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

Petition No.: **06-019-10-1-4-00236**
Petitioner: **Wakefield – Kroemer LLC**
Respondent: **Boone County Assessor**
Parcel No.: **019-09890-00**
Assessment Year: **2010**

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

Procedural History

1. The Petitioner appealed the assessment of its property for 2010 with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by filing its "Boone County Appeal Worksheet" on November 4, 2010.

2. The PTABOA issued a notice of its decision on December 29, 2010.

3. The Petitioner filed a Form 131 petition with the Board on January 7, 2011. The Petitioner elected to have its case heard according to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated January 18, 2012.

5. The Board held an administrative hearing on March 14, 2012, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.

6. The following persons were present and sworn in at hearing:

   a. For Petitioner:[1] Kurt Kroemer, shareholder, Wakefield-Kroemer, LLC
      Wayne A. Kroemer, chairman, Wakefield-Kroemer, LLC

   b. For Respondent: Lisa Garoffolo, Boone County Assessor
      Peggy Lewis, PTABOA Member

[1] Mr. Wayne Kroemer was sworn in as a witness, but did not present any testimony.

Facts

7. The property under appeal is a 1,278 square foot house located at 92 East Oak Street, Zionsville, in Boone County.

8. The ALJ did not conduct an on-site inspection of the property under appeal.

9. For 2010, the PTABOA determined the assessed value of the property to be $204,600 for the land and $112,100 for the improvements, for a total assessed value of $316,700.

10. The Petitioner requested an assessed value of $80,000 for the land and $112,100 for the improvements, for a total assessed value of $192,100.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in its property's assessment:

    a. The Petitioner's representative contends that market data shows the county assessor has consistently assessed properties for higher than their sale prices in the Petitioner's neighborhood. *Kroemer testimony.* In support of this contention, Mr. Kroemer submitted photographs, plat maps and an analysis showing two properties that sold in December of 2010. *Petitioner Exhibits 3 through 6.* According to Mr. Kroemer, the two properties sold for 21.6% and 24.7% less than their 2010 assessed values. *Kroemer testimony; Petitioner Exhibit 6.* Therefore, the Petitioner's representative concludes, the Petitioner's 2010 assessed value should be reduced by approximately 25%. *Kroemer testimony.*

    b. In addition, the Petitioner contends, its property is over-valued based on the sale prices of comparable properties in the neighborhood. *Kroemer testimony.* Mr. Kroemer testified that he used the sale prices of two comparable properties to calculate an average price per acre for the land and an average price per square foot for the buildings. *Id.* According to Mr. Kroemer, the property located at 70 East Oak Street is a house with 1,440 square feet of living area on a 0.08 acre lot that sold for $170,000 in December of 2010. *Petitioner Exhibits 4 and 6.* Mr. Kroemer allocated the property's $170,000 sale price as $1,572,000 per acre for the land and $46.50 per square foot for the building. *Kroemer testimony; Petitioner Exhibit 6.* Similarly, the property located at 60 South Elm Street is a house with 1,040 square feet of living area on a 0.19 acre lot that sold for $219,000 in December of 2010. *Petitioner Exhibits 5 and 6.* Mr. Kroemer allocated the property's $219,000 sale price as $918,500 per acre for the land and $42.80 per square foot for the building. *Kroemer testimony; Petitioner Exhibit 6.* Based on the two properties, Mr. Kroemer argues, the average land price was $1,245,250 per acre and the average building price was $44.65 per square foot, resulting in a value of the Petitioner's property of $124,525 for the land and

$57,063 for the building, or a total value of $181,588. *Kroemer testimony; Petitioner Exhibit 6.*

c. Finally, Mr. Kroemer argues that the county did not assess all properties equally in the Petitioner's neighborhood. *Kroemer testimony.* According to Mr. Kroemer, the four lots adjacent to the Petitioner's property did not increase in assessed value between the March 1, 2009, assessment date and the March 1, 2010, assessment date; whereas the Petitioner's property's assessed value increased by 13.5% between 2009 and 2010 – which created an inequity in the neighborhood. *Id.; Petitioner Exhibit 3.* The Petitioner's property is entitled to equal treatment. *Id.* Thus, Mr. Kroemer argues, the property's assessed value should be lowered. *Kroemer testimony.* Mr. Kroemer agreed, however, that a portion of the increase in the property's assessed value was caused by the incorrect measurement of the Petitioner's lot. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

a. The Respondent's representative testified that, upon reviewing the Petitioner's property for the March 1, 2010, assessment date, the county discovered an error on the Petitioner's property record card. *Lewis testimony.* According to Ms. Lewis, the property's lot size was "corrected" from 71 feet of frontage to 87 feet of frontage, resulting in the increase in assessed value between 2009 and 2010. *Id.* However, Ms. Lewis admitted, the county's aerial map showed that the lot was inadvertently measured to the middle of the street causing an incorrect measurement in the "correction." *Lewis testimony.* Ms. Lewis admits that by squaring off the lot and averaging the front and rear measurements, the correct frontage of the Petitioner's lot is 74 feet.[2] *Id.; Respondent Exhibits 7, 8, and 9.* Ms. Lewis contends that by adjusting the size of the Petitioner's lot to 74 feet of frontage, the assessed value of the Petitioner's property should be $174,000 for the land and $112,100 for the improvements, for a total assessed value of $286,100 for 2010. *Lewis testimony.*

b. The Respondent also contends that the assessed value of the property under appeal, as corrected, is the proper value for the Petitioner's property. *Garoffolo testimony.* In support of this position, the Respondent submitted sales information for four properties located in the area of the Petitioner's property that sold in 2008 and 2009. *Respondent Exhibit 10.* According to the Respondent, the sale prices of the four properties ranged from $246,000 to $690,000, or from $85.42 per square foot to $301.78 per square foot. *Garoffolo testimony; Respondent Exhibit 10.* Because the Petitioner's property's assessed value was only $286,100 or $223.87 per square foot for 2010, Ms. Garoffolo concludes, the Petitioner's

[2] The Petitioner's representative agreed with the Respondent that the effective frontage of the Petitioner's lot is 74 feet. *K. Kroemer testimony.*

property was not over-valued for the March 2, 2010, assessment. *Garoffolo testimony.*

Record

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

    a. The Form 131 petition and related attachments.

    b. The digital recording of the hearing.

    c. Exhibits:

Petitioner Exhibit 1 –	Subject property's assessment history for 2008, 2009 and 2010,
Petitioner Exhibit 2 –	GIS plat map of the subject property,
Petitioner Exhibit 3 –	GIS plat map of the subject property and four adjacent properties,
Petitioner Exhibit 4 –	Exterior photograph, plat map and property record card for 70 East Oak Street,
Petitioner Exhibit 5 –	Exterior photograph and plat map for 60 South Elm Street,
Petitioner Exhibit 6 –	Summary of the Petitioner's argument,
Respondent Exhibit 1 –	Boone County appeal worksheet, Notification of Final Assessment Determination – Form 115, and property record card and exterior photograph of the subject property,
Respondent Exhibit 2 –	Front page of the subject property's property record card,
Respondent Exhibit 3 –	Two exterior photographs of the Petitioner's property,
Respondent Exhibit 4 –	Notification of Final Assessment Determination – Form 115,
Respondent Exhibit 5 –	Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131 and Notification of Final Assessment Determination – Form 115,
Respondent Exhibit 6 –	Indiana Board of Tax Review, Notice of Hearing on Petition,
Respondent Exhibit 7 –	Aerial map of the Petitioner's property,
Respondent Exhibit 8 –	Aerial map of Petitioner's property showing the lot's front measurement,
Respondent Exhibit 9 –	Aerial map of Petitioner's property showing the lot's rear measurement,

Respondent Exhibit 10 – List of commercial sales in Zionsville Village,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.[3] That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

> 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.

15. Here, the Petitioner's representative and Respondent agreed that the property's value increased from $279,100 in 2009 to $316,700 for the 2010 assessment. *Form 11, Notice of Assessment of Land and Structures, attached to the Petitioners' Form 131 Petition.* However, the Respondent's representative testified that the increase in the property's 2010 assessed value was due to the "correction" of the lot's size from 71 feet of frontage to 87 feet of frontage.

16. Indiana Code § 6-1.1-15-17.2 applies where "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

[3] HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

assessor (if any) for the immediately preceding assessment date for the same property." Ind. Code § 6-1.1-15-17.2. "When faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation." *Joyce Sportswear Co. v. State Board of Tax Commissioners,* 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997), *review denied.* Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than five percent. Therefore, because the property's 2010 assessment accounted for a portion of the Petitioner's lot that was not previously assessed, the assessor was not assessing the "same property" in 2010 as she did in 2009. Thus, Indiana Code § 6-1.1-15-17.2 does not apply in this case.[4]

17. The Petitioner failed to provide sufficient evidence to establish a prima facie case that its property was over-valued in 2010. The Board reached this conclusion for the following reasons:

    a. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See Id*. A market-value-in-use appraisal prepared according to USPAP often will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

    b. The Petitioner's representative first argues that the Petitioner's property is over-valued based on the sales prices of comparable properties. *Petitioner Exhibits 3, 4, 5 and 6.* In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the property. *See* MANUAL at 3 (stating that the 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.") In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, 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 probative evidence of the comparability of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d

[4] To the extent that the Respondent erred in its "correction," the Board's conclusion does not change. First, the parties agreed that the property's size is 74 feet of frontage; whereas the property's 2009 assessed value was based on only 71 feet of frontage. Thus, the assessor assessed three additional feet of frontage in 2010 than she did in 2009. Moreover, the agreement between the parties that the property only has 74 feet of frontage results in an assessed land value of $174,000 for 2010 – which does not represent a greater than 5% increase over the $167,000 land assessment in 2009. Therefore the Petitioner retains the burden of proof in this matter under either analysis.

466, 470 (Ind. Tax Ct. 2005). Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.*

c. Here the Petitioner's representative apportioned two sales between their land value and improvement value and averaged the two values. However, Mr. Kroemer failed to show that the sales were of comparable properties. In fact, he made no attempt to compare the properties in terms of their characteristics that would affect their relative market values-in-use. Nor did he provide any evidence to support his allocation of the sale prices between the land and buildings. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. 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 Board of Tax Commissioners,* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *and Herb v. State Board of Tax Commissioners,* 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Thus, the Petitioner failed to raise a prima facie case that its property was over-valued based on the sale prices of the two nearby properties.

d. The Petitioner also contends that, because the two properties that sold were assessed for 21.6% and 24.7% over their sale prices, properties as a whole are over-assessed and therefore its property's value should be reduced by 25%. However, that argument, and the Petitioner's argument that four properties in the subject property's neighborhood did not increase in value, while its property's value increased 13.8% between 2009 and 2010, also fail to support a change in the Petitioner's property's assessed value.

e. A lack of uniformity and equality in a mass-appraisal assessment for a class or stratum of properties may be inferred from analyzing the ratios of assessment to sale price for a subgroup of properties within that class or stratum. *See* MANUAL at 20 (Explaining that a ratio study "statistically measures the accuracy and uniformity of the assessments produced by the mass appraisal method."). Where a ratio study shows that a given property is assessed above the common level of assessment, that 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 had other property in Lake County been properly assessed). *See also Westfield Golf Practice Center, LLC v. Washington Township Assessor,* 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) ("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.")

f. But ratio studies involve relatively sophisticated statistical comparisons that meet professionally accepted standards. *See Kemp v. State*, 726 N.E.2d 395,404 (Ind. Tax. Ct. 2000) ("A sales ratio study, prepared using professionally acceptable standards, would measure the uniformity of assessments under a market based assessment system."); *see also*, *IAAO Standard, passim* (describing the statistical analyses used in ratio studies). Such studies must 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)). The Petitioner failed to establish that its evidence satisfied these requirements.

g. Simply choosing two sales from a taxing district that may be undervalued is insufficient to show that the Petitioner's property should be adjusted downward accordingly. Even if the sales comprised the entire universe of sales in the Petitioner's neighborhood, the Petitioner failed to show that the two sales were a sufficient sample size from which to draw the inference the Petitioner urges the Board to draw. Ultimately, two properties in one neighborhood do not show a systematic underassessment of residential property in a taxing district. *See Moffett v. Ind. Dep't of Local Gov't Fin.*, 2009 Ind. Tax LEXIS 60 (Ind. Tax Ct. Dec. 16, 2009) (unpublished decision) (Article 10, § 1 of the Indiana Constitution "deals with the uniformity and equal rate of assessment and taxation of property *within the taxing district or locality in which the particular tax is levied."*) (emphasis added).

h. Where the 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, 1221-1222 (Ind. Tax Ct. 2003). Here, however, the Respondent admitted that the property's 2010 assessment was in error because the property was valued as having 87 feet of frontage; whereas the parties agree that the property only has 74 feet of frontage. Based on this agreement, the Respondent admitted that the assessed value of the Petitioner's land should only be $174,000.

Conclusion

18. The Petitioner failed to raise a prima facie case that its property was over-valued for the March 1, 2010, assessment. The Respondent, however, admitted that the lot's size was measured in error. The Board accepts this agreement and finds that the assessed value of the Petitioner's property should be reduced to $174,000 for the land. The Board notes that the improvement value of the Petitioner's property remains $112,100, resulting in a total assessed value of $286,100.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property should be changed for the 2010 assessment year.

ISSUED: June 8, 2012

_____
Chairman,
Indiana Board of Tax Review

_____
Commissioner,
Indiana Board of Tax Review

_____
Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE
- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5 as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Tax Court Rules are available on the Internet at http://www.in.gov/judiciary/rules/tax/index.html**. The Indiana Code is available on the Internet at** http://www.in.gov/legislative/bills/2007/SE0287.1.html**.**