

REPRESENTATIVES FOR PETITIONERS:

Fred H. Wilke, *pro se*
Shirley A. Wilke, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Andrew Baudendistel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Fred H. & Shirley A. Wilke,	)	Petition No.:	15-006-14-1-5-00038
)		
Petitioners,	)	Parcel No.:	15-01-35-303-022.031-006
)		
v.	)	County:	Dearborn
)		
Dearborn County Assessor,	)	Township:	Harrison
)		
Respondent.	)	Assessment Year:	2014

Appeal from the Final Determination of the
Dearborn County Property Tax Assessment Board of Appeals

August 10, 2015

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Did the Petitioners prove that the subject property was overvalued for the March 1, 2014, assessment?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2014 appeal with the Dearborn County Assessor on September 18, 2014. On December 1, 2014, the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. On December 29, 2014, the Petitioners timely filed a Form 131 petition with the Board.
3. On May 29, 2015, the Board's administrative law judge (ALJ), Jennifer Bippus, held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The Petitioners, Fred H. Wilke and Shirley A. Wilke, and County Assessor Gary R. Hensley were sworn and testified.
5. The Petitioners offered the following exhibits:
 - Petitioners Exhibit 1: Buyer's Closing Statement dated May 13, 2014,
 - Petitioners Exhibit 2: Multiple Listing Service (MLS) for the subject property,
 - Petitioners Exhibit 3: State Form 53569 – "Special Message to Property Owner" for 20344 Beau Vista Drive, dated March 19, 2014,
 - Petitioners Exhibit 4: State Form 53569 – "Special Message to Property Owner" for the subject property, dated March 13, 2015,
 - Petitioners Exhibit 5: Page 1 of 3 "Commitment for Title Insurance Schedule B Part II" from First American Title Insurance Company for the subject property,
 - Petitioners Exhibit 6: Appraisal of the subject property prepared by David Bischoff with an effective date of December 8, 2014.
6. The Respondent offered the following exhibits:
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: 2010 Form 134 with attachments,
 - Respondent Exhibit 3: Six property record cards from the Jamison Place Condominium area.
7. The following additional items are recognized as part of the record:

Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Hearing notice, dated April 29, 2015,
Board Exhibit C: Hearing sign-in sheet.

8. The subject property is a condominium located at 24074 Sun Hills Lane, Unit C, in West Harrison.
9. The PTABOA determined that the March 1, 2014, total assessment is \$155,000.
10. On their Form 131 petition, the Petitioners requested a total assessment of \$100,000.¹

OBJECTIONS

11. The Respondent objected to Petitioners' Exhibit 3 on the grounds that it is not relevant. Specifically, Mr. Baudendistel argued that the property referred to in the exhibit is a house while the subject property is a condominium; therefore, the properties are assessed differently.
12. The Petitioners argued that the exhibit indicates the assessor utilizes different standards to assess properties. The ALJ took the objection under advisement.
13. The Respondent's objection goes to the weight of the exhibit rather than its admissibility. Thus, the Board overrules the Respondent's objection, and Petitioners' Exhibit 3 is admitted.
14. The Respondent also objected to Petitioners' Exhibit 6 for three reasons. The ALJ took all three objections under advisement. First, Mr. Baudendistel argued that the appraisal is irrelevant because the effective date is six months past the assessment date.
15. Again, the Respondent's objection goes to weight of the exhibit rather than its admissibility. Thus, the Respondent's relevancy objection is overruled.

¹ At the hearing, the Petitioners stated that the assessment should be \$95,000 based on the purchase price of the subject property.

16. Next, the Respondent objected to Petitioners' Exhibit 6 because the appraiser was not present at the hearing to testify. In effect the Respondent is making a hearsay objection.
17. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

18. Petitioners' Exhibit 6 is hearsay. However, effective July 1, 2015, Ind. Code § 6-1.1-15-4 was amended to include the following language:

(p) At a hearing under this section, the Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection. This exception to the hearsay rule shall not be construed to limit the discretion of the Indiana board, as trier of fact, to review the probative value of an appraisal report.

Ind. Code § 6-1.1-15-4(p) (2015 Ind. Acts sec. 33, SEA 467).

19. In our final analysis the Board's final determination does not hinge on whether Petitioners' Exhibit 6 is admitted or not. Whether the exhibit is admitted or not however, is dependent on the Respondent's final objection.
20. Finally, the Respondent objected to Petitioners' Exhibit 6 because the Petitioners failed to provide the exhibit prior to the hearing.

21. Because the Petitioners opted out of the Board's small claims procedures, both parties were required to exchange copies of their documentary evidence at least five business days prior to the hearing. 52 IAC 2-7-1 (b) (1). The exchange requirement allows parties to be better informed and to avoid surprises, and it also promotes an organized, efficient, and fair consideration of the issues at a hearing. Failure to comply with this requirement can be grounds to exclude evidence. 52 IAC 2-7-1 (f). However, the Board may waive the evidence-sharing requirements for materials that were submitted or made part of the record at the PTABOA hearing. 51 IAC 2-7-1 (d).
22. Here, the Petitioners admitted that they only provided the appraisal's cover page, which contains the final value conclusion, to the Respondent prior to the hearing. Further, there is no evidence to indicate that the Petitioners offered the appraisal at the PTABOA hearing. Again, the Board's final determination is not dependent on if the Petitioners' Exhibit 6. Ultimately, the exhibit's cover page will be admitted over the Respondent's objection; however, the remainder of Petitioners Exhibit 6 will be excluded.

JURISDICTIONAL FRAMEWORK

23. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

24. The subject property's assessment of \$155,000 is too high. On March 4, 2014, the property was listed on the open market for \$104,900. The Petitioners purchased the property for \$95,000, on May 13, 2014. *F. Wilke testimony; Pet'rs Ex. 1, 2, 4.*

25. In an effort to show the property is over-assessed the Petitioners offered an appraisal performed by David Bischoff, a licensed certified appraiser. The appraisal was performed in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). The property's indicated value as of December 8, 2014, should be \$110,000. *F. Wilke testimony; Pet'rs Ex. 6.*
26. Mr. Bischoff placed the most emphasis on the sales comparison approach to value the subject property. Mr. Bischoff selected three sales that were "highly similar condo homes located in the subject's market area." Further, Mr. Bischoff opined that "the subject falls toward the middle of this range." After adjustments were made to account for differences between the subject property and the three comparable properties, Mr. Bischoff estimated the total value of the property at \$110,000. *Pet'rs Ex. 6.*
27. The Petitioners also point to another property they own that is assessed at \$121,600. This home is "much larger" and has more amenities than the subject property. Thus, it gives the impression the Respondent "uses different standards to assess different properties." *F. Wilke argument; Pet'rs Ex. 3.*
28. Finally, the Respondent has incorrectly assessed the majority of the condominiums in Jamison Place at \$155,000. This is inaccurate because each unit has different amenities. For example, some units have basements. Some units have two bedroom units while other units have three bedrooms. The only unit in Jamison Place that has a different assessment is for a condominium that is identical to the subject property. *F. Wilke argument (referencing Resp't Ex. 3).*

RESPONDENT'S CONTENTIONS

29. The subject property is correctly assessed. Prior to 2014, the property was listed as 50% complete and assessed at \$77,500. However, when the Petitioners purchased the property in 2014 it was considered 100% complete and the assessment was increased to \$155,000. *Hensley testimony; Resp't Ex. 1, 2.*

30. All of the condominiums in Jamison Place, with the exception of one, are valued at \$155,000. Because of the different amenities offered, the sale prices for the units range from \$112,500 to \$163,458. However, because the Respondent is unaware of what amenities each unit includes, they are all assessed uniformly. *Hensley testimony; Resp't Ex. 3.*
31. Finally, assessments in Dearborn County are completed in accordance with state guidelines. The county contracts with Tyler Technology to assess properties throughout the county. Further, neighborhood ratio studies are provided and utilized for trending. The 2014 ratio studies were approved by the Department of Local Government Finance (DLGF). *Hensley testimony.*

BURDEN OF PROOF

32. 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 recently amended by P.L. 97-2014 creates two exceptions to that rule.
33. 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 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 the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
34. 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 is effective March 25, 2014, and is applicable to all appeals pending before the Board.

35. Here, the assessment increased from \$77,500 in 2013 to \$155,000 in 2014, an increase of more than 5%. At the hearing the Respondent stated that he had the burden of proof. As such, the ALJ made the preliminary determination that the burden in this appeal would rest with the Respondent. However, Ind. Code § 6-1.1-15-17.2 applies only where an assessment for the *same property* increases by more than 5%. Ind. Code § 6-1.1-15-17.2(a). In this appeal, the Respondent assessed the subject property at 50% complete as of March 1, 2013. However the property was assessed at 100% complete in 2014. Thus, the 2014 assessment was not for the *same property*. Here, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with the Petitioners.

ANALYSIS

36. 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.

37. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See 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 2014 assessments, the assessment and valuation date was March 1, 2014. *See Ind. Code § 6-1.1-4-4.5(f)*.
38. The Petitioners purchased the subject property for \$95,000, on May 13, 2014. A property's sale price is often the best evidence of its value. *See Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by evidence). That is particularly true where, as here, the sale occurs close to the relevant valuation date.
39. There is no evidence that indicates the Petitioners' purchase price was not representative of the market. The Petitioners also offered evidence indicating that the property was listed on the open market for \$104,900. Further, the Respondent failed to offer any argument to the contrary.
40. In addition, while the Petitioners' appraisal, except the cover page, was excluded, the Board notes that the value conclusion indicated on the cover page supports the Petitioners purchase price and tends to indicate that the property is overvalued.
41. The Petitioners made a prima facie case that the subject property's 2014 assessment should be \$95,000. The burden shifted to the Respondent to impeach or rebut the Petitioners' case.
42. The Respondent failed to offer any probative valuation evidence to rebut the sale price or defend his assessment. To the contrary, the Respondent admitted that while he is aware that the condominiums in the subject property's complex have different amenities, the assessments do not reflect that.

43. The Respondent did attempt to defend the assessment by explaining the procedures that he followed in assessing the property. But as the Indiana Tax Court has explained, strictly applying assessment regulations does not necessarily prove a property's market value-in-use in an assessment appeal. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence).
44. Further, the Respondent noted that his 2014 ratio studies were approved by the DLGF. To the extent he intended to argue that because his ratio studies were approved, the subject property's assessment must be correct, he failed to offer any support for that notion. Indeed, the International Association of Assessing Officials' Standard on Ratio Studies, which 50 IAC 27-1-4 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, ratio studies cannot be used to judge the level of an appraisal of an individual parcel.** Such statistics can be used to adjust assessed values of appealed parcels 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, italics in original).

45. Thus, for the reasons set forth, the Respondent failed to impeach or rebut the Petitioners prima facie case. The most persuasive evidence on the record regarding the subject property's correct March 1, 2014, assessment is the Petitioners' purchase price of \$95,000. The Board therefore orders that the subject property's 2014 assessment be lowered to \$95,000.

SUMMARY OF FINAL DETERMINATION

46. The Board finds for the Petitioners and orders that the subject property's assessment be reduced to \$95,000.

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