

REPRESENTATIVE FOR PETITIONERS:

LaVonn E. Wilt, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Lisa Garoffolo, Boone County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Larry R. & LaVonn E. Wilt,	)	Petition No.:	06-010-12-1-5-00483
)		
Petitioners,	)	Parcel No.:	010-10050-35
	)		(06-08-13-000-021.035-016)
)		
v.	)	County:	Boone
)		
Boone County Assessor,	)	Township:	Union
)		
Respondent.	)	Assessment Year:	2012

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

July 24, 2014

Final Determination

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

Introduction

In this assessment appeal, Petitioners Larry R. Wilt¹ and LaVonn E. Wilt contested the March 1, 2012 assessment of the above-captioned parcel. The Board finds that the Boone County Assessor (the “Assessor”) failed to make a prima facie case that the assessment is correct.

¹ Mr. Wilt initiated the appeal on behalf of himself and Ms. Wilt, but he died prior to the hearing by the Board.

Procedural History

1. The subject property is Parcel No. 06-08-13-000-021.035-016 which contains a single-family home located at 2988 Stone Creek Drive in Zionsville.
2. The Wilts initiated the 2012 assessment appeal on August 22, 2012. On November 16, 2012, the Boone County Property Tax Assessment Board of Appeals (the "PTABOA") issued its determination (on Form 115) making no changes to the 2012 assessment of the subject property. The Wilts subsequently timely filed a Form 131 petition for review on December 31, 2012, asking the Board to conduct an administrative review of the 2012 assessment on the subject property.
3. The Board's Administrative Law Judge ("ALJ"), Dalene McMillen, held the hearing on January 28, 2014. Neither the ALJ nor the Board inspected the property.
4. LaVonn E. Wilt, the surviving Petitioner, was sworn as a witness. Lisa Garoffolo, the Assessor, and Peggy Lewis, a member of the PTABOA, were sworn as witnesses for the Respondent.
5. Wilt presented the following exhibits:²
 - Petitioner Exhibit 1: Assessor's reassessment field listing sheet
 - Petitioner Exhibit 2: Ryland Homes Fieldstone "Estate Collection" price sheet
 - Board Exhibit A: Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131) and attachments including:
 - Notification of Final Assessment Determination (Form 115)
 - Notice of Hearing on Petition - Real Property (Form 114)
 - 2012 Indiana property record card ("PRC") for the subject property
 - Spreadsheets containing sale prices and 2010, 2011 and 2012 assessments for several properties located in the Fieldstone and Brookhaven subdivisions
 - RBR Decks/Rodgers Ent. Invoice

² Ms. Wilt requested that Board Exhibit A, with its attachments, be admitted as part of her exhibits.

- Letter from the Wilts to the Board dated January 24, 2013
- Ryland Homes advertisement for the “Carrington” home
- Boone County appeal worksheet
- 2012 PRC for Parcel No. 010-10050-64 located at 2500 Boylston Court, Zionsville, IN 46077

6. The Assessor presented the following exhibits:

- Respondent Exhibit 1: Boone County appeal worksheet
- Respondent Exhibit 2: 2012 PRC for the subject property
- Respondent Exhibit 3: Four exterior photographs of the subject property
- Respondent Exhibit 4: Notice of Hearing on Petition - Real Property (Form 114)
- Respondent Exhibit 4A: 2012 PRC for Parcel No. 010-10050-78 located at 11554 Indian Hill Way, Zionsville, IN 46077
- Respondent Exhibit 4B: 2013 PRC for Parcel No. 010-10050-78 located at 11554 Indian Hill Way, Zionsville, IN 46077
- Respondent Exhibit 5: Notification of Final Assessment Determination (Form 115)
- Respondent Exhibit 6: Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131)
- Respondent Exhibit 7: Indiana Board of Tax Review Notice of Hearing on Petition dated November 22, 2013

7. The following items are also recognized as part of the record:

- Board Exhibit A: Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131) and attachments (see Petitioner exhibits above for the list of attachments)
- Board Exhibit B: Indiana Board of Tax Review Notice of Hearing dated November 22, 2013
- Board Exhibit C: Hearing sign-in sheet

8. The PTABOA determined the following assessment for 2012:

Land:	\$100,800
Improvements:	<u>\$250,700</u>
Total:	\$351,500

9. The Wilts requested the following assessment:

Land:	\$100,800
Improvements:	<u>\$191,200</u>
Total:	\$292,000

Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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). A burden-shifting statute creates two exceptions to this rule.
11. 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 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 appeals taken to the Indiana board of tax review or the Indiana tax court." Where the assessor fails to meet the burden of proof, "the taxpayer may introduce evidence to prove the correct assessment. If neither party meets the burden of proof, the assessment reverts to the assessment for the prior tax year, which is the original assessment for that prior tax year . . ." in cases in which the assessment for that prior tax year was not corrected by the assessor, stipulated or settled, or as determined by a reviewing authority. Ind. Code § 6-1.1-15-17.2(b).
12. 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 Ind. Code § 6-1.1-15." Under those circumstances, "(i)f the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of 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 the assessment is correct.”

13. Ind. Code § 6-1.1-15-17.2, as discussed in the preceding two paragraphs, was amended on March 25, 2014 and has application to all appeals pending before the Board. *See* P.L. 97-2014.
14. In 2011, the subject property was assessed at \$100,800 for the land and \$191,200 for the improvements for a total assessed value of \$292,000. In 2012, the subject property was assessed at \$100,800 for the land and \$250,700 for the improvements for a total assessed value of \$351,500. The parties agreed at the hearing that the 2012 assessment reflected an increase greater than 5% over that of the 2011 assessment.³ Therefore, pursuant to Ind. Code §§ 6-1.1-15-17.2(a) and (b), the Assessor has the burden of proving that the 2012 assessment is correct.

Jurisdictional Framework

15. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See also* Ind. Code §§ 6-1.5-4-1(b) and 6-1.1-15-4.

³ At some time, the property was improved by the addition of a deck. The invoice for the deck entered into the record is dated November 29, 2010 and indicates two payments were made on December 3, 2010 and December 10, 2010, respectively. The Assessor did not raise the argument that the property assessed in 2012 was not the same property assessed in 2011. Accordingly, the Board finds that the Assessor waived any argument that the burden-shifting statute should not apply on the grounds that the property assessed in 2012 was not the same property assessed in 2011.

Petitioners' Contentions

16. The home located on the subject property was constructed by Ryland Homes in 2008-2009. The model of the home is known as "The Carrington," which is a one-story, brick, ranch-style home. Wilt stated that the total purchase price of the home was \$355,207, which consisted of a \$344,995 base price for a type "A" elevation, \$10,000 for a premium lot and approximately \$212 for a poured concrete crawl space. *Wilt testimony; Petitioner Exhibit 2; Board Exhibit A.*

17. Wilt contends that the property was over-valued in 2012 based on the assessed values of other houses in the neighborhood. According to Wilt, a neighboring home located on Parcel No. 010-10050-78 has superior amenities as compared to the subject property and was assessed at \$343,500 in 2013. The neighboring home was also constructed by Ryland Homes and is also known as a "Carrington" model. The neighboring home has the following items that the subject home does not have: a three and one-half car garage, a full finished walkout basement, an additional full bathroom and two patios. Wilt explained that Ryland Homes sells different home types, each with three separate elevations and prices. The Ryland Homes price sheet Wilt provided indicates that a home with a type "C" elevation has a higher base price than a home with a type "A" elevation. The neighboring home is classified as a type "C" elevation while, as mentioned previously, the subject property is classified as a type "A" elevation. Despite the different amenities, elevation classifications and base prices, both the subject property and the neighboring home were assigned the same B+1 grade. *Wilt testimony; Board Exhibit A.*

18. Wilt contends that her next door neighbor's home located on Parcel No. 010-10050-34 is the most comparable property to the subject property. The house next door to the subject property is a "Carrington" model classified as a type "B" elevation. The house next door to the subject property has a full walkout basement, a brick raft on the exterior and hardwood floors and trim that the subject property does not have. The subject property

has a four foot extension on the house, a three-car garage, a wood raft on the exterior and a larger deck. Wilt's evidence shows that in 2012 the assessed value of property next door was \$319,200, which is less than the subject property's assessed value for 2012. Thus, Wilt contends, the assessed value of the property next door supports her argument that the assessed value of the subject property is too high. *Wilt testimony; Board Exhibit A.*

19. Wilt contends the subject home was improperly assigned a B+1 grade. It does not have hardwood floors or trim, and it also has laminate countertops. Conversely, the homes discussed in the previous two paragraphs located on Parcel No. 010-10050-78 and Parcel No. 010-10050-34 respectively, have hardwood floors and granite countertops and are also assigned a B+1 grade. According to Wilt, because the subject property has fewer amenities than the other two homes assigned a B+1 grade, the grade factor is over-stated. *Wilt testimony.*
20. In preparing for the Board hearing, Wilt sent a letter objecting to the comparison of the subject property to a home located on Parcel No. 010-10050-64. Wilt stated in the letter that the purportedly comparable home was also constructed by Ryland Homes and is also known as a "Carrington" model, but it has the following items that the subject home does not have: a three and one-half car garage, a full finished walkout basement, an additional full bathroom and an additional bedroom. *Wilt testimony; Board Exhibit A.*
21. Wilt disagrees with the PTABOA's final determination, which states "Based on the original purchase price and current sales in the area, the Board denies any change in assessed value for the tax year 2012 pay 2013." The assessed value increased by approximately 20% in 2012 and, according to Wilt, the only change to the property was the addition of a deck.⁴ Prior to his death, Mr. Wilt prepared a report showing the 2010, 2011, and 2012 assessed values and the sale prices of approximately 65 properties located in the Fieldstone and Brookhaven subdivisions. The Brookhaven subdivision adjoins the

⁴ The subject property record card shows the Assessor added the wood deck for 2012. *Board Exhibit A; Respondent Exhibit 2.*

Fieldstone subdivision and the two share a pool and a playground. The report was prepared to show two items. First, assessed values in Fieldstone and Brookhaven declined between 2010 and 2012. Second, the majority of the assessed values are less than sale price. For example, Parcel No. 010-10050-34, described in the preceding paragraph, was assessed for \$323,000 in 2011 and lowered to \$319,200 in 2012, while its sale price was \$363,350. *Wilt testimony; Board Exhibit A.*

22. Finally, Wilt contends that the Assessor reduced the 2013 assessment on her property to \$314,600. Wilt contends that because nothing changed on her property between 2012 and 2013, the reduction in the assessment demonstrates that the 2012 assessed value was too high. *Wilt testimony.*

Respondent's Contentions

23. Prior to the 2012 PTABOA hearing, the Assessor adjusted some underlying characteristics on which the assessment was based. The home had been assessed for a full basement, which the Assessor changed to a basement with 1,819 square feet and a crawl space with 777 square feet. The Assessor also stated that in 2011, a 459 square foot wood deck was added. *Assessor testimony; Respondent Exhibit 2.*
24. In support of the assessed value, the Assessor pointed to a comparative market analysis. It showed that in the subject property's neighborhood, one-story ranch style homes sold for \$170 per square foot and two-story style homes sold for \$117 per square foot. The Wilts' home is 2,596 square feet and, by applying the average sale price of \$170 per square foot, it would have an estimated value of \$441,320. Because the subject property was assessed for \$351,500, the Assessor contends the subject property was assessed below its market value. *Assessor testimony; Respondent Exhibit 1.*
25. The Assessor contends the Wilts property was assessed correctly based on its purchase price. They purchased the subject property on January 13, 2009, for \$355,207. In

support of the contention, the Assessor submitted a copy of the Wilts' PRC. *Assessor testimony; Respondent Exhibit 2.*

26. The Assessor also challenges the Wilts' use of a neighboring property at Parcel No. 010-10050-78 as a comparable to the subject property. According to the Assessor, at the time of the appeal, the neighboring property was only 70% complete and had an assessed value of \$268,300. In 2013, the neighboring property was assessed at 100% complete and the assessment increased to \$343,500. The Assessor noted that in 2012 the full basement was still unfinished. That property has less living area and two fewer plumbing fixtures than the subject home. Thus, the Assessor contends that because the neighboring property has fewer amenities and was only 70% complete in 2012, it does not support the Wilts claim that their property was over-valued. *Assessor testimony; Respondent Exhibits 4A-4B.*

Analysis

27. In Indiana, real property is assessed based on its "true tax value," which is defined as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or 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 the three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. *Id.* at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment. Such evidence may include an appraisal prepared in accordance with generally recognized appraisal standards. However, there is no requirement that an appraisal be presented either to support or rebut an assessment. *Id.* at 3.

28. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the market value-in-use 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012, both the assessment and valuation dates were March 1, 2012. Ind. Code § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).
29. The Assessor relied on the calculated average sale price for ranch style homes on a comparative market analysis at \$170 per square foot, and used that figure to conclude that the value of the subject property was accurate. Ms. Lewis, the witness for the Assessor, testified that it is cheaper to build a two-story home than it is to build a ranch-style home because a ranch-style home is more spread out and thus has a larger foundation. Ms. Lewis indicated that the Wilt home was primarily compared to other ranch-style homes in the neighborhood, of which there are five, including the home next door on Parcel No. 010-10050-34. Nothing in the record indicates that this type of methodology conforms to generally accepted appraisal principles. Conclusory statements regarding value based on an average square foot selling price are not sufficient to establish a relevant or accurate valuation for the subject property. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
30. The Assessor further contends that the subject property is correctly assessed based on its sale price. According to the Assessor, the Petitioners purchased the subject property January 13, 2009, for \$355,207. The sale of a property is often the best evidence of the property's value. *See Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). Here, however, nothing in the record relates this purchase price to the relevant assessment date. Because the Assessor did not relate the sale price to the value as of March 1, 2012, the sale price lacks probative value. *See Long*, 821 N.E.2d at 471.

31. For the reasons stated herein, the Assessor failed to prove the 2012 assessed value is correct. Accordingly, the assessment reverts to the assessment for the prior tax year. Because Wilt claims that the 2011 assessment of \$292,000 is correct, the Board need not analyze Wilt's arguments.

Summary of Final Determination

32. The Assessor failed to make a prima facie case. The Board finds in favor of Wilt. The 2012 assessment must be reduced to the prior year amount of \$292,000.

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>>.