REPRESENTATIVE FOR PETITIONER:
James O'Donnell, Co-Trustee

REPRESENTATIVE FOR RESPONDENT:
Rosemary Mandrici, St. Joseph County Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

WINIFRED H. O'DONNELL TRUST,	)	Petition No.: 71-026-13-1-5-20411-15
	)	
Petitioner,	)	Parcel No.: 71-08-01-126-006.000-026
	)	
v.	)	County: St. Joseph
	)	
ST. JOSEPH COUNTY ASSESSOR,	)	Township: Portage
	)	
Respondent.	)	Assessment Year: 2013

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

March 6, 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Did the Petitioner prove the subject property's 2013 assessment was incorrect?

PROCEDURAL HISTORY

2. The Petitioner initiated a 2013 appeal with the St. Joseph County Assessor on December 19, 2013. On July 24, 2015, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment but not to the level requested by the Petitioner.

3. On September 1, 2015, the Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.

4. Administrative Law Judge, Jennifer Bippus (ALJ) held the Board's administrative hearing on December 6, 2016. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. The following people were sworn and testified:

For the Petitioner:	James O'Donnell, Co-Trustee, Frank Krakowski, certified appraiser.
For the Respondent:	Rosemary Mandrici, St. Joseph County Assessor, Patricia St. Clair, St. Joseph County Deputy Assessor.

6. The Petitioner offered the following exhibits:[1]

Petitioner Exhibit 1:	Subject property record card,
Petitioner Exhibit 3:	2011 Real Property Assessment Manual, and several pages from the 2012 Real Property Assessment Guidelines,
Petitioner Exhibit 4:	Land Order for the subject property's area; property record cards for 418 East Angela, 422 East Angela, 418 Pokagon, and 426 Pokagon,
Petitioner Exhibit 5:	Ratio Study for subject property's neighborhood,
Petitioner Exhibit 6:	Sales utilized in the Ratio Study,
Petitioner Exhibit 8:	Appraisal of the subject property prepared by Jonathan Whitmer, Indiana Certified Residential Appraiser, with an effective date of March 1, 2013.

[1] The Petitioner listed exhibits 2 and 7 on the exhibit cover sheet, but these exhibits were not offered at the hearing.

7. The Respondent offered the following exhibits:

Respondent Exhibit 1:	Taxpayer's Notice to Initiate an Appeal (Form 130),
Respondent Exhibit 2:	"Assessment Appeal Hearing Information,"
Respondent Exhibit 3:	"ProVal Database comparable sales report,"
Respondent Exhibit 4:	Ratio Study summary page for 2013-pay-2014,
Respondent Exhibit 5:	Ratio Study for Neighborhood 7126380 for 2013-pay-2014,
Respondent Exhibit 6:	Map indicating sales utilized in the Ratio Study,
Respondent Exhibit 7:	Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134),
Respondent Exhibit 8:	Notification of Final Assessment Determination (Form 115),
Respondent Exhibit 9:	Form 131,
Respondent Exhibit 10:	2012 subject property record card,
Respondent Exhibit 11:	2013 subject property record card,
Respondent Exhibit 12:	2013 subject property record card with PTABOA adjustments,
Respondent Exhibit 13:	Valuation history of the subject property for 2007-2016,
Respondent Exhibit 14:	Email from Justin Jesch to Mr. O'Donnell dated November 23, 2016,
Respondent Exhibit 15:	Screen shot of certified mail receipt,
Respondent Exhibit 16:	Two "Comparable Sales Reports," property record cards, photographs, and a map.

8. The following additional items are recognized as part of the record:

Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Hearing notice dated October 26, 2016,
Board Exhibit C:	Hearing sign-in sheet.

9. The property under appeal is a single family residence located at 122 East Angela Boulevard in South Bend.

10. The PTABOA determined a total assessment of $117,000 (land $54,200 and improvements $62,800).

11. The Petitioner requested a total assessment of $106,000.[2]

[2] Mr. O'Donnell requested the land be valued at "$188 per front foot with the remainder applied to the improvements because he is appealing the land only."

JURISDICTIONAL FRAMEWORK

12. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

13. The subject property's 2013 land assessment is too high. The front foot rate of $588 is incorrect. The correct front foot value should be $188. The property's total assessment should be $106,000. Granted, the Respondent offered to stipulate to the appraised value of $106,000 but this stipulation was declined because "the issue is with the land value, which is the issue all the way from the beginning." Other properties in the same neighborhood have the same "land issue" and if a stipulation was accepted, Mr. O'Donnell would be precluded from utilizing "the subject property's corrected value as evidence" in subsequent appeals. *O'Donnell argument*.

14. In support of this argument, the Petitioner submitted an appraisal prepared by Jonathan Whitmer, a certified residential appraiser. The appraisal was performed in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). As of March 1, 2013, Mr. Whitmer estimated the property's total value was $106,000. *O'Donnell testimony; Pet'r Ex. 8.*

15. The Petitioner was in agreement with the "overall value" of the appraisal but sought a "lower land value with the remaining value applied to the improvements." In support of this argument, Mr. O'Donnell presented assessments of properties located in the same neighborhood, Harter Heights subdivision, and from a neighboring subdivision, University Heights. The subject property's land assessment is "much higher" when compared to neighboring properties. *O'Donnell argument; Pet'r Ex. 4, 8.*

16. The assessments among different neighborhoods are "anything but uniform." For example, the property located at 418 Angela Boulevard has a base rate of $315 per front foot, but the neighboring property has a base rate of $154 per front foot. Additionally, the property at 426 Pokagon Street has a base rate of $154 per front foot. According to the Respondent's Land Order, neighborhood 26348 is assessed at $154 per front foot, neighborhoods 26545, 26551, and 26549 are assessed at $188 per front foot. The subject property's neighborhood has a land assessment of $588 per front foot. It is "incomprehensible" to have this wide range of front foot values within a small area. The assessments should have been "equalized." *O'Donnell argument; Pet'r Ex. 4.*

17. Additionally, the Respondent failed to calculate the excess frontage correctly. According to the Guidelines, a 50% deduction should be given for excess frontage. The Respondent applied a 5% deduction. *O'Donnell argument; Pet'r Ex. 3.*

18. The Respondent's ratio study does not meet the International Association of Assessing Officers (IAAO) standards. According to the Petitioner's own ratio study calculations, the Respondent's coefficient of dispersion was not between 0.98 and 1.03. Therefore, the subject property's assessment was calculated from a "faulty" ratio study. *O'Donnell argument; Pet'r Ex. 5, 6.*

RESPONDENT'S CONTENTIONS

19. The Respondent agrees the subject property's total assessment should be $106,000 as indicated by the Petitioner's appraisal. The Respondent attempted to stipulate to this amount prior to the hearing. *Mandrici testimony (referencing Pet'r Ex. 8).*

20. Nonetheless, the Respondent attempted to defend the subject property's land assessment. Ms. Mandrici explained that Harter Heights, the subject's neighborhood, and University Heights, the adjacent neighborhood, are two separate subdivisions. The Petitioner utilized purportedly comparable properties from University Heights, not Harter Heights.

Base rates for land in each subdivision are different because different sales were utilized to arrive at the base rate values. *Mandrici argument.*

21. Thus, properties located in the subject property's subdivision, such as 309 Napoleon Street and 126 Pokagon Street, are assessed with a land base rate of $588 per front foot. Still, the Respondent is "willing to offer, because … some original fixtures and amenities are still in the Harter Heights homes, and some of the newer sales have some modernization going on, the $106,000." *Mandrici testimony; Resp't Ex. 16.*

BURDEN OF PROOF

22. 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.

23. 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 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 the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

24. 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.

25. Here, the total assessment decreased from $117,400 in 2012 to $117,000 in 2013.[3] The Petitioner accepted the burden of proof without argument from the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

ANALYSIS

26. 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.

27. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See 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

[3] While the Petitioner contends the appeal was of the land assessment only, neither party raised the argument that the burden-shifting statute should be applied only to the land assessment. On several occasions, the Board has addressed whether Ind. Code § 6-1.1-15-17.2, can be applied piecemeal to only land assessments or only improvement assessments, or whether that statute must be applied to the whole property. The Board has repeatedly held that the statute does not expressly contemplate piecemeal approaches, but was intended to apply to an entire "economic unit." *See Vern R. Grabbe v. Carroll Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. Nos. 08-002-10-1-1-00001, et al. (May 10, 2012); *Rebecca Budreau v. White Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. Nos. 91-020-08-1-5-00058, et al. (July 30, 2012); *Waterford Dev. Corp. v. Elkhart Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. Nos. 20-015-08-1-4-00241, et al. (September 25, 2012); *Mac's Convenience Stores, LLC v. Hamilton Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. No. 29-006-12-1-4-02050 (November 14, 2014).

Ct. 2005). For a 2013 assessment, the assessment and valuation date were March 1, 2013. *See* Ind. Code § 6-1.1-4-4.5(f).

28. Here, the Petitioner relied on a USPAP compliant appraisal completed by Jonathan M. Whitmer, an Indiana certified residential appraiser. Mr. Whitmer estimated the total value of the property at $106,000 as of March 1, 2013. The Respondent did not attempt to impeach or rebut the appraisal. She did not disagree with the value determined by Mr. Whitmer, in fact she conceded the total assessment should be lowered to $106,000. As such, the Petitioner made a prima facie case the 2013 total assessment should be reduced to $106,000.

29. However, because the Petitioner additionally requested the land value be lowered to $188 per front foot, and the "remaining value" be assigned to improvements, the Board must examine the Petitioner's additional evidence.

30. Given the parties essentially agreed to a total assessment of $106,000, the Board finds little value in determining how that amount is divided between the land and improvements. The overriding purpose of real property assessment in Indiana is to determine the market value-in-use of the entire property. Indeed, the Manual defines true tax value as "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." MANUAL at 2. Further, "true tax value may be considered as the price that would induce the owner to sell the property, and the price at which the buyer would purchase the real property for a continuation of use of the property for its current use." *Id.* Here, the Petitioner's home is situated on the land. Thus, the land value alone is somewhat immaterial as the Petitioner could not sell only its land. Generally, the Board does not consider the land and improvements in a piecemeal manner when the property forms a single economic unit. *See Koziarz v. Marshall Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. No. 50-017-12-1-5-00012, et. al. (May 22, 2014) ("[W]hile the Petitioner only appeals the land assessments and not the improvement, he fails to rebut the Respondent's evidence that the parcels form a single economic unit.")

31. Further, even if the Board were inclined to consider a piecemeal approach, the Petitioner failed to prove the land assessment is incorrect. In an attempt to prove the land assessment is incorrect, the Petitioner offered several land assessments from different neighborhoods. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided these comparable properties are located in the same taxing district or within two miles of the taxing district boundary. Ind. Code § 6-1.1-15-18(c)(1).

32. 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*. Here, the Petitioner failed to provide any of the required analysis. As such, the Petitioner's "assessment comparison" lacks probative value.

33. Next, the Petitioner argued that the Respondent's ratio study does not comply with IAAO standards.[4] More specifically, the Petitioner argued the ratio study's coefficient of dispersion was outside IAAO's acceptable range. The Board finds this argument unsupported, as it appears Mr. O'Donnell considered properties from multiple neighborhoods in his study. Moreover, the Petitioner failed to offer any support for the notion that a ratio study may be used to prove or disprove that an individual property's assessment reflects its market value-in-use. Indeed, the IAAO standard on Ratio Studies, which 50 IAC 27-1-44 incorporated by reference, says otherwise:

> 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, the 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 a common level.

INTERNATIONAL ASSOCIATIONS 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).

34. Finally, the Petitioner argues the Respondent failed to calculate the excess frontage correctly. Mr. O'Donnell stated "the Guidelines apply a 50% deduction for excess frontage and the Respondent only applied a 5% deduction."

[4] The Petitioner implicitly raises the issue of a lack of uniformity and equality in the land 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 Petitioner did not make a showing for a change in the land assessment based on lack of uniformity and equality.

35. Here, the Petitioner is relying on the application of the Guidelines rather than any market-based evidence. As the tax court has explained, strictly applying assessment regulations does not necessarily prove a property's true tax value in an assessment appeal. *Eckerling v Wayne Twp. Ass'r,* 841 N.E.2d 674 (Ind. Tax Ct. 2006) (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence). For these reasons, the Petitioner failed to present enough probative evidence to warrant a change in the front foot value assigned to the subject property's land assessment.

36. In summary, the Petitioner made a prima facie case that the subject property's 2013 total assessment should be reduced to $106,000. The Respondent conceded to this amount. Additionally, the Petitioner requested that the land assessment be reduced to $188 per front foot. As previously stated, the Board generally disregards a piecemeal approach to valuing property. Even if the Board were inclined to lower the front foot value assigned to the land assessment and the improvement value, the Petitioner failed to present probative evidence indicating the land assessment is incorrect.

SUMMARY OF FINAL DETERMINATION

37. The Board finds for the Petitioner and orders the subject property's 2013 total assessment be reduced to $106,000. The Board denies the Petitioner's request to change the front foot value assigned to the land portion of the assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

_____
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>.