

REPRESENTATIVE FOR PETITIONER: Lawrence Earl Carter, property owner

REPRESENTATIVE FOR RESPONDENT: Marilyn S. Meighen, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Carter Real Estate Holdings, LLC,	)	Petition No.: 19-020-20-1-4-00042-21
	)	
Petitioner,	)	Parcel No.: 19-11-34-301-409.000-020
	)	
v.	)	
	)	County: Dubois
Dubois County Assessor,	)	
	)	
Respondent.	)	Assessment Year: 2020

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

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**November 17, 2021**

**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. In this assessment appeal, Carter Real Estate Holdings, LLC sought to lower its property's assessment based largely on differences in how the assessment changed from year-to-year compared to the assessments of other properties in the area. The Assessor, however, offered a certified appraiser's valuation opinion to support the assessment, and Carter failed to impeach or rebut the appraiser's opinion. We therefore find that the assessment should not be changed.

## Procedural History

2. Carter filed a Form 130 petition contesting the 2020 assessment of its commercial property located at 322 and 324 4<sup>th</sup> Street in Huntingburg. On November 6, 2020, the Dubois County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination lowering the assessment to \$102,100 (\$17,900 for land and \$84,200 for improvements). Carter still disagreed with the assessment and filed a Form 131 petition with the Board.<sup>1</sup>
3. On July 22, 2021, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Carter’s petition. Neither he nor the Board inspected the property.
4. The following people testified under oath: Lawrence Earl Carter;<sup>2</sup> Brian Shelton, an MAI appraiser; and Austin Budell of Tyler Technologies.
5. Carter offered the following exhibits:<sup>3</sup>

Petitioner Exhibit 1:	Carter’s written contentions,
Petitioner Exhibit 2:	<i>Lawrence Earl Carter v. Dubois Cnty. Ass’r</i> , IBTR Pet. No. 19-020-18-1-4-01200-18 (October 16, 2019),
Petitioner Exhibit 3:	List of properties on 4 <sup>th</sup> Street with their property record cards and changes in assessments,
Petitioner Exhibit 4:	Real Estate Mortgage,
Petitioner Exhibit 5:	List of properties with their assessments and selling prices.
6. The Assessor submitted the following exhibits:

Respondent Exhibit A:	Appraisal report prepared by Brian Shelton, MAI,
Respondent Exhibit B1:	Carter’s exhibit coversheet,

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<sup>1</sup> Although Carter elected our small claims procedures, we granted the Assessor’s request that the appeal be heard under the standard procedures set forth in 52 IAC 4.

<sup>2</sup> Lawrence Carter is apparently a member of Carter Real Estate Holdings, LLC. Carter did not distinguish between himself and the LLC. For purposes of this determination, we refer to both simply as “Carter.”

<sup>3</sup> Carter included an exhibit coversheet for Exhibits 4 and 5 only, as he emailed those exhibits to us separately.

Respondent Exhibit B2:	Carter’s list of properties with their assessments and selling prices (Pet’r Ex. 5),
Respondent Exhibit B3:	Sales disclosure form for 403 North Jackson,
Respondent Exhibit B4:	Sales disclosure form for 410 4 <sup>th</sup> Street,
Respondent Exhibit B5:	Sales disclosure form for 411 East 4 <sup>th</sup> Street,
Respondent Exhibit B6:	Sales disclosure form for 425 East 4 <sup>th</sup> Street,
Respondent Exhibit B7:	Sales disclosure form for 417 4 <sup>th</sup> Street.

7. 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.

### **Parties’ Contentions**

#### **A. The Assessor’s Contentions**

8. The property is one of several storefront parcels along 4<sup>th</sup> Street in Huntingburg. It was originally two or three storefront spaces with an apartment above one of the buildings. Those spaces are now connected. The site is almost entirely covered by the building and therefore lacks any parking. The first-floor houses Carter’s retail operation. The second floor is in poor condition and has little utility. The stairs leading up to it are hard to maneuver. *Shelton testimony; Resp’t Ex. A at 14.*
9. The Assessor hired Brian Shelton to appraise the property. Shelton is a certified general appraiser in Indiana, Kentucky, and Illinois, and he is designated as an MAI by the Appraisal Institute. He estimated the property’s market value-in-use at \$120,000 as of January 1, 2020. *Meighen argument; Shelton testimony; Resp’t Ex. A.*
10. Shelton certified that his appraisal complies with the Uniform Standards of Professional Appraisal Practice (“USPAP”), and that he appraised the “fee simple estate” or “fee simple interest,” terms that he used interchangeably. He further certified that he appraised only the real estate and not any equipment, furniture, or other personal property. He toured the property and measured it to the extent possible, given that there are common walls shared with adjoining buildings. *Shelton testimony; Resp’t Ex. A.*

11. Shelton valued the property using the sales-comparison approach. While he also considered developing the income approach, he could not gather and confirm enough information to do so. *Shelton testimony; Pet'r Ex. A at 15.*
12. Shelton found five sales to use in his sales-comparison analysis. The sales occurred between May 2017 and February 2020. All were located along 4<sup>th</sup> Street (one had a Jackson Street address) and involved storefront buildings of a similar vintage as the subject building. Two were single story buildings, while the other three had partial second floors like the subject building. Like the subject property, most had either no onsite parking or only minimal parking. *Shelton testimony; Resp't Ex. A at 17-24.*
13. With those things in mind, Shelton examined whether the sales needed to be adjusted for transactional differences with the contemplated fee-simple sale of the subject property as well as whether the properties differed in relevant physical characteristics. Although the sales were from as far back as 2017, Shelton concluded that the market was stable during the intervening period, and he did not adjust the sale prices for market conditions. He determined that the first floor of each building contributed the lion's share of the property's value, and that there was little demand for second-floor space. He therefore allocated each sale price between the contributory values of the first floor and other space, such as a basement or second floor. Due to the economies of scale, Shelton adjusted the first-floor unit prices downward to account for the fact that the comparable buildings were all smaller than the subject building. *Shelton testimony; Resp't Ex. A at 22-24.*
14. The adjusted first-floor sale prices ranged from \$19.31/sf to \$20.11/sf, with a median of \$21.52/sf and an average of \$21.13/sf. Shelton settled on \$20/sf for the subject property. Because the subject property's second floor was difficult to access and was not an open shell, he determined that it had only minimal contributory value: \$2.50/sf. That was less than half the contributory second-floor value from any of his comparable sales. Based on

those allocated unit prices, Shelton estimated contributory values for the subject property's first and second floors at \$118,340, and \$3,100, respectively. That yielded a total value \$121,440, which Shelton rounded down to \$120,000. *Shelton testimony; Resp't Ex. A at 22-24.*

15. The Assessor's witness, Austin Budell, addressed evidence in which Carter highlighted the differences in the subject property's year-over-year assessments compared to those of other properties along 4<sup>th</sup> Street. According to Budell, there are several reasons why properties' assessments might increase or decrease at different rates from year to year. For example, the properties might be completely different, or at least have different uses, and therefore have different depreciation schedules. Similarly, properties might be remodeled at different times, a parcel might split off, or two parcels might be combined into one. *Budell testimony and argument; Meighen argument; Resp't Exs. B1-B7.*
16. Budell likewise dismissed Carter's reliance on ratios of assessments to sale prices for the comparable properties from Shelton's appraisal. Budell explained that sale prices and assessments are not necessarily identical because assessors are not allowed to "sales chase," meaning that they cannot adjust a property's assessment to match its sale price. In any case, the sale prices Carter used in his ratios are inaccurate, and merely picking a few properties to compare does not prove a lack of uniformity and equality. *Meighen argument; Budell testimony; Resp't Exs. B1-B7.*

## **B. Carter's Contentions**

17. According to Carter, there is "no rhyme or reason" to the assessments of either the subject property or any other property on 4<sup>th</sup> Street. In 2020, the subject property's assessment increased 20.25% while several other properties on 4<sup>th</sup> Street saw their assessments decrease. For example, 328 East 4<sup>th</sup> Street's assessment decreased 7.98%, and 320 East 4<sup>th</sup> Street decreased 17.07%. Other properties on 4<sup>th</sup> Street saw large increases or decreases even though their condition had not changed. If the overall trend on 4<sup>th</sup> Street were applied to the subject property, its 2020 assessment should have been

\$87,200, or 8% lower than its 2019 assessment of \$94,800. *Carter testimony and argument; Pet'r Exs. 1, 3.*

18. Carter also argues that assessments on 4<sup>th</sup> Street are not uniform and equal. He compared the sale prices for six properties, including the five that Shelton relied on in his appraisal, to their assessments. But he adjusted some of the sale prices because, unlike the subject property, those properties had parking. The sales occurred from 2018 to 2020. The ratios ranged from a property with a sale price that was 28% above its assessment to one with a sale price that was 54.95% below its assessment. *Carter testimony and argument; Pet'r Ex. 5.*
19. Carter disagrees with Shelton's appraisal. According to Carter, Shelton used sales of buildings that were dissimilar to the subject building. Some of the buildings had been vacant before they sold, and Shelton did not inspect their interiors. So they could have deteriorated. When touring the building with Carter, Shelton told Carter that the building would be "better valued" if the second floor did not exist, yet he assigned it a value. Carter cannot use the space for storage because it smells of bat manure and dead birds. *Carter argument and testimony; Shelton testimony.*
20. Finally, while the Assessor believes that Carter paid \$145,000 for the property in 2015, he actually paid only \$125,000. *Carter testimony; Pet'r Ex. 4.*

### **Analysis**

21. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Various statutes, including Ind. Code § 6-1.1-15-17.2, create exceptions to that general rule and assign the burden of proof to the assessor under specified circumstances, including where a property's assessment has increased more than 5% over the previous year. Here, the Assessor acknowledged that Carter's assessment increased more than 5% and accepted the burden of proof.

22. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c) (2011); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. 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 rules of the Department of Local Government Finance ("DLGF"). 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." MANUAL at 2.<sup>4</sup>
23. Evidence in an assessment appeal should be consistent with that standard. For example, a USPAP-certified market-value-in-use appraisal often will be probative. *See id.*; *see also*, *Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use). Regardless of the method used, a party must explain how its 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). For 2020 assessments, the valuation date was January 1, 2020. *See* I.C. § 6-1.1-2-1.5.
24. The Assessor had the burden of proof and offered Shelton's USPAP-compliant appraisal. Shelton applied a generally recognized appraisal approach—the sales-comparison approach—to estimate the property's market value-in-use as of the relevant valuation date. He identified sales of comparable properties and adjusted the sale prices for

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<sup>4</sup> The definition from the 2021 Real Property Assessment Manual, which applies to assessment dates after December 31, 2020, is the same. *See* 52 IAC 2.4-1-1 (filed November 2, 2020); 50 IAC 2.4-1-2 (filed November 2, 2020); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2

relevant ways in which the properties differed from the subject property. That is precisely the type of evidence the Tax Court contemplates as being probative in an assessment appeal.

25. Carter did little to dispute Shelton's appraisal. At most, he asserted, without any support, that the properties from Shelton's sales-comparison analysis were not sufficiently comparable to the subject property and disagreed with Shelton's decision to assign any value to the subject building's second floor. But Shelton explained why the properties were comparable to the subject property, and he adjusted for relevant differences. While he did not inspect the interior of the buildings, he had photographs from their listings. And he assigned only nominal contributory value to the subject building's second floor. In any event, Carter offered no competing evidence to show that Shelton's estimate of the second floor's value was wrong or what its true contributory value would be.
26. Carter mainly relies on what he characterizes as an unjustified year-over-year increase in the subject property's assessment. For support, he points to the changes to other properties' assessments along 4<sup>th</sup> Street during the same period. But that evidence does little to rebut Shelton's appraisal. Each tax year stands alone, and evidence of a property's assessment in one tax year is not probative of its true tax value in a different year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).
27. In addition, Carter appears to claim a lack of uniformity and equality in assessments. Unlike the issue of valuation, where Ind. Code § 6-1.1-15-17.2 shifted the burden to the Assessor to prove that the assessment was correct, Carter had the burden of proving an actionable lack of uniformity and equality. *See Thorsness v. Porter County Ass'r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (explaining that the predecessor to Ind. Code § 6-1.1-15-17.2 did not apply to claims based on a lack of uniformity and equality).



28. As the Tax Court has explained, “[o]ne way to measure uniformity and equality in property assessment is through an assessment ratio study.” *Id.* at 51. Such a study “compare[s] the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Id.* (citation omitted). Where a ratio study shows an actionable lack of uniformity, a taxpayer may be entitled to an equalization adjustment bringing its assessment to the common level shown by the study. *Id.* In providing guidance about how to compile and evaluate the data necessary for a ratio study, the DLGF has incorporated the International Association of Assessing Officers’ (“IAAO”) Standard on Ratio Studies (July 2007). See 50 IAC 27-1-4 (2010); 50 IAC 27-4-5(a) (2010);<sup>5</sup> see also, *Thorsness*, 3 N.E.2d at 53-54 (citing to predecessor to 50 IAC 27-1-4).
29. In *Thorsness*, the taxpayer offered evidence showing that while his property was assessed at 99.9% of its sale price, six other properties in his subdivision were assessed at an average of 79.5% of their recent sale prices. *Thorsness*, 3 N.E.3d at 50. At the administrative level, we rejected the taxpayer’s claim on grounds that it neither conformed to professionally accepted standards, nor was based on a statistically reliable sample of properties. *Id.* Although the Tax Court recognized that the taxpayer’s evidence was relevant, it affirmed our conclusion that the evidence lacked probative value to show that his assessment exceeded the common level of assessment for the township. *Id.* at 54.
30. Carter did not make an actionable claim for an equalization adjustment based on a lack of uniformity or equality. He did not quantify the adjustment he was seeking, arguing only that some properties were assessed at a lower percentage of their sale prices while others were assessed at a higher percentage. Nor did he show that his analysis complied with

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<sup>5</sup> When assessors performed ratio studies for the 2020 assessment, the DLGF’s rules incorporated the 2007 version of the IAAO standard. In November 2020, the DLGF amended its rules to incorporate the April 2013 version of the IAAO standard. 50 IAC 27-1-4 (filed Nov. 2, 2020); 50 IAC 27-4-5(a) (filed Nov. 2, 2020).

the IAAO Standard or that it was based on a statistically reliable representative sample. Indeed, Carter's approach mirrored that of the Taxpayer in *Thorsness*.

31. In any case, Carter's analysis relied on incorrect data and was methodologically flawed. In several instances, he did not use the actual sale prices for the properties. He instead deducted the portion of those prices that he allocated to the properties' parking areas. He justified his decision on grounds that the subject property does not have any parking.
32. Leaving aside the fact that Carter offered nothing to show how he determined his allocation, he misunderstands the reasons behind examining ratios between assessments and sale prices. Unlike the sales-comparison approach, where the principle of substitution dictates adjusting sale prices to make comparable properties more like the property being appraised, ratio studies test the performance of mass-appraisal systems and models by measuring the common level and uniformity of assessments. *See* 2007 IAAO Standard at parts 1-2.4. Each ratio is self-contained: it compares only that individual property's assessment to its market value, as evidenced by its sale price. Where there is a statistically reliable sample of ratios, assessors (and others) can analyze the overall level and uniformity of mass-appraisal assessments within a jurisdiction.

### **Final Determination**

33. The Assessor met her burden by offering Shelton's USPAP-compliant appraisal. We give Shelton's valuation opinion far more weight than Carter's evidence showing decreases in certain other properties' assessments. And Carter failed to make a prima facie case for an equalization adjustment based on a lack of uniformity and equality in assessments. We therefore find for the Assessor. We decline the Assessor's request to raise the assessment.<sup>6</sup>

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<sup>6</sup> We recognize that the Indiana Supreme Court's recent decision in *Southlake Ind., LLC v. Lake Cnty. Ass'r*, 2021 Ind. LEXIS 590 (Ind. 2021) may have some relevance to this case. As that decision was issued after we heard this appeal, neither party had the opportunity to argue its impact. In addition, neither party submitted a notice of additional authority. We are not permitted to act as an advocate for the parties. *CVS Corp. v. Prince*, 149 N.E.3d 323 (Ind. Tax Ct. 2020) (finding that the Board is "not authorized to ride in on a white horse to save the day" when a party fails to cite to legal authority or make a persuasive argument.) Thus, we resolve this case without regard to the *Southlake* decision.

We issue this Final Determination on the date first written above.

  
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Chairman, Indiana Board of Tax Review

  
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Commissioner, Indiana Board of Tax Review

  
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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>.