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

Petition: 79-004-22-1-5-00263-23
Petitioner: Kathryn J. Miller
Respondent: Tippecanoe County Assessor
Parcel: 79-07-28-435-019.000-004
Assessment Year: 2022

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

Procedural History

1. On May 17, 2022, Kathryn J. Miller appealed the 2022 assessment of her property located at 905 South 24th Street in Lafayette. The Tippecanoe County Property Tax Assessment Board of Appeals ("PTABOA") failed to issue a determination on Miller's appeal. She therefore filed a Form 131 petition with us on March 21, 2023. *See* Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed). The parties agreed that the property was assessed for $84,000 ($22,500 for land and $61,500 for improvements).

2. Miller elected to proceed under our small claims procedures. On December 13, 2023, our designated administrative law judge, Joseph Stanford ("ALJ"), held a hearing on Miller's petition. Neither he nor the Board inspected the property. Miller and Tippecanoe County Assessor Eric Grossman represented themselves. Miller, Grossman, and Deborah Lewellen, a certified appraiser, testified under oath.

Record

3. The official record for this matter includes the following:

Petitioner Exhibit 1:	Spreadsheet with assessment and sales information for Miller's "Direct Neighbors,"
Petitioner Exhibit 2:	Spreadsheet with assessment and sales information for "The County's 8 Comparisons,"
Petitioner Exhibit 3:	Spreadsheet with assessment and sales information for "All Sales in 2021 in Neighborhood Code,"
Petitioner Exhibit 4:	Spreadsheet with assessment and sales information for "Comparisons used in the Appraisal,"
Respondent Exhibit 1:	Narrative,
Respondent Exhibit 2:	Property record card for the subject property,

Respondent Exhibit 3: Appraisal report prepared by Deborah Lewellen, certified residential appraiser.

4. The record also includes (1) all petitions and 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.

Findings of Fact

A. The Subject Property

5. The subject property contains a 1,668-square-foot, two-story home built in 1940. Miller bought the property for $87,900 in 2002. The property was assessed for $71,100 in 2021. *Miller, Grossman, Lewellen testimony; Resp't Exs. 2-3.*

Parties' Contentions

A. Miller's Contentions

6. Miller argued that "trending" is generally not a fair way to compare and assess properties. Her home, which she argued is below average, was compared with updated and remodeled homes with basements, and those properties are worth more than hers. According to Miller, the assessments for properties in her neighborhood are generally lower than their sale prices in the year of the sale and even in later years. Miller claimed this is because rich people are buying the properties and paying more for them than they are worth. Miller also contended that rental properties in her neighborhood are assessed for less than owner-occupied homes, and that rental properties also see smaller increases in their assessments from year to year. She believes that the laws allowing this practice should be changed. *Id.; Miller testimony and argument; Pet'r Ex. 3.*

7. To support her claims, Miller offered a spreadsheet with sales information for all the properties from the subject property's assessment neighborhood that sold in 2021. The spreadsheet also includes the 2021 through 2023 assessments for each property. And it identifies whether the homes had a basement, second story, or garage as well as whether they were owner-occupied or were rentals. *Miller testimony; Pet'r Ex. 3.*

8. Miller offered a similar spreadsheet for 20 properties from her "direct" neighborhood, although only three of those properties sold. She focused on three properties on South 24th Street, none of which sold. She described 814 South 24th St. as having a brick apartment-type building that was the size of two big houses and as being in better condition than the subject property. She also testified that it had more land. But it was assessed for $151,700 in 2022. According to Miller, the subject property should be assessed for less than half of what that property was assessed for. She made a similar claim regarding 908 South 24th Street, which was assessed for only $111,400. And she testified that 912 South 24th St. has two houses that are in better condition than the

subject home and has more land. Yet it was assessed for less than the subject property. *Miller testimony and argument; Pet'r Ex. 1.*

9. Miller took issue with the properties that the Assessor compared to the subject property to justify his assessment as well as with the properties used by an appraiser the Assessor hired. According to Miller, those properties were "more expensive" than the subject property. And the appraiser used two properties that are not in the same assessment neighborhood as the subject property. Miller testified that her neighborhood backs up to a neighborhood with fancier homes and less crime, and that homes from the two neighborhoods are not comparable. *Miller argument and testimony; Resp't Ex. 3*; *Pet'r Exs. 2-3.*

10. Finally, Miller disagreed with the appraiser's testimony that the subject home had been remodeled before Miller bought it in 2002 and that it appeared to have new siding. According to Miller, she had not replaced the siding. And she described the notion of the home having been remodeled as "kind of iffy," explaining that the seller had done just enough work on the home's inside to make it sellable. She described some of the work as "half done." She acknowledged that the cabinets were a little newer. But she claimed that many other things should have been replaced. *Lewellen testimony.*

B. The Assessor's Contentions

11. The Assessor hired Deborah Lewellen, a certified general appraiser, to appraise the subject property. Lewellen determined that the property's current use was its highest-and-best use, and she estimated its market value at $131,000 as of January 1, 2022. She certified that her appraisal report comported with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Lewellen testimony; Resp't Ex. 3.*

12. Lewellen inspected the property's exterior only, which showed that the home had been adequately maintained with no major items of deferred maintenance. She testified that the listing for the property when it sold in 2002 indicated that the home had been newly remodeled. The home appeared to be in better condition than it was when it sold because the siding looked new, although Lewellen acknowledged she could have been wrong about that. *Lewellen testimony; Resp't Ex. 3.*

13. Lewellen relied on the sales-comparison approach to estimate the property's value. She found adequate sales activity in Miller's neighborhood, which Lewellen described as "maintaining or going up in value." Out of 95 sales that met her search criteria, Lewellen settled on the sales of seven comparable properties from within one-mile of the subject property. The sale prices ranged from $116,000 to $189,000. While Lewellen testified that the comparable properties were "pretty similar" to the subject property, she adjusted their sale prices to account for various ways in which they differed from the subject property, including differences in the following characteristics: the size of the lots and homes; the homes' construction quality and condition, the number of bedrooms; and the existence or absence of garages, basements, and amenities, like air-conditioning. *Lewellen testimony; Resp't Ex. 3.*

14. In considering whether to adjust for differences in condition, Lewellen described the subject home and all but one of her comparable homes as being in average condition. So she did not adjust the sale prices for those properties. She rated the other home as being in superior condition because of recent updates, such as a new kitchen. She therefore adjusted that property's sale price downward by $20,000, reflecting her estimate of the market reaction to those differences. *Lewellen testimony; Resp't Ex. 3.*

15. The adjusted sale prices ranged from $125,100 to $147,600, which Lewellen reconciled to $131,000 for the subject property. The Assessor, however, did not ask us to increase the assessment to that value, but instead argued that Lewellen's appraisal supports the existing assessment of $84,000. *Grossman testimony and argument; Resp't Ex. 3.*

16. The Assessor disagreed that he and Lewellen relied on sales of superior properties to value the subject property. He acknowledged that the home was in less than average condition. But he pointed to all the sales from the subject property's assessment neighborhood that were also within a one-mile radius of the subject property. According to the Assessor, properties with homes that were in average condition sold for an average of $117/sq.ft. Properties with homes in fair condition—which he defined as homes that are functional and livable, but that are outdated and need to be remodeled—sold for an average of $61/sq. ft. A unit price of $61/sq. ft. translates to a value above the $84,000 assessment from which Miller appealed. *Grossman testimony and argument.*

Conclusions of Law

A. Because the subject property's assessment increased by more than 5% between 2021and 2022, the Assessor had the burden of proof.

17. Generally, a taxpayer has the burden of proof when challenging a property's tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." I.C. § 6-1.1-15-20(a) (effective March 21, 2022).

18. 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.* If the burden has 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).

19. The subject property's assessment increased by more than 5% between 2021 and 2022, and the Assessor acknowledged that he had the burden of proof.

B. Based on Lewellen's appraisal, we find that the property's true tax value was $131,000.

20. 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 "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).

21. 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 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." 2021 REAL PROPERTY ASSESSMENT MANUAL at 2. In many instances, a property's market value will equal its market value-in-use. *Millennium Real Estate Investment, LLC v. Benton Cty. Ass'r*, 979 N.E.2d 192, 196 (Ind. Tax Ct. 2012) (explaining that where a property's current use is the same as its highest-and-best use and there are regular exchanges in the market, its market value-in-use will equal its market value).

22. In order to meet its burden of proof, a party "must present objectively verifiable, market-based evidence" of the property's value. *Piotrowski 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.

23. 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 2022 assessments, the valuation date was January 1, 2022. I.C. § 6-1.1-2-1.5(a).

24. The Assessor primarily relied on Lewellen's appraisal. Lewellen certified that she complied with USPAP, and she applied a generally accepted appraisal methodology—the sales-comparison approach—to estimate the subject property's market value as of the

relevant valuation date. She found that the property's highest-and-best use was the same as its current use, and there were regular exchanges of residential properties in the market. So the property's market-value-in-use equaled its market value. Based on Lewellen's appraisal, the Assessor made a prima facie showing that the property's true tax value was $131,000.

25. Miller did little to impeach Lewellen's valuation opinion. While Miller claimed that Lewellen relied on sales of homes that were more expensive than the subject home and that, in some instances, were located in a better neighborhood, she offered nothing to back up her assertions. In any case, Lewellen considered relevant differences between her comparable properties and adjusted their sale prices to account for how those differences affected the properties' relative values.

26. We do give some weight to Miller's testimony about her home not having been extensively remodeled and about her not having replaced the siding. But that testimony does not significantly detract from the reliability of Lewellen's valuation opinion. While the siding may not have been new, Lewellen saw no deferred maintenance from her inspection of the home's exterior. Miller's largely vague testimony about the lack of significant remodeling does not necessarily conflict with Lewellen's assumption that the home's interior condition was commensurate with the condition of its exterior. Nor does it show that Lewellen incorrectly judged the relative condition of the subject home compared to the condition of the other homes she used in her analysis. The same is true for the Assessor's broad characterization of the home's condition as "fair" rather than "average" condition.

27. Miller similarly offered little market-based evidence to show a value different than what Lewellen estimated for the subject property. While Miller offered sales and assessment data for properties both from the subject property's "direct" neighborhood and its larger assessment neighborhood, that raw data does little to show the subject property's value. At most, Miller offered information regarding a few characteristics for those properties, such as whether they had basements, garages, or a second story, and whether they were rentals or were instead owner-occupied. And for a small subset, she also offered broad characterizations about the size or condition of those other properties compared to the subject property. While Miller's comparative data is relevant, it falls well short of what is necessary to demonstrate the subject property's value. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (finding that taxpayers' comparative sales data lacked probative value where they failed to explain how the purportedly comparable properties compared to their property or how relevant differences affected the properties' relative values).

28. We therefore find that the subject property's true tax value was $131,000 as shown by Lewellen's appraisal. The Assessor, however, does not ask us to increase the assessment to that amount, but instead asks that we simply uphold the existing assessment of $84,000.

C. Miller did not make a case for an equalization adjustment.

29. In addition to contesting the subject property's assessed value, Miller arguably claims that assessments in her neighborhood were not uniform and equal, particularly when comparing rental properties to owner-occupied properties.

30. Indiana's Property Taxation Clause directs the Legislature to "provide, by law, for a uniform and equal rate of property assessment and taxation" and to "prescribe regulations to secure a just valuation for taxation of all property." Ind. Const. art. X § 1; *see also*, *Thorsness v. Porter Cty. Ass'r*, 3 N.E.3d 49, 51 (Ind. Tax Ct. 2014). The Property Taxation Clause, however, does not require "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *Id.* at 52 (*quoting State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998). The Legislature and the DLGF have enacted various statutes and rules designed to comply with the constitutional mandate of uniformity and equality, including statutes that contemplate applying equalization adjustments. *See, e.g.*, I. C.§ 6-1.1-13-5 and -6; I.C. § 6-1.1-14-5; 2021 REAL PROPERTY ASSESSMENT MANUAL at 14-15.

31. Those provisions generally offer class-wide relief and do not necessarily give taxpayers the right to seek an individual equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co. of Ind., Inc.*, 820 N.E.2d 1222, 1226 (Ind. 2005) (recognizing that the intent behind Ind. Code§ 6-1.1-4-5(a) and related statutes does not appear to authorize an individual equalization adjustment). Nonetheless, the general appeal statute (Ind. Code § 6-1.1-15-1.1) allows an individual taxpayer to "contend that its property taxes were higher than they would have been had other property been properly assessed." *See id.* (referencing predecessor to Ind. Code § 6-1.1-15-1.1). A taxpayer has the burden of proof in seeking an individual equalization adjustment. *See Thorsness*, 3 N.E.3d at 53 (holding that predecessor to Ind. Code § 6-1.1-15-20 did not apply to claims alleging a lack of uniformity and equality).

32. As the Tax Court explained in *Thorsness*, uniformity and equality may be measured through an assessment ratio study, which "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." *Thorsness*, 3 N.E.3d at 51 (*quoting Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396,399 n.3 (Ind. Tax Ct. 2007). And the DLGF has incorporated into its rules the IAAO's April 2013 Standard on Ratio Studies ("IAAO Standard"). *Id.* at 53-54 (referring to an earlier version of the IAAO Standard); 50 IAC 27-1-4.

33. As *Thorsness* illustrates, however, proving a claim for an individual equalization adjustment entails more than simply offering some raw sales and assessment data. In that case, the taxpayer offered evidence showing that while his property was assessed at 99.9% of its sale price, six other properties from his subdivision were assessed at an average of 79.5% of their recent sale prices. *Thorsness*, 3 N.E.3d at 50. At the administrative level, we rejected the taxpayer's claim on grounds that his evidence

neither conformed to professionally accepted standards, nor was based on a statistically reliable sample. *Id.*

34. The Tax Court affirmed our determination. In reaching its decision, the Court first discussed the 1999 version of the IAAO Standard, which the DLGF had incorporated into its rules for the years under appeal. *Id.* at 53. As is the case with the current standard, the 1999 version required valid ratio studies to be based on data that was both appropriately stratified and statistically analyzed. *Id.*; IAAO Standard at 24. Also like the current standard, the 1999 version required statistical measures of assessment accuracy and uniformity to be calculated for the entire taxing district and for each stratum therein. *Id.* at 54; *See* IAAO Standard at 9, 24 (discussing stratification), 27-29 (discussing statistical analysis). And the DLGF had declared the coefficient of dispersion as "the yardstick by which uniformity is measured in Indiana's townships." *Id.* (*citing* 50 IAC 14-7-1 (repealed April 8, 2010) and 2002 REAL PROPERTY ASSESSMENT MANUAL at 6).[1] The Court explained that while the taxpayer's evidence was relevant, it did not show that his property was assessed and taxed at a level exceeding the common level of assessment within his township overall. *Id.*

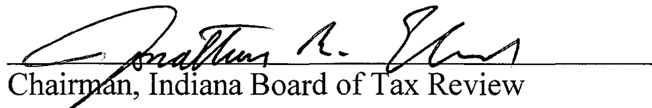
35. Like the taxpayer's evidence in *Thorsness*, Miller's sales and assessment data is relevant, but insufficient, to make a case for an equalization adjustment. Although Miller offered data from which assessment-to-sale ratios might be computed for both her "direct" and assessment neighborhoods, she did not compute those ratios. And she did not even attempt to analyze the data in the manner required by the DLGF's rule and the IAAO Standard. It is not our role to undertake that analysis for her. Even if it were our place to perform that analysis, a cursory glance at Miller's data makes it far from clear that applying an equalization adjustment to the subject property would be to her benefit. The subject property was assessed for only 64.1% of its true tax value as shown by Lewellen's appraisal. That might well be below, rather than above, the common level of assessment.

Conclusion

36. Based on Lewellen's appraisal, we find that the subject property's true tax value was $131,000. The Assessor, however, has conceded that the assessment should not be increased. And Miller failed to make an actionable case for an equalization adjustment. We therefore order no change to the assessment.

[1] While those provisions have since been repealed and replaced, the DLGF's current rules contain analogous provisions. *See* 50 IAC 27-4-5(c); 50 IAC 27-10-l(a); 2021 MANUAL at 14-15.

Date: March 12, 2024



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Commissioner, Indiana Board of Tax Review

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- 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>.