

REPRESENTATIVE FOR THE PETITIONERS:

Mark S. Thompson, *pro se*

REPRESENTATIVE FOR THE RESPONDENT:

Julie Minton, Morgan County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mark S. & Stephanie L. Thompson	)	Petition No.:	55-005-21-1-5-00719-21
)		
Petitioners,	)	Parcel No.:	55-02-30-435-019.000-005
)		
v.	)	County:	Morgan
)		
Morgan County Assessor,	)	Township:	Brown
)		
Respondent.	)	Assessment Year:	2021

June 22, 2022

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. The Petitioners appealed the 2021 assessment of their residential property in Morgan County. Because they failed to provide reliable, market-based evidence proving the market value-in-use of the subject property as of the assessment date, the Board finds for the Respondent.

PROCEDURAL HISTORY

2. The Petitioners appealed the 2021 assessment of a single-family home located at 1265 Rosewood Lane in Mooresville, IN with the Morgan County Assessor. On September 10, 2021, the Morgan County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination reducing the assessment to \$48,100 for land and \$223,300 for improvements for a total of \$271,400. The Petitioners timely filed an appeal with the Board.
3. On April 6, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
4. Mark Thompson and Morgan County Assessor Julie Minton testified under oath.
5. The Petitioners offered the following exhibits:
 - Petitioner Exhibit 1: Form 130, Form 115 and Form 131.
 - Petitioner Exhibit 2: Elevate information on the subject property,
 - Petitioner Exhibit 3: Map of Roberson Woods subdivision,
 - Petitioner Exhibit 4: Six photographs of the subject property,
 - Petitioner Exhibit 5: Subject property’s valuation history,
 - Petitioner Exhibit 6: Sales comparison summary and property record cards for 1265 Rosewood Lane, 1226 Rosewood Lane, 1321 Rosewood Lane, 1281 Cottonwood Court and 1365 Sugarberry Court,
 - Petitioner Exhibit 7: Per square foot comparison analysis,
 - Petitioner Exhibit 8: Tax improvement evaluation comparison analysis,
 - Petitioner Exhibit 9: Tax per square foot comparison analysis.
6. The Respondent offered the following exhibits:
 - Respondent Exhibit 1: 2021 subject property record card,
 - Respondent Exhibit 2: List of assessed values within the subject property’s neighborhood,
 - Respondent Exhibit 3: Subject property’s sales disclosure form.
7. The record also includes the following: (1) all pleadings and documents filed in this appeal, (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

PETITIONERS' CONTENTIONS

8. The Petitioners argued that the subject property is over-assessed. Thompson testified that in 2019 the property was assessed at \$231,200, but the 2020 assessment increased to \$281,800. In 2021, the year under appeal, the Assessor lowered the assessment by \$2,600 to \$279,200. The PTABOA reduced it an additional \$7,800 to \$271,400. The Petitioners argued that the Assessor should bear the burden of proof to show why the subject property's assessment increased by 17.4% since 2019. They requested that the assessment be reduced to \$48,100 for the land and \$205,100 for the improvements, for a total of \$253,200. *Thompson testimony; Pet'r Exs. 1, 2 & 5.*

9. Thompson testified that while the house at issue is "nice," it contains no upgrades. He noted that the house is comparable to other properties in the neighborhood as far as the brick exteriors, roof shingles and windows. But he pointed out that inside it has "baseline" cabinets, a dated built-in corner shelving unit, a gas-log fireplace, standard bathroom vanities and an outdated garden tub. He testified that nothing about the house justified it having the highest per square foot price in the neighborhood. *Thompson testimony; Pet'r Exs. 4 & 9.*

10. Thompson also presented a sales-comparison summary that he prepared of four properties in the same neighborhood. The four comparable properties sold in 2020 and 2021 for more than their 2021 assessed values. The sale prices ranged from \$277,000 to \$334,900, while the assessed values ranged from \$254,800 to \$280,000. This difference ranged from \$22,000 to \$57,000. He noted that the subject property sold for \$270,000 on November 15, 2019, but the assessed value for 2021 at \$271,400 was higher than that sale price. *Thompson testimony; Pet'r Ex. 6.*

11. The four comparable properties ranged in size from 1,992 square feet to 3,458 square feet, with improvement assessed values that ranged from \$64.81/sq. ft. to \$104.52/sq. ft. The subject property has 1,962 square feet with an improvement assessed value of

\$113.81/sq. ft. Thompson noted that the subject property was assessed higher than larger comparable properties located in the neighborhood. *Thompson testimony; Pet'r Ex. 6.*

12. Next, Thompson looked at the assessments of 52 of the 88 homes in the Roberson Woods subdivision. They ranged from 1,772 square feet to 3,656 square feet in size. Thompson testified that 24 properties were built after the year 2000 and 26 properties were built between 1993 to 1999. He found that the subject property ranks 38th out of 52 houses in size. *Thompson testimony; Pet'r Ex. 7.*
13. Thompson noted that although the Assessor contends that the subject property's assessment is in line with the entire neighborhood, the 18 houses with less than 2,000 square feet have an average assessed value of \$183,000, while the subject is valued \$40,000 higher at \$223,300. He also noted that the houses between 2,000 and 2,700 square feet have an average assessed value of \$208,000 or \$15,300 less than the subject. He found that while houses with 2,700 to 3,500 square feet have an average assessed value of \$235,000 or only \$11,700 higher than the subject property. He also testified that assessments varied greatly regardless of the size of the home, with the subject property ranking 15th out of the 52 houses in its assessment with the highest per square foot price. He found that within the 52 properties the per square foot assessments ranged \$65 to \$114 per square foot. The Petitioners argued that this showed that the properties with the "least amount of square footage have the highest tax valuation burden." *Thompson testimony; Pet'r Ex. 7-9.*

RESPONDENT'S CONTENTIONS

14. The Assessor testified that subject property was assessed at \$281,800 for 2020. In 2021, the assessment decreased to \$271,400. Based on this, the Assessor argued the Petitioners should have the burden to prove the market value-in-use of the subject property for 2021. *Minton testimony, Resp't Ex. 1.*
15. The Assessor claimed the subject property is assessed correctly. The sales disclosure form shows the Petitioners purchased the subject property on November 15, 2019, for

\$270,000. The sale occurred slightly over a year from the relevant valuation date. However, the sale was close enough to the year 2020 to be part of the sales used to develop the value for the assessment date of January 1, 2021. *Minton testimony; Resp't Ex. 3.*

16. The Assessor also submitted a list of 89 improved parcels from Section 1 through 5 of the Roberson Woods subdivision. The average assessed value of improved parcels in the neighborhood is \$274,900. *Minton testimony; Resp't Ex. 2.*

ANALYSIS

17. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
18. The Legislature repealed the burden-shifting statute on March 21, 2022. P.L. 174-2022 § 32 (repeal effective on passage). In the same bill, a new statute created a substitute burden-shifting statute, I.C. 6-1.1-15-20, for new appeals filed after the effective date of March 21, 2022. P.L. 174-2022 § 34 (effective on passage). The new statute does not apply to this appeal because it was filed with the PTABOA before March 21, 2022. Both the burden-shifting statute and its repeal dealt with a procedural question: how the parties must go about making their respective cases. Under those circumstances, we must apply the law that was in effect at the time of the procedural event covered by the statute and its repeal. And that procedural event was our hearing. A hearing is the point at which the parties can tailor their evidentiary presentations to address the burden of proof. Because the hearing on these appeals occurred after the Legislature repealed the burden-shifting statute, the repeal governs who has the burden of proof if its terms otherwise apply. *See Love v. State*, 286 So.3d 177, 187-88, 190 (Fla. 2019) (explaining that the “‘commonsense’ application of a new procedure generally ‘depends on the posture of the particular case’” and holding that a statute changing the burden of proof at an immunity

hearing applied to hearings held after the statute's effective date) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 275 n. 29, 114 S.Ct. 1483, 128 L. Ed. 2d 229 (1994)). Accordingly, neither the new nor the repealed statute apply to this case. Thus, the burden rests with the Petitioners to show what the correct assessment should be.

19. Real property is assessed based on its market value-in-use. Ind. Code c 6-1.1-31-6(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 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 property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
20. 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 the 2021 assessment, the valuation date was January 1, 2021. *See* Ind. Code § 6-1.1-2-1.5.
21. Here, the Petitioners presented a sales comparison summary of four purportedly comparable properties. A party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the comparison properties are comparable to the property under appeal. *See Long*, 821 N.E.2d at 470-71. Conclusory statements that properties are "similar" or "comparable" do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. They must similarly explain how relevant differences affect values. *Id.*
22. The four sales were from the same neighborhood as the subject property. But simply because a property is located in the same neighborhood does not mean it is comparable.

Thompson offered only conclusory explanation for how the comparable properties were different or similar to the subject property. He did not show how any differences affected their market value-in-use. Thompson also made references to several additional properties within the neighborhood, but likewise failed to show how they related to the subject property. Thus, the comparable sales are not reliable evidence of the market value-in-use of the subject property.

23. The Petitioners also presented an analysis of the assessments of 52 properties in the neighborhood. Based on this analysis, they argued that the subject property was being over assessed. We take this as a challenge to the uniformity and equality of the assessment as mandated by I.C § 6-1.1-2-2 and Article 10 of the Indiana Constitution. As the Tax Court has explained, “when 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) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *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)).
24. When a ratio study shows that a given property is assessed above the common level of assessment, the property’s owner may be entitled to an equalization adjustment. See *Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so “they bear the same relationship of assessed value to market value as other properties within that jurisdiction.” *Thorsness v. Porter County Assessor*, 3 N.E.3d 49, 52 (Ind. Tax

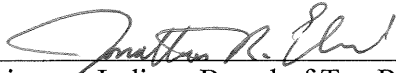
Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998).

25. As discussed above, one of the requirements for a reliable ratio study is a comparison between the assessments used and objectively verifiable market data such as sale prices or appraisals. The Thompsons did not provide that data for many of the properties. In addition, the Thompsons failed to show that the properties they presented were a statistically reliable sample of the properties in the neighborhood per square foot at the same level as similar neighboring properties' improvements. Simply comparing the assessments per square foot as Thompson did is not a recognized approach for applying an equalization adjustment. For these reasons, the Petitioners failed to make a prima facie case showing a lack of uniformity and equality in the assessment.
26. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Thus, we need not examine the Assessor's evidence.

SUMMARY OF FINAL DETERMINATION

27. The Petitioners had the burden of proof but failed to provide any reliable evidence of the market value-in-use of the subject property. They also failed to show that the subject property was not assessed uniformly or equally. Thus, we find in favor of the Respondent.

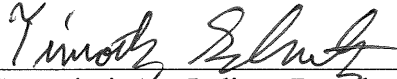
The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.



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>.