

REPRESENTATIVE FOR PETITIONER: Kelley J. Herrera, *pro se*

REPRESENTATIVE FOR RESPONDENT: Frank Agostino, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Kelley J. Herrera,	)	Petition Nos.: 71-011-20-1-5-00713-21
	)	71-011-21-1-5-00714-21
Petitioner,	)	
	)	
v.	)	Parcel No.: 71-04-12-453-002.000-011
	)	
St. Joseph County Assessor,	)	County: St. Joseph
	)	
Respondent.	)	Assessment Years: 2020 and 2021

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Appeal from the Final Determination of the  
St. Joseph County Property Tax Assessment Board of Appeals

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August 17<sup>th</sup>, 2022

**FINAL DETERMINATION**

The Indiana Board of Tax Review, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**Findings of Fact and Conclusions of Law**

**Introduction**

1. Kelley J. Herrera challenged her property's assessments for 2020 and 2021. She also sought an equalization adjustment based on a lack of uniformity and equality. Because Herrera failed to offer any probative evidence to show the market value-in-use of her property or of any of the other properties she identified, she failed to make a prima facie case on either claim. We therefore order no change to the assessments.

## Procedural History

2. Herrera contested the 2020 and 2021 assessments of her residential property located at 50801 Rose Bud Lane in Granger. The St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued Form 115 determinations valuing Herrera’s property as follows:

<b>Year</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2020	\$57,000	\$156,500	\$213,500
2021	\$62,900	\$150,600	\$213,500

3. Herrera disagreed with those determinations and filed Form 131 petitions with us for both years. On June 9, 2022, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Herrera’s petitions. Neither he nor the Board inspected the property. Herrera and Jason Kane, the Assessor’s reassessment deputy, testified under oath.<sup>1</sup>

4. Herrera submitted the following exhibits:<sup>2</sup>

Petitioner Exhibit 1:	Form 130 petitions,
Petitioner Exhibit 2:	Form 131 petitions,
Petitioner Exhibit 3:	Subject property record card; first page of the property record cards for 50775 Cherry Farm Trail, 50665 Brookhaven Drive, 13020 Fountain Court, and 13174 Fountain Court.

5. The Assessor submitted the following exhibits:

<u>For 2020:</u>	
Respondent Exhibit 1:	Form 131,
Respondent Exhibit 2:	Form 115,
Respondent Exhibit 3:	Form 130,
Respondent Exhibit 4:	Form 134,
Respondent Exhibit 5:	Ratio study sales, map, and worksheet,
Respondent Exhibit 6:	Sales from the Multiple Listing Service (“MLS”),
Respondent Exhibit 7:	Subject property record cards,

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<sup>1</sup> St. Joseph County Assessor Rosemary Mandrici and her chief deputy, Patricia St. Clair, were also sworn, but they did not testify.

<sup>2</sup> Herrera submitted separate sets of exhibits for 2020 and 2021. The two sets are identical except that Forms 130 and 131 (Exhibits 1 and 2) are specific to the year of appeal, and her Form 130 for 2021 contains an attachment describing the reasons for her appeal.

Respondent Exhibit 8: Screenshot of property record card “memo list.”  
Respondent Exhibit 9: Photograph of the subject property.

For 2021:

Respondent Exhibit 1: Form 131,  
Respondent Exhibit 2: Form 115,  
Respondent Exhibit 3: Ratio study sales, map, and worksheet,  
Respondent Exhibit 4: Sales from the MLS,  
Respondent Exhibit 5: Subject property record card,  
Respondent Exhibit 6: Screenshot of property record card “memo list.”  
Respondent Exhibit 7: Photograph of the subject property.

6. The record also includes the following: (1) all petitions or other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

### **Parties’ Contentions**

#### **A. Herrera’s Contentions**

7. Herrera primarily contends that her land assessment is “excessive.” According to Herrera, the Assessor combined her subdivision, Cherry Trail Estates, with three noncomparable subdivisions: Sussex Pointe, Lexington Glenn, and Bridlewood. Fountain Blue, a subdivision “just around the corner” from Herrera’s property, has more upscale homes and similarly sized lots with land assessments of only \$17,400 to \$21,600. Another subdivision, Fox Chase, which has lakes and lakefront lots, has a property with a \$52,500 land assessment. By contrast, Herrera’s land assessment was \$57,000 in 2020 and \$62,900 in 2021. *Herrera testimony and argument; Kane testimony; Pet’r Ex. 1 (2021), 3 (2020 and 2021).*
8. Herrera also disagrees with her home’s assessment. She has lived in her home for 24 years and has never updated or remodeled it. But it is assessed higher than a home across the street, even though that home has been updated and has more amenities. *Id.*
9. Although Herrera acknowledges that her property’s overall assessment of \$213,500 is “probably around its market value,” she disagrees with the Assessor’s argument that she

can only challenge the overall assessment. If that were the case, land and improvements would not be separately assessed. Land assessments should be accurate if they are going to be broken out separately from a property's overall value. *Herrera testimony and argument.*

## **B. The Assessor's Contentions**

10. According to the Assessor, we have previously determined that only a property's overall value can be challenged. In any case, Herrera's assessment is not too high. Jason Kane, a reassessment deputy who also has a real estate broker's license, pulled 2020 and 2021 sales from the MLS and calculated a price per square foot for each sale. When applied to Herrera's property, the median unit prices yielded values of \$245,000 for 2020 and \$265,000 for 2021. That justifies the assessments for those two years as well as the increase from the 2019 assessment of \$163,200. *Kane testimony and argument; Resp't Exs. 5, 6 (2020); Resp't Exs. 3, 4 (2021).*

### **Analysis**

11. Generally, an assessment determined by an assessing official is presumed to be correct. 2011 and 2021 REAL PROPERTY ASSESSMENT MANUAL at 3.<sup>3</sup> A petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).<sup>4</sup>
12. We find that Herrera failed to meet her burden. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2011 and 2021 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). Instead, it is determined under the rules of the Department of Local

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<sup>3</sup> The Department of Local Government Finance adopted a new assessment manual and guidelines that apply to assessments for 2021 forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference). Thus, the 2011 Manual applies to Herrera's 2020 appeal, and the 2021 Manual applies to the 2021 appeal. The language cited here is essentially the same in both manuals.

<sup>4</sup> Herrera did not claim that the burden should be on the Assessor, and we will not make an argument on her behalf as to the now-repealed burden-shifting statute, I.C. § 6-1.1-15-17.2.

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.” 2011 and 2021 MANUAL at 2.

13. Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with USPAP often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
  
14. The parties dispute whether Herrera could separately challenge the assessment of her land as opposed to her property’s total assessment. But Herrera failed to offer probative market-based evidence to support either challenge. She made largely conclusory assertions about the relative desirability of land in her subdivision compared to other subdivisions without offering evidence to show the market value-in-use of any properties within those subdivisions. While she did offer property record cards for a few properties with land that she believed was more valuable than hers but that was assessed for less, her analysis fell well short of what the Tax Court requires. At most she compared lot sizes, and in one case, explained that a property was located near hers. *See Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (finding that taxpayers’ comparable sales data lacked probative value where they failed to explain how their property’s characteristics compared to those of the purportedly comparable properties, and how any differences affected market value-in-use). She offered even less information from which to compare her home to the home across the street that she claims was more favorably assessed.

15. Finally, to the extent Herrera intended to claim a lack of uniformity and equality in assessments, she similarly failed to make a case. As the Tax Court has explained, “[o]ne way to measure uniformity and equality in property assessment is through an assessment ratio study.” *See Thorsness v. Porter Cty. Ass’r*, 3 N.E.3d 49, 51 (Ind. Tax Ct. 2014). Such a study “compare[s] the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Id.* at 51 (citation omitted). Where a ratio study shows an actionable lack of uniformity, a taxpayer may be entitled to an equalization adjustment bringing its assessment to the common level shown by the study. *Id.*
16. Herrera offered no objectively verifiable data to show the market value-in-use of her property or of any of the other properties she claims were more favorably assessed. She therefore failed to make a prima facie case for an equalization adjustment. *See Westfield Golf Practice Cntr., LLC v. Washington Twp. Ass’r*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (finding that taxpayer failed to prove a lack of uniformity and equality where it failed to show the actual market value in-use for its property or for any of the properties it claimed were more favorably assessed.)

### Conclusion

17. Herrera failed to make a prima facie case for reducing her 2020 and 2021 assessments. We therefore find for the Assessor and order no change to those assessments.

We issue this Final Determination on the date first written above.

  
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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>.