the Tax Court explained in, *Westfield Golf Practice Center*, the focus of Indiana's assessment system has changed from the application of a self-referential set of regulations to a question of whether a property's assessment reflects the external benchmark of market value-in-use. *See, Westfield Golf Practice Center, LLV v. Washington Twp. Ass'r*, 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). One way to prove a lack of uniformity and equality under Article X, Section 1 of the Indiana Constitution is to present assessment ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id*. at 399 n.3. The taxpayer in *Westfield Golf Practice Center* lost its appeal because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id*. at 399. Here, the Petitioners' did not make a showing for a change in the assessment based on lack of uniformity and equality.

Petitioners' conclusory opinion that they paid too much for the property lacks probative value. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).

g) In that same vein, the Petitioners allege the Respondent was guilty of "spot assessing."

> "[s]ales chasing" … is the practice of selectively changing values for properties that have been sold, while leaving other values alone. In turn, "selective reappraisal" cases have been characterized as those in which either one taxpayer or a small group of tax payers are singled-out for revaluation or for first-time assessment when similar property is not assessed for any [additional] tax liability. Similarly, a "spot assessment" involves the practice of reassessing only those properties that were the subjects of recent sales while leaving undisturbed the assessed valuations of properties in the same class of property that have not been sold. *See Big Foot Stores LLC v. Franklin Twp. Ass'r,* 919 N.E.2d 621 (Ind. Tax Ct. 2009).

This is a serious allegation, as several jurisdictions have held "selective reappraisals, spot assessments, and sales chasing are prohibited assessment practices that violate both the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the uniformity and equality provisions of state constitutions." *See Big Foot Stores LLC,* 919 N.E.2d 621 n.8. Here, based on the undisputed testimony from the Respondent, the assessment increased as a result of several new structures placed on property and the combining of two parcels. This is not "spot assessing."

h) Finally, the Petitioners argue the Respondent changed the "effective date of construction" on the property in an effort to increase the assessment. Again, based on the undisputed testimony from the Respondent, the property had been "remodeled" at some point, and a change in effective age was warranted. Essentially, the Petitioners are challenging the methodology used to develop the property's assessed value. Evidence and arguments regarding the strict application of the Guidelines, however, are not enough to prove that an existing assessment must be changed. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (stating "when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") Here, the Petitioners failed to show how the Assessor's methodology resulted in an assessment that fails to accurately reflect the subject property's market value-in-use.

i) Consequently, the Petitioners failed to make a prima facie case that the 2014 assessment is incorrect. Where a Petitioner has not supported its 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, 1221-22 (Ind. Tax Ct. 2003).

Conclusion

19. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2014 assessment will not be changed.

ISSUED: December 22, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days 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>.