

REPRESENTATIVE FOR PETITIONERS:

Wayne Holmes, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Scott Potts, Local Government Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Wayne & Suzanne Holmes,)	Petition Nos.: 91-021-08-1-5-00051
)	91-021-09-1-5-00006
Petitioners)	
)	Parcel No.: 91-73-33-000-113.400-021
v.)	
)	County: White
White County Assessor,)	Township: Union
)	
Respondent.)	Assessment Years: 2008 and 2009

Appeal from the Final Determination of the
White County Property Tax Assessment Board of Appeals

July 26, 2013

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Wayne and Suzanne Holmes challenged the subject property’s March 1, 2008 and March 1, 2009 assessments based on the sale prices for two nearby properties and their claim that assessments from the subject property’s neighborhood were poor predictors of sale

prices. But the Holmeses did little to compare the subject property to the two properties that sold and the mere fact that some properties sold for prices above or below their assessments does little to show the subject property's market value-in-use. The Board therefore finds for the Assessor.

Procedural History

2. The Holmeses filed a notice for review contesting the subject property's March 1, 2008 and March 1, 2009 assessments. On November 21, 2011, the White County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations lowering the assessments for both years, but not to the level that the Holmeses requested.
3. The Holmeses then timely filed a Form 131 petition with the Board for both assessment years. On May 14, 2013, the Board's administrative law judge, Patti Kindler ("ALJ"), held a hearing on both appeals. Neither the Board nor the ALJ inspected the subject property.
4. The following people testified under oath:
 - For the Holmeses: Wayne Holmes
 - For the Assessor: Scott Potts
5. The Holmeses submitted the following exhibits:
 - Petitioners Exhibit 1: The Holmeses' Requests for Review,
 - Petitioners Exhibit 2: Sales disclosure, parcel data, and property record card ("PRC") for 301 S. Main,
 - Petitioners Exhibit 3: Sales disclosure, parcel data, and PRC for 305 S. Main,
 - Petitioners Exhibit 4: November 14, 2011 letter from Mr. Holmes to the PTABOA,
 - Petitioners Exhibit 5: Sales disclosure, parcel data, and PRC for 322 S. Main,
 - Petitioners Exhibit 6: Sales disclosure, parcel data, and PRC for 618 S. Main,
 - Petitioners Exhibit 7: Sales disclosure, parcel data, and PRC for 206 S. Bluff,
 - Petitioners Exhibit 8: Sales disclosure, parcel data, and PRC for 526 S. Main,
 - Petitioners Exhibit 9: Two sales disclosures, parcel data, and PRC for 546 S. Main.

6. The Assessor submitted the following exhibits:

- Respondent Exhibit 1: PRC for 518 S. Bluff,
- Respondent Exhibit 2: PRC for 206 S. Bluff,
- Respondent Exhibit 3: PRC for 546 S. Main,
- Respondent Exhibit 4: Mr. Potts' Notice of Appearance of Consultant on Behalf of Assessor for the 2008 appeal,
- Respondent Exhibit 5: Mr. Potts' Notice of Appearance of Consultant on Behalf of Assessor for the 2009 appeal,
- Respondent Exhibit 6: March 7, 2013 letter from Barry Wood to Linda Downey, White County Assessor, with attachments,
- Respondent Exhibit 7: PRC for the subject property.

7. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A: The Form 131 petitions,
- Board Exhibit B: Hearing notices,
- Board Exhibit C: Hearing sign-in sheet.

8. The PTABOA determined the following assessments:

Year	Land	Improvements	Total
March 1, 2008	\$24,800	\$125,200	150,000
March 1, 2009	\$16,300	\$137,200	\$153,500

9. On their Form 131 petitions, the Holmeses requested the following assessment for both years:

Land: \$15,000 Improvements: \$85,000 Total: \$100,000.

Parties' Contentions

A. Summary of the Holmeses' Evidence and Contentions

10. The subject property contains a single-family home located at 521 S. Main Street in Monticello, Indiana. It was assessed for more than its fair market value in both 2008 and 2009. *Holmes testimony.*

11. To show that the subject property was over-assessed, the Holmeses pointed to the sales of two purportedly comparable properties. The first is located just two blocks from the subject property at 301 S. Main, and it sold for \$118,900 in October 2005. While that home is larger than the subject home and has superior brick construction, both homes are roughly the same age. The other property, located at 305 S. Main, also has a brick home that is similar to the subject home in both size and age. That second property sold for \$112,500 in 2008 and again for \$92,055 in 2009.
12. The difference between the two sale prices for 305 S. Main shows that property values are declining. In fact, a third property, 546 S. Main—which is “cattycorner” from the subject property and has a smaller home but larger, attached garage—sold for \$165,000 in 2009 but for only \$65,000 in 2011 after it went into foreclosure. Similarly, 526 S. Main, which has a home that is only about 200 square feet smaller than the subject home, sold for only \$90,000 in 2013, again showing the market’s decline. The subject property’s assessments fail to reflect that decline. *Holmes testimony; Pet’rs Exs. 2-3, 9.*
13. Unlike the sales that the Holmeses identified, the sales that the Assessor’s witness, Mr. Potts, identified involved properties that are not comparable to the subject property. For example the home at 322 S. Main is almost 1,000 square feet smaller than the subject home. And smaller, newer homes have held their values better in the current economy because they require less money both to maintain and to heat and cool. Similarly, the building at 206 S. Bluff not even a single-family home but rather an extensively remodeled former bed and breakfast with vinyl siding and new windows that is in far better condition than the subject home. The home at 518 South Bluff is likewise in better condition than the subject home. That home also has vinyl siding and a two-car garage compared to the subject home’s asbestos siding and one-car garage. In any case, the properties that Mr. Potts relied on were assessed for less than the subject property.¹
Holmes testimony; Pet’rs Exs. 5, 7.

¹ 518 S. Bluff was assessed for \$143,700 in 2008 and \$146,300 in 2009. 546 S. Main was assessed for \$177,000 in both 2008 and 2009. 206 S. Bluff was assessed for 189,800 in 2009 (the record does not show its assessment for 2008). *See Resp’t Exs. 1-3.*

14. Finally, under Indiana’s market-value-based system, assessments are supposed to predict a property’s sale price. But assessments in the subject property’s area are poor predictors of sale prices; some properties sell for much less than their corresponding assessments while others sell for more. To illustrate, Mr. Holmes compared the following properties’ sale prices to their assessments:

Address	Sale Price	Assessment
301 S. Main	\$118,900 (10/7/05)	\$146,000
305 S. Main	\$112,500 (10/14/08)	\$170,800
322 S. Main	\$140,000 (5/16/07)	\$110,500
618 S. Main	\$154,500 (6/25/07)	\$94,900
206 S. Bluff	\$178,000 (2/1/07)	\$139,000

Holmes testimony. Although the sales occurred in different years, it appears that Mr. Holmes was using each property’s March 1, 2011 assessment for his comparison. *See id.*; *see also, Pet’rs Exs. 2-3, 5-7.*²

B. The Assessor’s Evidence and Contentions

15. There are several problems with the Holmeses’ evidence. First, the sale dates for their purportedly comparable sales have no bearing on assessments for 2008 and 2009. For example, the Holmeses pointed to 546 S. Main, which sold for \$165,000 in 2006 but for only \$65,000 in 2011. The 2011 sale, however, is too far removed from the valuation dates applicable to the assessments under appeal to be relevant. While the market declined, that decline did not start until mid 2008, after the valuation dates at issue in these appeals. *Potts testimony.*
16. Second, all the sales that Mr. Holmes pointed to were foreclosures. Assessors and appraisers generally do not rely on foreclosures, because they are not arm’s-length transactions. *Potts testimony.*

² In two instances—301 and 305 S. Main—the assessment that Mr. Holmes identified did not match any assessment appearing on the property’s record card. In both those cases, however, the record card did not have an entry for 2011. *Pet’rs Exs. 2-3.*

17. While the Holmeses seemingly argue that every assessment should precisely predict a property's sale price, mass-appraisal does not work that way. An assessor must meet three criteria to comply with the Department of Local Government Finance's ("DLGF") standards for ratio studies: (1) the median assessment-to-sales ratio must equal 1.0; (2) the coefficient of dispersion must be 15% or less; and, (3) the price related differential must indicate that assessments do not show favoritism for a certain type of property. White County's assessments met those statistical criteria and were approved by the DLGF. *Id.*
18. In any case, the subject property's assessments for March 1, 2008, and March 1, 2009, were accurate in light of the following sale prices for other neighborhood homes that were of comparable age, construction quality, and condition:
- 518 S. Bluff is 23% smaller than the subject home and sold for \$140,000 in 2006.
 - 206 S. Bluff is 28% larger than the subject home and sold for \$178,000 on February 1, 2007.
 - 546 S. Main is only 4% smaller than the subject home and is therefore the most comparable. It sold for \$165,000 on November 15, 2006.

Potts testimony; Resp't Exs. 1-3.

Analysis

A. Burden of Proof

19. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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 taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk

the Indiana Board ... through every element of the analysis.”). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

B. Discussion

20. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party’s evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standards of the Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
21. In any case, a party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *See O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2008 and March 1, 2009 assessments, the valuation dates were January 1, 2007, and January 1, 2008, respectively. 50 IAC 21-3-3(b) (2009).
22. The Holmeses first pointed to the sales of two properties that Mr. Holmes described as comparable to the subject property. For sales data to be probative, however, the properties that sold must be sufficiently comparable to the property under appeal. Conclusory statements that a property is “similar” or “comparable” to another property do not suffice; instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the properties that

sold. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005).

Similarly, one must explain how any differences between the sold properties and the property under appeal affect their relative market values-in-use. *Id.*

23. Mr. Holmes offered general comparisons between the subject home and the two homes that sold in terms of a few relevant characteristics. But he ignored many others. And he failed to explain how relevant differences affected the properties' relative market values-in-use. Even if Mr. Holmes had done a less superficial comparison, he did not explain how a sale from October 2005 related to the subject property's market value-in-use as of the relevant valuation dates of January 1, 2007 and January 1, 2008. At most, he pointed to properties that sold for lower prices in 2010 and 2011 than they had earlier and asserted that property values were declining. But those sales do little to show when any market decline occurred. For example, property values could have been higher on the relevant valuation dates (January 1, 2007 and 2008) than they were in 2005, with all of the depreciation occurring in later years.
24. Mr. Holmes also claimed that the properties Mr. Potts characterized as being comparable to the subject property were actually assessed for less than the subject property. That is only partially true. 518 S. Bluff's assessment (as determined by the PTABOA) was lower than the subject property's assessment (as determined by the PTABOA) for both years, albeit only marginally. But the other two properties—206 S. Bluff and 546 S. Main—were actually assessed for more than the subject property (as determined by the PTABOA) in both years. Regardless, neither Mr. Potts nor Mr. Holmes explained how any relevant differences between those three properties and the subject property affected their relative market values-in-use. Thus, Mr. Holmes's assessment comparison, like his sales comparison, lacks probative value.
25. Finally, Mr. Holmes claimed that assessments from the subject property's neighborhood were poor predictors of sale prices, pointing to three properties that sold for prices above their assessments and two properties that sold below their assessments. The fact that

some properties sold for prices different than what they were assessed for, however, does nothing to show the subject property's market value-in-use. At most, the Holmeses' evidence about sales-to-assessment ratios might relate to a claim for an equalization adjustment based on a lack of uniformity and equality in assessments. *See Indiana Dep't of Local Gov. Fin. v. Commonwealth Edison Co.* 820 N.E.2d 1222 (Ind. 2005) (“Commonwealth was entitled to seek an adjustment to the assessed value of its distributable property . . . on grounds that its property taxes were higher than they would have been had other property in Lake County been property assessed.”). But the Holmeses did not make such a claim, and even if they did, their evidence would fall well short of proving an actionable lack of uniformity and equality or their entitlement to an equalization adjustment. Indeed, because the Holmeses did not offer probative evidence to establish the subject property's market value-in-use, one cannot tell whether the property was assessed above or below the common level.³

SUMMARY OF FINAL DETERMINATION

26. The Holmeses failed to make a prima facie case for reducing the subject property's 2008 and 2009 assessments. The Board therefore finds for the Assessor.

\This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

³ And that assumes that the Holmeses offered statistically reliable evidence to establish a median ratio for the two assessment years at issue, which they did not. Instead the Holmeses compared five random, unadjusted sales from various years to the sold properties' March 1, 2011 assessments.

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.