

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

**Petition:** 10-027-18-1-1-01303-18  
**Petitioner:** Anita Sue Guthrie  
**Respondent:** Clark County Assessor  
**Parcel:** 10-06-25-500-164.000-027  
**Assessment Year:** 2018

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Anita Sue Guthrie contested the 2018 assessment of her property located at 5001 Pleasant Drive in Henryville, Indiana 47126. On November 1, 2018, the Clark County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination valuing the subject property at \$334,600 for 2018. Guthrie timely filed her Form 131 appeal with the Board.
2. On May 15, 2019, David Smith, our designated Administrative Law Judge (“ALJ”), held a hearing on the petition. Neither he nor the Board inspected the subject property.
3. Certified tax representative Milo Smith represented Guthrie. Attorney Ayn Engle represented the Assessor. Smith, Leroy Guthrie, and Ken Surface, senior vice president of Nexus Group, were sworn as witnesses.

**RECORD**

4. The official record contains the following exhibits submitted by the parties:

Petitioner Exhibit 1:	Property Record Card (“PRC”) for subject property
Petitioner Exhibit 2:	Copy of 50 IAC § 27-1 et seq.
Petitioner Exhibit 3:	Spreadsheet and PRCs for sales in subject neighborhood
Petitioner Exhibit 4:	Summary of neighborhood properties
Petitioner Exhibit 5:	Requested assessment
Respondent Exhibit A:	Form 134 Joint Report
Respondent Exhibit B:	Form 130 (Short) Notice to Initiate Appeal
Respondent Exhibit C:	Form 130 Taxpayer’s Notice to Initiate Appeal
Respondent Exhibit D:	Form 115 Notice

Respondent Exhibit E:	Form 131 Petition for Review
Respondent Exhibit F:	PRC for 5001 Pleasant Drive
Respondent Exhibit G:	Sketch of subject property
Respondent Exhibit H:	Construction permits
Respondent Exhibit I:	Pictures of subject property
Respondent Exhibit J:	Satellite image of subject property
Respondent Exhibit K:	Power of Attorney
Respondent Exhibit L:	Neighborhood analysis
Respondent Exhibit M:	PRCs for neighborhood analysis
Respondent Exhibit N:	Appendix B, Indiana Real Property Assessment Guidelines
Respondent Exhibit O:	PRCs for some properties in Petitioner's Exhibit 3
Respondent Exhibit P:	Sales Disclosure Forms and PRCs for some properties in Petitioner's Exhibit 3
Respondent Exhibit Q:	Assorted PRCs

5. The official record for this matter includes the following: (1) all pleadings 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**

6. Guthrie objected to the admission of Respondent Exhibits P and Q because the Assessor failed to provide them five days prior to hearing. If requested at least ten business days prior to hearing, our small claims procedural rules require parties to exchange copies of documentary evidence at least five business days before a hearing. 52 IAC 3-1-5(d). This requirement allows parties to be better informed and to avoid surprises. It also promotes an organized, efficient, and fair consideration of the issues. The Board may exclude evidence or testimony based on a party's failure to comply with a timely exchange request. 52 IAC 3-1-5(f). Here, however, there is no indication that Guthrie timely requested an exchange of evidence. Consequently, we overrule the objection.
7. Guthrie also objected to Respondent Exhibits P and Q based on relevance. Because the PRCs are for the properties Guthrie included in her exhibits, we find them relevant and overrule the objection.
8. Additionally, Guthrie objected to the Assessor's claim during his closing argument that Guthrie was challenging the Assessor's methodology. However, Guthrie offered no legal basis for her objection and we find nothing improper about the Assessor's argument. We therefore overrule the objection.
9. The Assessor objected to Leroy Guthrie's testimony regarding the value of his former home based on relevance. Our ALJ took the objection under advisement. Because we find the information to be at least marginally relevant to the ultimate valuation question, we overrule the objection.

10. The Assessor also objected to the PRCs included in Petitioner's Exhibits 3 and 4 because Guthrie failed to exchange them before the hearing. But, as with Guthrie's objection based on the failure to exchange, there is no indication that the Assessor timely requested an exchange of evidence. Consequently, we overrule the objection.
11. We also overrule the Assessor's objection to the admission of the PRCs included in Petitioner's Exhibits 3 and 4 because he was unsure whether the PRCs were true and accurate copies. Parties to small claims proceedings before us are not bound by the rules of evidence except for provisions relating to privileged communications and offers of settlement. 52 IAC 3-1-5(2). Furthermore, the PRCs are public records maintained by the Assessor's Office. The Assessor was therefore in the best position to determine whether the copies offered by Guthrie were accurate. Yet, the Assessor never raised a genuine question about their accuracy.<sup>1</sup>
12. Finally, the Assessor objected to Guthrie's argument regarding 50 IAC 27-5-6, arguing that Smith was making a legal argument that was beyond his authority as a certified tax representative. While Smith's arguments may have approached the line into practicing law, we do not believe that he crossed it. We therefore overrule the objection.

#### **BURDEN OF PROOF**

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
14. Here, the assessment increased from \$54,700 in 2017 to \$334,600 in 2018. Although the assessment increased by more than 5%, Guthrie stipulated that she nevertheless bears the burden because the increase was the result of new structural improvements on the property. *See* I.C. § 6-1.1-15-17.2(c) (the burden-shifting statute does not apply where the assessment is based on structural improvements that were not considered in the prior year's assessment).

#### **SUMMARY OF CONTENTIONS**

15. **Guthrie's case:**
  - a. Guthrie's husband, Leroy Guthrie, testified regarding his lengthy experience as a builder and contractor. He built the structures on the subject property with help from some subcontractors. Leroy did not keep all of the receipts related to the construction of the subject home, pole barn, or the other structures on the property. Because he

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<sup>1</sup> We note the Assessor did not request additional time at the hearing to review them. Nor did he ask to continue the hearing to do so.

was working on building three other homes at the same time, he also had problems trying to separate his expenditures. But he put less than \$300,000 into building the structures on the subject property. He estimated the pole barn cost approximately \$16,000 to build, while the house cost less than \$200,000 due to his use of cheap labor and surplus materials from other contractors. *Guthrie testimony.*

- b. The subject property is located in Neighborhood 10055001. Guthrie submitted a spreadsheet summarizing the assessment and sales information for all of the homes that sold within that neighborhood in 2017 and 2018, along with the PRCs for each individual property. The median and average depreciation applied to the properties were -22% and -24%, respectively. And the median and average ratio of their assessed values to sales prices were 98% and 101%, respectively. *Smith testimony; Pet'r Ex. 3.*
- c. Guthrie also offered a spreadsheet summarizing the assessment information for the 13 homes located nearest to the subject. All but one of the homes were built between 1969 and 1973. And the median year built is 1970. There are no recently built homes near the subject property. The 13 homes' median depreciation was a -35%, and their median assessed value was \$78/SF. The subject is assessed at \$116/SF despite the fact that the subject has some agricultural land that is not assessed at market value. So all of the sold houses over \$100,000 are receiving an average -24% depreciation, while all of the houses located near the subject are receiving an average of -35% depreciation. *Smith testimony; Pet'r Ex. 4.*
- d. 50 IAC 27-5-6 states that if older homes in a specific neighborhood are appreciating or depreciating at a more rapid rate than new homes, the two groups should be stratified and analyzed separately with a factor determined for each property type within the specific neighborhood. It is not sufficient to merely stratify properties and sales according to their classification and develop one annual adjustment for the entire class of property. Sales used to develop annual adjustment factors must be comparable to the properties for which the factors are being developed. For example, the assessor shall endeavor to ensure that adjustment factors are developed from a sample of sales that is representative to the population of parcels that the factors will ultimately be applied. *Smith testimony; Pet'r Ex. 2.*
- e. Because it is new, the subject property should be within its own neighborhood and should not have a neighborhood factor applied. Removing the 1.27 neighborhood factor applied to all of the subject's improvements, and reducing the values of the detached garage and pole barn to \$10,000 and \$5,800, respectively, results in a total value for the subject's improvements of \$210,900. Guthrie is not requesting any change to the current land assessment of \$37,700. Thus, Guthrie is requesting a total assessment of \$248,600. *Smith testimony; Pet'r Ex. 5.*

16. **The Assessor's case:**

- a. Surface is a Level III certified assessor/appraiser employed by Nexus Group. He

provides consulting services to the Clark County Assessor's Office. Surface testified about the process for developing an assessed value, and the Assessor's adherence to Indiana law and Department of Local Government Finance ("DLGF") regulations in assessing the subject property. The cost of the home shown on the building permit is only an estimate, and does not provide a "market value-in-use" for the home. The permit also does not address the specific characteristics of the home in comparison to other properties. The assessed values used in Petitioner Exhibit 3 are the 2019 values—they are not applicable to the 2018 valuation at issue. And Guthrie included multi-parcel sales for which no adjustments were made. Finally, Guthrie made no adjustment to account for the 35 acres on which the subject sits, while all of his comparables are situated on one acre or less. *Surface testimony; Resp. Exs. F, G, H, I, L, M, N.*

- b. The Assessor argued that Guthrie failed to provide or compare specific property attributes, or to make adjustments for differences. Guthrie analyses also failed to comply with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Finally, the Assessor asserted that none of Guthrie's analyses actually provided a suggested market value-in-use for the subject property. *Surface testimony; Engle argument; Resp. Exs. O, P, Q.*

#### ANALYSIS

17. Guthrie failed to establish a prima facie case for reducing the property's 2018 assessment. The Board reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 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). It is instead 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.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks

probative value. *Id.* For 2018, the valuation date was January 1, 2018. Ind. Code § 6-1.1-2-1.5(a).

- c. Guthrie contends the property's 2018 assessment should be \$248,600, but her primary arguments in support of that valuation relate to the neighborhood factor used to determine her assessment. These arguments go solely to the methodology used by the Assessor. Even if the Assessor made errors in delineating the neighborhood or in selecting the neighborhood factor, simply attacking the Assessor's methodology is insufficient to rebut the presumption that the assessment is correct. *See Eckerling*, 841 N.E.2d at 678 (stating that 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.") And Guthrie's arguments about the depreciation applied to the neighboring properties fail for the same reason.
- d. To the extent that any of Guthrie's arguments regarding the properties in the subject's neighborhood were an attempt at an assessment comparison approach under Indiana Code § 6-1.1-15-18 or an attempt to make a uniform and equal argument, she still came up short.
- e. To effectively use an assessment comparison approach, parties must show the properties are comparable to the subject using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. To establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f. Here, Guthrie's evidentiary presentation was insufficient to demonstrate that any of the properties are truly comparable to the subject. Again, a proponent needs to give specific reasons explaining why they believe a property is comparable. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Id.* at 470. While the properties may share similarities to the subject due to their location, Guthrie failed to discuss their characteristics in any detail. And Guthrie failed to explain why it was unnecessary to make adjustments to account for differences between the properties and the subject as required by *Long*. Furthermore, Guthrie never used the information to calculate a requested value.
- g. With regard to a uniform and equal argument, the Tax Court has explained that Indiana's current assessment system no longer focuses on how assessment regulations were applied, but rather on whether assessments reflect the external benchmark of market value-in-use. *Westfield Golf Practice Center, LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). One

method of proving a lack of uniformity and equality under our current system is to offer 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 399 n.3. When used to measure uniformity of assessments or to apply equalization adjustments, the DLGF's rules require statistical analyses to be performed. *See* 50 IAC 27-4-1; 50 IAC 27-4-5; *see also*, *Thorsness v. Porter Cnty. Ass'r*, 3 N.E. 3d 49, 53-54 (Ind. Tax Ct. in 2014) (interpreting predecessors to current regulations).

- h. Although Guthrie calculated the ratio of the neighboring properties' assessed values to their sales prices, such an exercise is meaningless without knowing the subject's ratio. And the subject's ratio cannot be calculated because there is no sales price or market value-in-use appraisal establishing a value to use as the denominator. Furthermore, the assessed values Guthrie used to calculate the ratios for the neighboring properties were not from 2018. We also note that while the properties are located in the same assessment neighborhood as the subject, almost all of them are classified as Family Dwelling (both platted and un-platted), whereas the subject is classified as Cash Grain/General Farm. This is problematic because the Tax Court has stated that a taxpayer's entitlement to an equalization adjustment is predicated on how other property *within the same classification* is assessed. *BP Prods. N. Am., Inc. v. Matonovich*, 842 N.E.2d 901, 906 (Ind. Tax Ct. 2006).
- i. Finally, although the cost approach is one of the three standard valuation methods used in appraisal practice, Leroy's testimony about the cost to construct the improvements was too vague to be probative. And there is no indication that his estimates complied with USPAP. We likewise find no probative evidence supporting a reduction to the assessments of the detached garage or pole barn. In fact, through his use of surplus materials and "cheap labor", he established that his cost of construction were likely below market value.
- j. Because Guthrie offered no probative market-based evidence to demonstrate the subject's correct market value-in-use for 2018, she failed to make a prima facie case for a lower assessment. Where a petitioner has not supported his 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).

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2018 assessment.

ISSUED: August 13, 2019

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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>>.