

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

Petition: 57-011-14-1-5-10284-15
Petitioners: Samuel & Marianne Slone
Respondent: Noble County Assessor
Parcel: 57-04-15-100-019.000-011
Assessment Year: 2014

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

Procedural History

1. The Petitioners initiated their 2014 assessment appeal with the Noble County Assessor on October 22, 2014.
2. On May 18, 2015, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.
4. The Board issued a notice of hearing on August 24, 2015.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on October 29, 2015. She did not inspect the property.
6. Samuel and Marianne Slone appeared *pro se*. County Assessor Kim Miller appeared for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a single-family rental property located at 1645 North Shore Drive in Rome City.
8. The PTABOA determined the total assessment is \$60,900 (land \$27,300 and improvements \$33,600).
9. On their Form 131 the Petitioners requested a total assessment of \$40,500 (land \$7,600 and improvements \$32,900).¹

¹ At the hearing, the Petitioners requested a total assessment of \$27,000.

Record

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

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit A:	“Estate Showcase” Orizon Real Estate, Inc., May 2015 newspaper listing for the subject property,
Petitioners Exhibit B:	Orizon Real Estate, Inc., September 2015 newspaper listing for the subject property,
Petitioners Exhibit C:	Orizon Real Estate, Inc., October 2015 newspaper listing for the subject property,
Petitioners Exhibit 1:	“Comparable Market Value” report prepared by Tim Hess, Associate Broker, ReMax Results, dated October 15, 2015.
Respondent Exhibit 1:	Phone record between the Respondent and Orizon Real Estate, Inc., dated October 28, 2015,
Respondent Exhibit 2:	Letter from Ms. Miller to the Petitioners dated February 5, 2015, regarding their pending appeals,
Respondent Exhibit 3:	Form 131,
Respondent Exhibit 4:	Subject property record card,
Respondent Exhibit 5:	Multiple Listing Service (MLS) report for the subject property,
Respondent Exhibit 6:	Aerial photograph of the subject property,
Respondent Exhibit 7:	Comparable property analysis prepared by the Respondent,
Respondent Exhibit 8:	Property record card and aerial photograph for the property located at 384 Spring Beach Road,
Respondent Exhibit 9:	Property record card and aerial photograph for the property located at 870 Lions Drive,
Respondent Exhibit 10:	Property record card for the property located at 1665 North Shore Drive,
Respondent Exhibit 11:	MLS listing report with six photographs for the property located at 1665 North Shore Drive,
Respondent Exhibit 12:	Aerial photograph of the property located at 1665 North Shore Drive,
Respondent Exhibit 13:	Tyler Technology land analysis spreadsheet for the subject property’s neighborhood,
Respondent Exhibit 14:	Letter from Ms. Miller to the Petitioners, dated October 5, 2015, requesting their exhibit and witness list.

Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Notice of hearing, dated August 24, 2015,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

11. Ms. Miller objected to all of the Petitioners' exhibits on the grounds that the Petitioners failed to provide copies of the exhibits prior to the hearing when requested by the Respondent. *See Resp't Ex. 14.*
12. In response, the Petitioners claimed they only received their evidence "a couple days ago." The Petitioners went on to argue that because it is the only evidence they have, "there is no reason for them to be at the hearing if it is not admitted." The ALJ took the objection under advisement.
13. Under the Board's procedural rules for small claims hearings, parties are only required to exchange copies of their exhibits *if requested*. *See 52 IAC 3-1-5(d)* ("if requested not later than ten (10) business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence...at least five (5) business days before the small claims hearing.") Here, the Respondent requested "copies of all evidence" from the Petitioners in a letter dated October 5, 2015. The Petitioners failed to comply with that request. Thus, Ms. Miller's objection is sustained, and the Petitioners' evidence is excluded, pursuant to 52 IAC 3-1-5(d).
14. The Board's ruling on this objection, however, does not affect the final determination. For the reasons discussed below, even if the Board were to consider the Petitioners' evidence, the final determination would remain the same.
15. Ms. Miller also objected to the comparable sales utilized in Petitioners' Exhibit 1 on the grounds that they were not "timely." It is not clear if Ms. Miller intended this as a legal objection or simply rebuttal. In any case, because the Board sustained her objection above, this objection is moot.
16. The Petitioners also made several objections. However, it is not clear if the Petitioners intended to actually make legal objections to the admission of the Respondent's evidence, or were simply making arguments in rebuttal of the exhibits' content and Ms. Miller's related testimony. First, they objected to Ms. Miller's statements regarding her conversation with a realtor at Orizon Realty, on the grounds that those statements were "inaccurate." Second, they objected to the subject property's land assessment on the grounds that the Respondent "rotated" the land and improvement value to add more value to the land. Finally, the Petitioners objected to the Respondent's testimony that "all off-water parcels saw an increase in their land assessment" on the grounds that this statement was also inaccurate. The ALJ overruled the Petitioners' second objection regarding the "rotated" land and improvement value. The Board will adopt the ALJ's ruling because

the objection goes to the weight of the evidence rather than its admissibility. The ALJ took the remaining two objections under advisement.

17. To the extent that the Petitioners intended these to be legal objections, the Board overrules the Petitioners' objections. The objections go to the weight of the evidence rather than its admissibility. Thus, the Respondent's exhibits and Ms. Miller's testimony are admitted.

Contentions

18. Summary of the Petitioners' case:

- a) The property's assessment is too high. While Orizon Real Estate, Inc., has listed the property for \$60,900 in the newspaper three times, it is only listed "to prove that it cannot be sold." The home suffers from several deficiencies, most notably that the home only has one room with eight-foot ceilings. The rest of the home has six-foot and seven-foot ceilings. Furthermore, the property record card and realtor listing erroneously lists two bedrooms rather than one bedroom. *Samuel Slone argument; Pet'rs Ex. A, B, C.*
- b) In an effort to prove the property is over-assessed, the Petitioners presented a Comparable Market Value Report performed by Tim Hess, a Broker for ReMax Results. *Marianne Slone testimony; Pet'rs Ex. 1.*
- c) Mr. Hess' report features three sales of comparable properties. The first property, located at 351 South Fourth Street sold for \$30,000 on August 21, 2015. This property features water frontage and a two-car garage. The second property, a three bedroom home located at 718 Jay Street sold for \$18,500 on September 19, 2014. Finally, the property at 9667 North Steinbarger Lake Road sold on August 28, 2015, for \$50,000. This property features a larger home with a two-car garage on a double lot overlooking Steinbarger Lake. After an analysis of the three properties, Mr. Hess valued the subject property at \$27,000. *Marianne Slone testimony; Pet'rs Ex. 1.*
- d) The Respondent erroneously relied on a purportedly comparable property that the owner purchased with the intent of "tearing it down for the construction of a new garage." Here, the Respondent "rotated the improvement price into the land price once the buildings were torn down." The Respondent also inaccurately determines property values utilizing current listings. This is especially troubling because the Respondent relied on a property owned by the Petitioners that is also the subject of an appeal. *Samuel Slone argument.*

19. Summary of the Respondent's case:

- a) The property is correctly assessed. The 2014 assessment increased because of recent sales. Trending has indicated that off-lake land assessments were substantially lower than their sale prices. *Miller argument; Resp't Ex. 2.*

- b) The Respondent contacted Orizon Real Estate, Inc., regarding the property's listing. Ms. Miller was informed that "the property had been shown, but no one was interested." However, according to a representative from Orizon "there could be a possibility of the property selling at the beginning of the 2016 lake season." *Miller testimony; Resp't Ex. 1.*
- c) The Petitioners listed the subject property at its 2014 assessed value of \$60,900. The listing for the property states that it is in "average condition." The photographs attached to the listing indicate the property "looks fine" and has no "big issues." Accordingly, the listing supports the current assessment. *Miller testimony; Resp't Ex. 5.*
- d) A recent ratio study and trending was performed in conjunction with Tyler Technologies for the subject property's neighborhood. By utilizing the abstraction method, they determined property values in the neighborhood were below market value. Utilizing all recent sales, a median land value of \$22,250 was established. Utilizing only vacant land sales, the study yielded a median land value of \$18,500. Finally, when utilizing the abstraction method, a median value of \$29,250 was arrived at.² Here, Ms. Miller elected to utilize the median value of \$22,250. The subject property's current land assessment is supported by the study. *Miller testimony; Resp't Ex. 2, 4.*
- e) To further emphasize that the property's assessed value was "within reason," the Respondent presented the per acreage value that Tyler Technologies utilized in their study. The study results suggested a median acreage base rate value of \$117,000. If this amount would have been used on the subject property, their land assessment would have been increased substantially. Ultimately, the Respondent decided to use \$75,000 as the per acre base rate for the subject property. *Miller testimony; Resp't Ex. 13.*
- f) The Respondent also offered her own comparable sales analysis. Ms. Miller utilized three comparable properties and distinguished them from the subject property for differences in lot size, foundation type, structure size, year of construction, number of bathrooms, sheds, and garages. The first property, located at 384 Spring Beach Road sold for \$58,500 in 2013. This property sold again in 2015 for \$71,500. The second property, located at 870 Lions Drive sold for \$75,000 in 2010. This property also sold in 2014 for \$75,000 as well. The third property, located closest to the subject property, at 1665 North Shore Drive is currently listed for \$67,700. This property was utilized because of its proximity to the subject property. In addition, this is also a rental property. The Respondent considered "some adjustments that are typically made in appraisals." According to the analysis, the subject property is "under assessed." *Miller argument; Resp't Ex. 7, 8, 9, 10, 11, 12.*

² The Respondent defined the "abstraction method" as "taking the same sales with land and improvements and subtracting the improvements."

- g) Finally, the purportedly comparable sales utilized by the Petitioners are “too new” to establish the subject property’s March 1, 2014, market value-in-use. Without a time adjustment those sales are not probative. *Miller argument (referencing Pet’rs Ex. 1); Resp’t Ex. 5.*

Burden of Proof

20. 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.
21. 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).
22. 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.
23. Here, the parties agree that the total assessed value increased by more than 5% from 2013 to 2014. In fact, the total assessed value increased from \$41,600 to \$60,900. Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2014 assessment is correct. To the extent the Petitioners seek an assessment below the 2013 level of \$41,600; they have the burden to prove that lower value.

Analysis

24. The Respondent failed to make a prima facie case that the 2014 assessment was correct.
- a) 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. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut 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.

- b) Regardless of the method used, 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); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2014 assessment, the date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).
- c) Here, the Respondent had the burden to prove the 2014 assessment was correct. First, the Respondent argues that a correction in the land value triggered the increase. The Respondent attempted to support the land portion of the property's assessment by introducing a "study" she had completed. She arrived at three possible median values for the land portion of the property's assessment. One study included "all sales and listings" and indicated a median value of \$22,250. A second study was performed with "only vacant lots" and indicated a median value of \$18,500. Finally, a third study was performed utilizing the abstraction method and yielded a median value of \$29,250.
- d) It appears the Respondent was using the ratio study to explain why the assessment increased by more than 5% from 2013 to 2014. The Respondent, however, failed to offer any support for the notion that a ratio study may be used to prove that an individual property's assessment reflects its market value-in-use. Indeed, the International Association of Assessing Officials Standard on Ratio Studies, which 50 IAC 27-1-44 incorporates 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 the common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added in italics in original).

- e) The Respondent also offered evidence regarding three purportedly comparable properties. In doing so, the Respondent essentially relies 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.
- f) To effectively use the sales-comparison approach as evidence in a property tax appeal, 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.*
- g) In some respects she attempted to compare her three purportedly comparable properties to the subject property. She also offered estimated amounts for some of the adjustments she made. However, she failed to explain how she arrived at the adjustment amounts. Granted, she stated that she made “some adjustments that are typically made in appraisals,” but she failed to provide any other indication that her analysis conforms to generally accepted appraisal principles and USPAP. In addition, one of the properties utilized was a listing and not a sale. She failed to explain how a list price was relevant, other than to state that she used it because of its proximity to the subject property and because it is a rental property. Therefore, the sales data presented lacks probative value.
- h) For these reasons, the Respondent did not offer enough probative evidence to prove the 2014 assessment was correct. Therefore the Petitioners are entitled to have their assessment returned to its 2013 level of \$41,600. The Petitioners, though, sought an even lower assessment. The Board now turns to the Petitioners’ argument.
- i) The Petitioners requested a value of \$40,500 on their Form 131, and ultimately requested a total valuation of \$27,000 at the hearing. However, because the Petitioners’ evidence was excluded for the aforementioned reasons, the Petitioners failed to make a prima facie case for any further reduction in the assessment. Even had the Board considered the Petitioners’ evidence, it suffers from the same shortcomings as the Respondent’s evidence. Specifically, the Petitioners merely offered sales of other purportedly comparable properties without any explanation as to how they are comparable to the subject property. They failed to offer any analysis as to how the differences between their purportedly comparable properties and the

subject property affect their relative values. Finally, they failed to provide any indication that the analysis they presented conforms to generally accepted appraisal principles and USPAP. Thus, their evidence lacks probative value.

Conclusion

25. The Respondent had the burden of proving the 2014 assessment was correct. She failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioners sought an assessment lower than the 2013 level, but likewise failed to make a prima facie case. Thus, the Board orders that the subject property's 2014 assessment be reduced to the 2013 amount of \$41,600.

Final Determination

In accordance with these findings of fact and conclusions of law, the 2014 assessment must be changed to \$41,600.

ISSUED: January 26, 2016

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 of 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>>.