

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

Petition No.: 43-023-13-1-5-00002
Petitioner: Joseph R. Caracci 1998 Trust
Respondent: Kosciusko County Assessor
Parcel No.: 43-08-12-300-210.000-023
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

PROCEDURAL HISTORY

1. The Joseph R. Caracci 1998 Trust, by its trustee, Joseph R. Caracci (“Petitioner”), initiated an appeal with the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) contesting the 2013 assessed value of the subject property. On October 15, 2013, the PTABOA issued its determination making no change to the 2013 assessed value.
2. On June 2, 2014, Petitioner filed a Petition for Review of Assessment (“Form 131”) with the Board, electing to have the appeal heard under the Board’s small claims procedures. On August 25, 2014, Petitioner filed an amended Form 131.
3. The Board issued a notice of hearing on May 29, 2015.¹ Administrative Law Judge (“ALJ”) Gary Ricks held the hearing on August 20, 2015. Neither the Board nor the ALJ inspected the property.
4. At the hearing, Mr. Caracci represented Petitioner and attorney Jack Birch represented the Kosciusko County Assessor (“Respondent”). The following witnesses were sworn and testified on behalf of Respondent:²
 - Susan Engelberth, Kosciusko County Assessor
 - John Beer, part-time county employee and certified appraiser.

¹There was some confusion as to what years were at issue. Although Petitioner filed appeals for 2013 and 2014, counsel for Respondent claimed they received no notice for 2014. After discussion, the parties agreed that only the 2013 appeal would be heard.

² PTABOA Coordinator Teena Pence was sworn but did not testify.

FACTS

5. The subject property is a residential lake property located at 158 EMS W17 LN in North Webster.

6. The 2013 assessed value is:

Land:	\$ 60,500
Improvements:	<u>\$186,200</u>
Total:	\$246,700

7. Petitioner requested the following value on the Form 131:

Land:	\$ 60,500
Improvements:	<u>\$ 97,400</u>
Total:	\$157,900 ³

RECORD

8. The official record of this hearing consists of the following:

- a. A digital recording of the hearing
- b. These Findings and Conclusions
- c. Exhibits

Petitioner Exhibit 1:	List of comparable properties
Petitioner Exhibit 2:	Description of comparable properties
Petitioner Exhibit 3:	IBTR Final Determination on 2012 appeal
Petitioner Exhibit 4:	Motion for Pre-Hearing Summary Judgment
Petitioner Exhibit 5:	Petitioner email to Respondent
Petitioner Exhibit 6:	2013 Form 115.

Respondent Exhibit A:	Photograph of subject property
Respondent Exhibit B:	Photograph of subject property
Respondent Exhibit C:	Photograph of subject property
Respondent Exhibit D:	Photograph of subject property
Respondent Exhibit E:	Photograph of subject property
Respondent Exhibit F:	Photograph of subject property
Respondent Exhibit G:	Photograph of subject property

³ Petitioner contended on the Form 131 that the total assessment should be \$157,900. At the hearing, he contended that the total assessment should be \$152,985.

Respondent Exhibit H:	Aerial photograph of subject property
Respondent Exhibit I:	Property record card (“PRC”) for subject property
Respondent Exhibit J:	Sales comparison analysis for subject
Respondent Exhibit K:	Aerial photograph of subject property
Respondent Exhibit L:	Comparable property sale information
Respondent Exhibit M:	Comparable property sale information
Respondent Exhibit N:	Comparable property sale information
Respondent Exhibit O:	Comparable property sale information.
Board Exhibit A:	Form 131 petition with attachments
Board Exhibit B:	Notice of Hearing dated May 29, 2015
Board Exhibit C:	Hearing sign-in sheet
Board Exhibit D:	Notice of appearance for Jack Birch.

OBJECTIONS

9. Petitioner objected to Respondent’s Exhibits A through G on the grounds that the photographs contained therein were taken without his knowledge. The ALJ took the objection under advisement. Petitioner did not object to the relevance or the content of the photographs and made no other legal argument that would bar their admission. Petitioner’s objection is overruled.
10. Petitioner objected to Exhibit I and certain testimony related thereto on the grounds that it was unclear as to which PRC was being referenced and for what year. Respondent eventually clarified which PRC was being referenced and Petitioner withdrew his objection.
11. Respondent objected to the question directed at Ms. Engelberth regarding the discovery request of “this information for the 2013 hearing to the Petitioner” that Petitioner claims to have made of her. Respondent argued that there was no way Ms. Engelberth could have been aware of such request and, furthermore, there was no right to discovery in this instance.
12. 52 IAC 3-1-5(c) provides that there shall be no prehearing discovery under the Board’s small claims procedures (except that copies of documentary evidence and names of witnesses may be requested not later than ten days prior to the hearing). Furthermore, in the Board’s “Order Denying Respondent’s Motion to Compel Property Inspection,” the Board indicated that for a party to avail itself of ordinary discovery, it would have to exercise its option to transfer the case out of small claims, which neither party did. Respondent’s objection is sustained.
13. Respondent objected to the question directed at Ms. Engelberth regarding Petitioner’s public information request. Respondent argues that no such request was made, nor did Petitioner offer proof of any such request. It is unclear what any such request may

have entailed and the line of questioning was not developed beyond the objection to provide any clarity in that regard. Nevertheless, the question is allowed. However, the Board notes that this ruling does not affect the outcome of the case.

14. Respondent objected to the question directed at Mr. Beer regarding the “trending” of one of the comparable properties included in Respondent’s Exhibit J. Respondent argued that Petitioner is mistaken in his understanding of the term “trending.” Respondent’s objection goes to the weight of the evidence rather than its admissibility.
15. Respondent objected to the question directed at Mr. Beer asking “Isn’t that what the 2002 law was meant to effect?” The question was asked in the context of how a property should be assessed in light of the referenced law. Respondent objected on the grounds that the witness is not qualified to provide a legal opinion or analyze the legal application of the law. Respondent’s objection is sustained.
16. Respondent objected on the grounds of hearsay to Petitioner’s submission of the affidavit of Gregory Schenkel, one of Petitioner’s neighbors, which is part of Petitioner’s Exhibit 2. Respondent argued that the document is hearsay because Mr. Schenkel was not present at the hearing to be questioned about the affidavit. Petitioner agreed that the document is hearsay.
17. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board’s procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

18. The exhibit is admitted, subject to the limitations in the Board’s procedural rules. The Board notes, however, that this ruling does not affect the outcome of the case.
19. Respondent objected to Petitioner’s Exhibit 3 on the grounds of relevance. Petitioner’s Exhibit 3 consists of the Board’s decision in Petitioner’s 2012 appeal. Respondent argued that each year’s assessment is separate and distinct from other years and that the Board’s 2012 decision is not relevant to this appeal.

20. Pursuant to *Barth, Inc. v. State Bd. of Tax Commr's*, 699 N.E.2d 800, 805 (Ind. Tax Ct. 1998), “each tax year stands on its own,” and “[w]here a taxpayer challenges an assessment, the resolution of that challenge does not depend on how the property was previously assessed.” But that does not mean a prior Board decision has no relevance, particularly in applying the burden-shifting statute. Respondent’s objection is overruled.

CONTENTIONS

21. Summary of Respondent’s case:
- a. Respondent is in her first term as Kosciusko County Assessor. She has spent 16 years in the assessing industry. She originally worked for eight years in the Tippecanoe Township Assessor’s Office before coming to work at the county. *Engelberth testimony.*
 - b. Generally, Respondent’s office determines the assessed value of a property by considering measurements of the property, cost tables provided by the state, various multipliers provided by the state, trending analyses, and ratio study factors. That information, taken together, eventually results in an assessed value that appears on the PRC for the year at issue. This method of calculating an assessed value is consistent with the instructions and training provided by the state in arriving at a property’s market value-in-use. *Engelberth testimony.*
 - c. Respondent contends the 2013 assessed value of the improvements situated on the subject property in the amount of \$186,200 is correct. She bases her contention on measurements taken by her office, information provided by Petitioner, and photographs of the subject property, which she believes to be true and correct. *Engelberth testimony; Resp. Exs. A-I.*
 - d. Neither Respondent nor any personnel from her office were permitted to enter Petitioner’s property. *Engelberth testimony.*
 - e. John Beer is a part-time county employee and has been a certified residential appraiser since 1991. He has performed over 1,000 appraisals in Kosciusko County and has performed appraisals on all of the lakes in the county. *Beer testimony.*
 - f. While he is familiar with the Uniform Standards of Professional Appraisal Practice, Mr. Beer did not perform an appraisal of the subject property because he is not impartial with regard to Respondent. He did, however, review all of the photos of the property and the PRC, and he performed a “drive-by” inspection. He did not perform an on-site inspection of the property. *Beer testimony.*

- g. Based on the information Mr. Beer analyzed, he completed a sales comparison analysis. In that analysis he compared the subject property to four purportedly comparable properties. The analysis provides lowest, highest, average, and median indicated values with regard to the subject property. This is the same analysis he would perform when doing an appraisal, but in that instance, he would arrive at a final determination of value for the subject property. *Beer testimony; Resp. Ex. J.*
- h. Comparable # 1 is located at 764 E. Willis Park in North Webster, approximately 1.2 miles from the subject property. In 2013, it had an assessed value of \$94,000. It sold in February of 2013 for \$105,000. Net adjustments made to the value total \$129,610. Comparing the subject property to this adjusted value results in a value for the subject property of \$234,610. *Beer testimony; Resp. Exs. J and L.*
- i. Comparable # 2 is located at 307 N. Stanley Street in North Webster, approximately 1.5 miles from the subject property. In 2013, it had an assessed value of \$154,100. It sold in August of 2012 for \$210,000. Net adjustments made to the value totaled \$89,250. Comparing the subject property to this adjusted value results in a value for the subject property of \$299,250. *Beer testimony; Resp. Exs. J and M.*
- j. Comparable # 3 is located at 662 Albert Eckert Drive in North Webster, approximately 1.5 miles from the subject property. In 2013, it had an assessed value of \$275,500. It sold in August of 2012 for \$275,900. Net adjustments made to the value total (\$30,388). Comparing the subject property to this adjusted value results in a value for the subject property of \$245,513. *Beer testimony; Resp. Exs. J and N.*
- k. Comparable # 4 is located at 144 EMS W-17 Lane in North Webster, approximately 100 feet from the subject property. In 2013, it had an assessed value of \$288,700. It sold in November of 2012 for \$258,000. Net adjustments made to the value total (\$7,950). Comparing the subject property to this adjusted value results in a value for the subject property of \$250,000. *Beer testimony; Resp. Exs. J and O.*
- l. The analysis results in a lowest indicated value of \$234,610, a highest indicated value of \$299,250, an average indicated value of \$257,356, and a median indicated value of \$247,781. It supports the 2013 value of the subject property as determined by Respondent, which is slightly lower than the median value as indicated by the analysis. *Beer testimony; Resp. Ex. J.*
- m. Comparable #4 is perhaps the most similar to Petitioner's property. It is roughly the same age, has the same weed growth, and has the same obstructed view of the lake. It has a garage but no guesthouse, whereas the subject property has a

guesthouse but no garage. Comparable #4 sold for \$258,000, which is only slightly more than the assessed value of the subject. *Beer testimony; Resp. Ex. J.*

- n. A property's market value-in-use is best determined by using sales data from a time frame that is relevant to the valuation. Considering that the assessed value of the subject property is very close to the sale price of Comparable #4, which is nearly an identical property, the 2013 assessed value of the subject property is correct. *Birch argument.*

22. Summary of Petitioner's case

- a. The 2013 assessed value of the subject property is too high. Respondent's evidence for 2013 is the same as the evidence that was presented at the PTABOA hearing and at the 2012 Board hearing. Respondent has failed to follow state law, Department of Local Government Finance procedures, and has arbitrarily changed Petitioner's PRC. *Pet'r. testimony.*
- b. Some of the information on the PRC is incorrect which results in the assessed value being too high. Specifically, there are issues with regard to the square footage of the attic and with certain corrections made to the plumbing. *Pet'r testimony.*
- c. Many neighboring properties saw an increase in their assessments shortly after they were sold. This practice is inconsistent with the law. The Indiana Supreme Court ruled in 2002 that properties must be assessed at market value. *Pet'r testimony.*
- d. The property located at 144 EMS W17 Lane in North Webster sold for \$258,000 in November of 2012. However, the assessment for the property was much higher. The property is comparable to the subject property, and these two properties should be valued alike. *Pet'r testimony; Pet'r Ex. 2a.*
- e. Respondent is inconsistent in considering what other properties are comparable to the subject property. For example, the subject property is on a weedy channel where it is impossible to swim or fish. Other properties are located on pristine lakefront lots. *Pet'r testimony.*
- f. The property located at 8 EMS W23 Lane in North Webster was listed for sale for over 300 days before finally selling for \$140,000, which was \$66,000 less than the county's assessed value. *Pet'r testimony; Pet'r Ex. 2b.*
- g. The property located at 77 EMS W26 Lane in North Webster is on a channel similar to that of the subject property. The original asking price was \$200,000 in 2014, but the price was eventually reduced to \$159,000 which was \$59,000 less

than its appraised value. This property did not sell and was eventually taken off the market. *Pet'r testimony; Pet'r Ex. 2c.*

- h. Two properties recently listed for sale are in the same development as the subject property. The first is located at 134 EMS W17 Lane in North Webster. Its assessed value increased from \$212,600 in 2011 to \$256,600 in 2014. This property eventually sold for \$185,000. *Pet'r testimony; Pet'r Ex. 2d.*
- i. The second of the two properties is located at 138 EMS W17 Lane in North Webster. It was recently listed for sale at a price of \$115,000 which is \$69,600 below its assessed value of \$184,800. It remains unsold. *Pet'r testimony; Pet'r Ex. 2e.*
- j. Houses on pristine lakefront lots sell for more than houses on weedy channels. Properties on Lake Webster are priced much differently than those on Lake Tippecanoe or Lake Wawasee. Values have been grossly exaggerated by the previous assessor and errors were made in details such as square footage and finished and unfinished areas. Properties were listed and sold for far below the county's assessments. Considering these factors, among others, and applying a trending rate of 10.9%, the subject property should be valued at \$152,985. *Pet'r argument.*

BURDEN OF PROOF

- 23. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the 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). A burden-shifting statute creates two exceptions to that rule.
- 24. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. § Code 6-1.1-15-17.2(b).
- 25. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under

subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

26. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
27. On appeal, the Board ordered that the 2012 assessment be reduced to the 2011 value. The 2013 assessment reflected an increase over that amount. Consequently, the parties agreed at the hearing that Respondent has the burden to prove the 2013 assessment is correct. To the extent that Petitioner seeks an assessment below \$164,300, the 2012 assessed value as determined by the Board, it bears the burden of proving that lower value.

ANALYSIS

28. Respondent failed to make a prima facie case that the 2013 assessment was correct.
 - a. Real property is assessed based on its "true tax value," which means "the 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 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 471 (Ind. Tax Ct. 2005). The valuation date for a 2013 assessment was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Rather than submitting an appraisal to support her value for the subject property, Respondent offered a sales comparison analysis. Respondent compares the subject property to four supposed comparable properties to determine the lowest,

highest, average, and median indicated values.

- d. Respondent's analysis does not provide a final estimate of value for the subject property. It contains the following notation:

This analysis uses methods typically used in the appraisal business for estimating an [sic] property's market value. This is not to be considered an appraisal report but an analysis of sales in the subject's general neighborhood and how they compare directly to the subject property. No final estimate of value is given, only the range of indicated values, the average indicated value and the median indicated value.
 - e. Regarding her offering of purportedly comparable sales, Respondent recognizes that one can estimate the value of a subject property by analyzing the sales of comparable properties. A party offering such evidence must show that the properties are generally comparable to each other, and also must show how any relevant differences affect the relative values. *See Long*, 821 N.E.2d at 470-71 (holding that, in applying the sales-comparison approach, the taxpayers needed to explain how any differences between their property and the properties to which they sought to compare it affected the relevant market values-in-use). Here, Respondent failed to provide sufficient evidence to indicate how the subject property was comparable to her purported comparable properties. Moreover, she offered little to explain or account for any differences among the properties, and how those differences affected the respective values. Her evidence lacked the type of analysis contemplated by *Long*
 - f. In addition, Respondent's Exhibit J and the accompanying testimony fail to provide a substantive explanation as to what specific adjustments were made to the comparable properties and how those adjustments were used to compare the other properties to the subject.
 - g. Because Respondent did not offer probative evidence to support the assessment, she failed to meet her burden of proof. The 2013 assessment is reduced to the 2012 total assessed value, which was \$164,300. Petitioner, though, sought an even lower assessment. The Board now turns to Petitioner's evidence.
29. Petitioner failed to make a prima facie case for reducing the assessment below the 2012 value.
- a. Petitioner offered an analysis of several properties purportedly comparable to the subject. Some of the properties had recently sold for less than their assessed values while others had been taken off the market.

- b. Petitioner's analysis included consideration of some similarities and differences among his property and the purportedly comparable properties. However, he too did little to show how those similarities and differences affected the relevant market values-in-use. Furthermore, he offered no evidence that the analysis complied with generally accepted appraisal practices.
- c. Because Petitioner did not offer probative evidence to support a value lower than the 2012 assessed value, he failed to make his prima facie case.

CONCLUSION

- 30. Respondent had the burden of proving the 2013 assessment was correct. She failed to make a prima facie case. Petitioner sought an assessment lower than the 2012 value, but likewise failed to make a prima facie case. The Board orders that the 2013 assessment be reduced to the 2012 amount of \$164,300.

FINAL DETERMINATION

In accordance with these findings and conclusions of law, the 2013 assessment must be changed to \$164,300.

Issued: February 16, 2016

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>.