

REPRESENTATIVE FOR PETITIONER: Jennifer Weiser, pro se

REPRESENTATIVE FOR RESPONDENT: Gabe Deaton, Director of Assessment

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

JEFFREY AND JENNIFER WEISER,)	Petition No.: 49-801-19-1-5-00297-21
)	
Petitioner,)	Parcel No.: 8060756
)	
v.)	County: Marion
)	
MARION COUNTY ASSESSOR,)	Assessment Year: 2019
)	
Respondent.)	

August 2, 2022

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. Jeffrey and Jennifer Weiser contested their 2019 assessment. Because they failed to present any reliable, market-based evidence proving the market value-in-use of the subject property and because they failed to demonstrate an actionable lack of uniformity and equality in their assessment, we find for the Assessor and order no change to the 2019 assessment.

PROCEDURAL HISTORY

2. The Weisers challenged the 2019 assessment of their property located at 6314 Oxbow Way in Indianapolis. On January 22, 2021, the Marion County Property Tax Assessment

Board of Appeals (“PTABOA”) issued a Form 115 determination valuing the subject property at \$864,800 (\$94,900 for land and \$769,900 for improvements).

3. The Weisers timely filed a Form 131 petition with the Board. On April 12, 2022, our designated administrative law judge, David Smith (“ALJ”), held a telephonic hearing on the petition. Neither he nor the Board inspected the subject property.
4. Jennifer Weiser appeared pro se. Gabe Deaton, Director of Assessment for the Marion County Assessor’s Office, appeared for the Assessor. Both testified under oath.

5. The Weisers submitted the following exhibit:

Petitioner Ex. 1: Neighborhood assessment comparison data

6. The Assessor submitted the following exhibits:

Respondent Ex. 1: Aerial photo of subject neighborhood
Respondent Ex. 2: 2019 Property Record Card (“PRC”) for subject property
Respondent Ex. 3: 2018 neighborhood sales data and PRCs
Respondent Ex. 4: 2019 neighborhood sale data
Respondent Ex. 5: 2017 neighborhood sales data
Respondent Ex. 6: 2016 neighborhood sales data
Respondent Ex. 7: Assessment data for neighborhood properties

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

THE WEISERS’ CONTENTIONS

8. The Weisers purchased the subject property for \$685,500. For many years, the assessment reflected their purchase price. It then jumped up to a value greater than what the Weisers believe they could sell their property for. The subject property is in a gated community of about 70 homes, most of which are lakefront homes. However, the subject property is not located on the lake. The Weisers do not think that the Assessor should

compare their property to the lakefront homes in their neighborhood because there is a \$400,000 price premium for the lakefront homes as shown by their purchase prices. While everyone on the Weisers' side of the street benefits from the neighborhood, the sales prices for these non-lakefront homes are not as high per square foot. *Weiser testimony; Pet'r Ex.1.*

9. The property at 6392 Oxbow Way, which recently sold for \$685,000 (\$159.71/SF), is a "perfect comp." It is a little bit smaller than the subject property, but like the subject property it is not on the lake. In contrast, all but one of the comparable sales offered by the Assessor are located on the lake. The one sale the Assessor offered that was not a lakefront property, 6344 Oxbow Way, sold for \$975,000, but it was just built five or six years ago. The assessed value for the subject property should not be based on three or four sales of lakefront homes, while excluding the sale of 6392 Oxbow Way. Although it has more square footage and a B+ grade, the property located at 6356 Oxbow Way is also similar to the subject property. Its assessment was \$655,900 or \$108/SF, while the subject property's assessment was \$164/SF. Given that it is not a lakefront home, the subject property is over-assessed on a per square foot basis. *Weiser testimony; Pet'r Ex.1.*
10. Additionally, many of the lots in the Weisers' neighborhood have assessments for land but not for improvements. For instance, the property located at 6327 Oxbow Way, which is across the street from the subject property and located on the water, had a land-only assessment of \$48,500. It may be an issue with the public records, but the Weisers are unsure exactly why there was no assessment for the house when their assessment includes values for both land and improvements. The Weisers also question why the land assessment for their property (\$94,900) is higher than the land assessments for lakefront lots like 6327 Oxbow Way. *Weiser testimony; Pet'r Ex.1.*
11. The Weisers further contend that their assessment is too high because the subject property is the only home in their neighborhood assigned an A+ grade. Most of the other

homes were in the A- to B+ range. The subject property was built in 2002 and they had not made any significant improvements to it as of 2019. Finally, the Weisers pointed out that while the Assessor calculated the subject property's total size to be 5,269 square feet, that total includes a partially finished attic space located on the third floor that is not completely livable. *Weiser testimony; Pet'r Ex. 1.*

THE ASSESSOR'S CONTENTIONS

12. The subject property is correctly assessed. It had been underassessed since 2012. The subject property's subdivision is located on a tax district border line that causes PRCs for some of the waterfront lots to appear incorrect as their PRC valuation data is split between two reports. The primary reason for the increase in subject property's assessment was removal of a negative \$188,802 adjustment that the Washington Township Assessor apparently implemented sometime after the property was developed, but before the consolidation of the townships. The A+ condition grade is also a carryover determination from the township assessor. *Deaton testimony; Resp. Exs. 1, 2.*

13. The comparative market analysis of sales in the Weisers' neighborhood in 2016, 2017, 2018 and 2019 show average sales prices of \$213/SF, \$203/SF, \$242/SF, and \$207/SF, respectively. The ten best comparable properties in the neighborhood had assessed values ranging from \$139/SF to \$186/SF. The Assessor relies on recent sales when assessing value. The square footage values from the sales analysis and the ten comparable properties show that the subject property's assessment is in line with the sales prices and assessed values of other properties in the neighborhood. The subject property's land value also receives a -30% influence factor. The Weisers have provided no reason or evidence to prove that the subject property should have a lower assessment. *Deaton testimony; Resp. Exs. 1-7.*

ANALYSIS

14. Generally, an assessment determined by an assessing official is presumed to be correct.

2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving that the assessment is incorrect and what the correct assessment should be. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).¹

15. 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); MANUAL at 2. 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 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 2.²
16. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Eckerling*, 841 N.E.2d at 678. Simply attacking the methodology used to determine an assessment, however, does not suffice; instead, a party must offer market-based evidence to show that the property's assessed value does not reflect its market value-in-use. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).

¹ The Legislature repealed the burden-shifting statute, I.C. § 6-1.1-15-17.2, on March 21, 2022. P.L. 174-2022 § 32 (repeal effective on passage). In the same bill, a new statute created a substitute burden-shifting statute, I.C. 6-1.1-15-20, for new appeals filed after the effective date of March 21, 2022. P.L. 174-2022 § 34 (effective on passage). Because the Weisers filed their appeal with the PTABOA before March 21, 2022, and our hearing on this appeal occurred after the Legislature repealed I.C. § 6-1.1-15-17.2, neither the new nor the repealed statute apply to this case. Regardless, we note that the Weisers offered no argument that the burden of proof should shift to the Assessor under either statute.

² The 2011 REAL PROPERTY ASSESSMENT MANUAL, which applied to the assessment date at issue in this appeal, used the same definition. 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.

17. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of 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 (Ind. Tax Ct. 2005). For the 2019 assessment, the valuation date was January 1, 2019. I.C. § 6-1.1-2-1.5(a).
18. In support of their petition, the Weisers presented a mix of sales and assessment data from purportedly comparable properties in their neighborhood. A party offering such data must use generally accepted appraisal and assessment practices to show that the properties are comparable to the subject property. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466,471 (Ind. Tax Ct. 2005). Conclusory statements that a property is "similar" or "comparable" do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E. 2d at 471. They must also explain how relevant differences affect values. *Id.*
19. The type of analysis required by *Long* is lacking from the Weisers' case. Jennifer Weiser's testimony that the property at 6392 Oxbow Way is a "perfect comp" and her description of 6356 Oxbow Way as being similar to the subject property are precisely the types of conclusory statements that the Tax Court explained are insufficient to prove comparability. And her statements describing both properties as non-lakefront homes located in the subject property's neighborhood are simply not enough to establish comparability. Furthermore, the Weisers did not even attempt to explain how any relevant differences affected their values. The Weisers likewise failed to demonstrate comparability or adjust for relevant differences for any of the other neighborhood properties included in their analysis.
20. Additionally, there are major problems with the Weisers' sales and assessment data that render it unreliable. They failed to provide supporting documentation for any of their data, and there are multiple instances where the 2019 assessed values and/or the square

footages they reported are different than the values contained in the Assessor's assessment data. For example, the Weisers listed the property at 6303 Oxbow Way as having a total assessment of \$989,000 for 2019, but as the Assessor asserted and his evidence confirms, some of the waterfront lots have more than one PRC due to their location along a tax district border line. In the case of 6303 Oxbow Way, the second PRC contained an additional land assessment of \$140,600, for a total assessment of \$1,129,600. In fact, of the twenty-four properties included in their analysis, there are only three properties where both the assessed values and the square footages reported by the Weisers match the Assessor's data.³

21. The tax district border line issue also appears to explain why the Weisers believed that many of the lakefront properties such as 6327 Oxbow Way had land-only assessments⁴ and why the land assessments for many of the lakefront properties they included in their analysis appeared lower than the subject property's—the Weisers failed to include the assessment data from each property's second PRC.
22. We likewise find no merit to the Weisers' argument about the subject property's A+ grade. The choice to assign a particular grade to a given property is part of the methodology used by an assessor to develop an assessment. Simply attacking the methodology used to calculate an assessment or strictly applying the assessment guidelines is generally insufficient—taxpayers must provide their own independent market-based evidence of value. *Eckerling*, 841 N.E.2d at 678; *see also Piotrowski*, 177 N.E.3d at 131-32.
23. We also conclude the Weisers failed to demonstrate that their partially finished attic should be excluded from the calculation of the subject property's total size. However, even if they had, the Weisers still failed to introduce any probative market-based evidence demonstrating the correct market value-in-use for the subject property after

³ 6308 Oxbow Way, 6332 Oxbow Way, and 6302 Oxbow Way (comparing Petitioner Ex. 1 to Respondent Ex. 7).

⁴ The Weisers claimed 6327 Oxbow Way had a land-only assessment of \$48,500, when it in fact had a total assessment of \$701,400 in 2019. *Respondent Ex. 7*.

taking the attic's level of finish into account. Again, to successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling*, 841 N.E.2d at 678.

24. Because the Weisers offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use for 2019, they failed to make a prima facie case for a lower assessment.

25. Finally, to the extent the Weisers offered the sales and assessment data to challenge the uniformity and equality of their assessment as mandated by I.C. § 6-1.1-2-2 and Article 10 of the Indiana Constitution, we conclude they failed to make a prima facie case demonstrating a lack of uniformity and equality in the subject property's assessment. Uniformity and equality in an assessment may be measured through an assessment ratio study. *Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). An assessment ratio study "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." *Id* (citation omitted). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

26. When a ratio study shows that a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments

so “they bear the same relationship of assessed value to market value as other properties within that jurisdiction.” *Thorsness v. Porter Co. Ass’r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. Of Tax Comm’rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana’s Constitution, however, does not guarantee “absolute and precise exactitude as to the uniformity and equality of each individual assessment.” *State Bd. of Tax Comm’rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998).

27. As discussed above, a ratio study compares the assessed values of properties with objectively verifiable data such as sales prices or market value-in-use appraisals. Here, however, the Weisers did not actually use their sales and assessment data to compute any ratios. Even if they had, much of the Weisers’ sales and assessment data is unreliable. Of the six properties they reported sales prices for, only two have assessments matching the Assessor’s assessment data.⁵ And although the Assessor’s evidence reflects the same sales prices for four of the six properties, the Weisers offered no supporting documentation such as sales disclosure forms to confirm the sales prices for 6374 Oxbow Way or 6392 Oxbow Way. They also failed to convince us that six properties represent a statistically reliable sample of properties that sold within the subject property’s assessing jurisdiction. Because the Weisers did not truly develop a ratio study, much less one prepared according to professionally acceptable standards, they failed to prove that they are entitled to an equalization adjustment.

28. Where a petitioner has not supported their claim with probative evidence, the respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

⁵ 6332 Oxbow Way and 6344 Oxbow Way (comparing Petitioner Ex. 1 to Respondent Ex. 7)

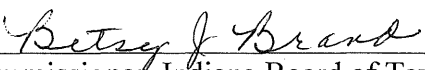
CONCLUSION

29. We find for the Assessor and order no change to the 2019 assessment.

This 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>.