

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

Petition: 32-012-12-1-5-10000
Petitioners: Neal & Crystal Fossmeyer
Respondent: Hendricks County Assessor
Parcel: 32-10-35-178-003.000-012
Assessment Year: 2012

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

PROCEDURAL HISTORY

1. Neal and Crystal Fossmeyer (the “Petitioners”) initiated an assessment appeal with the Hendricks County Property Tax Assessment Board of Appeals (the “PTABOA”) by filing Form 130 dated October 4, 2012.
2. The Petitioners claim the PTABOA did not hold a hearing on their petition within the statutory time period. *N. Fossmeyer testimony.*
3. The Petitioners appealed to the Board by filing a Form 131 petition for review on April 26, 2013.
4. The Petitioners elected to have the administrative hearing conducted under the Board’s small claims procedures and the Hendricks County Assessor (the “Respondent”) did not elect to have the proceeding removed from the Board’s small claims procedures.
5. Paul Stultz, the Board’s appointed Administrative Law Judge (the “ALJ”), held the administrative hearing on May 14, 2014. The ALJ did not inspect the subject property.
6. The Petitioners appeared *pro se* and were sworn as witnesses. Hendricks County Assessor Gail Brown and PTABOA member Lester Need also were sworn as witnesses.

FACTS

7. The subject property is a two-story single family residential property located at 709 Masten Street in Plainfield.
8. The Form 11 for March 1, 2012 shows the assessment to be \$399,800. The property record card (“PRC”) shows the 2012 assessment was changed to \$363,600 on October 23, 2012. The tax duplicate for 2012 shows an assessed value of \$363,600. *Need testimony; N. Fossmeyer testimony; Petitioners Exhibits 1, 5, 7; Respondent Exhibit 2.*

9. The Petitioners request a total assessed value of \$268,500 for the subject property.

RECORD

10. The official record for this matter contains the following:
- a. Digital recording of the hearing,
 - b. Petitioners Exhibit 1 – Form 11 Notice of Assessment for March 1, 2012,
Petitioners Exhibit 2 – PTABOA statement and Form 115 for March 1, 2011
assessment,
Petitioners Exhibit 3 – Analysis of Residential Assessed Valuation,
Petitioners Exhibit 4 – Comparable Neighborhood - Walnut Hills Subdivision
Analysis,
Petitioners Exhibit 5 – Adjusted PRC,
Petitioners Exhibit 6 – Corrected Synopsis of Assessor’s Position of Subject Appeal,
Petitioners Exhibit 7 – History of Fossmeyer Real Estate,
Petitioners Exhibit 8¹ – Parcel Information for Lester Need’s property,

Respondent Exhibit 1 – Photo of Subject Property,
Respondent Exhibit 2 – 2012 PRC,
Respondent Exhibit 3 – MLS listing of Subject Property,
Respondent Exhibit 4 – Pages 1 and 4 of Petitioners’ Exhibit 2,
Respondent Exhibit 5 – Petitioners’ Attachment to Form 103 (Section 2),
Respondent Exhibit 6 – Petitioners’ Sales Disclosure,
Respondent Exhibit 7 – Pages 1 and 2 of Petitioners’ First Mortgage,
Respondent Exhibit 8 – Pages 1 and 5 of Petitioners’ Second Mortgage,
Respondent Exhibit 9 – Petitioners’ Exhibit 1 - Form 11 for 2012,
Respondent Exhibit 10 – Petitioners’ PRC,
Respondent Exhibit 11 – Petitioners’ Exhibit 3,
Respondent Exhibit 12 – Copy of PowerPoint Presentation Slides,

Board Exhibit A - Form 131 Petition with Attachments,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Hearing Sign-in Sheet.
 - c. These Findings and Conclusions.

BURDEN OF PROOF

11. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor,*

¹ The Petitioners also included, but did not label, a copy of an April 16, 2014 letter to the Hendricks County Assessor; a statement titled Appeal to the Indiana Board of Tax Review, and a Response to Lester E Need’s (PTABOA) Evidence. Mr. Fossmeyer read from the statement and response.

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 the rule.

12. First, Ind. Code § 6-1.1-15-17.2(a) “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.” Under Ind. Code § 6-1.1-15-17.2(b), “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.”

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 Ind. Code 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 the assessment is correct.

13. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, to include the burden-shifting language. The change applies to all appeals pending before the Board. *See P.L. 97-2014.*
14. The Petitioners contend that the Respondent has the burden because the assessment increased more than 5%. Mr. Fossmeyer testified that the 2012 assessment of \$399,800 was an increase of 10%. *N. Fossmeyer testimony; Petitioners Exhibit 1.*
15. The Respondent claims the Petitioners have the burden of proof because the PTABOA changed the 2012 assessment to \$363,600. The change was made on October 23, 2012, and was a result of the 2011 appeal to the PTABOA.² The PTABOA determined the 2011 assessment is \$363,400. Therefore, the 2012 assessment increased by \$200. *Brown testimony; Need testimony; Respondent Exhibit 10.*
16. In this case, Ind. Code § 6-1.1-15-17.2(d) applies. The Petitioners appealed their 2011 assessment. As a result, the PTABOA reduced the 2011 assessment from \$388,700 to \$363,400. *Petitioners Exhibit 2.* The PTABOA then changed the 2012 assessment to \$363,600. Because the 2012 assessment is an increase over the 2011 assessment, regardless of the amount of the increase, the Respondent has the burden of proving the assessment is correct.

² Ms. Brown testified that she did not know if the Petitioners received written notice of the change. She did not have a copy of the Form 115, Notification of Final Assessment Determination, with her at the hearing.

CONTENTIONS

17. Summary of the Respondent's case:

- a. The subject property is a residential property located in a preferential neighborhood. The improvements were constructed in 1981. The Fossmeyers purchased the subject property in October of 2010. *Need testimony; Respondent Exhibits 1, 2, 12.*
- b. The Petitioners appealed the 2011 assessment. As a result, the PTABOA reduced the grade to B+1 and reduced the swimming pool to \$5,000. The PTABOA approved a 2011 assessment of \$363,400. The Petitioners filed an appeal for 2012 claiming there was an assessment increase of 10%. The Form 11 for 2012 did show the assessment to be \$399,800. However, the 2012 assessment was changed to \$363,600 as a result of the PTABOA action on the 2011 assessment. The increase between the 2011 assessment and the 2012 assessment was \$200 or .055%. *Need testimony; Respondent Exhibit 12.*
- c. The Petitioners acknowledged they purchased the subject property for \$412,000 in October 2010. At the time of purchase, First Merchants Bank approved first and second mortgages for a total of \$370,436. First Merchants Bank does not make loans for amounts totaling more than 89.9% of the fair market value of the property. The mortgages support the \$412,000 purchase price. On December 17, 2012, the Petitioners refinanced the subject property with First Merchants Bank for \$366,866. These mortgage values support the purchase price and assessment. They do not support the Petitioners' proposed value of \$266,760. *Need testimony; Respondent Exhibits 6, 7, 8, and 12.*
- d. According to the Petitioners, their assessed value per square foot is \$112. Their computation is based on 3,319 square feet of living area and an assessed value of \$399,800. The Respondent contends that the Petitioners have a finished basement of 1,287 square feet that should be included in the living area. The Respondent contends that the total living area should be 4,606 (3,319 + 1,287) square feet. Using that amount of living area (4,606 square feet) and assessed value at \$363,400 results in an assessed value per square foot of \$78.89.³ Because neighboring homes generally range from \$60 to \$90 per square foot, a value at \$78.89 per square foot is not out of the ordinary. *Need testimony; Respondent Exhibit 12.*

18. Summary of the Petitioners' case:

- a. The 2011 assessment increased from \$277,200 to \$388,700. That is a 40% increase. The PTABOA subsequently reduced the 2011 assessment to \$363,400. The 2011

³ Note: \$363,400 is the 2011 assessed value. The 2012 assessed value is \$363,600. This is a 2012 appeal. Therefore, the Respondent's calculation should have used \$363,600. This difference, however, appears to be insignificant.

- PTABOA determination has been appealed to the Board and is pending. *N. Fossmeyer testimony; Petitioners Exhibits 1, 2.*
- b. The 2012 assessment increased to \$399,800. That is a 10% increase. The assessment was subsequently appealed to the PTABOA. The Petitioner contends that the PTABOA did not hold a hearing. The Petitioners appealed to the Board on April 26, 2013. The 2012 taxes at issue are based on an assessed value of \$363,600. *N. Fossmeyer testimony; Petitioners Exhibits 1, 7.*
 - c. The Petitioner contends that the subject property has not been assessed uniformly and equally as compared to other comparable homes in the subject property's area. The Petitioner contends that a field inspection would have provided evidence that the subject property is assessed too high. The Petitioners contend that they cannot get anyone to come out to inspect the property. The Petitioner contends that the Respondent has ignored the principle of equality and uniformity which violates the Indiana Constitution. *N. Fossmeyer testimony.*
 - d. The Petitioners contend that it is possible to use the assessed value per square foot of living area to determine a reasonable measurement of uniformity of assessments. The Petitioners prepared an exhibit showing the assessed value per square foot for seven neighborhood homes over 3,000 square feet, two homes similar to the subject property, and three homes that recently sold. A similar exhibit was prepared for Walnut Hills, a comparable neighborhood in the area. The Petitioners contend that both exhibits show the disparity in the subject property's assessed value of \$112 per square foot. *N. Fossmeyer testimony; Petitioners Exhibits 3, 4.*
 - e. The Petitioners presented a property record card showing proposed changes to determine an equitable assessed value of \$268,500. The Petitioners changed the grade from B+2 to C+2 to, as the Petitioners contend, accurately reflect the quality of construction. The Petitioners changed the depreciation rate from 9% to 27%. The Petitioners contend that they do not understand how the Respondent determined depreciation rate to be 9%. The Petitioners contend that there have been no structural improvements since 1981 to extend the economic life of the property. *N. Fossmeyer testimony; Petitioners Exhibit 5.*
 - f. The Petitioners contend that the Indiana Constitution provides that comparable property should be assessed uniformly to secure a just value for taxation. The Department of Local Government Finance ("DLGF") has determined that the assessment of real estate taxes should be based on market value. Appraisers generally agree that the market value of a property is not the same as its sales price because they would only be equal under conditions of a perfect market. The Petitioners contend that in a depressed real estate market, the difference between the two concepts is more distinct. *N. Fossmeyer testimony.*
 - g. The Petitioners contend that county assessors must understand the distinctions between the terms market value and sales price. Market value represents an expected

- price that should result under specific market conditions. Sales price represents what a purchaser agrees to pay and a seller agrees to accept under circumstances surrounding their transaction. The Petitioners contend that a sales price makes no assumption of prudent conduct by the parties and is a historic fact, whereas market value is an estimate. *N. Fossmeyer testimony.*
- h. The Petitioners contend that the Respondent implies the sales price of \$412,000 is synonymous with market value, but the purchase price included \$32,000 for personal property. According to the Respondent, the property was extensively renovated in 2008. The Petitioners contend the property was not renovated, but rather, the expenditures were necessary to bring the property to a competitive level. Much of the expenditures were for deferred maintenance, land fill, landscaping, and an addition to the attic. The Petitioners contend that none of the expenditures increased the economic or physical life of the property. Even after the expenditures, the assessed value remained at \$277,000 for two years. *N. Fossmeyer testimony.*
 - i. The Petitioners contend that the Respondent offered the real estate listing by RE/MAX Excel Realtors as support of market value of the subject property. It is not clear if the realtor is advising or acting as an appraiser. The Petitioners contend that the listing does not present any data to support a market value conclusion. *N. Fossmeyer testimony; Respondent Exhibit 3.*
 - j. The Petitioners contend that the Hardin property, a similar home, is located on 3.49 acres of prime real estate in Plainfield Corporation. There have been structural changes since originally built. It has a large pole barn with an enclosed office, an in-ground pool, and a utility shed. The total assessed value for 2012 was \$316,300. The property was conveyed to Wilmington Trust Company by an “SHF” deed for \$412,128 and sold on the open market for \$284,000 which is \$32,000 below the current assessed value. The Petitioners contend that the lien on the Hardin property has no correlation to its market value. *N. Fossmeyer testimony; Petitioners Exhibit 3; Respondent Exhibit 11.*
 - k. The Petitioners contend that a taxpayer can compare his assessed value to other homes that are similar to determine if his home is uniformly and equally assessed. The Petitioner cited Mr. Need’s home as an example. For 2012, Mr. Need’s property was assessed for \$230,400 and has 2,932 square feet of living area. The total assessed value per square foot of living area for Mr. Need’s property is \$63. Mr. Need could then compare that \$63 per square foot to other comparable properties for equalization purposes. *N. Fossmeyer testimony; Petitioners Exhibit 8.*
 - l. The Petitioners provided corrections to the Synopsis of the Assessor’s Position for the subject property. The Petitioners also presented a history of the subject property regarding assessments and taxes. *N. Fossmeyer testimony; Petitioners Exhibits 6, 7.*

m. In conclusion, the Petitioners raised four points:

- The Petitioners claim to simply want to have the subject property equalized with comparable properties in the area and desire either their assessment be adjusted down or assessments on comparable properties be raised.
- The Petitioners contend that they tried to meet with the Respondent twice. On both occasions, the Petitioners were told the Respondent was not in the office. The Petitioners claim to have left a phone number and no calls were returned.
- The Petitioners claim that neither the assessor nor the deputy assessor appeared at the PTABOA hearing on July 30, 2012 and question whether the hearing should be disregarded due to such absence.
- The Petitioners claim that, during the PTABOA hearing, they were told by a board member that the burden of proof fell on the taxpayer. The Petitioners note that, under certain circumstances, the burden of proof falls on the assessor. *N. Fossmeyer testimony.*

ANALYSIS

19. Real property is assessed based on its "true tax value," which means "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." 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. *Id.* Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut or affirm an assessed 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. *Id.* at 3.
20. Regardless of the type of evidence, a party must explain how that evidence relates to the relevant valuation date; otherwise, the evidence lacks probative value. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2012, the assessment and valuation dates were the same, March 1, 2012. I.C. § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation as to how it demonstrates, or is relevant to, value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
21. The Respondent focused on the Petitioners' purchase price as support for the current assessment. The Petitioners purchased the subject property for \$412,000 on October 29, 2010. The sale of a property is often the best evidence of its value. *See Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). Here, however, nothing in the record relates this purchase price to the relevant assessment date. Because the Respondent did not relate the sale price to the value as of March 1, 2012, the sale price lacks probative value. *See Long*, 821 N.E.2d at 471.

22. In addition, the Respondent contends that the mortgage loans obtained by the Petitioners for the subject property confirm the value. On October 29, 2010, the first and second mortgage loans totaled \$370,436. On December 17, 2012, the Petitioners refinanced the subject property for \$366,866. The Respondent argues that banks do not make loans totaling more than 89.9% of the fair market value of the property, so the mortgage loans support the value. The Respondent did not cite to any authority that supports using mortgage loans to determine value-in-use. In addition, the Respondent did not relate the loans to the value as of March 1, 2012. Therefore, the loan values lack probative value. *See Long*, 821 N.E.2d at 471.
23. Finally, the Respondent points to flaws in the Petitioners' calculation of assessed value per square foot of living area for the subject property. The Respondent notes that the Petitioners did not include the finished basement in the square footage. The Petitioners also used the original 2012 assessed value instead of the corrected assessed value of \$363,400. The Respondent contends that with these changes the Petitioners' assessed value per square foot is in line with the neighboring homes. The Respondent, however, did not identify the neighboring homes or present any meaningful comparison of the neighboring homes to the subject property. Therefore, this kind of evidence does not help support the accuracy of the existing 2012 assessed value.
24. The Respondent failed to make a prima facie case. The Petitioners are entitled to have the 2012 assessment revert to its 2011 value of \$363,400. The Petitioners, however, sought an even lower value.
25. The Petitioners contend that their property is not assessed in a uniform and equal manner. According to the Indiana Tax Court:

[W]hen 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.

Westfield Golf Practice Center v. Washington Twp. Assessor, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). 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 Petitioners did not present an assessment ratio study.

26. The Petitioners presented an analysis of the assessed value per square foot of living area. The analysis included seven neighborhood homes (including the subject property),⁴ two similar homes, three recent sales, and seven homes in the Walnut Hills subdivision. In addition, the Petitioners presented the assessed value per square foot of living area of Mr. Need's home. A party to an appeal of residential property may "introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district." Ind. Code § 6-1.1-15-18(c)(1). The determination of whether the properties are comparable shall be made using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18.
27. The Petitioners failed to offer a meaningful comparison of the properties to the subject property. At best, the Petitioners provided a few details about the Hardin property, a similar home, and Mr. Need's property. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent of the evidence 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.* The Petitioners did not offer the type of analysis contemplated by the court in *Long*. A comparison of assessments requires the same kind of evidence and analysis of comparable factors and distinguishing characteristics. *Indianapolis Racquet Club v. Marion Co. Assessor*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014).
28. The Petitioners contend that changing the grade to C+2 and the depreciation rate to 27% will result in a more equitable assessment. The Petitioners failed to meet their burden because they simply contest the methodology used to compute the assessment. *Eckerling v. Wayne County Assessor*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, the Petitioners need to show the assessment does not accurately reflect the market value-in-use. *Id.*; see also *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that proper focus is not on methodology, but rather, on what the correct value actually is). The Petitioners must do more than contest the methodology. The Petitioners must present evidence showing that the assessment is not equal to the market value-in-use of the subject property and evidence of a more accurate valuation.
29. The Petitioners concluded by raising four points. The first point is that the Petitioners want the property to be equalized. As stated above, the Petitioners failed to meet their burden with regard to this issue. The next points relate to the Petitioners' attempts to meet with the Respondent and events that occurred at the PTABOA hearing. In this case, there is no evidence that a hearing was held on the 2012 assessment. Therefore, the Board must assume the Petitioners are referring to the PTABOA hearing on the 2011

⁴ The Petitioners' calculation for the subject property is incorrect. As the Respondent noted, the total square footage of living area should be 4,606. The Petitioners used 3,391 square feet which does not include the finished basement. The Respondent also noted that the Petitioners used the original assessed value, not the corrected assessed value.

assessment. Because the 2011 assessment is not before it, the Board declines to address these points.

CONCLUSION

30. The Respondent failed to make a prima facie case that the assessment is correct, which entitled the Petitioners to have the assessment reduced to the previous year's level. The Petitioners failed to make a prima facie case for any further reduction. The assessment must be reduced to the 2011 value of \$363,400.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the assessed value will be changed to \$363,400.

ISSUED: November 10, 2014

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>>.