

REPRESENTATIVES FOR PETITIONER: Linda Donovan and William Donovan, pro se

REPRESENTATIVE FOR RESPONDENT: Ayn Engle, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

LINDA DONOVAN and WILLIAM)	Petition No.: 10-009-23-1-5-00214-24
DONOVAN ¹ ,)	
)	
Petitioners,)	Parcel No.: 10-19-00-103-683.000-009
)	
v.)	County: Clark
)	
CLARK COUNTY ASSESSOR,)	Assessment Year: 2023
)	
Respondent.)	

February 17, 2025

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. Linda Donovan and William Donovan contested their 2023 assessment. The Assessor had the burden of proof and presented evidence showing that the Donovans purchased the subject property for \$810,000 several months before the relevant valuation date. The Donovans failed to refute the purchase price's validity and also failed to rebut it with any reliable, market-based evidence of their own. They further failed to demonstrate an actionable lack of uniformity and equality in their assessment. We therefore find for the

¹ Because Linda Donovan and William Donovan jointly own the subject property and mutually prosecuted this appeal, we will refer to both as petitioners throughout this Final Determination even though Linda was the only petitioner listed on the Form 131 petition.

Assessor and order the 2023 assessment increased to \$810,000.

PROCEDURAL HISTORY

2. On June 12, 2023, the Donovans filed a Form 130 notice challenging the 2023 assessment of their property located at 1 Riverpointe Plaza, Unit 1104 in Jeffersonville, Indiana. The Clark County Property Tax Assessment Board of Appeals (“PTABOA”) met on February 5, 2024 and issued a Form 115 final determination on February 15, 2024 valuing the subject property at \$700,000 (\$0 for land and \$700,000 for improvements).
3. On March 25, 2024, the Donovans filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On May 23, 2024, we granted the Assessor’s motion to remove the case from small claims, and on June 3, 2024, we granted the Donovans’ motion for an in-person hearing. On June 20, 2024, our designated administrative law judge, David Smith (“ALJ”), held a hearing on the petition. Neither he nor the Board inspected the subject property.
4. Linda Donovan and Ken Surface testified under oath.
5. The Donovans submitted the following exhibits:

Petitioner Ex. P-A:	Summary of Petitioner’s case
Petitioner Ex. P-1:	Indiana Code § 6-1.1-4-4.5
Petitioner Ex. P-2:	2021 REAL PROPERTY ASSESSMENT MANUAL excerpt (page 3)
Petitioner Ex. P-3:	2024 Property Record Card (“PRC”) for subject property
Petitioner Ex. P-4:	2013-2024 assessment history for subject property
Petitioner Ex. P-5:	Data and PRCs for comparable units
Petitioner Ex. P-6:	Historical sales data for Harbours units
Petitioner Ex. P-7:	Examples of assessment inequities
Petitioner Ex. P-8:	Ratio file data and State approval letter for subject property
Petitioner Ex. P-9:	Assessment value comparison sheet for other properties
Petitioner Ex. P-10:	Pictures of largest Harbours unit (1110)
Petitioner Ex. P-11:	Pictures comparing subject property to Unit 1110
Petitioner Ex. P-12:	Appraisal excerpt; Unit 1112 listing history; history of larger unit assessments

6. The Assessor submitted the following exhibits:

Respondent Ex. R-1: 2023 PRC for subject property
Respondent Ex. R-2: August 24, 2022 Sales Disclosure Form ("SDF")
Respondent Ex. R-3: MLS listing for subject property
Respondent Ex. R-4: 2023 PRCs for various other Harbours units

7. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

OBJECTIONS

8. The Assessor made a hearsay objection to Linda Donovan's testimony about what an Assessor's representative said during the PTABOA hearing for the subject property. Our ALJ took the objection under advisement. Our procedural rules allow us to admit hearsay with the caveat that we cannot base our final determination solely on hearsay that has been properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d). We overrule the objection and note that we do not base any part of our determination on the challenged testimony.

FINDINGS OF FACT

9. The subject property is located at 1 Riverpointe Plaza, Unit 1104, Jeffersonville, Indiana. It consists of a residential condo unit built in 1992 and situated on the 11th floor of the Harbours condominium complex. The condo was created when two smaller side-by-side units were combined into a larger unit sometime between 2001 and 2004 when the complex was being converted from apartments into condos. It has 2,812 square feet of finished living area, with a master bedroom, two smaller bedrooms, three full bathrooms, three balconies, and three covered parking spaces. The condo was totally updated by a remodeler in 2005. *L. Donovan testimony; Ex. P-A; Ex. R-2; Ex. R-3.*

10. An MLS listing sheet describes the subject property and its upgrades as follows:

LUXURY PENTHOUSE Condominium with SPECTACULAR views and upgrades/amenities galore. This penthouse is second-to-none and the owner spared no expense in renovating. With polished natural Travertine throughout, 3 bedrooms and 3 full ensuite baths, 2 separate balconies overlooking gorgeous views of the Ohio River & Louisville Skyline, you'll never want to leave home. Custom designed, the unit features top-of-the-line stainless Jen Air Smart Appliances, an induction cooktop, menu board microwave and convection ovens, a reverse osmosis water system, quartz counters, custom cherry cabinetry and a Moag glass wall and backsplash. Love entertaining? The entire unit has a zoned, custom surround sound center and first class wet bar with wine cooler. All new designer plugs and switches and lighting throughout. New Premium zoned high efficiency HVAC units keep guests completely comfortable in the split bedroom layout. Cathedral ceilings and an Open Concept design allow for panoramic views and beautiful sunlight any time of the day. Relax with a glass of wine on any of your 3 balconies and enjoy the river and stunning sunsets and celebrate Thunder Over Louisville in complete style. This penthouse unit comes with 3 premium 1st floor covered parking spots and ALL the amenities of The Harbours including gated entries, fitness center, Indoor & outdoor pools, patio/gazebo/grill areas.

Upgrades inc everything in remarks & MORE: Culligan Water Softening System, 8 ft custom drs, custom lg pane patio drs, new solid surface balcony flrs, new Quartz counters, new fixtures & portrait lighting thru-out, new designer paint & moldings, new Moag Glass shower enclosures, dr hardware including entry, three pantry areas, mechanical/utility closet, extra storage w/ heated/cooled finished attic, custom blinds thru-out, new quartz window sills, upgraded plumbing & electric. \$25,000 sound system thru-out was custom designed by Hawkeye. 2 HVAC systems (\$21,000) include new outdoor units on the roof. Moag Glass walls & backsplashes are in kit & bar. 1 bdrm classified as non-conforming due to no window. Deeded parking 127, 128 & 138.

Ex. R-3 (errors in original).

11. In 2023, the subject property was assessed for \$700,000, an increase of about 72% over its 2022 assessment of \$405,000. *Ex. R-1.*
12. The subject property was originally listed for sale by real estate agents Jeremy L. Ward

and Tamyra Persinger of Ward Realty Services on April 24, 2022 for \$879,000. Its listing price was later reduced to \$829,900. The Donovans used Terri Wedding of Semonin Realtors as their real estate agent, and purchased the subject property on August 24, 2022 for \$810,000, 122 days after it was first listed. *Surface testimony; Ex. R-2, Ex. R-3.*

13. Before the Donovans purchased the subject property, they had considered purchasing Unit 1008 on the 10th floor of the Harbours condominium complex, which was also for sale in 2022. Unit 1008 has about the same square footage as the subject property, but it had not been updated. Based on personal considerations including their age and some unexpected health issues, the Donovans decided to buy Unit 1104 even though it cost them over \$300,000 more than Unit 1008 because they did not believe they could handle a three- to four-month remodel. *L. Donovan testimony; Ex. P-A at 1-3; Ex. R-4 at 15-16.*

14. In support of their argument that the subject property is over-assessed, the Donovans submitted the following:

- Sales and assessment data and the associated PRCs for three condo units in the Harbours condominium complex;
- Historical sales data for five of the Harbours “larger” condo units and sales and assessment data for nine Harbours condo units that sold in 2022;
- Examples of purported inequities in the assessments of “larger” condo units located on the 11th floor of the Harbours condominium complex;
- 2023 ratio study data related to the subject property which reported its total assessed value to be \$558,800 without any reference to a specific assessment date, and a copy of a March 31, 2023 letter from the Department of Local Government Finance approving Clark County’s 2023 ratio study; and
- Assessment data purporting to show the historical over-assessment of “larger” condo units in the Harbours condominium complex.

However, the Donovans did not use any of the data to develop a proposed assessment for the subject property using generally accepted appraisal principles, or to develop an

assessment ratio study prepared according to professionally accepted standards. *L. Donovan testimony; Exs. P-A, P-5, P-6, P-7, P-8, P-12.*

15. The Donovans also submitted four assessment comparison tables in which they calculated assessments for the subject property by adding 15% to the average² 2023 assessment for each specific group of condo units:
- Table 1 contains assessment data for condo units larger than 2,140 SF (including the subject property). That group of units had an average 2023 assessment of \$508,751, resulting in a proposed assessment of \$584,857.
 - Table 2 contains assessment data for condo units with between 2,140 SF and 3,538 SF (excluding the subject property). That group of units had an average 2023 assessment of \$476,666, resulting in a proposed assessment of \$548,166.
 - Table 3 contains assessment data for condo units with between 2,469 SF and 3,538 SF (excluding the subject property). That group of units had an average 2023 assessment of \$528,750, resulting in a proposed assessment of \$608,062.
 - Table 4 contains assessment data for condo units with between 2,469 SF and 2,706 SF (excluding the subject property). That group of units had an average 2023 assessment of \$495,000, resulting in a proposed assessment of \$569,250.

However, there is no evidence demonstrating that the Donovans' method of calculating assessments complies with generally accepted appraisal principles. *L. Donovan testimony; Exs. P-A, P-9.*

CONCLUSIONS OF LAW AND ANALYSIS

A. BURDEN OF PROOF

16. Generally, the 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."

² Although the Donovans' tables purport to show a median assessment for each group of condo units, the values reported in the "Median" column of each table are in fact statistical averages.

Ind. Code § 6-1.1-15-20(a) (effective March 21, 2022).

17. 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.*
18. 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).
19. Here, the 2023 assessment increased by more than 5% over the previous year's assessment. The Assessor agreed that he therefore has the burden of proof. To the extent the Donovans sought to have their assessment adjusted to a level below its true tax value based on a lack of uniformity and equality in assessments, however, they have the burden of proving that they are entitled to that relief. *See Thorsness v. Porter Cty. Ass'n*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (holding that predecessor to Ind. Code § 6-1.1-15-20 did not apply to claims alleging a lack of uniformity and equality).

B. VALUATION STANDARD

20. The Indiana Board of Tax Review is 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 of a property's true tax value "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 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.” 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

22. In order 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.” *P/A 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. Dept. 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).

C. VALUATION EVIDENCE

24. As discussed above, the Assessor has the burden of proof. He presented evidence

establishing that the Donovans purchased the subject property on August 24, 2022 for \$810,000 in a valid, arm's length transaction in which both parties were represented by realtors. And the transaction closed less than five months prior to the relevant valuation date. Because there is no evidence showing a significant change in the market over those intervening months, we find that the sale was sufficiently close to the valuation date for it to be reliable evidence of the subject property's true tax value. We therefore conclude that the Assessor made a case that the subject property's 2023 assessment should be increased to \$810,000.

25. We now turn to the Donovans' evidence to determine whether it was sufficient to rebut the Assessor's case. The Donovans contend that the subject property's 2023 assessment should be \$558,000, but they failed to present any probative market-based evidence to support that value. 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). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674,678 (Ind. Tax Ct. 2006).
26. The Donovans submitted a wide variety of sales and assessment data for other condo units within the Harbours condominium complex. However, they did not use any of their data to develop a proposed assessment for the subject property using generally accepted appraisal principles. Nor did the Donovans demonstrate that the method they used to calculate proposed values in the four assessment comparison tables they presented complies with generally accepted appraisal principles. Thus, their evidence is unreliable.
27. Because the Donovans offered no reliable market-based evidence to demonstrate the subject property's true tax value as of January 1, 2023, they failed to rebut the Assessor's case. Our inquiry would normally end there, and we would simply order the assessment to be increased to \$810,000. However, the Donovans also claimed a lack of uniformity

and equality in the subject property's assessment. If successful on that claim, they might be entitled to have the subject property's assessment adjusted from its true tax value to a level more in line with the common level of assessment. We therefore turn to the merits of the Donovans' uniform and equal claim.

D. UNIFORM AND EQUAL CLAIM

28. The Donovans also argued that the subject property was not receiving a uniform and equal assessment as compared to other condo units in the Harbours condominium complex. Indiana's Property Taxation Clause directs the Legislature to "provide, by law, for a uniform and equal rate of property assessment and taxation" and to "prescribe regulations to secure a just valuation for taxation of all property." IND. CONST. art. X § 1(a); *see also*, *Thorsness* 3 N.E.3d at 51. The Property Taxation Clause, however, does not require "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) (emphasis in original). The Legislature and the DLGF have enacted various statutes and rules designed to comply with the constitutional mandate of uniformity and equality, including statutes that contemplate applying equalization adjustments. *See, e.g.*, I. C. § 6-1.1-13-5 and -6; I.C. § 6-1.1-14-5; 2021 REAL PROPERTY ASSESSMENT MANUAL at 14-15. Those provisions generally offer class-wide relief and do not necessarily give taxpayers the right to seek an individual equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co. of Ind, Inc.*, 820 N.E.2d 1222, 1226 (Ind. 2005) (recognizing that the intent behind Ind. Code § 6-1.1-4-5(a) and related statutes does not appear to authorize an individual equalization adjustment). Nonetheless, the general appeal statute (Ind. Code § 6-1.1-15-1.1) allows an individual taxpayer to "contend that its property taxes were higher than they would have been had other property been properly assessed." *See id.* (referencing predecessor to Ind. Code § 6-1.1-15-1.1).
29. A claim for relief based on a lack of uniformity and equality necessarily hinges on the standards for valuing properties under our State's assessment system. Before the switch

to our current system, true tax value was determined under the State Board of Tax Commissioners' assessment regulations and bore no relation to any external, objectively verifiable measurement standard. *Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 398 (Ind. Tax Ct. 2007). That changed under the new system, which incorporates market value-in-use as its external, objectively verifiable benchmark. The focus shifted from examining how assessment regulations were applied to examining whether a property's assessed value actually reflects that external benchmark. *Id.* at 399. Thus, "the end result—a 'uniform and equal rate' of assessment—is required, but there is no requirement of uniform procedures to arrive at that rate." *Id.* (quoting *State ex. rel. Att'y Gen. v. Lake Superior Ct.*, 820 N.E.2d 1240, 1250 (Ind. 2005) (emphasis in original)).

30. In *Westfield Golf*, the Tax Court explained that one method for proving a lack of uniformity and equality is to present ratio studies, comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id.* at n. 3. See also, 3 N.E.3d at 51. And the DLGF has incorporated into its rules the IAAO's April 2013 Standard on Ratio Studies ("IAAO Standard"). *Id.* at 53-54 (referring to an earlier version of the IAAO Standard); 50 IAC 27-1-4. The taxpayer in *Westfield Golf* lost its uniformity-and equality claim because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Westfield Golf*, 859 N.E.2d at 399.
31. In *Thorsness v. Porter Cty. Ass'r*, the Tax Court rejected a taxpayer's claim for an individual equalization adjustment based on the lack of uniformity in assessments, and in doing so, expanded on its discussion from *Westfield Golf* about the use of ratio studies. *Thorsness*, 3 N.E.3d at 53-54. The taxpayer in *Thorsness* offered evidence showing that while his property was assessed at 99.9% of its sale price, six other properties from his subdivision were assessed at an average of 79.5% of their recent sale prices. *Id.* at 50. At the administrative level, we rejected the taxpayer's claim on grounds that his evidence

neither conformed to professionally accepted standards, nor was based on a statistically reliable sample. *Id.*

32. In reaching its decision, the Tax Court first discussed the 1999 version of the IAAO Standard, which the DLGF had incorporated into its rules for the years under appeal in that case. *Id.* at 53. As is true under the current standard, the 1999 version required valid ratio studies to be based on data that was both appropriately stratified and statistically analyzed. *Id.*; IAAO Standard at 24. Also like the current standard, the 1999 version required statistical measures of assessment accuracy and uniformity to be calculated for the entire taxing district and each stratum therein. *Id.* at 54; *See* IAAO Standard at 9, 24 (discussing stratification), 27-29 (discussing statistical analysis). And the DLGF had declared the coefficient of dispersion as “the yardstick by which uniformity is measured in Indiana’s townships.” *Id.* (citing 50 IAC 14-7-1 (repealed April 8, 2010) and 2002 REAL PROPERTY ASSESSMENT MANUAL at 6).³ The Court explained that while the taxpayer’s evidence was relevant, it did not show that his property was assessed and taxed at a level exceeding the common level of assessment within his township overall. *Id.*

33. Here, the Donovans offered a significant amount of raw sales and assessment data. However, they failed to compute assessment-to-sales price ratios from that data, much less analyze it in the manner contemplated by the IAAO Standard and the DLGF’s rules. Thus, the Donovans’ evidence does not conform to professionally accepted standards for ratio studies and is insufficient to show that they are entitled to an equalization adjustment.

FINAL DETERMINATION

34. The burden of proof has shifted under I.C. § 6-1.1-15-20. The Assessor established that the Donovans’ \$810,000 purchase price was reliable evidence of the subject property’s

³ While those provisions have since been repealed and replaced, analogous provisions may be found in the DLGF’s current rules. *See* 50 IAC 27-4-5(c); 50 IAC 27-10-1(a); 2021 MANUAL at 14-15.

true tax value as of January 1, 2023. The Donovans failed to offer any reliable market-based evidence supporting a different value, and they also failed to prove a lack of uniformity and equality in the assessment. Because the totality of the evidence shows the true tax value of the subject property is \$810,000, we find for the Assessor and order the 2023 assessment increased to that amount.

This 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>>.