

REPRESENTATIVES FOR PETITIONER: William & Martha Pottorff, pro se

REPRESENTATIVES FOR RESPONDENT: Marilyn Meighen, Attorney
Brian Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

William & Martha Pottorff,)	Petition No.: 55-004-14-1-5-10199-15
)	
Petitioner,)	Parcel No.: 55-09-29-175-004.000-014
)	
v.)	County: Morgan
)	
Morgan County Assessor,)	Assessment Year: 2014
)	
Respondent.)	

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

February 28, 2019

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:

I. Introduction

1. The Morgan County Assessor, who has the burden of proof in this assessment appeal, relied on an appraisal prepared by a certified general appraiser in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”). The appraiser valued the property at slightly less than its assessment. Although William and Martha Pottorff impeached that appraisal to a degree, we find it sufficiently reliable to show the property’s true tax value. We therefore order the assessment reduced to the amount reflected in the appraisal.

II. Procedural History

2. The Pottorffs appealed the 2014 assessment on their single-family residence located at 1280 South Shore Drive in Martinsville. On April 6, 2015, the Morgan County Property Tax Assessment Board of Appeals (“PTABOA”) entered its determination reducing the assessment to the following values:

Land	Improvements	Total
\$38,500	\$214,200	\$252,700

3. The Pottorffs appealed this decision by timely filing a Form 131 petition in which they elected to have the matter heard under our small claims procedures. We later granted the Assessor’s request to transfer the appeal to our standard hearing procedures. We also granted the Assessor’s request for entry upon land and ordered the Pottorffs to allow both the Assessor and her appraiser to inspect the home.
4. After several attempts to schedule a hearing and multiple continuance requests, our designated administrative law judge, Kyle C. Fletcher (“ALJ”), held a telephonic conference at which the parties agreed to have the appeal decided on written submissions. The ALJ then issued an order directing the parties to submit all their evidence by October 10, 2018. He specified that the parties had to present any testimony through sworn affidavits. He allowed the parties to file briefs discussing the evidentiary submissions by October 24, 2018. The parties timely filed their evidentiary exhibits and briefs. Neither the Board nor the ALJ inspected the property.
5. The parties submitted the following exhibits:¹
- Petitioners Exhibit 1: Affidavit of William & Martha Pottorff
 - Petitioners Exhibit 2: Table labeled 1280 South Shore
 - Petitioners Exhibit 3: Unlined table labeled LE tax info for Pottorff 3-23-2015
 - Petitioners Exhibit 4: Lined table labeled LE tax info for Pottorff 3-23-2015

¹ The Pottorffs submitted a single group of documents for both this appeal and a separate appeal for a different property (pet. no. 55-004-14-1-5-10198-15). They did not label any of the documents as exhibits. We have included those documents in both appeals, assigned them exhibit numbers, and labeled them accordingly.

- Petitioners Exhibit 5: Property Assessment Detail Report for 1085 Locust Dr.
- Petitioners Exhibit 6: Property detail and history reports and property report card (“PRC”) for 1085 Locust Dr.
- Petitioners Exhibit 7: October 3, 2018 letter from Maureen Rohr
- Petitioners Exhibit 8: Market value estimate and bill from Jean Shewmaker
- Petitioners Exhibit 9: Property history and detail reports for 3656 S. Whippoorwill Lake Dr.
- Petitioners Exhibit 10: Plat of survey for Carl Rohr
- Petitioners Exhibit 11: Land Sciences record of survey, page 1
- Petitioners Exhibit 12: Sketch from Dianna Grindean’s appraisal report for 1280 South Shore Dr.
- Petitioners Exhibit 13: Outside measurements of 1280 South Shore Dr.
- Petitioners Exhibit 14: Blueprint for Mr. and Mrs. Carl Rohr residence
- Petitioners Exhibit 15: Morgan County Assessor form partially completed by Steve Dunbar
- Petitioners Exhibit 16: 2018-2019 Uniform Standards of Professional Appraisal Practice (“USPAP”) excerpt
- Petitioners Exhibit 17: Two tables labeled Newest Appraisal 5-2-18 and LE tax info for Pottorff 3-23-2015
- Petitioners Exhibit 18: Form 11R/A notice for 1280 South Shore Dr., Form 11 for 1280 South Shore Dr., and 2 Form 11 notices for 1290 South Shore Dr.
- Petitioners Exhibit 19: Form 11 notice for 1290 South Shore Dr.
- Petitioners Exhibit 20: 2013-2015 PRCs for 1220 South Shore Dr.

- Respondent Exhibit A: PRC for the subject property
- Respondent Exhibit B: Dianna Grindean affidavit
- Respondent Exhibit B1: Certified residential appraiser license
- Respondent Exhibit B2: Appraisal report for 1280 South Shore Drive by Dianna Grindean
- Respondent Exhibit B3: Aerial photograph of 1280 South Shore Drive

- 6. The record also includes (1) all petitions, motions, briefs, and other documents filed in these appeals, and (2) all orders and notices issued by the Board or our ALJ.

III. Summary of Contentions

A. The Assessor

- 7. The Assessor submitted an appraisal from Dianna Grindean, an Indiana certified residential appraiser. Grindean certified that she performed her appraisal in conformity with USPAP. She developed the sales-comparison and the cost approaches to value the

subject property, giving the most weight to her conclusions under the sales-comparison approach. Because of a lack of rental data, she did not develop the income capitalization approach. *Resp't Exs. B-B2.*

8. The property is located in the Lake Edgewood 3rd subdivision, which Grindean described as a desirable and popular community with a stable market for lakefront properties. It sits on what Grindean described as a .46-acre site. She inspected the site as well as the interior and exterior of the home, which was built in 1964. She also measured the home, which she reported as having 1,568 square feet of above-grade living area, including a sunroom, and also a 2,024-square-foot basement, 1,568 square feet of which was finished. She found that the home was built with average quality materials and workmanship and that it was well maintained. She noted updates to the roof, windows, floor coverings, and parts of the kitchen and bathrooms. In light of those updates, she estimated the home's effective age at between 35 and 40 years. *Resp't Exs. B, B2.*
9. Grindean began her analysis under the cost approach by valuing the site. Because the Pottorffs' subdivision had been built-up for many years, she looked to sales of vacant parcels from the same general market segment and estimated a site value of \$45,000. She used the Marshall & Swift residential cost guide to determine a replacement cost for the improvements, and she estimated depreciation using an economic life of 50 years for the home. After adding her estimated site value to the depreciated cost of the improvements, Grindean arrived at a value of \$272,654 under the cost approach. *Resp't Exs. B, B2.*
10. Turning to the sales-comparison approach, Grindean initially found a limited pool of comparable sales. After expanding her search, she selected what she considered the most recent sales in the subject property's general market segment with similar appeal, function, and design as the subject property. The sales were all less than seven miles from the subject property and sold for prices ranging from \$215,000 to \$299,900. *Resp't Exs. B, B2.*

11. Grindean adjusted the sale prices to account for relevant ways in which the sold properties differed from the subject property, such as differences in building veneer, above-grade living area, basement area and finish, view (lake frontage), and lot size. She also adjusted for differences in various amenities like porches, patios, decks, and fireplaces. She quantified her adjustment for above-grade living area at \$20/sq. ft. Although the sites ranged from .31 to 1.5 acres, she did not adjust the sale price for any site that was less than one acre. *Resp't Exs. B, B2.*
12. Grindean's adjusted sale prices ranged from \$224,300 to \$276,600. She gave the most weight to the sale of 1085 Locust Drive in Martinsville, which sold for an adjusted price of \$276,600, because it was from the subject property's neighborhood and was the most similar in terms of size and amenities, aside from having a nicer lot with more lake frontage. It was also the most recent sale. Grindean settled on a value of \$250,000 under the sales-comparison approach, which was also her reconciled value after considering her conclusions under both approaches. *Resp't Exs. B, B2.*
13. In addition to her comparable sales data, Grindean included information for one then-current listing. She noted that the home was substantially smaller than, and not as updated as, the subject home. She also noted that the Pottorffs had listed the property for sale by owner at \$353,500 and that a realtor had previously listed it at the same price. She described the price as high for the subject property's market. *Resp't Ex. B2.*
14. Grindean initially valued the property as of November 12, 2015. At the Assessor's request, Grindean later examined sales data from January 1, 2012, to February 28, 2014, and added a sale from April 2013 to her report. But she did not change the report's effective date. After reviewing the additional data, Grindean found that property values were relatively flat throughout that period, showing only minimal increases. She found only minimal changes in 2015 as well. She believed the indicated amount from her original valuation was still reliable throughout the period the Assessor asked her to focus on. In an affidavit, Grindean affirmed that she amended her appraisal to estimate the property's value as of March 1, 2013. The Assessor characterizes that statement as a

typo and claims Grindean actually valued the property as of March 1, 2014. *Resp't Exs. B, B1; Ass'r Brief.*

15. Although the Pottorffs offered an assessment history for the subject property and assessment information for several other properties, the Assessor argues that such information, by itself, does not show the subject property's market value-in-use for the year under appeal. Each tax year stands alone and the value of the subject property in previous years does not show its value for later years. Because the Pottorffs did not attempt to analyze any of the information they offered for other properties or explain how that information related to the subject property's value, the Assessor argues that they failed to meet their duty of walking us through their evidence. *Resp't Brief.*

B. The Pottorffs

16. The Pottorffs rely on a mix of (1) exhibits submitted in compliance with the ALJ's order, and (2) unsworn factual allegations in their brief. The property was unoccupied after the original owners moved out. In August 1999, Jean Shewmaker estimated its value at \$66,190. Between July 2000 and May of 2002, the previous owners' daughter-in-law, Maureen Rohr, hired Grindean to evaluate the property. She valued it at \$40,000. Rohr wrote a letter indicating that Grindean did not believe the property would sell in its then-current condition. When the Pottorffs bought it for \$40,000 in 2002, William Pottorff quoted Rohr a price to demolish the house. *Pet'rs Brief; Pet'rs Exs. 7-8, 15.*
17. The Pottorffs gave two reasons why they believe the Assessor increased their assessment in 2014. First, they assert the Assessor was responding to them listing the property at \$353,500. They claim they listed the property to help a friend sell his property. Second, the Pottorffs contend the Assessor increased property values to meet the demands of the "Conservancy Board Budget," which the Pottorffs argue is inappropriate because Lake Edgewood property owners have no interest in the conservancy and must pay to use water from it. The Pottorffs believe their assessment should be \$126,500. *Pet'rs Brief; Pet'rs Exs. 9.*

18. Next, the Pottorffs point to what they characterize as several errors in Grindean's appraisal. The Pottorffs claim that Grindean's sketch of the basement is wrong—it should have 576 fewer square feet because it does not extend under the garage. They also claim that only 1,404 square feet of the basement was finished, as opposed to 1,568 square feet as reported by Grindean. And they claim the sunroom is still what it was originally designed to be—a porch. Neither the sunroom nor the room below it has HVAC ductwork in it. The door between the sunroom and the rest of the home has a threshold similar to those leading to the garage or to outside. *Pet'rs Brief; Pet'rs Exs. 12-14.*
19. The Pottorffs also argue that Grindean erred in determining the site's borders and size. She lists the site as 0.46 acres, but the lot is only 0.33 acres. The Pottorffs believe Grindean erroneously included portions of a separate, nearby lot. And according to both Google Maps and a more recent appraisal of the subject property that used many of the same comparable sales, most of those sales are significantly further away from the subject property than Grindean reported in her appraisal. *Pet'rs Brief; Pet'rs Exs. 10-11, 17.*
20. The Pottorffs also take issue with Grindean's judgment on several points, beginning with her estimate of the home's effective age. According to the Pottorffs, maintenance such as replacing flooring, windows, and the roof, should not decrease the effective age by 20 years. *Pet'rs Brief.*
21. They similarly disagree with Grindean's decision to rely on the sale of 1085 Locust Drive, as well as with several of her adjustments to its sale price. While Grindean considered it as the most comparable to the subject property, it was assessed 25% higher than the subject property and its home is 11% larger. The Pottorffs also had questions about how Grindean calculated her adjustment for the Locust Lane property's superior view, or why she adjusted its sale price by only \$4,000 to account for the property's dock and only \$7,500 for its much larger deck. With support from a property detail report,

they also claim that Grindean's photograph of the Locust Drive property actually depicts a different property on the same street.² *Pet'rs Brief; Pet'rs Exs. 5-6.*

22. Finally, the Pottorffs allege that the Assessor, her counsel, Marilyn Meighen, and Grindean acted in a biased and unethical manner. First, Meighen failed to announce herself as an attorney during an informal meeting between the Pottorffs and the Assessor. Second, Meighen misunderstood the Pottorffs' attempt at settlement, which would have corrected all of the errors without the expense of court proceedings. Third, Grindean previously offered a value opinion for the subject property.³ Fourth, Grindean took photographs inside the home without the Pottorffs' knowledge. Finally, one of the PTABOA members at the Pottorffs' hearing was the Assessor's daughter. *Pet'rs Brief.*

IV. Conclusions of Law

A. Burden of Proof

23. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor under certain circumstances, including where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal. *See* I.C. § 6-1.1-15-17.2(a)-(b), (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

² The Pottorffs claim that the photograph in Grindean's appraisal depicts 1105 Locust Lane. But they also refer to the property from Grindean's appraisal as being on Locust Lane rather than Locust Drive. We therefore infer that the two properties are on the same street.

³ Grindean acknowledged that she previously appraised the subject property. *Resp't Ex. B.*

24. The Pottorffs' assessment jumped from \$140,400 in 2013 to \$252,700 in 2014—an increase of far more than 5%. The Assessor, however, argues that the Pottorffs are seeking an equalization adjustment and that the burden-shifting statute does not apply to such claims. *Ass'r Brief (citing Thorsness v. Porter Cnty. Ass'r*, 3 N.E. 3d 49 (Ind. Tax Ct. 2014)). We disagree. It is unclear whether the Pottorffs seek an equalization adjustment. Even if they do, they also claim that the PTABOA erred in valuing their property. Under the burden-shifting statute, the Assessor has the burden of proving the assessment is correct.

B. The Assessor proved that the subject property's market value-in-use was \$250,000

25. 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) and (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.

26. 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 accepted appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (reiterating that a USPAP-compliant market value-in-use appraisal is the most effective method for rebutting the presumption that an assessment is correct).

27. Regardless of the method used, a party must explain how her evidence relates 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.* For 2014 assessments, the valuation date was March 1, 2014. I.C. §§ 6-1.1-4-4.5(f), 6-1.1-2-1.5.

28. The Assessor offered Grindean's USPAP-compliant appraisal valuing the property at \$250,000. We find Grindean's appraisal generally credible. She developed two generally accepted valuation approaches, ultimately relying on her conclusions under the sales-comparison approach. And she explained why she believed her data was appropriate, including why and how she adjusted the sale prices for her comparable properties. We are more concerned by the fact that Grindean did not expressly value the property as of the relevant March 1, 2014 valuation date. But she explained, without contradiction, that her estimated value was reliable for a period encompassing that date.
29. The Pottorffs challenge Grindean on several fronts, none of which significantly impeaches her credibility. First, they claim Grindean improperly included the sunroom in the home's above-grade living area and overestimated the size of the basement by including an area under the garage. Grindean does appear to have included the sunroom in calculating above-grade living area. But the Pottorffs offered no probative evidence to show why that was improper.
30. Even if we were to assume Grindean should have excluded the sunroom from the home's above-grade living area, the effect on her valuation opinion would be insignificant. The sunroom is less than 290 square feet, and Grindean used an adjustment of \$20/sq. ft. to account for differences between the subject home and her comparable sales in terms of above-grade living area. Assuming the sunroom had no value, it would have affected Grindean's valuation opinion by less than \$5,800, or roughly 2%. Obviously, the sunroom has value, so the effect would have been negligible.
31. As for the basement, the Pottorffs complain that Grindean described it as extending below the garage. But that does not appear to have affected Grindean's conclusions under the sales-comparison approach. She did not consider any area under the garage in comparing the subject home to her comparable homes. Instead, she focused on finished area, using measurements that mirrored what she reported for above-grade living area.

Even if we were to credit the Pottorffs' unsworn allegation that Grindean overestimated the basement's finished area by 164 square feet, the effect on her valuation opinion would be insignificant. As to the Pottorffs' claim that Grindean overestimated the lot's size, they have failed to persuade us that their measurements are more accurate.

32. While the Pottorffs take issue with Grindean's estimate of the home's effective age, they offer little support for their view. They simply disagree with her judgment. Without more, we have no reason to second-guess Grindean's judgment about the degree to which the Pottorffs' maintenance and renovations decreased the home's effective age.
33. Most of the Pottorffs' complaints about Grindean's reliance on the sale of 1085 Locust Drive similarly amount to unsupported challenges to her judgment. We recognize Grindean's photograph of that property does not match the photograph from its property detail report. It is unclear whether Grindean simply used the wrong photograph or whether she erred in reporting the address and instead actually used a nearby property from Locust Drive. In either case, the Pottorffs do not allege that any of Grindean's underlying data for the sale was wrong.
34. As a last attempt to impeach Grindean, the Pottorffs allege that she underestimated the distances between the subject property and her comparable sales. But they level those allegations through unsworn statements in their brief and tables that they prepared purportedly summarizing their Google Maps search and data from a recent appraisal, which they did not include in their evidentiary submission. We give those allegations, like all their unsworn allegations, no weight. In any case, it is unclear how, if at all, those alleged errors affected Grindean's valuation opinion.
35. In short, we give little weight to the Pottorffs' attempts to impeach Grindean's valuation opinion. While her appraisal is far from perfect, we are persuaded that she reliably estimated the property's true tax value.

36. The Pottorffs, by contrast, offered no probative evidence to show a different value. The subject property's sale price and valuation opinions from more than 10 years before the relevant valuation date have no bearing on its true tax value. The Pottorffs' exhibits do reference assessments for other properties, and they contain some basic information about those properties. But raw data for other properties does nothing to show the subject property's value; instead, the Pottorffs needed to apply generally accepted appraisal principles to show how those properties compared to the subject property and how relevant differences affected value. *See, e.g., Long*, 821 N.E.2d at 471-72; (finding 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); *Indianapolis Racquet Club, Inc. v. Marion Cnty. Ass'r*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014) (rejecting claim based on assessments of other properties because the taxpayer failed to explain how those compared to its property or to account for distinguishing characteristics that would affect values).
37. As for the subject property's assessment history, the Assessor correctly points out that each assessment year stands alone and that evidence of a property's assessment in one year does not necessarily show its true tax value in later years. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).
38. While the Pottorffs make several mostly unsupported allegations about what they believe was unethical conduct by the Assessor, her attorney, and a PTABOA member in the proceedings below, they fail to explain why those allegations are relevant to the central question in this appeal—the subject property's true tax value. Our proceedings are de novo, and there are no allegations of unfairness regarding the appeal process before us.

C. The Pottorffs failed to prove they were entitled to an equalization adjustment

39. Finally, to the extent the Pottorffs claim an equalization adjustment, they have the burden of proof. *Thorsness*, 3 N.E.3d at 52-53. An equalization adjustment is a remedy for the lack of uniformity and equality in assessments. It seeks to adjust a property's assessment

so that it bears the same relationship of assessed value to true tax value as other properties within the same jurisdiction. *See id.* at 51-52. The Pottorffs, however, did not show the true tax value of the subject property or any of the other properties. They therefore failed to meet their burden of proof. *See Westfield Golf Practice Cntr., LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (finding that taxpayer failed to prove a lack of uniformity and equality where it failed to show the actual market value in-use for its property or any of the properties it claimed were more favorably assessed).

V. CONCLUSION

40. Based on Grindean's appraisal, we find that the subject property's true tax value is \$250,000 and that its 2014 assessment should be changed accordingly.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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>>.