

REPRESENTATIVE FOR PETITIONER:  
Lawrence Cook, pro se

REPRESENTATIVES FOR RESPONDENT:  
Bradley J. Adamsky, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Lawrence Cook,	)	Petition No.: 46-045-20-1-5-00296-21
	)	
Petitioner,	)	Parcel No.: 46-13-32-476-021.000-045
	)	
v.	)	County: LaPorte
	)	
LaPorte County Assessor,	)	Assessment Year: 2020
	)	
Respondent.	)	

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July 16, 2021

**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:

**INTRODUCTION**

1. Lawrence Cook contested his 2020 assessment. The Assessor bore the burden of proof and presented an appraisal supporting a higher value for the property. Because Cook failed to successfully impeach the credibility of the appraisal and failed to offer probative valuation evidence of his own, we find the appraisal offers the best evidence of the property’s value. Accordingly, we find for the Assessor and order the 2020 assessment changed to reflect the appraiser’s value conclusion.

## PROCEDURAL HISTORY

2. Cook challenged the 2020 assessment of his property located at 505 Grassfork Court South in Wanatah. The LaPorte County Assessor assessed the property at \$170,100 (\$39,700 for land and \$130,400 for improvements). Cook elected to appeal his 2020 assessment directly to the Board after the LaPorte County Property Tax Assessment Board of Appeals (“PTABOA”) failed to issue a determination within 180 days of Cook filing his notice of appeal. *See* Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed).
3. On May 11, 2021, our designated administrative law judge, Ellen Yuhan (“ALJ”), held a telephonic hearing on the petition. Neither she nor the Board inspected the property.
4. Lawrence Cook, Assessor Mike Schultz, and Chief Deputy Assessor Stacey Sweitzer testified under oath.
5. Cook submitted the following exhibits:

Petitioner Exhibit 1:	Spreadsheet of properties sold in and near J-Mar Acres, 2017 to March 2020
Petitioner Exhibit 2:	Map of properties across from J-Mar Acres
Petitioner Exhibit 3:	2020 assessment for 505 Grassfork Court
Petitioner Exhibit 4:	Summary of the 2019 and 2020 assessment for 505 Grassfork Court
Petitioner Exhibit 5:	S & W Realty property history for 606 Fieldcrest
Petitioner Exhibit 6:	S & W Realty property history for 608 Grassfork Court
Petitioner Exhibit 7:	S & W Realty property history for 108 Sprunger Drive
Petitioner Exhibit 8:	S & W Realty property history for 503 Wildflower Way
Petitioner Exhibit 9:	S & W Realty property history for 510 Condon Road
Petitioner Exhibit 10:	2020 assessment for 505 Grassfork Court as amended by the county assessor

6. The Assessor submitted the following exhibits:

Respondent Exhibit 1:	Notice of Hearing
Respondent Exhibit 2:	Property record card
Respondent Exhibit 3:	Appraisal by Sights Appraisal, LLC
  
7. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

#### **BURDEN OF PROOF**

8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
  
9. Here, the assessment increased by more than 5% from 2019 to 2020 (\$160,300 in 2019 to \$170,100 in 2020). The Assessor conceded that he therefore bears the burden of proof.

#### **THE ASSESSOR'S CONTENTIONS**

10. The property's original assessment for 2020 was \$189,000—\$39,700 for the land and \$149,300 for the improvements. After Cook received the new assessment, he called the office and Sweitzer explained that while values did go up in the subject's subdivision (J-Mar Acres), sales supported the increase. She encouraged Cook to talk to a local realtor to get an idea of what his property was worth. The Assessor's Office did lower the property's assessment to \$170,100. Because Sweitzer did not hear from Cook again, she thought he agreed with the new value and the appeal was settled. *Sweitzer testimony; Resp't Ex. 2.*

11. When Cook filed with the IBTR, the County ordered an appraisal from Sights Appraisal, LLC. The appraiser, William Sights, certified that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). The three comparable properties he used are all in the subject’s neighborhood. Sights estimated its value was \$185,000 as of January 1, 2020. The Assessor requests the Board change the assessment to reflect Sights’ opinion of value. *Schultz testimony; Sweitzer testimony; Resp’t Ex. 3.*
  
12. The neighborhood across from J-Mar Acres that Cook mentioned is an older subdivision and is in a different neighborhood. Cook is using potentially under-assessed properties to try and establish the value of his property, which is not a valid argument. In addition, Cook is only arguing that his land assessment needs to be changed, not the total assessed value. The Board stated in *Hammond v. Washington Township Assessor* that it was reluctant to lower an improved property’s land assessment without some assurance that the property as a whole is assessed at its market value-in-use. *Sweitzer testimony; Adamsky argument.*

#### COOK’S CONTENTIONS

13. The assessments for properties in the subject’s neighborhood of J-Mar Acres all went up from 2019 to 2020. Also, their assessments are almost in line with their sales prices. The assessments for houses in the neighborhood located across Condon Road are not. For example, the house located at 108 Sprunger Drive sold for \$184,900 in March of 2020. Its 2019 assessment was \$150,700 and now its 2020 assessment has dropped to \$149,100. If it sold for \$184,900, Cook thought its 2020 assessment would have gone up considerably like the homes in J-Mar Acres did. *Cook testimony; Pet’r Exs. 1, 5-9.*
  
14. All of the properties in J-Mar Acres had their land assessments increase, while the comparable lots on the other side of Condon Road, which is only 22 feet wide, saw no change to their assessments. Cook’s land assessment increased by 60.8%, going from \$24,800 to \$39,700. Based on the 5% maximum increase allowed by law, the 2020

assessed value for his land and improvements should be \$168,315. It should not have jumped from \$160,300 to \$189,000 because other houses around it are selling. He has not sold his house and he did not do any improvements. *Cook testimony; Pet'r Exs. 2, 3, 4.*

15. In speaking with local realtors and looking on the internet, Cook found that an assessment should be between 80% and 90% of the appraised value. Taking the middle of the road, 85%, and applying that to Sights' appraised value would put Cook's total assessment at \$157,250 for 2020. *Cook testimony; Pet'r Exs. 1, 5-9.*
16. While Cook thinks Sights' appraisal is "fair" and "in the ballpark," he complained that Sights only did a drive-by appraisal—he took pictures but did not do an interior inspection. Cook also noted that Sights did not separately appraise the land value, whereas the Assessor assesses the land and improvements separately. *Cook testimony.*

#### ANALYSIS

17. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he 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.
18. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with USPAP often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct.2005). So may cost or sales information for the property under appeal, sales

or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices).

19. Regardless of the method used to prove true tax value, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). The valuation date for this appeal is January 1, 2020. Ind. Code § 6-1.1-2-1.5(a).
20. As discussed above, the Assessor has the burden of proof. He offered a USPAP-compliant appraisal prepared by William Sightes, a certified residential appraiser. Sightes relied on the sales comparison approach and estimated the subject's value to be \$185,000 as of January 1, 2020.
21. Cook criticized the appraisal because Sightes did a drive-by appraisal and did not perform an interior inspection. However, Cook did not point out any specific flaws in the appraisal—in fact, he thought it was reasonable. Because Cook failed to impeach the credibility of Sightes' appraisal, we find it to be probative evidence of the subject's true tax value. Accordingly, the Assessor made a prima facie case supporting his request to increase the 2020 assessment to reflect Sightes' opinion of value. The burden therefore shifts to Cook.
22. In an effort to rebut the Assessor's valuation evidence, Cook offered sales and assessment information for some properties in the subject's neighborhood and some from a neighborhood located across the street. While sales and assessment information may be used to prove market value-in-use, a party offering such data must show that the properties the data is derived from are comparable to the subject using generally accepted appraisal and assessment practices. I.C. § 6-1.1-15-18(c); *see also Long v. Wayne Twp.*

*Ass'r*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). Conclusory statements that a property is “similar” or “comparable” do not suffice; instead, taxpayers must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Id.* at 471. Taxpayers must similarly explain how relevant differences affect values. *Id.*

23. The type of analysis contemplated by I.C. § 6-1.1-15-18(c) and *Long* is lacking from Cook’s case. He only briefly discussed the subject’s assessment and the sales and assessment information for one of the purportedly comparable properties (108 Sprunger Drive). And while Cook complained that the land assessments for the properties on the other side of Condon Road did not increase, we find his statement that they are comparable lots to be conclusory. Furthermore, Cook did not even attempt to quantify and adjust for relevant differences. Nor did he use any of the information he submitted to compute a suggested value. We therefore conclude that Cook’s sales and assessment information lacks probative value.
  
24. Cook’s two attempts to actually compute a value fair also failed. Cook claimed that his property’s 2020 assessed value should be \$157,250 because he learned from local realtors and the internet that his assessment should be 85% of its appraised value. However, the only situation that would entitle Cook to such a remedy would be if he proved a lack of uniformity and equality in assessments and demonstrated that 85% was the proper equalization adjustment using an assessment ratio study. *See Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (explaining that uniformity and equality in assessment may be measured through an assessment ratio study); *see also, Thorsness v. Porter County Ass'r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (explaining that where a ratio study shows an actionable lack of uniformity, a taxpayer may be entitled to an equalization adjustment bringing his assessment to the common level shown by the study).

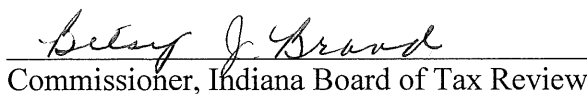
25. Although Cook did present some potentially relevant sales and assessment information, he did not use it to compute the 85% ratio he applied to Sights' opinion of value. Even if he had, we would still conclude that Cook failed to use a statistically reliable sample of properties. Thus, his evidence is insufficient to show that his assessment exceeded the common level of assessment or that he is entitled to an equalization adjustment.
26. Alternatively, Cook claimed that his property's 2020 assessed value should be \$168,315 based on a 5% maximum increase allowed by law. But it appears he may have simply misinterpreted the burden-shifting provision contained in Indiana Code § 6-1.1-15-17.2 because there are no laws or regulations limiting assessment increases to 5% per year.
27. Because Cook offered no probative market-based evidence proving that his property's market value-in-use was lower than \$185,000, he failed to rebut the Assessor's prima facie case.

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order the 2020 assessment changed to \$185,000.

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