

REPRESENTATIVE FOR THE PETITIONER: Julie Gilmour-Penzone, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Julie Gilmour-Penzone,	)	Petition No.:	71-002-22-1-5-00363-23
)		
Petitioner,	)	Parcel No.	71-13-02-251-062.000-002
)		
v.	)	County:	St. Joseph
)		
St. Joseph County Assessor,	)	Township:	Centre
)		
Respondent.	)	Assessment Year:	2022

July ²⁴~~21~~, 2024

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. Julie Gilmour-Penzone appealed the 2022 assessment of her residential property in St. Joseph County. She had the burden of proof but her most probative evidence supported the current assessment. For that reason, we order no change to 2022 assessment.

PROCEDURAL HISTORY

2. The Petitioner appealed the 2022 assessment of her property located at 6819 Lutz Drive in South Bend.

3. On April 28, 2023, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$37,700 for land and \$294,300 for improvements for a total of \$332,000.
4. On April 25, 2024, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Julie Gilmour-Penzone, Appraiser Chris Niedbalski, and St. Joseph County Assessor Michael Castellon all testified under oath.
6. The Petitioner offered the following exhibits:
 - Petitioner Exhibit 1: Subject home blueprints, emails, online property information, introduction to property details, 2023 subject property record card (“PRC”),
 - Petitioner Exhibit 2: 2020 Indiana residential code R303.10 required heating and three main criteria for what makes interior space count as living area,
 - Petitioner Exhibit 3: Basement heating estimate prepared by Service Titan,
 - Petitioner Exhibit 4: Fifteen interior photographs of the subject property,
 - Petitioner Exhibit 5: One interior photograph of the subject property,
 - Petitioner Exhibit 6: 2019 and 2023 subject PRCs, sales history, improvement and land information, surveyor’s map, and Centre Township neighborhood land base rates,
 - Petitioner Exhibit 7: 2023 subject PRC, Building Department public record request form, three notice of permit construction forms and two photographs of subject pool,
 - Petitioner Exhibit 8: Zillow listings, tax statements, parcel information and PRCS for comparables.
 - Petitioner Exhibit 9: Zillow listings,
 - Petitioner Exhibit 10: Appraisal report of the subject property prepared by Kathleen Kennedy of Accurate Group, LLC and other valuation documents,
 - Petitioner Exhibit 11: Real estate market report for zip code 46614 and seven pool and concrete apron photographs.

7. The Respondent offered the following exhibits¹:

- Respondent Exhibit 2: Petition for Review of Assessment Before the Indiana Board of Tax Review – Form 131,
- Respondent Exhibit 3: Notification of Final Assessment Determination – Form 115,
- Respondent Exhibit 4: PTABOA minutes dated April 18, 2023,
- Respondent Exhibit 5: Notice of Hearing on Petition – Real Property – Form 114,
- Respondent Exhibit 6: Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134,
- Respondent Exhibit 7: Taxpayer’s Notice to Initiate an Appeal – Form 130,
- Respondent Exhibit 8: 2022 subject PRC,
- Respondent Exhibit 9: Subject property’s valuation history and memo list from Proval,
- Respondent Exhibit 10: Department of Local Government Finance (“DLGF”) memorandum “Updated Location Cost Modifiers for the 2022 Annual Adjustment,”
- Respondent Exhibit 11: DLGF “2022 Location Cost Multipliers Difference,”
- Respondent Exhibit 12: DLGF memorandum “Updated Cost Information,”
- Respondent Exhibit 13: Real Property Assessment Guidelines – Appendix C,
- Respondent Exhibit 14: 2023 subject PRC.²

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.³

FINDINGS OF FACT

9. The subject property is a one-story frame home with a free-standing patio, in-ground pool and utility shed located on 0.27 acres in South Bend. *Resp’t Exs. 8 & 14.*

¹At the beginning of the hearing, the Petitioner stated that she did not receive the Assessor’s exhibits five days before the hearing. But when the Assessor offered the exhibits into evidence, the Petitioner stated she had no objections. Thus, we admit the exhibits into evidence.

² Respondent’s Exhibit 1, an appraisal report prepared by Chris Niedbalski, was submitted but not offered into evidence.

³The Assessor called appraiser Chris Niedbalski to testify at the hearing. During the course of the testimony, it became apparent that the appraisal report that had been submitted to the Board was a different version of the report than the one Niedbalski was testifying about. For that reason, the Assessor “withdrew” Niedbalski’s testimony. The Petitioner did not object. We interpret this as an unopposed motion to strike Niedbalski’s testimony, which we grant.

10. Gilmour-Penzone purchased the subject property on December 29, 2021, for \$332,000. *Castellon testimony; Resp't Ex. 14.*
11. The Petitioner presented an appraisal prepared by Kathleen Kennedy of Accurate Group LLC that estimated the market value of the subject property as of February 25, 2023. Kennedy certified that her appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). To arrive at her opinion of value, Kennedy developed the sales-comparison approach. She concluded to a value of \$335,000. *Gilmour-Penzone testimony; Pet'r Ex. 10.*
12. The 2022 assessment under appeal of \$332,000 was a decrease from the 2021 assessment of \$333,400.

PETITIONER'S CONTENTIONS

13. The Petitioner argued that the gross living area listed on the property record card of 3,225 sq. ft. was incorrect because the blueprints show only 3,070 sq. ft.⁴ She also argued that only 256 sq. ft. of the 1,365 sq. ft. basement was habitable because the remainder had no heat or air conditioning. *Gilmour-Penzone testimony; Pet'r Exs. 1-5.*
14. In addition, the Petitioner alleged there were several other errors in the assessment including classifying the land as farmland instead of residential, not enough depreciation as compared to other properties in the same zip code, an incorrect effective age, and an incorrect listing of a "complete remodel" when the home had not been remodeled. She also testified that the pool was not functional because of cracks. Furthermore, she claimed the home had three bedrooms instead of the four listed on the property record card because one of the bedrooms was uninhabitable. Based on these factors, she

⁴ The Petitioner's blueprints show the 1st floor as 1,928 sq. ft. and the basement as 1,157 sq. ft., for a total area of 3,085 sq. ft. *Pet'r Ex. 1.*

requested an assessment of \$310,000 for the subject property. *Gilmour-Penzone testimony; Pet'r Exs. 6, 7 & 11.*

15. The Petitioner also offered evidence of reportedly comparable properties that she claimed demonstrated what fair and equitable taxes and assessments would be. *Gilmour-Penzone testimony; Pet'r Exs. 8 & 9.*

RESPONDENT'S CONTENTIONS

16. The Assessor testified that in 2022 the county conducted a comprehensive land study, which resulted in an increase in land values. *Castellon testimony.*
17. In addition, the Assessor noted that the gross living area in the assessment was calculated using measurements of outside walls. He also testified that while the subject land was classified as agricultural, it was receiving the residential base rate. *Castellon testimony.*

BURDEN OF PROOF

18. Generally, the taxpayer has the burden of proof when challenging a property 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." Indiana Code § 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." Ind. Code § 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.*
20. 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).

21. Here, the current assessment \$332,000 is not an increase of more than 5% over the previous assessment of \$333,400. Thus, the Petitioner has the burden of proof.

ANALYSIS

22. The Indiana Board of Tax Review is the trier of fact in property tax appeals, and its 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 it." I.C. § 6-1.1-15-20(f). The Board's 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).
23. 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, true tax value is found 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.
24. In order to meet its burden of proof, a party "must present objectively verifiable, market-based evidence" of the value of the property. *Piotrowski v. Shelby Cty. Assessor*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Assessor*, 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 County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). This is because the "formalistic application of

the Guidelines' procedures and schedules" lacks the market-based evidence necessary to establish the market value-in-use of a specific property. *Piotrowski*, 177 N.E.3d at 133.

25. 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. Assessor*, 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).
26. As discussed above, the Petitioner primarily argued there were errors in the assessment such as incorrect depreciation, square footage, bedroom count, a listing of a remodel, and effective age. The Petitioner did not measure and did not specify which measurements from the blueprints should be corrected on the property record card. Likewise, it is unclear how the Petitioner arrived at her calculation of the finished basement. For the pool, although the Petitioner testified it was not functional due to cracks, she did nothing to quantify the effect that had on the overall value of the property. As for the farmland, we note that the land is already receiving a residential base rate. Regardless, it is insufficient to simply attack the methodology used to develop the assessment. Instead, parties must use market-based evidence to "demonstrate that the suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
27. The Petitioner did offer some market-based evidence in the form of an appraisal. But that appraisal valued the subject property at \$335,000 as of February 23, 2023. All evidence must be affirmatively related to the relevant valuation date. *Nova Tube Ind. II LLC v. Clark Cty. Assessor*, 101 N.E.3d 887, 895 (Ind. Tax Ct. 2018). Failure to do so renders that evidence insufficient to establish a *prima facie* case that the assessment is

incorrect. *Id.* The valuation date for this appeal is January 1, 2022, over a year prior to the effective date of the appraisal. Thus, it is insufficient to support any change in value for the 2022 assessment year. We also note that it values the subject property higher than the current assessment.

28. In addition to the appraisal, the Petitioner also presented some information regarding purportedly comparable properties. But conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). Rather, a party seeking to use sales or assessment comparables must identify the characteristics of the subject property, explain how those characteristics compare to the characteristics of the purportedly comparable properties, and explain how any differences affect the relative market values-in-use of the properties. *Id.* at 471. The Petitioner did not identify the differences between the purportedly comparable properties and the subject, nor did she explain how the relevant differences affected their respective values. Without such analysis, this evidence is insufficient to support any value. Nor did the Petitioner present any other evidence that reliably indicated a value for the subject property as of January 1, 2022. We also note that the evidence in the record most closely related to the valuation date, the Petitioner’s December 29, 2021, purchase of the subject property for \$332,000, supports the current assessment.
29. Finally, it appears the Petitioner may have been challenging the uniformity and equality of the assessment as compared to the other purportedly comparable properties she presented. 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)). But the Petitioner did not demonstrate she provided a statistically reliable sample of properties, nor did she present reliable market data showing the value of the subject property as of the assessment date. For these reasons, she failed to make a prima facie case showing a lack of uniformity and equality in the assessment.

30. We find the Petitioner has failed to make a case for any decrease in the assessment. Because the Petitioner has not supported her 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).

SUMMARY OF FINAL DETERMINATION

31. In accordance with the above findings and conclusions, we order no change to the 2022 assessment.

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>>.