INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: **57-011-17-1-5-02243-17**
Petitioner: **Holly L. Goneau**
Respondent: **Noble County Assessor**
Parcel: **57-04-16-100-426.000-011**
Assessment Year: **2017**

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated her 2017 assessment appeal by filing an undated Notice to Initiate an Appeal (Form 130) with the Noble County Assessor.

2. On December 13, 2017, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.

3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.

4. The Board issued a notice of hearing on April 6, 2018.

5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on May 31, 2018. He did not inspect the property.

6. Petitioner Holly L. Goneau and Assessor Kim Carson appeared *pro se*. Gavin Fisher and Dawn J. O'Connor were witnesses.[1] All of them were sworn.

Facts

7. The property under appeal is a vacant lot located at 115 Sylvan Point in Rome City.

8. The PTABOA determined a total land assessment of $135,800.

9. On her Form 131, the Petitioner requested a total land assessment of $93,320.

[1] At the hearing, both Mr. Fisher and Ms. O'Connor participated as if they were representatives for their respective parties. While neither side objected, Mr. Fisher and Ms. O'Connor both should have submitted written verification they are an "authorized representative" as defined by 52 IAC 2-2-4. Because they did not, and both the Petitioner and the Respondent were properly represented pursuant to 52 IAC 2-2-4, the Board will view Mr. Fisher's and Ms. O'Connor's roles as that of witnesses.

Record

10. The official record for this matter is made up of the following:

a) A digital recording of the hearing,

b) Exhibits:

Petitioner Exhibit 1:	Aerial map indicating land assessments for neighboring properties,
Petitioner Exhibit 2:	Property record cards for "Market Model 102-150 Sylvan Point,"
Petitioner Exhibit 3:	Petitioner's written proposal presented at the PTABOA hearing,
Petitioner Exhibit 4:	Property data for "Market Model 102-150 Sylvan Point,"
Petitioner Exhibit 5:	Line graph indicating "assessed land value per total linear feet of lake frontage,"
Petitioner Exhibit 6:	Line graph indicating "assessed land value per one linear foot of frontage,"
Petitioner Exhibit 7:	Spreadsheet listing eight land sales for Sylvan Lake,
Petitioner Exhibit 8:	Bar graph listing eight sale prices and lot sizes,
Petitioner Exhibit 9:	Line graph of sales data,
Petitioner Exhibit 10:	Line graph of assessed values based on acreage for "Market Model 102-150 Sylvan Point,"
Petitioner Exhibit 11:	Line graph of assessed values based on acreage, removing Parcel 105, for "Market Model 102-150 Sylvan Point,"
Petitioner Exhibit 12:	Bar graph of vacant land sales for "Market Model 102-150 Sylvan Point,"
Petitioner Exhibit 13:	Document entitled "Parrish 110 Sylvan Point Price History" dated May 9, 2018, and signed by Rick Parrish,
Petitioner Exhibit 14:	Bar graph comparing assessed land values to sales prices for "Market Model 102-150 Sylvan Point,"
Petitioner Exhibit 15:	Bar graph comparing annual assessed land value changes for "Market Model 102-150 Sylvan Point,"
Petitioner Exhibit 16:	Line graph comparing acreage, frontage, and assessed land values for "Market Model 102-150 Sylvan Point,"
Petitioner Exhibit 17:	Two photographs of Sylvan Lake,
Petitioner Exhibit 18:	2018 Notice of Assessment of Land and Structures (Form 11),
Petitioner Exhibit 19:	Petitioner's "Conclusions,"
Petitioner Exhibit 20:	Aerial photograph of the subject property.
Respondent Exhibit 1:	"Vacant or 'tear-down' land sales analysis,"
Respondent Exhibit 2:	Subject property record card,

Respondent Exhibit 3:	"Analysis of the Petitioner's evidence,"
Respondent Exhibit 4:	2017 Notification of Final Assessment Determination (Form 115) and PTABOA notes.

c) 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 our ALJ; and (3) these findings and conclusions.

Contentions

11. Summary of the Petitioner's case:

a) The property's assessment is too high. The property was purchased in 2003 for $84,000, and the assessment has steadily increased every year. According to several regression analyses, the assessment is unfair and inequitable when compared to the assessments of surrounding properties. *O'Connor argument; Pet'r Ex. 1, 2, 3, 5, 6, 10, 11, 19.*

b) In support of her position, the Petitioner offered a number of analyses completed by Dawn O'Connor. While the Respondent assessed the subject property using the acreage method, Ms. O'Connor concluded that "acreage is not a good indicator, and that a better indicator of value is linear feet of lake frontage." *O'Connor argument; Pet'r Ex. 8, 9, 10, 11.*

c) Ms. O'Connor prepared two different line graphs to derive an accurate value for the subject property. In her first analysis, she plotted assessed land value per total linear feet of lake frontage. She plotted the subject property (Lot 115), along with Lots 102, 105, 110, 120, 125, 130, 135, 140, and 145. Together these lots constitute "market model 102-150 Sylvan Point," and according to Ms. O'Connor this is "a market model that's presented on the property record card." According to this graph, the subject property's assessment is a "definite outlier." This analysis yielded a value of $105,437 for the subject property. *O'Connor testimony; Pet'r Ex. 5.*

d) Ms. O'Connor's second analysis focused on assessed value per one linear foot of frontage, and she concluded this was "an even better indicator of value." This analysis utilized the same lots, but resulted in a "much tighter fit" to the regression line and therefore a "lower r-squared value." Again, this graph illustrates the subject property is an "obvious outlier." This analysis yielded a value of $93,320 for the subject property. Accordingly, the subject property's assessment should be lowered to this value. *O'Connor testimony; Pet'r Ex. 6.*

e) Only one lot on Bliss Point has recently sold. Lot 110 sold on April 8, 2016, for $160,000. Prior to the 2016 sale, this lot was purchased in 2005 for $135,000. The only "improvement" made to this lot was the construction of a concreate seawall for "just over $24,000." Ms. O'Connor surmised the construction of the seawall was "the

only increase in the property's value." In 2017, this lot was assessed at $120,800. *O'Connor testimony; Pet'r Ex. 2, 12, 13, 14.*

f) Other lots on the "better, north facing side" of Bliss Point, are similarly under-assessed. For example, Lot 102 was purchased for "maybe $118,000" and "it has been assessed at under $85,000 for three years in a row, and just crest at $85,000 in 2017."[2] *O'Connor testimony; Pet'r Ex. 2, 14, 15, 16, 17.*

12. Summary of the Respondent's case:

a) The property is correctly assessed. In support of the current assessment, licensed residential appraiser Gavin Fisher offered a list of seven sales in a "vacant and tear-down land sales analysis." *Fisher testimony; Resp't Ex. 1.*

b) In examining the sales, Mr. Fisher determined that "the front-foot method" is the most reliable in valuing the property, even though the Respondent had valued it using a base rate of $350,000 per acre. While he listed seven sales in his analysis, he placed the most weight on three sales that occurred in 2015 and 2016:

Parcel	Date of sale	Sale price	FF	Value/FF
57-04-16-100-421.000-011	4/8/2016	$160,000	81	$1,975
57-04-15-300-064.000-011	11/17/2016	$110,000	46	$2,391
57-04-23-400-087.000-011	12/1/2015	$125,000	44	$2,841

Fisher testimony; Resp't Ex. 1.

c) Mr. Fisher testified that had he completed a full appraisal utilizing the sales-comparison approach, the adjustment "grid would look empty" because the comparable properties are "so similar to the subject." Overall, these properties are similar in frontage, size, buildability, and view.[3] All three of these properties would be considered "directly substitute properties in an open market transaction." *Fisher testimony; Resp't Ex. 1.*

d) Based on his analysis, Mr. Fisher concluded that the subject property should be valued at $2,500 per front foot, or $140,000. Although the current assessment is only $135,800, the Respondent is not requesting an increase. *Fisher testimony; Resp't Ex. 1, 2.*

e) The Petitioner's argument is flawed. Ms. O'Connor "appeared to admit" at the PTABOA hearing the subject property is "worth more than its taxable value." Additionally, there are "substantial limitations" to the applicability of the Petitioner's

[2] According to the property record card, this lot was purchased in 2005 for $119,000. Additionally, this lot was assessed at $86,600 in 2017. *Pet'r Ex. 2.*

[3] Mr. Fisher did testify that while one comparable property had 81 feet of frontage compared to the subject property's 56 feet of frontage, adjustments for diminishing marginal utility are not necessary until "you get over between 90 and 100 feet of frontage." *Fisher testimony.*

linear regression analyses. Specifically, the purportedly comparable properties are not interchangeable because some are improved. Further, while all the properties are assessed utilizing the $350,000 per acre base rate, many have negative influences that the Petitioner failed to account for. For example, several are irregularly shaped and some have "buildability restrictions." *Fisher argument (referencing Pet'r Ex. 3, 5, 6).*

Burden of Proof

13. 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 amended by P.L. 97-2014 creates two exceptions to that rule.

14. 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 tax 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 to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

15. 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 was effective March 25, 2014, and has application to all appeals pending before the Board.

16. Here, the parties agree the total assessed value of the property increased by more than 5% from 2016 to 2017. In fact, the total assessment increased from $118,800 in 2016 to $135,800 in 2017. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the Respondent has the burden to prove the 2017 assessment is correct. To the extent the Petitioner requests an assessment below the 2016 level of $118,800; she has the burden to prove that lower value.

Analysis

17. The Respondent failed to make a prima facie case that the 2017 assessment is correct.

    a) Real property is assessed based on its market value-in-use. 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. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate 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.

b) Regardless of the method used, a party must explain how the 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 a 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.

c) The Respondent had the burden of proof in this case. In order to prove her case, she offered a sales-comparison analysis prepared by licensed residential appraiser Gavin Fisher. In his analysis, Mr. Fisher examined seven sales, but focuses mainly on three properties that sold close to the relevant valuation date. Based on his analysis, Mr. Fisher concluded the property's value to be $140,000, supporting the current assessment.

d) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

e) Mr. Fisher testified he compared many characteristics of the properties utilized in his analysis. While he did not expressly assert he complied with the Uniform Standards of Professional Appraisal Practice (USPAP), he did testify as to what his adjustment grid would look like if he had completed "a full appraisal." He concluded "the grid would look empty in that appraisal" because the comparable properties were "so similar to the subject" in every respect that they would "be considered directly substitute properties in an open market transaction." Thus, Mr. Fisher testified that he compared the properties but concluded no adjustments were warranted to account for differences.

f) The Board is troubled with Mr. Fisher's conclusory statements that the purportedly comparable properties he examined are in fact comparable. For example, Mr. Fisher stated the properties he examined are "so similar" to the subject property, but he failed to show how they were similar. Mr. Fisher failed to provide anything other than his testimony to support this statement. Additionally, Mr. Fisher failed to present any documentary evidence indicating where his purportedly comparable

properties are located. While Mr. Fisher argued the properties he utilized could be considered "directly substitute properties" he also concluded the Petitioner's evidence was flawed because her properties were *not* direct substitutes. The problem with this argument is that both the Petitioner and the Respondent relied on Parcel 57-04-16-100-421.000-011. The Board recognizes that Mr. Fisher is a licensed appraiser. But here, Mr. Fisher did not complete a USPAP compliant appraisal, and instead based his opinion of value solely on conclusory statements. For these reasons, the Board finds Mr. Fisher's evidence to lack probative value. Consequently, the Respondent failed to make a prima facie case that the 2017 assessment is correct. Therefore the Petitioner is entitled to have her assessment returned to its 2016 value of $118,800. The Board's inquiry does not end here because the Petitioner requested a lower value. The Board now turns to the Petitioner's evidence.

g) The Petitioner argued her assessment is not fair and equitable in comparison to the other parcels on Bliss Point. In essence, she applied the "assessment-comparison" approach, using linear algebra, in an attempt to prove a more accurate value. Parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1).

h) The determination of whether the properties are comparable using the assessment-comparison approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales- comparison approach. *Id.*; *see also Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value).

i) While the purportedly comparable properties the Petitioner selected are similarly located, there are clear differences in the shapes and sizes of the properties. Additionally, some of the properties include improvements. Therefore, some adjustments to account for differences would be required for a direct comparison using linear regression. The type of analysis and related adjustments required for a probative comparison are lacking.

j) The Petitioner explicitly raised the issue of a lack of uniformity and equality in assessments. 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. Ass'r,* 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. *See 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. *See 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)).

k) When a ratio study shows that a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.,* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness v. Porter Co. Ass'r,* 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs,* 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "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).

l) Similar to the taxpayer in *Westfield Golf*, the Petitioner's argument is flawed. Here, the Petitioner failed to explain how her purportedly comparable properties are sufficient to draw any meaningful inference about the uniformity or equality of assessments within an assessing jurisdiction. The only market based evidence the Petitioner relied on was the April 8, 2016, sale of parcel 57-04-16-100-421-000-001. However, the only information provided regarding this property was a sales price, testimony regarding a "seawall," and the property's 2017 assessment. The Petitioner failed to provide any other objectively verifiable data, such as a market value-in-use appraisal. Instead, the Petitioner wanted the Respondent to use the same methodology to assess the subject property as used to assess the purportedly comparable properties. The Tax Court has rejected that type of claim. *See Westfield Golf,* 859 N.E.2d at 398-399 (rejecting taxpayer's uniformity and equality claim where taxpayer argued that its golf-ball landing area was assessed using a different base rate than the base rates used to assess landing areas at other driving ranges). For these reasons, the Petitioner failed to make a prima facie case showing a lack of uniformity and equality in assessments. Ultimately, the Petitioner failed to make a case that the assessment should be reduced below the 2016 level of $118,800.

Conclusion

18. The Respondent had the burden of proving the 2017 assessment was correct. For the reasons stated above, the Respondent failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioner sought an assessment lower than the 2016 level but likewise failed to make a prima facie case. Thus, the Board orders the subject property's 2017 assessment be reduced to the 2016 value of $118,800.

Final Determination

In accordance with these findings and conclusions, the 2017 assessment must be changed to $118,800.

ISSUED: August 29, 2018

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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>.