REPRESENTATIVE FOR PETITIONERS: *Pro Se*

REPRESENTATIVE FOR RESPONDENT: Attorney Ayn Engle

BEFORE THE
INDIANA BOARD OF TAX REVIEW

DAVID P. HENRY, Petitioner, v. HARRISON COUNTY ASSESSOR, Respondent.	)	Petition No.:	31-014-23-1-5-00520-23
	)	Parcel No.:	31-03-020-351-007.000-014
	)	County:	Harrison
	)	Township:	Morgan
	)	Assessment Year:	2023

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:

I. INTRODUCTION

1. David Henry appealed the 2023 assessment of his home. Because the assessment increased more than 5% from the prior year and the totality of the evidence offered by the parties does not suffice to show the property's true tax value, we must presume that its value for 2023 equals the 2022 assessment of $71,800. We disagree with the Assessor's claim that we should nonetheless affirm the assessment based on Henry's behavior that led an appraiser she had retained to withdraw from the assignment. We find that Henry's actions did not merit such an extreme sanction, particularly where the Assessor could have sought the less drastic remedy of a continuance, which would have allowed her to retain a substitute appraiser.

II. PROCEDURAL HISTORY

2. Henry appealed the 2023 assessment of his property located at 1010 Rose Drive NE, in Palmyra. The Harrison County Property Tax Assessment Board of Appeals ("PTABOA") determined an assessment of $19,700 for land and $67,600 for improvements, for a total of $87,300.

3. Henry then timely filed a Form 131 petition with us. We originally set a hearing on Henry's petition for November 28, 2023. At the Assessor's request, we continued the hearing to February 28, 2024.

4. The Assessor filed two additional motions. First, she requested a second continuance based on a conflict with the new hearing date. Second, she moved to dismiss Henry's appeal under 52 IAC 4-9-6(a)(2), which provides that we may order default or dismissal for "disruptive, vulgar, abusive, obscene, or contemptuous conduct or language by a party or authorized representative." The Assessor alleged that Henry engaged in "troubling" behavior that could be construed as threatening. Most of the behavior that the Assessor identified revolved around Perry Reisert, the appraiser she had hired in connection with Henry's appeal, trying to arrange a date and time to inspect Henry's property. Concluding that Henry had "anger issues or worse," Reisert indicated to the Assessor that he wanted no more contact with Henry and withdrew from the assignment. *Assessor's Motion to Dismiss at 3, Ex. E.*

5. We granted a continuance, setting a new hearing date of April 9, 2024. But we denied the motion to dismiss. Although we acknowledged that Henry's alleged behavior came close to the type of conduct contemplated by 52 IAC 4-9-6, we found would not rise to a level warranting the extreme remedy of dismissal. We advised the parties to work more cooperatively, however, noting that "continued conduct like this may result in the summary dismissal of this appeal. . . ." *Order Granting Assessor's Motion to Continue*

and Denying Assessor's Motion to Dismiss.

6. Our administrative law judge, Erik Jones ("ALJ"), held the hearing as scheduled. Ayn Engle appeared as counsel for the Assessor. Henry and Ken Surface testified under oath.

7. Although Henry indicated that he had some photographs on his phone, he did not offer any exhibits at the hearing. The Assessor offered the following exhibits:

Exhibit R-1	2023 Property Record Card ("PRC") for the subject property,
Exhibit R-2	Sales-comparison grid labeled "Kens Comps,"
Exhibit R-3	Aerial map showing subject and comparable properties,
Exhibit R-4	2023 PRCs for all five comparable properties,
Exhibit R-5	Sales disclosure forms for all five comparable properties,
Exhibit R-6	E-mails and texts exchanged between Perry Reisert, Ayn Engle, and David Henry,
Exhibit R-7	E-mail exchanges between Assessor's counsel and various appraisers regarding replacing Perry Reisert.

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

III. OBJECTIONS

9. Henry objected to Exhibit R-2—a sales-comparison grid with an indicated value for Henry's property—on grounds that his property is unique, making none of the properties used in the grid truly comparable. The Assessor responded that the grid was relevant and that any questions about comparability went to the weight we should give the exhibit.

10. We agree with the Assessor. Henry's objection goes more to the weight we should afford the exhibit than to its admissibility. As explained below, however, we give no weight to the grid or to the analysis contained therein.

IV. FINDINGS OF FACT

A. Henry's property

11. Henry's property consists of a single-story house on approximately 0.25 acres of land in Palmyra. The house was built in 1980. *Henry testimony*; *Ex. R-1*.

12. The property sits at the base of a small drainage basin, causing water to collect in Henry's backyard. The house's slab foundation has begun to crack and separate from the garage. The Assessor assigned the house a quality grade of "D+2." And she rated its condition as poor. *Henry testimony; Surface testimony; Ex. R-1*.

13. The property was assessed for $71,800 in 2022. *Ex. R-1*.

B. The Assessor's efforts to hire a replacement appraiser

14. After Reisert withdrew from his appraisal assignment, the Assessor's counsel looked for someone else to appraise Henry's property. She sent an email to various appraisal firms, advising them of the nature of the assignment, the scheduled hearing date, and the date she would need the appraisal report (April 1, 2024). She also informed them that Reisert had withdrawn from the assignment after Henry had yelled at him. But she explained that we had cautioned Henry, and she indicated that she would handle scheduling the inspection and would even ask us to allow a sheriff to accompany the appraiser if necessary. In some emails, she also indicated that an inspection could be avoided if absolutely necessary. *Ex. R-7*.

15. Several firms responded that they were unavailable on the required dates. One firm indicated that it had two appraisers who could take the assignment if the deadline for submitting the report could be moved. None of the firms expressed reluctance based on Henry's previous actions. *Ex. R-7*.

C. Sales-comparison grid

16. Having failed to hire another fee appraiser, the Assessor offered testimony from Ken Surface, a Level III assessor-appraiser with 21 years of experience assessing properties like Henry's. *Surface testimony; Ex. R-2.*

17. Surface did not prepare an appraisal report. Instead, he testified about a comparison grid labeled "Kens Comps." It is not clear how the grid was prepared, or by whom. Surface merely testified that the grid was "prepared here at the county through their INCAMA system," which he described as a software program that "allows you to input the subject and then pull out properties that are assigned to the same neighborhood and same characteristics." In any case, Surface described the grid as being "the same type" of sales-comparison analysis found in appraisals that comply with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Surface testimony; Ex. R-2.*

18. The grid includes five improved properties that sold in 2022 for prices ranging from $99,900 to $240,000. They were all located within one mile of Henry's property. The houses had quality grades between "D+2" and "C," and they were all in average condition. *Surface testimony; Exs. R-2 through R-5.*

19. The sale prices were adjusted to account for differences between the properties, including, among other things, differences in land value, neighborhood factors, house size, number of plumbing fixtures, quality grade, age, condition, and exterior features. There were no adjustments for differences in the number of bedrooms. *Surface testimony; Ex. R-2.*

20. Nothing in the grid explains how any of the adjustments were quantified. And Surface offered little explanation at the hearing. He testified that the adjustments for differences in land value and neighborhood factors were based on data from the Assessor's property record cards. Other than that, he indicated that the adjustments had considered cost tables

from the Department of Local Government Finance ("DLGF"). *Surface testimony; Ex. R-2.*

21. The gross adjustments ranged from 54.88% to 62.87% of the comparable properties' sale prices. The adjusted prices fell within the following ranges and measures of central tendency:

Overall Range	Average	Median	Unit Range	Average	Median
$85,190 - $95,410	$89,800	$91,190	$38.09 - $86.60	$68.10	$71.67

The report listed an "indicated" value of $91,200, matching the rounded overall median value. On a unit basis, however, the indicated value translated to $82.38/sq. ft., which was close to the maximum of the range. *Surface testimony*; *Ex. R-2.*

V. Conclusions of Law

A. Because the property's assessment increased by more than 5% between 2022 and 2023, the Assessor conceded that she had the burden of proof.

22. 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 "the property's true tax value." I.C. § 6-1.1-15-20(a) (effective March 21, 2022).

23. 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 that do not apply here, 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.*

24. If the burden 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). The Assessor concedes that Henry's assessment increased by more than 5% and that she bore the burden of proof.

B. Because the totality of the probative evidence does not suffice to establish the property's true tax value, we must presume its value equals the previous year's assessment of $71,800.

25. We are 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).

26. 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 DLGF's rules. 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.

27. To meet its burden of proof, a party "must present objectively verifiable, market-based evidence" of the property's value. *Piotrowski BK #5463 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.

28. 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. Dep't 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).

29. The Assessor relied on a sales-comparison grid that estimated the property's value at $91,200. Under the sales-comparison approach, "an opinion of market value is developed by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract . . . ." THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 351 (15th ed. 2020).[1] The approach is premised on the notion that an opinion of market value can be supported by studying the market's reaction to comparable and competitive properties. *Id.*

30. Appraisers applying the approach examine market evidence using "paired data analysis, trend analysis, statistics, and other recognized and accepted techniques to identify which elements of comparison within the data set of comparable sales are responsible for value differences." *Id.* They then use qualitative and quantitative techniques to adjust for any differences in relevant elements of comparison that affect the comparable properties' sale prices. *Id.* at 361-65, 372-96.

31. Several techniques are available to quantify adjustments, including paired- grouped- and secondary-data analysis, statistical analysis, and capitalization of income differences. *Id.*

[1] We take official notice of this treatise. *See* 50 IAC 4-6-11(a)(4) (allowing us to take official notice of treatises considered to be reliable authorities on subjects addressed at the hearing, including any relevant edition of *The Appraisal of Real Estate*).

at 371-72. Appraisers may also make cost-related adjustments. *Id.* But the value added or lost by the presence or absence of an item may not equal the cost of installing or removing it. Instead, "the market dictates the value contribution of individual components to the value of the whole." *Id.* at 392-93.

32. There is nothing to show that the Assessor's sales-comparison grid was prepared in accordance with generally accepted appraisal principles. Indeed, it is unclear who (or what) prepared the grid. Surface referred to the Assessor's INCAMA system, although it is unclear the extent to which that system was involved. And we know very little about how adjustments to the comparable properties' sale prices were determined, beyond the fact that the DLGF's cost tables were taken into account. As explained above, however, one should use cost to quantify adjustments only where the market recognizes it as appropriate. And we have no information to show which, if any, characteristics for the relevant market recognizes cost as an appropriate measure of contributory value.

33. While there is some other relevant evidence, such as the home's relatively low construction quality and poor condition, that evidence does not, by itself, establish any particular value for the property. Thus, because the totality of the evidence does not suffice to show the property's true tax value, we must presume that its value equals the previous year's assessment of $71,800.

C. We will not impose the functional equivalent of dismissal as a sanction against Henry when the Assessor could have sought a less extreme remedy that would have allowed her to secure a substitute appraiser.

34. In her closing argument, the Assessor urged us to uphold the assessment essentially as a sanction against Henry for his behavior that led to Reisert withdrawing from the appraisal assignment. According to the Assessor, but for Henry's actions, she would have offered an appraisal to support the property's assessed value. And she argued that we should not reward Henry for his behavior.

35. We decline the Assessor's request. We have already found that the actions Henry was alleged to have engaged in would not rise to the level meriting the extreme sanction of dismissal. And the sanction the Assessor sought in her closing argument is the functional equivalent of dismissing Henry's appeal. Yet the Assessor pointed to no new transgressions by Henry.

36. Instead, the Assessor focused on her inability to secure a new appraiser. There is no evidence that Henry's behavior impeded her ability to do so, however. The main obstacle to the Assessor retaining a new appraiser was the scheduled hearing date and the corresponding deadline for completing a report so it could be timely exchanged before the hearing. Indeed, one appraisal firm indicated that it had two appraisers who could take the assignment if the deadline for completing the appraisal report could be moved. A much less drastic remedy was therefore available: the Assessor could have asked to continue the hearing. She chose not to do so. We will not impose the extreme remedy sought by the Assessor when a less drastic one was available.

VI. Conclusion

37. Henry's assessment increased by more than 5% between 2022 and 2023, and the totality of the evidence did not suffice to show the property's true tax value. We therefore order that the assessment be reduced to the previous year's level of $71,800.

DATE: July 8, 2024

Jonathan R. Elrod
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Timothy Ogden
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>.