

REPRESENTATIVE FOR PETITIONERS: Debra Swearingen, *pro se*

REPRESENTATIVE FOR RESPONDENT: Sheri Bentley, *pro se*

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

DON & DEBRA SWEARINGEN, H/W,)	Petition No.: 54-030-23-1-5-00602-23
)	
Petitioners,)	
)	Parcel No.: 54-11-01-111-015.002-030
v.)	
)	
MONTGOMERY COUNTY ASSESSOR,)	County: Montgomery
)	
Respondent.)	Assessment Year: 2023

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

Introduction

1. Don and Debra Swearingen appealed the 2023 assessment of their home. The totality of the evidence offered by the parties does not suffice to show the property’s true tax value. Because the assessment increased more than 5% from the prior year, we must presume that the property’s value for 2023 equals the 2022 assessed value of \$239,100.

Procedural History

1. The Swearingens contested the 2023 assessment of their property located at 1159 West Country Club Road in Crawfordsville. The Montgomery County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination setting the assessment at \$254,300 (\$31,200 for land and \$223,100 for improvements).

2. The Swearingens then filed an appeal petition with us. On January 31, 2024, our designated administrative law judge, Joseph Stanford (“ALJ”), held a hearing on the Swearingens’ petition. Neither he nor the Board inspected the property. Debra Swearingen and Sheri Bentley, the Montgomery County Assessor, both represented themselves and testified under oath.

3. The Swearingens submitted the following exhibits:
 - Exhibit 1: Form 130 petition,
 - Exhibit 2: Form 115 determination, dated September 27, 2023
 - Exhibit 3: January 12, 2024 letter from Mindy Fruits,
 - Exhibits 4-9: Photographs of mobile homes.

4. The Assessor submitted the following exhibits:
 - Exhibit A: Property record card for Swearingens’ property,
 - Exhibit B: Form 115 determination,
 - Exhibit C: Spreadsheet with information about five sales,
 - Exhibit D: PRC for 1218 Glenway Drive,
 - Exhibit E: Photograph of 1218 Glenway Drive
 - Exhibit F: PRC for 1190 North 400 West,
 - Exhibit G: Photograph of 1190 North 400 West,
 - Exhibit H: PRC for 2904 West Country Club Road,
 - Exhibit I: Photograph of 2904 West Country Club Road,
 - Exhibit J: PRC for 1127 West Country Club Road,
 - Exhibit K: Photograph of 1127 West Country Club Road,
 - Exhibit L: Aerial photograph of the subject property, 1127 West Country Club Road, and mobile homes,
 - Exhibit M: Aerial photograph for 1111 Ladoga Road and surrounding area,
 - Exhibit N: PRC for 1111 Ladoga Road.

5. The record also includes the following: (1) all petitions or 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

6. The Swearingens' property contains a 2,631-square-foot home on a 1.04-acre site. It was assessed for \$162,400 in 2021 before jumping to \$239,100 in 2022. Prior to 2022, a 25% obsolescence depreciation factor had been applied to the home, and a negative 30% influence factor had been applied to the homesite. But those factors were removed as part of the cyclical reassessment process. For 2023, the Assessor originally assessed the property for \$257,700. On appeal, the PTABOA applied a negative 10% influence factor to the homesite, reducing the overall assessment to \$254,300. *Bentley testimony; Exs. A-B.*

Parties' Contentions

A. The Assessor's Contentions

7. The Assessor acknowledges that a negative influence factor should be applied to the Swearingens' land valuation to account for the property's view of dilapidated mobile homes across the street. But she argues that the 10% negative influence factor that the PTABOA applied is sufficient. *Bentley argument.*
8. According to the Assessor, the real estate market was "very strong" in 2022, so the mobile homes did not affect the value of the Swearingens' property as much as they would have in other years or other markets. The Assessor offered a list of other properties in the area that sold for more than their assessed values. The list includes 1111 Ladoga Road, which is surrounded on three sides by a mobile home park. It also includes 1127 W. Country Club Road, which is adjacent to the Swearingens' property, although the home is set back further from the street than the Swearingens' home is. *Bentley testimony and argument; Exs. D-N.*

B. The Swearingens' Contentions

9. The Swearingens argue that obsolescence depreciation should be reapplied to their home because of the mobile homes across the street. Those mobile homes are

“nonconforming” properties. One is barely habitable, and the others are boarded up and used only for storage. According to Debra Swearingen, if the mobile homes affect the Swearingens’ land value, then they also affect their home’s value. *Swearingen argument and testimony; Exs. 3-9.*

10. To support their claim, the Swearingens offered a letter from Mindy Fruits, a realtor with FC Tucker Company, proposing a minimum deduction of 25% to the assessment of the Swearingens’ land and improvements. According to Fruits, that deduction would account for the diminished value caused by the neighboring mobile homes. She was troubled by the fact that, despite any changes to the Swearingens’ property, the Assessor had removed the negative influence and obsolescence factors that had previously been applied to the property. *Ex. 3.*¹
11. According to Debra Swearingen, the Swearingens’ home is the only one that sits close enough to the neighboring mobile homes to have its value affected. And she disagrees with the Assessor’s comparison of her property to 1111 Ladoga Road. That property sits across from the Imperial Estates mobile home park. Unlike the mobile homes across the street from the Swearingens’ property, Imperial Estates is a conforming property with covenants, rules, and regulations. *Swearingen argument and testimony (referring to Exs. M, N).*

Conclusions of Law and Analysis

A. Because the Swearingens’ assessment increased by more than 5% between 2022 and 2023, the Assessor had the burden of proof.

12. 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).

¹ The ALJ admitted the letter (Ex. 3) over the Assessor’s objection that it did not contain an opinion of value, i.e. what the property would have sold for. *Bentley objection.*

13. 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.*
14. 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).
15. The Swearingens' assessment increased 6.4%, rising from \$239,100 in 2022 to \$254,300 in 2023. The Assessor did not object to the ALJ's preliminary determination that she had the burden of proof. We agree and find that the Assessor had the burden.

B. Because the totality of the evidence does not suffice to show the property's true tax value, we must presume that its value equals the previous year's assessment of \$239,100.

16. 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 of a property's true tax value "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).
17. 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.

18. 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.
19. 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 2023 assessments, the valuation date was January 1, 2023. I.C. § 6- 1.1-2-1.5(a).
20. Neither party offered any market-based evidence from which to reliably determine the true tax value of the Swearingens’ property. The Assessor pointed to a list of properties that sold for more than what they were assessed for. By itself, that raw sales and assessment data does nothing to show the market value-in-use of the Swearingens’


property. See *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005) (holding that taxpayers' sales data for other properties lacked probative value where they failed to explain how the characteristics of those properties compared to their property or how any differences affected market value-in-use).

21. Similarly, while the deteriorating mobile homes across the street might affect the value of the Swearingens' property, neither side offered any reliable evidence to quantify that effect, much less to show the property's overall value. At most, the Swearingens offered an opinion from a realtor, Mindy Fruits, who simply proposed a 25% deduction to the Swearingens' assessment to account for the mobile homes' effect. But Fruits did not explain how she arrived at her opinion, much less show that she complied with generally accepted appraisal principles. Her opinion therefore carries no probative weight.
22. Because the totality of the evidence does not show the true tax value of the Swearingens' property, we must presume that its value equals the previous year's assessment of \$239,100.

Conclusion

23. The Swearingens' assessment increased by more than 5% between 2022 and 2023 and the totality of the evidence did not suffice to show the property's true tax value. We therefore order that the assessment be reduced to the previous year's level of \$239,100.

Date: APRIL 26, 2024



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 of 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>>.