

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

**Petition No.:** 06-019-18-1-5-01257-18  
**Petitioner:** Bertram Anthony Graves  
**Respondent:** Boone County Assessor  
**Parcel No.:** 019-10340-65  
**Assessment Year:** 2018

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 his 2018 assessment appeal with the Boone County Assessor on June 25, 2018.
2. On October 3, 2018, the Boone County Property Tax Assessment Board of Appeals (PTABOA) issued a Notification of Final Assessment Determination (Form 115) lowering the assessment, but not to the level requested by the Petitioner.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.<sup>1</sup>
4. On July 30, 2020, Dalene McMillen, the Board's Administrative Law Judge (ALJ) held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.
5. Bertram Anthony Graves appeared *pro se* via telephone. County Assessor Lisa Garoffolo appeared for the Respondent via telephone.<sup>2</sup> Both were sworn and testified.

**Facts**

6. The property under appeal is a single-family home located at 4404 Riverbirch Run in Zionsville.
7. The PTABOA determined a 2018 total assessment of \$500,000 (land \$74,400 and improvements \$425,600).

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<sup>1</sup> The appeal was scheduled to be heard according to the Board's small claims procedures, and neither party opted out.

<sup>2</sup> Peggy Lewis was also on the call but was not sworn to testify.

8. At the hearing, the Petitioner requested a total assessment of \$468,384.

### **Record**

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

a) A digital recording of the hearing.

b) Exhibits:

- Petitioner Exhibit 1: Sales comparison analysis,
- Petitioner Exhibit 2: Sales comparison locational map,
- Petitioner Exhibit 3: Property record card and photograph for 4232 Riverbirch Run,
- Petitioner Exhibit 4: Property record card for 4287 Riverbirch Run,
- Petitioner Exhibit 5: Property record card for 4324 Riverbirch Run,
- Petitioner Exhibit 6: Property record card and photograph for 4415 Riverbirch Run,
- Petitioner Exhibit 7: Property record card and photograph for 4478 Riverbirch Run,
- Petitioner Exhibit 8: Property record card and photograph for 11874 Creekstone Way,
- Petitioner Exhibit 9: Property record card and photograph for 4990 Austin Trace,
- Petitioner Exhibit 10: Property record card and photograph for 11994 Creekstone Way,
- Petitioner Exhibit 11: Property record card and photograph for 4697 Ridgewood Drive,
- Petitioner Exhibit 12: Property record card and photograph for 11857 Arborhill Drive.
  
- Respondent Exhibit 1: Letter from Petitioner to Boone County Assessor dated June 25, 2018,
- Respondent Exhibit 2: Boone County Appeal Worksheet,
- Respondent Exhibit 3: Notice of Preliminary Hearing on Appeal dated July 2, 2018,
- Respondent Exhibit 4: 2018 subject property record card,
- Respondent Exhibit 5: Sales comparison analysis for Summerglen in Austin Oaks and multiple listing sheet for 4232 Riverbirch Run,
- Respondent Exhibit 6: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134) dated August 30, 2018,

- Respondent Exhibit 7: Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) (Form 114) dated August 31, 2018,
- Respondent Exhibit 8: Letter from Petitioner to Boone County Assessor dated September 14, 2018,
- Respondent Exhibit 9: Letter from Boone County Assessor to Petitioner dated September 24, 2018,
- Respondent Exhibit 10: Form 115,
- Respondent Exhibit 11: Form 131,
- Respondent Exhibit 12: Indiana Board of Tax Review Notice of Hearing on Petition dated December 20, 2019,
- Respondent Exhibit 13: Sixty-one (61) various photographs.

- 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 ALJ; and (3) these findings and conclusions.

### **Contentions**

#### 10. Summary of the Petitioner's case:

- a) The subject property is over-assessed. Based on 2017 sale prices of other homes in the Austin Oaks neighborhood, and the Petitioner's own calculation of price per square foot, the 2018 assessment should be reduced to \$468,384. *Graves argument; Pet'r Ex. 1.*
- b) To support his value conclusion, Mr. Graves examined the sale prices of ten comparable homes that sold between May 9, 2017, and November 7, 2017. The comparable properties sold from \$423,500 to \$680,000. In his sales comparison analysis Mr. Graves listed the land size, year built, number of bedrooms, bathrooms, fireplaces, garage size, basement area finished and unfinished. He then calculated the average price per square foot using the living area of the first floor, second floor, and attic areas. A second calculation was also performed, including the first floor, second floor, and basement area price per square foot.<sup>3</sup> For example, the property located at 4232 Riverbirch Run has a first and second floor living area of 4,454 square feet with a price per square foot of \$152. When the basement area is added, the total living area is 6,432 square feet with a price per square foot of \$105. *Graves testimony; Pet'r Ex. 1.*
- c) Based on his first calculation, the average price per square foot equated to \$137.76. Based on his second calculation, the average price per square foot was \$100.05.

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<sup>3</sup> It appears the Petitioner did not perform a calculation including the basement area for the property located at 4284 Riverbirch Run. *See Pet'r Ex. 1.*

When the average of all the “figures” were calculated it equated to a price per square foot of \$119.08. Selecting the highest average price per square foot of \$137.76, the subject property should be valued at \$468,384.<sup>4</sup> *Graves testimony; Pet’r. Ex 1.*

- d) To further illustrate his calculated average price per square foot of \$137.76 is higher than the 2017 market, he pointed to the “real estate directory.” This directory indicates the property located at 4232 Riverbirch Run has a total living area of 6,126 square feet with a price per square foot of \$111. A second property located at 4415 Riverbirch Run has a total living area of 5,097 square feet with a price per square foot of \$112. *Graves testimony; Pet’r Ex. 1, 3, 6.*
- e) Finally, Mr. Graves testified regarding the property located at 4478 Riverbirch Run. This four bedroom, four and a half bath, 5,585 square feet of living area home was built in 1998. The property sold on November 7, 2017, for \$515,000. While the subject property has 3,400 square feet of living area and was built in 1998 it is currently assessed at \$500,000. This demonstrates the subject property is inaccurately assessed. *Graves testimony; Pet’r Ex. 7.*

11. Summary of the Respondent’s case:

- a) The subject property is correctly assessed. To support this argument, the Respondent relied on a sales comparison analysis of eight sales. Based on the 2017 sale prices, the comparable properties sold for \$148 per square foot above grade. When the “CMA” is applied to the subject property’s 3,400 square feet it yields a value of \$503,200, a value slightly higher than the current assessment. With that being said, the Respondent requests the assessment to remain at \$500,000. *Garoffolo testimony; Resp’t Ex. 2, 4, 5.*

### **Burden of Proof**

- 12. 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 creates two exceptions to that rule.
- 13. 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

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<sup>4</sup> This calculation was based on the first and second floor square footage of 3,400 multiplied by \$137.76. The Petitioner did not perform a calculation including the basement area of 1,533 square feet. *See Pet’r Ex. 1.*

correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

14. 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).
15. Here, according to the subject property record card and Form 115, the total assessment increased from \$498,300 in 2017 to \$500,000 in 2018, an increase of less than 5%. The Petitioner failed to offer any argument the burden should shift to the Respondent. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

### **Analysis**

16. The Petitioner failed to make a prima facie case for reducing the assessment.
  - 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 property 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. *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 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.
  - c) As discussed above, the burden remains with the Petitioner. In support of his argument that the property is over-assessed, the Petitioner prepared what amounts to a price per square foot analysis. More specifically, he relied on ten sales within the subject property’s neighborhood. In making this argument, the Petitioner is essentially relying on a sales-comparison approach to establish the assessment should

- be lowered. *See* MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property’s total value.”); *see also, Long*, 821 N.E.2d 466, 469.
- d) To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *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) Here, the type of analysis required is lacking from the Petitioner’s case. While the Petitioner pointed to ten properties near the subject property, he failed to offer sufficient evidence relating their specific features and amenities to the subject property. More importantly, the Petitioner made no attempt to make adjustments for any relevant differences between the properties. The Petitioner’s evidentiary presentation therefore falls short of providing the level of analysis contemplated by *Long*.
  - f) Additionally, the Petitioner failed to offer any evidence that submitting sale prices and computing a price per square foot comports with generally accepted appraisal principles. Thus, the Petitioner’s analysis lacks probative value.
  - g) Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lay Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

17. The Petitioner failed to make a prima facie case for reducing the 2018 assessment. The Board finds in favor of the Respondent.

## Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2018 assessment.

ISSUED: October , 2020

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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 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>>.