

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

**Petition No.:** 57-010-16-1-5-01501-16  
**Petitioner:** William B. Boyle, Jr.  
**Respondent:** Noble County Assessor  
**Parcel No.:** 57-04-15-400-309.000-010  
**Assessment Year:** 2015

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

**Procedural History**

1. Petitioner initiated his appeal with the Noble County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130. On May 27, 2016, the PTABOA issued its Notification of Final Assessment Determination. Petitioner then filed a Form 131 petition on July 19, 2016, with the Board.<sup>1</sup>
2. Petitioner elected to have his appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On January 31, 2017, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.
4. The following people testified under oath:
  - William B. Boyle, Jr., owner,
  - Kim Carson, Noble County Assessor,
  - Gavin Fisher, Assessor’s expert witness.

**Facts**

5. The property under appeal is a 0.286 acre vacant lot located at 540 Bayview Drive in Rome City.
6. The PTABOA determined the total land assessment is \$20,000.

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<sup>1</sup> The Form 131 stated the year under appeal is 2016. The Form 115, however, indicated that the effective date of the assessed value is for 2015. Petitioner agreed with the PTABOA that the year under appeal is in fact 2015.

7. Petitioner requested a total property assessment of \$2,000.

**Record**

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

a. A digital recording of the hearing,

b. Exhibits:

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|------------------------|--|
| Petitioner Exhibit 1:  | Form 131 petition,   |
| Petitioner Exhibit 2:  | Form 130 petition,   |
| Petitioner Exhibit 3:  | Beacon Schneider aerial map for parcel #57-04-15-400-002.000-010,                                    |
| Petitioner Exhibit 4:  | Aerial map of subject property,  |
| Petitioner Exhibit 5:  | Photograph of subject property,  |
| Petitioner Exhibit 6:  | Photograph of subject property,  |
| Petitioner Exhibit 7:  | Photograph of subject area,  |
| Petitioner Exhibit 8:  | Form 130 petition,   |
| Petitioner Exhibit 9:  | Petitioner’s written contentions,  |
| Petitioner Exhibit 9A: | Multiple listing sheet (“MLS”) for 910 North Shore Drive,  |
| Petitioner Exhibit 9B: | MLS for lot 33 Spring Beach Road,  |
| Petitioner Exhibit 9C: | MLS for 000 Spring Beach Road,   |
| Petitioner Exhibit 10: | Form 11, dated May 27, 2016,   |
| Petitioner Exhibit 11: | Form 11, dated August 28, 2015,  |
| Petitioner Exhibit 12: | Form 115,  |
| Petitioner Exhibit 13: | Petitioner’s written contentions,  |
| Petitioner Exhibit 14: | Subject property record card,  |
| Petitioner Exhibit 15: | Rome City planning & zoning code for lake residential district,                                      |
| Petitioner Exhibit 16: | Email correspondence between Kim (Miller) Carson, Noble County Assessor and Leah Pranger, Rome City, |
| Respondent Exhibit 1:  | Petitioner comparable sales,   |
| Respondent Exhibit 2:  | Respondent comparable sales,   |
| Board Exhibit A:       | Form 131 petition,   |
| Board Exhibit B:       | Hearing notice,  |
| Board Exhibit C:       | Hearing sign-in sheet,   |

c. These Findings and Conclusions.

## **Burden of Proof**

9. 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 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). A burden-shifting statute creates two exceptions to that rule.
10. 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).
11. 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," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "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).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value increased from \$2,000 to \$20,000 between 2014 and 2015. The parties agree that was an increase in excess of five percent. Respondent therefore has the burden of proving that the 2015 assessment is correct.

## **Summary of the Parties' Contentions**

14. Respondent's case:
  - a. Gavin Fisher, an Indiana licensed appraiser, offered MLS information for three purportedly comparable properties to support the assessment. *Fisher testimony; Resp't Ex. 2.*
  - b. Lot 10 at Spring Beach Road sold at auction on July 29, 2013, for \$30,500. The lot is a buildable lot that is slightly larger than the subject property. It would

require a negative adjustment for size and consideration for connecting to municipal utilities. Mr. Fisher noted a property sold at auction is not ideal in terms of comparability, but he offered it nonetheless to show that its sale price supports the subject property's assessed value. *Fisher testimony; Resp't Ex. 2.*

- c. Lot 29 at Pleasant Point sold on May 27, 2016, for \$47,900. The lot is substantially smaller than the subject property and has been improved with a 24 foot by 36 foot garage. The property would require a negative adjustment for the cost of the garage and a positive adjustment for the smaller lot size. *Fisher testimony; Resp't Ex. 2.*
- d. The lot at Lakeside Court sold on June 21, 2016, for \$21,000. This lot is smaller than the subject property, does not have municipal utilities, and is not large enough to support a single-family residence. It is therefore considered an accessory lot suitable for additional parking or another additional structure. Mr. Fisher contends the size difference is insignificant and, therefore, no size adjustment is required. He contends this is the "most similar" comparable property to the subject property. *Fisher testimony; Resp't Ex. 2.*
- e. Mr. Fisher ultimately contends that, when considered in light of the three purportedly comparable properties, the 2015 value of the subject property should be \$21,000. *Fisher testimony.*
- f. Mr. Fisher contends Petitioner's sales data is flawed. He contends Petitioner analyzed properties that are not in fact comparable to the subject property. As such, he argues the properties are not relevant indicators that the subject property's value is overstated.
- g. Mr. Fisher contends that Petitioner's comparable #1 is a 9 foot by 67 foot lot that was purchased at auction. Mr. Fisher claims that the size of the lot hinders construction of other buildings and additional parking.
- h. Mr. Fisher contends that Petitioner's comparable #2 is a 9 foot access lot to the lake. He claims the true value of Petitioner's first two comparable lots is due to the lake access, which the subject property does not have.
- i. Mr. Fisher contends that Petitioner's comparable #3 represents a reasonable comparison to the subject property. However, he contends that the sale thereof was not conducted as an arm's length transaction. Respondent's records show that the property sold in December of 2010 for \$8,500, not in May of 2015 as shown by Petitioner. Thus, Respondent contends, the sale is not relevant to the 2015 assessment date. *Carson & Fisher testimony; Resp't Ex. 1.*

15. Petitioner's case:
- a. Petitioner contends that the assessment is too high. He claims that the subject property is not located within the Rome City town limits and does not have access to the town's sanitary sewer. Consequently, he contends the subject property is not a buildable lot. He further contends that the subject lot would need two acres to accommodate a sewer system to be considered a buildable lot under the Rome City regulations. *Boyle testimony; Pet'r Ex. 15.*
  - b. Petitioner further contends that Respondent's sales data is flawed. He claims that Respondent analyzed three properties located within the Rome City corporate limits that fit the size criteria of buildable lots, whereas the subject property is an unbuildable lot. *Boyle testimony.*

### Analysis

16. The board finds the respondent failed to provide sufficient evidence to establish a prima facie case that the 2015 assessed value is correct for the following reasons:
- a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's ("DLGF") rules. The DLGF's 2011 Real Property Assessment 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." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 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. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2015 assessments, the valuation date was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

- c. Respondent had the burden of proving that the assessment was correct. She offered market-based evidence to support her assessment and her expert analyzed three specific lots. Respondent is essentially relying on a sales-comparison approach to establish the market value-in-use of the property. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property’s total value.”); *see also, Long*, 821 N.E.2d 466, 469.
- d. To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *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.*
- e. Here, the type of analysis required is lacking from Respondent’s case. The evidence fails to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the property under appeal. Respondent’s witness identified some differences and offered final market values, however, he failed to identify or quantify specific differences between the purportedly comparable properties and the subject property. While Respondent’s witness is a licensed appraiser, he failed to indicate whether his analysis conforms to generally accepted appraisal principles and USPAP. Additionally, there is no evidence to support the \$21,000 value requested by Respondent. Thus, Respondent’s sales-comparison analysis lacks probative value.
- f. For these reasons, Respondent did not offer enough probative evidence to prove the 2015 assessment was correct. Therefore, the assessment should revert to the 2014 value of \$2,000.

### **Conclusion**

- 17. Respondent had the burden of proving the 2015 assessment was correct which Respondent failed to do. The assessment must therefore be reduced to the 2014 assessed value of \$2,000.

## Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed value of Petitioner's property should be reduced to \$2,000 for 2015.

ISSUED: April 18, 2017

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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>>.