
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Harold W. Myers)	Petition:	02-072-16-1-5-00201-17
)		
Petitioner,)	Parcel:	02-08-14-254-009.000-072
)		
v.)	County:	Allen
)		
Allen County Assessor)	Assessment Year:	2016
)		
Respondent.)		

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

August 13, 2018

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:

INTRODUCTION

1. Harold W. Myers claimed that the Assessor over-assessed his property for 2016. But Myers did not offer probative market-based evidence to show that the assessment was wrong, much less what the correct value should be. Thus, we affirm the assessment.

PROCEDURAL HISTORY

2. Myers filed an appeal with the Allen County Assessor challenging the 2016 assessment of his home located at 6809 Palmilla Ct. in Fort Wayne. On December 29, 2016, the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing property at \$307,700. Myers responded by filing a Form 131 petition with the Board, opting out of our small claims procedures.
3. On May 22, 2018, our designated administrative law judge, Kyle C. Fletcher (“ALJ”), held a hearing on the petition. Neither he nor the Board inspected the property.
4. Myers appeared pro se. Andrew J. Smethers, a team leader with the Allen County Assessor, appeared for the Assessor. Both were sworn as witnesses. Stacey O’Day, the Allen County Assessor, and Rob Williamson, a level-three assessor-appraiser, both attended the hearing but did not testify.
5. Myers submitted the following exhibits:

Petitioner’s Ex. 1:	Petitioner’s Cover Sheet including Exhibits A and B
Petitioner’s Ex. A:	Comparable sales data
Petitioner’s Ex. B:	Document entitled “Allen County Assessor Sales Comparison Analysis”
6. The Assessor submitted the following exhibits:

Respondent’s Ex. A.1:	Letter from Smethers to Myers with annotated copy of Petitioner’s Ex. A and property record cards (“PRCs”)
Respondent’s Ex. A:	PRC for 6809 Palmilla Ct.
Respondent’s Ex. B:	Sales-comparison grid
Respondent’s Ex. C:	Aerial map with comparable sales identified
Respondent’s Ex. D:	PRC for 8528 Killeen Run
Respondent’s Ex. E:	Sales disclosure form for 8528 Killeen Run
Respondent’s Ex. F:	PRC for 6704 Cherry Hill Pkwy
Respondent’s Ex. G:	Sales disclosure form for 6704 Cherry Hill Pkwy

Respondent's Ex. H:	PRC for 7032 Nighthawk Dr.
Respondent's Ex. I:	Sales disclosure form for 7032 Nighthawk Dr.
Respondent's Ex. J:	Price/sq. ft. analysis for Cherry Hill Addition one-story homes
Respondent's Ex. K:	Price/sq. ft. analysis for Cherry Hill Addition one-story homes with basements

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

OBJECTIONS

8. Myers made two objections, both of which the ALJ took under advisement. First, Myers objected to all of the Assessor's exhibits on grounds that she did not offer them at the PTABOA hearing. We overrule the objection. "A party participating in the hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before [the PTABOA]." Ind. Code § 6-1.1-15-4(k).
9. Second, Myers objected to Respondent's Exhibit A.1 on grounds that he was not sure how the Assessor's witness, Andrew Smethers, performed the calculations contained in that exhibit "other than mathematically." The first page of the exhibit explains the calculations, and the property record cards containing the underlying data used in the calculations are attached. In addition, Smethers testified and was available to be cross-examined about his calculations. For those reasons, we overrule the objection.

PARTIES' CONTENTIONS

A. Myers' Contentions

10. Myers claimed that the Assessor failed to include relevant sales in assessing his property. He provided a list of 10 properties that sold around the time of the valuation date as a “snapshot” of the market in Cherry Hill—the subdivision where his property is located. Cherry Hill contains 427 homes and is about 20 years old. This list contains information about the sale price, list price, total area, days on the market, and price-per-square-foot of above-grade finish for each home. Myers became familiar with these properties while he was a member of the board of directors for the Cherry Hill Association. He believes the sales show that the assessment is too high. *Pet'r Ex. 1A; Myers testimony.*

11. According to Myers, the Assessor used outdated and inaccurate techniques to value his property. He offered a document labeled “Allen County Assessor Sales Comparison Analysis” that the Assessor’s office had created to evaluate assessment appeals. The document refers to “Market Adjusted Cost Schedules” that the Department of Local Government Finance (“DLGF”) developed and Dr. J. Wayne Moore tested. Myers argued that the schedules, which were from 2012, were outdated and that they calculated building cost instead of sale value. He also argued that the Assessor should have analyzed adjusted cost figures instead of simply following the DLGF’s schedules. *Pet'r Exs. 1, 1B; Myers testimony.*

B. Assessor's Contentions

12. Myers owns a one-story home with a basement that backs up to a golf course. Smethers offered his own analysis of three sales from Cherry Hill that he believed were the most comparable to Myers’ property. The sales were all one-story homes with a basement and three-car garage. And they all had views of the golf course or pond. In choosing those sales, Smethers bracketed Myers’ home with smaller and larger homes, which he claimed increased the reliability of his analysis. Smethers adjusted the sale prices to account for

various ways in which the properties differed from Myers' property. Those adjusted prices ranged from \$316,900 to \$332,380, or \$109.24/sq. ft. to \$143.27/sq. ft. *Resp't Exs. A-I, C; Smethers testimony.*

13. Smethers also examined the price-per-square foot for all one-story homes, including those with basements, that were sold in Cherry Hill between 2014 and 2016. In both cases, the price per square foot of Myers' home was below the median and average prices for the sold homes. Based on Smethers' analyses, the Assessor believes we should affirm the assessment. *Resp't Exs. J, K; Smethers testimony.*

14. Leaving those analyses aside, the Assessor argued that Myers failed to meet his burden of proving that the assessment was incorrect. Myers' list of sales contains a significant error— although Myers purported to calculate the price-per-square-foot of above-grade finished area, he actually calculated the price-per-square-foot of total home area, including finished and unfinished basements. Using the record cards for the properties on Myers' list, Smethers separately calculated the price-per-square-foot of above-grade finished area and found that Myers' property was assessed at \$116.82/sq. ft., while the other properties sold for an average of \$122.41/sq. ft. Similarly, Myers' property was assessed at \$58.41/sq. ft. of total home area, which is less than the price-per-square-foot of total home area for any of the other properties on the list. Smethers also questioned whether the homes on the list were comparable to Myers' home. For example, some had two stories. *Smethers testimony; Resp't Ex. A.1.*

15. Myers mistakenly believed that the Assessor used the document labeled "Allen County Assessor Sales Comparison Analysis" in assessing his property. The Assessor generated that document as part of a report in 2012. She did not know that one of her employees was continuing to distribute it to taxpayers after that time. The cost tables have been updated since then, and the Assessor used current data in assessing Myers' property. *Pet'r Ex. 1B; Smethers testimony.*

BURDEN OF PROOF

16. Generally, a taxpayer seeking review of an assessment has the burden of making a prima facie case both that the assessment is incorrect and what the correct value should be. Indiana Code § 6-1.1-15-17.2, also known as the burden-shifting statute, creates two exceptions to that rule. The assessor has the burden of proving the assessment is correct when (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) a successful appeal reduced the prior year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2(a)-(b), (d).

17. Myers' assessment increased by less than 5% between 2015 and 2016, rising from \$304,400 to \$307,700. And there is no evidence that he appealed his 2015 assessment. Myers therefore conceded that he had the burden of proof.

CONCLUSIONS OF LAW AND ANALYSIS

18. 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 DLGF's rules. 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.

19. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal

principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for a 2016 assessment was January 1, 2016. I.C. § 6-1.1-2-1.5(a)(2); I.C. § 6-1.1-4-4.5(f).

20. Myers provided a list of 10 sales at least partly in an attempt to show that his property was assessed for more per square foot of living area than the sale prices for comparable properties in the Cherry Hill. When using comparable sales to show a property's value, a party must (1) identify the relevant characteristics of the property under appeal, (2) explain how those characteristics compare to the purportedly comparable properties, and (3) explain how any relevant differences affect the properties' market value-in-use. *Long*, 821 N.E.2d at 471. Otherwise, the evidence lacks probative value. *Id.* Conclusory statements that a property is "similar" or "comparable" do not suffice; instead, the party must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Id.*
21. Although Myers offered some basic information about the properties on his list, he fell well short of showing that they were comparable to his property. And he did not even attempt to adjust the sale prices to account for relevant ways in which they differed from his property. In any case, as Smethers pointed out, Myers miscalculated his basic unit of comparison—price-per-square-foot of above-grade finished area. For those reasons, Myers' sales data lacks probative value.
22. Indeed, Myers primarily focused on attacking the sales-comparison tool that he mistakenly believed the Assessor used to determine his assessment. Even if the Assessor

had used that outdated data, simply attacking the methodology used to assess a property typically does not suffice to make a prima facie case; instead, a taxpayer must offer market-based evidence to show the property's true tax value. *See Eckerling*, 841 N.E.2d at 678. Because Myers failed to offer any probative market-based evidence to show his property's value, he failed to make a prima facie case for reducing the assessment.

CONCLUSION

23. In accordance with the above findings and conclusions, we find for the Assessor and order no change to Myers' 2016 assessment.

The Indiana Board of Tax Review issues the Final Determination of the above captioned matter on the date written above.

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>>.