

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

Petition: 48-005-18-1-5-00602-19
Petitioners: Christopher and Michelle Holmes
Respondent: Madison County Assessor
Parcel: 48-11-09-300-063.000-005
Assessment Year: 2018

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

PROCEDURAL HISTORY

1. Christopher and Michelle Holmes contested the 2018 assessment of their property located at 929 Winding Way in Anderson. On May 15, 2019, the Madison County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination valuing the subject property at \$168,300 (\$25,400 for land and \$142,900 for improvements).
2. The Holmes timely filed a Form 131 appeal with the Board and elected to proceed under our small claims procedures. On November 19, 2019, David Smith, our designated Administrative Law Judge (“ALJ”), held a hearing on the Holmes’ petition. Neither he nor the Board inspected the property.
3. Christopher and Michelle Holmes appeared pro se. Attorney Ayn Engle represented the Assessor. The Holmes and Lawrence Perry of Nexus Group were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:

Petitioner Exhibit 1:	929 Winding Way tax assessments 2014-2019
Petitioner Exhibit 2:	929 Winding Way tax assessment 2014
Petitioner Exhibit 3:	929 Winding Way tax assessment 2015
Petitioner Exhibit 4:	929 Winding Way tax assessment 2016
Petitioner Exhibit 5:	929 Winding Way tax assessment 2017
Petitioner Exhibit 6:	929 Winding Way tax assessment 2018
Petitioner Exhibit 7:	929 Winding Way tax assessment 2019
Petitioner Exhibit 8:	2018 neighborhood tax assessments
Petitioner Exhibit 9:	2019 neighborhood tax assessments

Petitioner Exhibit 10:	929 Winding Way 2019 Property Record Card (“PRC”)
Petitioner Exhibit 11:	929 Winding Way 2018 PRC
Petitioner Exhibit 12:	929 Winding Way 2017 PRC
Petitioner Exhibit 13:	929 Winding Way 2016 PRC
Petitioner Exhibit 14:	929 Winding Way 2015 PRC
Petitioner Exhibit 15:	929 Winding Way 2014 PRC
Petitioner Exhibit 16:	909 Winding Way 2018 PRC
Petitioner Exhibit 17:	909 Winding Way 2019 PRC
Petitioner Exhibit 18:	1109 Winding Way 2018 PRC
Petitioner Exhibit 19:	1109 Winding Way 2019 PRC
Petitioner Exhibit 20:	1021 Winding Way 2018 PRC
Petitioner Exhibit 21:	1021 Winding Way 2019 PRC
Petitioner Exhibit 22:	1020 Winding Way 2018 PRC
Petitioner Exhibit 23:	1020 Winding Way 2019 PRC
Petitioner Exhibit 24:	928 Winding Way 2018 PRC
Petitioner Exhibit 25:	928 Winding Way 2019 PRC
Petitioner Exhibit 26:	1029 Winding Way 2018 PRC
Petitioner Exhibit 27:	1029 Winding Way 2019 PRC
Petitioner Exhibit 28:	908 Winding Way 2018 PRC
Petitioner Exhibit 29:	908 Winding Way 2019 PRC
Petitioner Exhibit 30:	Kitchen picture 1
Petitioner Exhibit 31:	Kitchen picture 2
Petitioner Exhibit 32:	Outlet picture
Petitioner Exhibit 33:	Basement picture 1
Petitioner Exhibit 34:	Basement picture 2
Petitioner Exhibit 35:	Garage picture 1
Petitioner Exhibit 36:	Garage picture 2
Respondent Exhibit 1:	Form 131 petition
Respondent Exhibit 2:	2018 PRCs for subject property and adjacent parcels
Respondent Exhibit 3:	2017 PRCs for subject property and adjacent parcels
Respondent Exhibit 4:	Sales Disclosure Forms (“SDF”) for subject property and adjacent parcels dated 11/17/2017
Respondent Exhibit 5:	Deeds transferring subject property
Respondent Exhibit 6:	Satellite imagery, maps, and pictures of subject
Respondent Exhibit 7:	Subject property listings from Multiple Listing Service (“MLS”)
Respondent Exhibit 8:	PRCs for neighboring properties
Respondent Exhibit 9:	MLS listings

5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, 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. The Assessor objected to a question Christopher asked Perry regarding the legal definition of an apartment because Perry is not an attorney. Our ALJ sustained the objection and we adopt his ruling.
7. The Assessor also made a relevance objection to the admission of Petitioner's Exhibits 7, 10, 19, 21, 23, 25, and 27 because they are for the 2019 assessment year. Our ALJ took the objection under advisement. While the documents contain information about the 2019 assessment year, all but Exhibit 7 contain information pertaining to the 2018 assessment year that is at issue. And all seven exhibits convey some basic information about the properties that is at least minimally relevant to this proceeding. We therefore overrule the objection.
8. Finally, the Assessor objected to a portion of Christopher's closing argument in which he claimed that the PTABOA's failure to give a reason for rejecting the Holmes' first appeal was what led them to file the current appeal. The Assessor argued that the Holmes had not presented the information during their evidentiary presentation and it represented a new argument. Our ALJ took the objection under advisement. Because Christopher's passing comment about the Holmes' motivation to file an appeal with us merely provides some background information and does not represent a substantive argument bearing on our decision, we overrule the objection.

BURDEN OF PROOF

9. 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).
10. Here, the assessment increased from \$106,000 in 2017 to \$168,300 in 2018—an increase of more than 5%. The Assessor stipulated that he bears the burden of proof.

SUMMARY OF CONTENTIONS

11. **The Assessor's case:**
 - a. Perry is a Level III assessor/appraiser and consultant for Nexus Group, a private company that has contracted with the Madison County Assessor for several years. He has worked directly with the Madison County office for five years, and he has valued several thousand properties during his career. *Perry testimony.*

- b. The subject property is a 0.50-acre parcel with a house and a detached garage. There are two additional adjacent parcels containing a total of 0.27 acres that are not under appeal. Although the three parcels are identified as separate parcels for tax purposes, they form a single economic unit because they have sold together at least four times and the two additional parcels are land-locked. *Perry testimony; Resp't Exs. 2, 4-7.*
- c. The three parcels were listed for sale together on October 2, 2017, and they were actively marketed for a couple of weeks. The sellers received multiple offers from several parties before accepting the Holmes' above-list price offer of \$180,500 on October 18, 2017. The Holmes completed the purchase on November 17, 2017, less than two months before the January 1, 2018 assessment date. The sellers paid \$3,500 of the Holmes' closing costs, making the net sale price \$177,000. *Perry testimony; Resp't Exs. 4, 7.*
- d. The Holmes' purchase is representative of the property's market value-in-use on January 1, 2018 for several reasons. For residential properties like the subject, market value-in-use is typically the same as market value. And in Perry's experience, a bona fide sale of a subject property is considered the best evidence of value. Here, the property was listed for sale on several public sources, generated significant interest, and received multiple offers above list price. Additionally, both parties were typically motivated and were unrelated to each other, making this an arm's-length transaction. *Perry testimony; Resp't Exs. 4, 7.*
- e. In 2018, the total assessment for all three parcels was \$169,100¹. The Holmes paid a net sale price of \$177,000 for the three parcels, meaning that the property is currently under-assessed. Because the Holmes only appealed one of the parcels, Perry suggests that the Board raise the subject property's assessment by \$7,900 so that the total assessment for all three parcels equals the net sale price of \$177,000. *Perry testimony; Resp't Exs. 2, 4, 7.*
- f. In the absence of building permits or access to the inside of a property, the Assessor's office performs a review after a property sells. They review sales disclosures looking for discrepancies between a property's assessed value and its sale price to see what changed or what they missed. They also review listings from the Multiple Listing Service. When reviewing the Holmes' purchase of the subject property, the Assessor discovered a number of updates not previously accounted for including an updated kitchen with stainless steel appliances, upgraded countertops and recessed lighting; the addition of a full bath in the main house; and additional finished space above the detached garage, including a closet and a new half bath. Based on this information, the Assessor changed the effective age of the house from 1929 to 2005, and the effective age of the garage from 1929 to 1960. *Perry testimony; Resp't Exs. 2, 3, 7.*

¹ This value includes the subject property's \$168,300 assessment, plus the \$500 and \$300 land-only assessments for the two adjacent parcels—Parcel Nos. 48-11-09-300-005.000-003 and 48-11-09-300-006.000-003. *Resp't Ex. 2.*

- g. Perry also calculated the three parcels' assessment ratio by dividing their total assessed value of \$169,100 by the net sales price of \$177,000, resulting in a ratio of 95.5%. The Assessor strives to reach a 100% assessment ratio on all properties. The significant discrepancy revealed by the three parcels' assessment ratio indicates that the property is under-assessed and needs adjustment. *Perry testimony; Resp't Exs. 2, 4, 7.*
- h. The Holmes did not identify and compare attributes of the properties in their evidentiary presentation. Nor did they present any market-based data for those properties. The Holmes also made no market adjustments based on differences in the properties. Market value and market value-in-use should be "synonymous." The assessment should reflect what a property would bring on the open market. *Perry testimony; Resp't Exs. 8, 9.*

12. **The Holmes' case:**

- a. The Holmes contend that their property is over-assessed. The replacement cost only increased from \$167,370 in 2017 to \$173,355 in 2018. On the other hand, the assessment increased from \$106,000 to \$168,300 during that same period. This nearly 60% increase was due to the change in the effective date of construction from 1929 to 2005 and the assessment of the detached garage increasing from \$22,932 to \$55,042. But there is no justification for a 76-year jump in the effective date of construction. *C. Holmes testimony; Pet'r Exs. 5, 6, 11, 12.*
- b. The house is still structurally a 90-year old home. While the kitchen and bathrooms have been updated, the remainder of the house has seen few updates. The electrical outlets in the home have not all been updated to three-prong. There are also significant foundation problems in the basement, which is not waterproofed or fully finished and routinely has water running to the center drain. The space over the detached garage is not an apartment because it has no HVAC system; it is a loft. The area described as closet space in the loft is really the entry, and there is no cooking space, shower or bathtub. And while there is a toilet and sink in the loft, there is no water currently running to them. *C. Holmes testimony; Pet'r Exs. 30-36.*
- c. The Holmes' house was built in 1929 and it is the oldest home on that portion of Winding Way. It is also the second smallest on that part of the street. The effective date of construction for all of the other houses in the area is 1965 or earlier. And all but one of the homes in the neighborhood have a higher replacement cost than their house. However, their assessment is higher than all but two houses on their street. Walt Weaver purchased 1020 Winding Way for \$55,000 in 2014, and he resold it to the current owners for \$208,000 after renovating it. Although its current replacement cost is \$230,780, its assessment is only \$120,300 due to its effective date of construction being 1965 and the application of a 35% depreciation rate. Similarly,

the PRC for 1109 Winding Way shows a 2016 remodel with a replacement cost of \$214,060, but its assessment is currently \$90,000. There is quite a bit of disparity between replacement cost and assessed value when comparing the Holmes' house to other houses in the area. The Holmes contend that they are carrying the majority of the tax burden for their neighborhood. *C. Holmes testimony; Pet'r Exs. 8, 18, 22.*

- d. The Holmes are not arguing that their house's replacement cost is inaccurate. They are arguing that changing the effective date of construction by 76 years is just ridiculous. The pictures they reviewed on Zillow before they purchased the property were deceiving. A man cannot stand upright in front of the toilet in the loft due to the low ceiling. And the loft space does not have HVAC or connected plumbing, making it unusable even for storage. They do not understand how other houses in the neighborhood have sold for much more than their home, but have assessments that are half of what they sold for. The Holmes' analysis only looked at replacement costs and did not compare the particular attributes of the other homes. But when the replacement costs are so much more for other homes than their home, they do not understand why those owners are paying less taxes. *M. Holmes testimony.*

ANALYSIS

13. The Assessor established a prima facie case supporting his requested increase to the 2018 assessment. The Holmes failed to impeach the Assessor's evidence and failed to offer more persuasive valuation evidence of their own. 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. Evidence in an assessment appeal should be consistent with that standard. For example, market-value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice 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). So may cost or 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. *Id.; see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals but explaining that the determination of comparability must

- be made in accordance with generally accepted appraisal and assessment practices). Normally, a party does not make a case for changing an assessment simply by showing how the DLGF's assessment guidelines should have been applied. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."). Instead, the party must offer relevant market-based evidence. *See id.*
- c. As discussed above, the Assessor has the burden of proving that the 2018 assessment is correct. The Assessor offered evidence that the Holmes purchased the subject property and two adjacent parcels for a net purchase price of \$177,000 on November 17, 2017, and he requested that we raise subject property's assessment by \$7,900 so that the total assessment for all three parcels equals the net purchase price of \$177,000. The purchase price of a property can be the best evidence of its value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, the Assessor demonstrated that the Holmes' purchase was a valid arm's-length transaction that closed less than two months before the January 1, 2018 valuation date.
 - d. The Holmes did not attempt to impeach the Assessor's evidence regarding their purchase. Thus, we find the \$177,000 purchase price to be probative valuation evidence. Additionally, we find the Assessor's request to raise subject property's assessment by \$7,900 properly excludes the \$800 in assessed value attributable to the two adjacent parcels that are not before us. Accordingly, we conclude that the Assessor made a prima facie case that the subject property's 2018 assessment should be \$176,200 (\$168,300 plus \$7,900). The burden therefore shifts to the Holmes to rebut the Assessor's valuation evidence.
 - e. The Holmes raised two basic arguments: (1) the updates to their home do not justify the change in the effective dates of construction for their house and detached garage given the numerous deficiencies still present in both structures, and (2) their assessment is too high relative to the assessments of other homes in the immediate neighborhood. We address each claim in turn.
 - f. We conclude the Holmes' argument regarding the appropriate effective age for the house and garage improperly focuses on alleged errors in computing their assessment. They apparently believe that if the problems with the house and garage were properly accounted for, the effective age of those structures would be older, resulting in higher depreciation levels and a lower overall assessment. But as explained above, the Tax Court has cautioned against using the DLGF's assessment guidelines to prove a property's value on appeal. Instead, the Holmes needed to offer relevant, market-based evidence to show their property's correct market value-in-use.
 - g. The Holmes also argued that their assessment is too high relative to the assessments of other homes in the immediate neighborhood. However, to effectively use an

assessment comparison approach, a party must show that the properties are comparable to the subject using generally accepted appraisal and assessment principles. Ind. Code § 6-1.1-15-18. Thus, to make their case, the Holmes needed to compare the characteristics of the purportedly comparable properties they identified to their property's characteristics and explain how any relevant differences affected value. Because they failed to do so, their assessment comparison is not probative valuation evidence. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d at 471-72 (Ind. Tax Ct. 2005) (finding that 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).

- h. Because the Holmes offered no probative market-based evidence to demonstrate their property's correct market value-in-use, they failed to rebut the Assessor's prima facie case.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order the 2018 assessment increased to \$176,200.

ISSUED: March 18, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>.