

REPRESENTATIVE FOR PETITIONER: Susanne P. Bair, *pro se*

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

SUSANNE P. BAIR,)	Petition No.: 53-004-23-1-5-00595-23
)	
Petitioner,)	Parcel No.: 53-05-18-200-043.007-004
)	
v.)	
)	
MONROE COUNTY ASSESSOR,)	County: Monroe
)	
Respondent.)	Assessment Year: 2023

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

FINAL DETERMINATION

The Indiana Board of Tax Review, 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. Susanne Bair appealed the 2023 assessment of her home. The totality of the evidence offered by the parties does not suffice to show the property’s true tax value. Because the assessment increased by more than 5% over the previous year’s assessment, we must presume that the property’s value for 2023 equals the 2022 assessed value of \$608,700.

Procedural History

2. Bair contested the 2023 assessment of her property located at 2654 West Prestwick Court in Bloomington. The Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 determination changing the home’s quality grade to “B-1,” thereby reducing the assessment to \$643,500 (\$100,000 for land and \$543,500 for improvements).
3. Still disagreeing with her assessment, Bair filed a Form 131 petition with us. On March 19, 2024, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Bair’s petition. Neither he nor the Board inspected the property. Bair represented herself. Marilyn Meighen appeared as counsel for the Assessor. Bair and Bradley Berkemeier of Nexus Group testified under oath.
4. Bair offered the following exhibits:
 - Exhibit 1: Form 131 petition,
 - Exhibit 2: Attachment to Form 131,
 - Exhibit 3: Form 11, Notice of Assessment,
 - Exhibit 4: Form 114,
 - Exhibit 5: Form 115,
 - Exhibit 6: Form 130,
 - Exhibit 7: Muirfield neighborhood comparisons,
 - Exhibit 8: *Bill and Lisa Hurley v. Monroe Cty. Ass’r*, pet. no. 53-004-22-1-5-00937-22 (IBTR, December 14, 2023),
 - Exhibit 9: Muirfield sales data,
 - Exhibit 10: Information not provided at PTABOA hearing,¹
 - Exhibit 13: Residential summary statistics,
 - Exhibit 14: November 1, 2023 Form 115 for Chad Riester & Kathryn Adams.²

¹ This appears to be a list of assessment neighborhoods with corresponding neighborhood factors together with a handwritten note explaining that the list was provided to Bair after the PTABOA hearing. Bair originally labeled this exhibit “NBHD sales.” The Assessor objected to the original exhibit title and suggested it be identified as “Information not provided at PTABOA hearing.” The ALJ then indicated that he would refer to the exhibit using that description.

² Bair identified two additional exhibits (Exhibits 11 and 12) as audio recordings of her own and another taxpayer’s PTABOA hearings. She did not provide the recordings, however, and she withdrew her initial offer of those exhibits.

5. The Assessor offered the following exhibits:

- Exhibit A: Property record card (“PRC”) for the subject property,
- Exhibit B: Aerial photograph,
- Exhibit C: Sales-comparison analysis,
- Exhibit D: Indiana Association of Realtors year-over-year sale price analysis,
- Exhibit E: PRC and sales disclosure for 2502 West Turnbury Circle,
- Exhibit F: PRC and sales disclosure for 5108 North Chatham Drive,
- Exhibit G: PRC and sales disclosure for 5014 North Muirfield Drive.

6. The record also includes the following: (1) all petitions or other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Findings of Fact

7. The subject property contains a 2,760-square-foot one-story home with an unfinished basement built in 2018. The property was assessed for \$608,700 in 2022. *Ex. A.*

Parties’ Contentions

A. Bair’s Contentions

8. Bair took issue with what she described as the Assessor’s failure at the PTABOA hearing to offer any evidence or otherwise support her denial of Bair’s request to reduce the property’s assessment to \$578,000. *Bair testimony and argument.*

9. Although the Assessor offered a sales-comparison analysis from Bradley Berkemeier at our hearing, Bair characterized that analysis as subjective. In any case, Bair argued that Berkemeier impermissibly used sales from more than a year before the assessment date when there were sales from 2022 that were still within a two-mile radius of the subject property. Bair also criticized Berkemeier’s reliance on year-over-year changes in the median sale price for Monroe County homes. According to Bair, that statistic is irrelevant because some locations in Monroe County are less coveted than others. *Bair testimony and argument.*

10. In the past, the Assessor has used cost-per-square-foot to determine and defend assessments. According to Bair, the subject property has the third-highest cost per finished square foot in the Muirfield Woods subdivision. The two homes with higher unit values are graded “A” and “A+2,” while the subject home is graded only “B-1.” Three homes that Bair characterized as “distinctly similar” were assessed for an average of \$158/sq. ft., which is \$75/sq. ft. less than the subject property’s assessment. That disparity equates to over \$200,000 in total value. *Bair testimony and argument; Exs. 7-8, 14.*

B. The Assessor’s Contentions

11. To support the assessment, the Assessor offered Berkemeier’s sales-comparison analysis. Berkemeier is a Level III Assessor-Appraiser with Nexus Group, the Assessor’s property-tax consultant. He has more than 20 years of experience in the assessment field, including roughly 15 years in which he has reviewed residential appeals. Although Berkemeier has reviewed hundreds of residential appraisals, he is not a licensed fee appraiser. The Assessor, however, argued that an appraisal is not required to prove a property’s value if a party offers appropriately adjusted sales data. *Meighen argument; Berkemeier testimony; Ex. C.*
12. Berkemeier used three main criteria in looking for sales data. He wanted sales that (1) occurred as close as possible to the assessment date, (2) involved properties that were physically similar to Bair’s property, and (3) were from similar locations as Bair’s property. He could not find any sales from Muirfield Woods from 2022, so he was faced with a choice: expand the geographical scope of his search or use more remote sales and adjust the sale prices to reflect market conditions on the assessment date. He chose the second option and settled on three sales from Muirfield Woods, all of which occurred in the third quarter of 2021. *Berkemeier testimony; Exs B-C.*

13. To adjust the sale prices for market conditions, Berkemeier used data from the Indiana Association of Realtors, which reflected a 10% increase in the median sale price for Monroe County homes between February 2022 and January 2023. *Berkemeier testimony; Exs. C-D.*

14. Berkemeier also considered adjusting the sale prices to account for physical differences between the comparable properties and the subject property. He considered characteristics like story height, exterior finish, foundation type, the existence and size of finished and unfinished basements, bedroom and bathroom counts, quality grade, effective age, and exterior features. For most of his adjustments, Berkemeier relied on assessment data that had been collected for the homes. And he quantified many of those adjustments using the Real Property Assessment Guidelines from the Department of Local Government Finance (“DLGF”). For example, he accounted for differences in quality grades by adjusting 5% per increment, and he adjusted for differences in garage size and exterior features using the differences in replacement cost new for those items. Where Berkemeier could not find assessment data to quantify an adjustment for differences in a given characteristic, he tried to make a “reasonable” adjustment. *Berkemeier testimony; Ex. C.*

15. The adjusted sale prices ranged from \$566,200 to \$723,500, with an average of \$649,500 and a median of \$658,800. Berkemeier did not offer an opinion as to the property’s value beyond saying that the average and median values supported the existing assessment of \$643,500. *Berkemeier testimony; Ex. C.*

16. Overall, Berkemeier explained that he wanted to use both what he had learned from reviewing appraisal reports and his experience in the assessment field. According to Berkemeier, his analysis is similar to what one might see in an appraisal report. It has a comparable-sales adjustment grid like one that an appraiser would develop. *Berkemeier testimony.*

17. Turning to Bair’s evidence, the Assessor argued that Bair failed to make a case for lowering the assessment. Instead, Bair simply calculated median and average unit prices without adjusting those prices to account for differences between properties. *Meighen argument.*

Conclusions of Law and Analysis

A. Because Bair’s assessment increased by more than 5% between 2022 and 2023, the Assessor had the burden of proof.

18. Generally, a taxpayer has the burden of proof when challenging a property’s tax assessment. Accordingly, the assessment on appeal, “as last determined by an assessing official or the county board,” will be presumed to equal “the property’s true tax value.” I.C. § 6-1.1-15-20(a) (effective March 21, 2022).
19. However, the burden of proof shifts if the property’s assessment “increased more than five percent (5%) over the property’s assessment for the prior tax year.” I.C. § 6-1.1-15-20(b). Subject to certain exceptions, the assessment “is no longer presumed to be equal to the property’s true tax value, and the assessing official has the burden of proof.” *Id.* If the burden has shifted, and “the totality of the evidence presented to the Indiana board is insufficient to determine the property’s true tax value,” then the “property’s prior year assessment is presumed to be equal to the property’s true tax value.” I.C. § 6-1.1-15-20(f). Here, the assessment increased by 5.7% between 2022 and 2023, and the parties agreed that the Assessor had the burden of proof.

B. Because the totality of the evidence does not suffice to show the property's true tax value, we must presume that its value equals the previous year's assessment of \$608,700.

20. We are the trier of fact in property tax appeals, and our charge is to “weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence” before us. I.C. § 6-1.1-15-20(f). Our conclusion “may be higher or lower than the assessment or the value proposed by a party or witness.” *Id.* Regardless of which party has the initial burden of proof, either party “may present evidence of the true tax

value of the property, seeking to decrease or increase the assessment.” I.C. § 6-1.1-15-20(e).

21. 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). Instead, it is determined under the DLGF’s rules. 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.” 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.
22. To meet its burden of proof, a party “must present objectively verifiable, market-based evidence” of the property’s value. *Piotrowski v. Shelby Cty. Ass’r*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal “methodology” of the “assessment regulations.” *PIA Builders & Developers, LLC v. Jennings Cty. Ass’r*, 842 N.E.2d 899, 900, (Ind. Tax Ct. 2006). This is because the “formalistic application” of the procedures and schedules from the DLGF’s assessment guidelines lacks the market-based evidence necessary to establish a specific property’s market value-in-use. *Piotrowski*, 177 N.E.3d at 133.
23. Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is ‘similar’ or ‘comparable’ simply because it is on the same street are nothing more than conclusions . . . [and] do not constitute probative evidence.” *Marinov v. Tippecanoe Cty. Ass’r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property’s value as of the valuation date. *O’Donnell v. Dep’t of Local Gov’t. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2023 assessments, the valuation date was January 1, 2023. I.C. § 6-1.1-2-1.5(a).

24. Neither party offered reliable evidence from which to determine the subject property's true tax value.
25. We begin with the Assessor's evidence. She relied on Berkemeier's sales-comparison analysis. Berkemeier, however, did not show that he complied with generally accepted appraisal principles in completing his analysis.
26. Under the sales-comparison approach, "an opinion of market value is developed by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract" THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 351 (15th ed. 2020).³ The approach is premised on the notion that an opinion of market value can be supported by studying the market's reaction to comparable and competitive properties. *Id.* Appraisers applying the approach examine market evidence using "paired data analysis, trend analysis, statistics, and other recognized and accepted techniques to identify which elements of comparison within the data set of comparable sales are responsible for value differences." *Id.* They then use qualitative and quantitative techniques to adjust for any differences in relevant elements of comparison that affect the comparable properties' sale prices. *Id.* at 361-65, 372-96.
27. Several techniques are available to quantify adjustments, including paired- grouped- and secondary-data analysis, statistical analysis, and capitalization of income differences. *Id.* at 371-72. Appraisers may also make cost-related adjustments. *Id.* But the value added or lost by the presence or absence of an item may not equal the cost of installing or removing it. Instead, "the market dictates the value contribution of individual components to the value of the whole." *Id.* at 392-93.

³ We take official notice of this treatise. *See* 50 IAC 4-6-11(a)(4) (allowing us to take official notice of treatises considered to be reliable authorities on subjects addressed at the hearing, including any relevant edition of *The Appraisal of Real Estate*).

28. Berkemeier pointed to data showing that the three properties from his analysis were generally similar to the subject property in terms of several elements of comparison. For example, they are all located in the same subdivision as the subject property. And Berkemeier adjusted the sale prices to account for various ways in which the properties differed. But he did little to show that he adhered to generally accepted appraisal principles. Instead, he largely relied on cost-based mass appraisal data without any assurance that it reflected how market participants valued those differences. In other instances, he gave no basis for his adjustments other than to say that he thought they were “reasonable.”
29. We do not mean to imply that an appraisal by a licensed appraiser is required to prove a property’s market value-in-use. Instead, we simply find a lack of market-based support for Berkemeier's adjustments, particularly in the absence of an appraiser’s credentialed expertise and representations of USPAP compliance. And the Assessor offered no other evidence to establish the property's market value-in-use.
30. We now turn to Bair’s evidence and arguments. Bair essentially argued that the subject property is assessed higher than are other properties from the same subdivision. But she did even less than Berkemeier did to compare her property to those other properties in terms of characteristics that affect value. And unlike Berkemeier, who at least attempted to adjust his comparable properties’ sale prices, Bair did not explain how relevant differences between those other properties in the subdivision and the subject property affected their relative values. Her comparative data therefore lacks probative value. *See Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005).
31. Because the burden of proof shifted to the Assessor and the totality of the evidence is insufficient to determine the subject property’s value, Ind. Code § 6-1.1-15-20(f) requires us to presume that the previous year’s assessment of \$608,700 equals the property’s true tax value for 2023.

Final Determination

32. In accordance with these findings and conclusions, we order that the property's 2023 assessment revert to the 2022 value of \$608,700.

Date: June 17, 2024

Jonathan R. Elrod
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Timothy Schultz
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>.