

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

**Petition No.:** 15-013-11-1-5-00003  
**Petitioners:** Richard J. & Patricia A. Spade  
**Respondent:** Dearborn County Assessor  
**Parcel No.:** 15-07-15-200-030.003-013  
**Assessment Year:** 2011

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

**Procedural History**

1. Richard and Patricia Spade filed a Form 130 petition with the Dearborn County Assessor contesting the subject property’s 2011 assessment. On December 7, 2011, the Dearborn County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Spades relief.
2. The Spades then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On July 10, 2013, the Board held a hearing through its designated administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn and testified:
  - a) Richard & Patricia Spade,
  - b) Gary Hensley, Dearborn County Assessor.<sup>1</sup>

**Facts**

5. The subject property is a condominium unit located at 403 Riviera Drive in Lawrenceburg, Indiana.
6. Neither the Board nor the ALJ inspected the property.

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<sup>1</sup> Andrew Baudendistel appeared as counsel for the Assessor.

7. The PTABOA determined the following assessment:
- |           |                         |                  |
|-----------|-------------------------|------------------|
| Land: \$0 | Improvements: \$230,000 | Total: \$230,000 |
|-----------|-------------------------|------------------|
8. At hearing, the Spades requested an assessment between \$172,105 and \$173,232.<sup>2</sup>

### **Parties' Contentions**

9. Summary of the Spades' case:
- a) The subject property was assessed too high in light of the sale prices and assessments for other condominium units in the same subdivision. The subject property is located in the middle of a building. The Spades pointed to four sales, two of which involved units at the end of their building. The third was the sale in which they bought the subject unit, and the fourth involved another unit from the middle of the building. The middle units sold for an average of 7.88% less than the end units and should be assessed accordingly. The two end units were assessed for an average of \$188,050 in 2013. Thus, the two middle units, including the subject property, should be assessed for \$173,232. *R. Spade testimony; Pet'rs Exs. 1-2.*
  - b) The Spades also looked at how assessments in the subdivision decreased between 2012 and 2013. The assessments for the end units in the Spades' building decreased by an average of 12.37% during that period. Applying that same decrease to the subject property's 2012 assessment of \$196,400 yields a value of \$172,105. *R. Spade testimony; Pet'rs Exs. 1-2.*
  - c) Finally, the Spades bought the property for \$191,843 on February 11, 2011. *R. Spade testimony.*
10. Summary of the Assessor's case:
- a) The assessment is correct. Assessments start with the cost approach. Those cost-based values are then trended to the market using sales from prior years. The Assessor uses the same sales for his ratio studies. The Department of Local Government ("DLGF") approves the Assessor's work (and the work of his contractor, Tyler Technologies), including the ratio studies. *Hensley testimony; Resp't Ex. 2.*
  - b) Physical differences between the condominium units lead to differences in their assessments. For example, some units have two-car garages while others have only a one-car garage. Assessments for buildings 1, 4, and 15 in the subject property's neighborhood ranged from \$155,000 to \$230,000 per unit. *Hensley testimony.*

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<sup>2</sup> The Spades requested an assessment of \$188,000 on their Form 131 petition.

11. The official record contains the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1: Sales, appraisal, and assessment data for the subject property's neighborhood,

Petitioners Exhibit 2: Proposed assessment computations,

Petitioners Exhibit 3: September 22, 2011 letter from the Spades to the Assessor,

Petitioners Exhibit 4: Summary of the Spades' case,

Respondent Exhibit 1: Ratio study report for the subject property's neighborhood,

Respondent Exhibit 2: Neighborhood sales information,

Respondent Exhibit 3: Assessment information for various neighborhoods, including condominium unit groupings for the subject property's neighborhood,

Respondent Exhibit 4: Form 115 determination,

Board Exhibit A: Form 131 petition,

Board Exhibit B: Hearing notice,

Board Exhibit C: Notice of Appearance for Andrew Baudendistel,

Board Exhibit D: Hearing sign-in sheet,

- d) These Findings and Conclusions.

### **Objection**

- 12. The Assessor objected to Petitioners' Exhibits 1 and 2, which contain sales and assessment data for condominium units in the Spades' neighborhood and the Spades' written discussion of that data. The Assessor argued that the exhibits are irrelevant because they reference assessments from 2012 and 2013, while the Spades have appealed a 2011 assessment. The ALJ took the objection under advisement.
- 13. The Board overrules the Assessor's objection. Generally, each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) ("Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later."). And as discussed below, the Spades did not explain how assessments from 2012 or 2013 relate to the subject property's value for 2011. Nonetheless, Petitioners' Exhibits 1 and 2 contain more than just assessment data; they also contain sale prices and appraisal

information that is relatively close in time to the assessment date, March 1, 2011. In fact, some of the information listed in Petitioners' Exhibit 1 also appears in Respondent's own exhibits. *See Resp't Exs. 1-2.*

## Analysis

### Burden of Proof

14. Generally, a taxpayer has the burden of proof in an assessment appeal. The taxpayer must make a prima facie case proving both that the challenged assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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). If the taxpayer makes a prima facie case, the assessor has the burden to rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
15. Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

16. The subject property's assessment went from \$92,000 in 2010 to \$230,000 in 2011—an increase of far more than 5%. But the statute applies only where an assessment for the *same property* increases by more than 5%. The Assessor testified without dispute that the subject unit was still being built on March 1, 2010, and was therefore assessed based on its percentage of completion. By contrast, it was assessed as 100% complete in 2011. Because the 2011 assessment was not for the same property that was assessed in 2010, the increase does not shift the burden of proof from the Spades to the Assessor.

## Discussion

17. The Spades proved that the 2011 assessment should be reduced to \$191,800. The Board reaches this conclusion because:
- a) Indiana assesses real property based on its true tax value, which the DLGF has defined as the property's market value-in-use. A party may offer evidence that is consistent with that definition in an assessment appeal. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2006). Sales information or actual construction costs for the property under appeal, sales or assessment information for comparable properties, and other information compiled according to generally accepted appraisal principles may also be probative. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2005); *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
  - b) In any case, a party must explain how its evidence relates to the relevant valuation date; otherwise, that evidence lacks probative value. *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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2011, the assessment and valuation dates were the same—March 1, 2011. I.C. § 6-1.1-4-4.5(f).
  - c) The Spades offered two different calculations, both of which were based either partially or wholly on assessments from 2012 or 2013. Because the Spades did not explain how those later-year assessments relate to the property's true tax value for 2011, their calculations have little or no probative weight.
  - d) But the Spades bought the property for \$191,843 on February 11, 2011. A property's sale price is often the best evidence of its value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). That is particularly true in a case like this where the sale occurs less than a month before the relevant valuation date.
  - e) The Assessor offered no probative valuation evidence of his own to rebut that sale price. He instead simply described the procedures that were followed in computing assessments. But as the Indiana Tax Court has explained, strictly applying assessment regulations does not necessarily prove a property's market value-in-use in an assessment appeal. *See Eckerling*, 841 N.E.2d at 678 (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence).

- f) The Assessor likewise offered no authority for using a ratio study to prove that an individual property's assessment reflects its market value-in-use. In fact, the International Association of Assessing Official's Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, prohibits using ratio studies for that purpose:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . .  
**However, ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel.** Such statistics can be used to adjust assessed values on appealed properties to the common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

### Conclusion

18. The Spades made a prima facie case for reducing the subject property's 2011 assessment to \$191,800. The Assessor failed to rebut that evidence. The Board finds for the Spades.

### Final Determination

The Indiana Board of Tax Review orders that the 2011 assessment be reduced to \$191,800. (In accordance with the DLGF's assessment guidelines, the Board rounds to the nearest \$100.)

ISSUED: September 30, 2013

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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 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>>.