

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

**Petition No:** 07-004-20-1-5-00043-21  
**Petitioner:** Debra K. Rogers  
**Respondent:** Brown County Assessor  
**Parcel No.:** 07-07-18-400-214.000-004  
**Assessment Year:** 2020

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

**Procedural History**

1. The Petitioner appealed her 2020 assessment of a warehouse property on 1.93 acres located at 1187 Greasy Creek Road in Nashville with the Brown County Assessor.
2. On December 14, 2020, the Brown County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering the assessment to \$30,100 for land and \$54,000 for improvements for a total of \$84,100.
3. The Petitioner timely appealed to the Board, electing the Board’s small claims procedures. On July 20, 2021, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”) held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
4. Michael L. Carmin, Attorney, represented the Petitioner. Brian Cusimano, Attorney, represented the Brown County Assessor. The Petitioner, Debra K. Rogers, and Brown County Assessor Mari Miller testified under oath.

**Record**

5. The official record for this matter is made up of the following:

a) Exhibits:

Petitioner Exhibit A: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134 dated August 27, 2019,  
Petitioner Exhibit B: Notification of Final Assessment Determination – Form 115 dated November 21, 2019,  
Petitioner Exhibit C: Notice of Assessment of Land and Structures – Form 11 dated April 30, 2020,

- Petitioner Exhibit D: Notification of Final Assessment Determination – Form 115 dated December 14, 2020,
- Petitioner Exhibit E: Petition for Review of Assessment Before the Indiana Board of Tax Review – Form 131,
- Petitioner Exhibit F: Aerial photograph of the subject property,
- Petitioner Exhibit G: 2020 property record card for parcel #07-07-18-400-216.000-004,
- Petitioner Exhibit H: 2020 property record card for parcel #07-07-18-400-210.001-004.
- Respondent Exhibit A: Appraisal report of the subject property prepared by Wayne F. Johnson, First Appraisal Group Incorporated with an effective date of August 5, 2018,
- Respondent Exhibit B: Sales disclosure form dated November 11, 2019,
- Respondent Exhibit C: 2020 subject property record card.

- b) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

### **Burden of Proof**

6. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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 burden-shifting statute creates two exceptions to that rule.
7. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
8. 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 IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject for 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).

9. Here, the parties agree the total assessed value of the subject property increased by more than 5% from 2019 to 2020. The property record card indicates the assessment increased from \$62,500 in 2019 to \$84,100 in 2020. In addition, there was a successful appeal in the prior year. Neither party offered any argument regarding the burden. We find the Respondent has the burden to prove the 2020 assessment is correct.

### Contentions

10. Summary of the Petitioner's case:
- a) The subject property was previously owned by a company owned by the Petitioner's father. It has a warehouse that was previously used to service restaurants. When the Petitioner's father passed, it became part of a trust. The Petitioner, along with four other siblings, became beneficiaries of that trust. The subject property is located adjacent to the Petitioner's home and the only access to the subject property is through the Petitioner's other land. The property was appraised as of August 5, 2018, for \$110,000. Based on this appraisal, the subject property was distributed to the Petitioner on November 12, 2019, at a value of \$110,000. *Rogers testimony; Pet'r Ex. F; Resp't Ex. A.*
  - b) The Petitioner appealed the 2019 assessment of the subject property with the permission of the trustees. After an inspection by an employee of the Assessor, the 2019 assessment was reduced to \$62,500. In 2020, the assessed value increased to \$109,900. The Petitioner appealed again and the PTABOA reduced the 2020 assessment to \$84,100. The Petitioner argued that between 2019 and 2020 there were no changes in the use or condition of the property that would justify any increase in assessed value. Thus, she requested the assessment be reduced to \$62,500. *Carmin argument; Rogers testimony; Pet'r Exs. A-D.*
  - c) The Petitioner noted that she disagreed with the subject property being classified as nonresidential C-3 as shown on the property record card. She claims the property located to the north at 1305 Greasy Creek Road is comparable to the subject property but is classified as "excess residential."<sup>1</sup> *Rogers testimony; Pet'r Ex. H.*
11. Summary of the Respondent's case:
- a) The Respondent argued that the November 11, 2019, transfer to the Petitioner for \$110,000 was the best evidence of value. Miller noted that although the sales disclosure form shows the existence of a family relationship between the buyer and seller, it also shows that there was zero discount in the transfer. *Cusimano argument; Miller testimony; Resp't Ex. B.*

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<sup>1</sup> To the extent the Petitioner may have been arguing that the subject property was subject to the wrong tax cap classification under Article 10 § 1 of the Indiana Constitution we note that she failed to develop this argument. In addition, the evidence indicates that the subject property did not have a residential use as it contained a commercial building.

- b) The Respondent also pointed to the August 5, 2018, appraisal prepared by Wayne Johnson of First Appraisal Group Incorporated. Mr. Johnson valued the property using the the sales comparison approach. He estimated the fair market value to be \$110,000 as of August 5, 2018. The Assessor admitted that neither the 2019 transfer nor the appraisal were perfect evidence, but argued that together they support a market value-in-use of the property of \$110,000 for January 1, 2020. *Miller testimony; Resp't Ex. A.*

### Analysis

12. The Respondent failed to meet her burden of proof to show the 2020 assessment was correct. The Board reached this decision for the following reasons:
- 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.” Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. 2011 MANUAL at 2. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
- b) Regardless of the method used, a party must explain how the evidence relates to 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. Ass'r*, 821 N.E.2d 466, 471 (In. Tax Ct. 2005). For the 2020 assessment, the valuation date was January 1, 2020. *See* Ind. Code § 6-1.1-2-1.5.
- c) The Respondent primarily relied on the November 11, 2019 “purchase” of the subject property by the Petitioner. This was not a purchase. It was a distribution of assets to a beneficiary. Accordingly, the “sales price” on the sales disclosure does not establish an actual sale-only a transfer. The property was not sold. The property was not exposed to the open market and no money changed hands. For all these reasons we do not find the 2019 transfer of the subject property to be reliable evidence of value.
- d) Likewise, we do not find the appraisal to be reliable evidence of value for the assessment date. Johnson estimated the value as of August 5, 2018, approximately 17

months prior to the January 1, 2020, assessment date. All evidence must be related to the valuation date. *Long* at 471. The Respondent failed to offer any evidence that related or trended the 2018 appraisal to January 1, 2020. Thus, we find the appraisal unreliable and that the Respondent failed to meet her burden of proof. Because the Petitioner only requested the assessment be reverted, we need not examine the rest of her evidence.

### Conclusion


13. Because the Respondent failed to meet her burden of proof the assessment must revert to the prior year's value of \$62,500.

### Final Determination

In accordance with the above findings and conclusions, we order the 2020 assessment reduced to \$62,500.

ISSUED: *OCTOBER 18, 2021*

  
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Chairman, Indiana Board of Tax Review

  
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Commissioner, Indiana Board of Tax Review

  
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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>.