

REPRESENTATIVE FOR THE PETITIONERS: Lawrence A. Vierra, *pro se*
Yolanda A. Vierra, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Cathy Searcy, Elkhart County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lawrence A. & Yolanda A. Vierra,)	Petition Nos.: 20-015-20-1-5-00467-22
Co-Trustees,)	20-015-21-1-5-00468-22
)	
Petitioners,)	Parcel No.: 20-11-14-351-044.000-015
)	
v.)	County: Elkhart
)	
Elkhart County Assessor,)	Township: Elkhart
)	
Respondent.)	Assessment Years: 2020 & 2021

April 26, 2023

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 2020 and 2021 assessments of their residential property in Elkhart County. They failed to provide reliable, market-based evidence supporting any reduction in the assessments. For that reason, we order no change to the assessment for the 2020 assessment year. For 2021, the Assessor conceded that the assessment should be reduced to \$421,600. Thus, we adopt that value.

PROCEDURAL HISTORY

2. The Petitioners appealed the 2020 and 2021 assessments of their property located at 1912 Woodstone Court in Goshen.

3. On May 4, 2022, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations with the following assessments:

2020: Land: \$24,800	Improvements: \$381,500	Total: \$406,300
2021: Land: \$48,000	Improvements: \$395,900	Total: \$443,900 ¹

4. On January 26, 2023, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

5. Lawrence Vierra, Yolanda Vierra, Tylan Miller, Deputy Assessor, and Cathy Searcy, Elkhart County Assessor, testified under oath.

6. The Petitioners offered the following exhibits:

Petitioner Exhibit 1:	Articles Regarding Housing Prices by John Rubino,
Petitioner Exhibit 2:	Advertising Materials from USAA Federal Savings Bank and FIGURE with notes from Petitioners,
Petitioner Exhibit 3:	Department of Local Government Finance (“DLGF”) information for subject property and other nearby parcels with notes from Petitioners,
Petitioner Exhibit 4:	List of houses for sale in 2020, 2018 with assessments, taxes, and Zillow listings.
Petitioner Exhibit 5:	Inspection of subject property prepared Calvin Bolt of Calvin Bolt Home Inspections, ²
Petitioner Exhibit 8:	Improvement values’ comparable analysis (2021 appeal),
Petitioner Exhibit 9:	2006 – 2022 assessment history of the subject property,
Petitioner Exhibit 10:	Emails between the Vierras and Elkhart County Assessor. ³

¹ In 2021 parcel 20-11-14-351-043.000-015 (lot 98) was combined with the subject parcel 20-11-14-351-044.000-015 (lot 99).

² Petitioner Exhibits 6 and 7 were not submitted into the record.

³ After the Board hearing, the Petitioners submitted a portion of an article with an explanation from Lawrence Vierra. This information was not requested by the ALJ; therefore, it will not be entered into evidence pursuant to 52 IAC 4-6-15.

7. The Respondent offered the following exhibits:

- Respondent Exhibit 1: 2020 and 2021 subject property record cards and parcel 20-11-14-351-043.000-015 property record card,
- Respondent Exhibit 2: Assessor's explanation of the 2021 combination of the subject parcel and parcel 20-11-14-351-043.000-015,
- Respondent Exhibit 3: Aerial maps of subject property,⁴
- Respondent Exhibit 7: Multiple listing sheet ("MLS") for the subject property,
- Respondent Exhibit 8: Emails between the Vierras and Elkhart County Assessor,
- Respondent Exhibit 9: Five photographs of the subject property,
- Respondent Exhibit 10: Notification of Final Assessment Determination – Form 115 for January 1, 2020,
- Respondent Exhibit 11: Notification of Final Assessment Determination – Form 115 for January 1, 2021,
- Respondent Exhibit 12: Comparable analysis, aerial maps, and 2020 and 2021 property record cards,
- Respondent Exhibit 13: Multiple listing sheets, property record cards, and comparable property amenities sheet,
- Respondent Exhibit 14: Email initiating 2020 appeal, Taxpayer's Notice to Initiate an Appeal – Form 130 for January 1, 2021, and email between Elkhart County Assessor and Vierras dated July 14, 2020,
- Respondent Exhibit 15: MLS and Elkhart Board of Realtors statistics,
- Respondent Exhibit 16: Basic level direct sales comparison – 2020 model,
- Respondent Exhibit 17: Basic level direct sales comparison – 2021 model.

8. 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) the digital recording of the hearing.

FINDINGS OF FACT

9. The subject property is a two-story partial brick, partial frame home located on a 125 ft. by 143 ft. lot in 2020. In 2021, the lot size increased to 219 ft. by 147 ft. due to a combination with another parcel. *Searcy testimony; Resp't Exs. 1-3, & 9.*

⁴ Respondent Exhibits 4, 5 and 6 were not submitted into the record.

10. The Petitioners purchased the subject property in 2006, for \$399,900. *Y. Vierra testimony.*

PETITIONERS' CONTENTIONS

11. The Petitioners presented two purportedly comparable properties in the subject neighborhood they alleged were similar in square footage and appearance. In 2020, the assessments of the comparable properties were \$385,700 and \$407,200 while the assessment of record for the subject property was \$406,300. In 2021, the same two comparable properties in the neighborhood had assessments of \$323,300 and \$417,900, while the subject property's assessment was \$443,900. They claimed this demonstrated that the subject property was over assessed. *Y. Vierra testimony; L. Vierra testimony; Pet'r Ex. 3, 8.*
12. Next, the Petitioners compared the 2018 taxes of five properties located in Elkhart Township that had similar or greater square footage than the subject property. The tax bills for those properties ranged from \$2,688 to \$3,481, while the subject property's tax bill was \$4,663.76. *Y. Vierra testimony; Pet'r Ex. 4.*
13. The Petitioners presented a 2006 home inspection showing 81 deficiencies in the subject property. While they acknowledged some had been cured, they claimed the remaining deficiencies affected the condition and value of the property. *Y. Vierra testimony; L. Vierra testimony; Pet'r Ex. 5.*
14. The Petitioners also claimed that combining the additional parcel in 2021 had little impact to the overall value of the subject property because that parcel was swamp, non-buildable, and subject to easements on 30% to 40% of the land. *L. Vierra testimony.*
15. Finally, the Petitioners also presented estimates from USAA Federal Savings Bank and FIGURE, a mortgage lender, which estimated the value of the subject property at \$350,400 and \$356,300, respectively. In addition, they also pointed to articles about falling home prices. *Y. Vierra testimony; L. Vierra testimony; Pet'r Exs. 1-2.*

RESPONDENT'S CONTENTIONS

16. The Assessor argued that the subject property's 2020 assessment was correct. In support of this, Miller presented a sales-comparison analysis. He selected six comparables located in Elkhart County. He compared quality, condition, age, above grade living area, basement size and finish. The adjusted sale prices ranged from \$397,410 to \$499,355. Miller reconciled the subject property's January 1, 2020, value at \$454,745. Miller found this supports the subject property's 2020 assessment. *Miller testimony; Resp't Ex. 16.*
17. For 2021, the Assessor conceded the subject property was over-assessed based on Miller's analysis. For this year, Miller also selected six properties in Elkhart County. Again, he compared quality, condition, age, above grade living area, basement size and finish. The adjusted sale prices ranged from \$367,140 to \$473,355. Miller reconciled the subject property's January 1, 2021, value at \$421,600 (rounded). Miller found this supports lowering the subject property's 2021 assessment from \$443,900 to \$421,600. *Miller testimony; Resp't Ex. 17.*
18. Miller testified the Petitioners' analyses were flawed because they failed to show how the comparable properties compare to the subject property. In particular, Miller testified the above and below grade square footages shown on the Petitioner Exhibits 3 and 4 are inaccurate. *Miller testimony; Resp't Ex. 12 & 13.*

ANALYSIS

19. Generally, an assessment determined by an assessing official is presumed to be correct. 2011 and 2021 REAL PROPERTY ASSESSMENT MANUAL at 3⁵. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).

⁵ For the Petitioners' 2020 appeal, the 2011 Real Property Assessment Manual applied. The Department of Local Government Finance has adopted a new assessment manual and guidelines for 2021 assessments forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

20. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 and 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.
21. 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 2020 assessment, the valuation date was January 1, 2020. For the 2021 assessment, the valuation date was January 1, 2021. *See* Ind. Code § 6-1.1-2-1.5.
22. The Petitioners purchased the subject property in 2006, for \$399,900. The purchase price can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). But the Petitioners' purchase occurred fourteen years prior to the January 1, 2020, valuation date, and fifteen years prior to the January 1, 2021, valuation date and they failed to relate the purchase price to the valuation dates. Consequently, the purchase price is not probative evidence of the property's market value-in-use for 2020 and 2021.
23. The Petitioners did present some evidence in the form of comparable assessments. But a party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable 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. *Id.* at 471. They must similarly explain how relevant differences affect values. *Id.*

24. But the Petitioners did not offer the type of analysis contemplated by *Long*. While they identified some differences between the comparables and the subject, they did not offer any evidence or analysis that show how the differences affected the properties' overall market values-in-use. Without such analysis, this evidence is insufficient to support any reduction in the assessments.
25. The Petitioners also pointed to several deficiencies in the subject property detailed in the 2006 inspection report. But they failed to present reliable evidence quantifying the effect those deficiencies had on the overall value of the subject property as of the valuation dates. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). For this reason, the Petitioners are not entitled to any relief on these grounds.
26. The Petitioners also presented value "estimates" from USAA Federal Savings Bank and FIGURE. These estimates appear to be developed for advertising materials. It is unclear who exactly developed the estimates, what expertise they had, what methodology they used, or what research they did. For these reasons we find this evidence to be unreliable.
27. In addition, the Petitioners claimed their assessments were disproportionately higher than other similar properties. 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)). The Petitioners did not demonstrate that they provided a statistically reliable sample of properties, nor did they compare the assessments of the purportedly comparable properties with objectively verifiable market data. For these reasons, they have failed to show they are entitled to any relief these grounds.

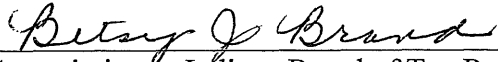
28. Finally, we note that the Petitioners claimed that the subject property received higher tax bills than other similar properties. Tax bills are not only developed from assessments, but also from the application of other factors such as deductions, credits, and local taxing rates. The Petitioners did not provide any information on these other factors. For that reason, we find they have failed to make a case for any relief on these grounds.
29. Thus, we find the Petitioners have failed to make a case for any reduction in the assessments. Because 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). For these reasons, we order no change to the subject property's 2020 assessment. For 2021, however, the Assessor conceded that the assessment should be reduced to \$421,600. Thus, we adopt that value.

SUMMARY OF FINAL DETERMINATION

30. For 2020, the Board orders no change to the assessment. For the 2021 assessment year, we order the assessment reduced to \$421,600.

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>>.