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

Petition: **53-014-18-1-5-00993-18**
Petitioner: **Jamie Wittenberg**
Respondent: **Monroe County Assessor**
Parcel: **53-07-18-201-009.000-014**
Assessment Year: **2018**

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioner initiated her 2018 assessment appeal with the Monroe County Assessor on April 30, 2018.

2. On July 6, 2018, the Monroe County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.

3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing small claims procedures.

4. The Board issued a notice of hearing on May 1, 2019.

5. Administrative Law Judge (ALJ) Timothy Schuster held the Board's administrative hearing on June 11, 2019. Neither the Board nor the ALJ inspected the property.

6. Jamie Wittenberg appeared *pro se* and was sworn. Attorney Marilyn Meighen appeared for the Respondent. Consultant Ken Surface was sworn as a witness for the Respondent.[1]

Facts

7. The property under appeal is a single family residence located at 3655 South Oak Ridge Drive in Bloomington.

8. The PTABOA determined the total assessment is $289,700 (land $31,100 and improvements $258,600).

9. The Petitioner requested a total assessment of $235,100 (land $31,100 and improvements $204,000).

[1] County Assessor Judith A. Sharp was present but was not sworn and did not testify.

Record

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

    a) A digital recording of the hearing.

    b) Exhibits:

Petitioner Exhibit 1:	Spreadsheet listing Oak Ridge Neighborhood assessments from 2016 to 2018,
Petitioner Exhibit 2:	Monroe County Permit Lookup,
Petitioner Exhibit 3:	2017 subject property record card,
Petitioner Exhibit 4:	2018 subject property record card,
Petitioner Exhibit 5:	Pages 5 and 6 from *Justin Greer v. Tippecanoe Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. No. 79-035-14-1-5-20341-15 (Nov. 29, 2016),
Petitioner Exhibit 6:	Page 7 from the 2011 Real Property Assessment Manual,
Petitioner Exhibit 7:	Photographs of 3510 South Oak Ridge Drive,
Petitioner Exhibit 8:	Property record card for 3510 South Oak Ridge Drive,
Petitioner Exhibit 9:	Photographs of 3485 South Oak Ridge Drive,
Petitioner Exhibit 10:	Property record card for 3485 South Oak Ridge Drive,
Petitioner Exhibit 11:	50 IAC 27-11-2.
Respondent Exhibit A:	Subject property record card,
Respondent Exhibit B:	Sales disclosure form dated April 17, 2017,
Respondent Exhibit C:	Multiple Listing Service (MLS) report for the subject property,
Respondent Exhibit D:	"Assessor's summary,"
Respondent Exhibit E:	Indiana Housing Market Update,
Respondent Exhibit F:	Petitioner's mortgage.

    c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all notices and orders issued by the Board or ALJ; and (3) these findings and conclusions.

Objections

11. Ms. Meighen objected to Petitioner's Exhibit 2, a listing of several building permits in the subject property's neighborhood, initially arguing that there was a lack of foundation for the exhibit. After the Petitioner established a satisfactory foundation, Ms. Meighen argued the exhibit is irrelevant.

12. The ALJ overruled the objection. The Board adopts the ALJ's ruling because the objection goes to the weight of the evidence rather than its admissibility. Accordingly, Petitioner's Exhibit 2 is admitted.

Contentions

13. Summary of the Petitioner's case:

a) The subject property is over-assessed. The property was assessed at $235,100 in 2017. The assessment increased to $289,700 in 2018. *Wittenberg argument; Pet'r Ex. 3, 4.*

b) On April 14, 2017, the Petitioner purchased the subject property for $290,000. While the purchase price can be considered evidence of market value, it is only one sale. The Respondent should have employed other market evidence and calculations to assess the property. *Wittenberg testimony; Pet'r Ex. 3, 4, 5.*

c) According to the Petitioner, the 2018 increase was based solely on her purchase price and therefore constitutes sales chasing. Further, basing assessments solely on purchase prices would deem Indiana an acquisition cost state rather than a market value state. *Wittenberg argument; Pet'r Ex. 4.*

d) In 2018, the subject property was the only property in the neighborhood that was singled out and reassessed. Out of 22 properties in the neighborhood, one outlier property experienced an assessment increase of 9.15%. Most assessments increased roughly 1% or 2%. Some properties saw a decrease in their assessments. The properties located at 3510 South Oak Ridge Drive and 3485 South Oak Ridge Drive, both quite comparable to the subject property, had an assessment increase of only 2.96% and 2.24%, respectively. *Wittenberg testimony; Pet'r Ex. 1, 8, 9, 10, 11.*

e) While the Petitioner acknowledged property owners could conceivably make improvements to a home and increase its value without obtaining a building permit, the Petitioner nonetheless noted that no building permits had been obtained for the subject property. The Respondent did not point to any specific improvements or value calculations she relied on to change the home's grade and effective age. *Wittenberg argument; Pet'r Ex. 2.*

14. Summary of the Respondent's case:

a) The subject property is correctly assessed. The Petitioner purchased the property on April 14, 2017, for $290,000, supporting the current assessment. This sale fell within the 12-month window immediately preceding the January 1, 2018, assessment date for sales that are to be used for annual adjustments. *Meighen argument; Surface testimony; Resp't Ex. A, C, D, F.*

b) The Respondent did not engage in sales chasing. Every home in the Petitioner's neighborhood was reassessed for 2018 as part of the cyclical reassessment. Specifically regarding the subject property, there was a visual inspection, and the MLS sheet revealed various upgrades and remodels made over the years that had not previously been included in the property's valuation. For example, the MLS sheet

listed several recent upgrades to the property including a new HVAC system, new flooring, a new hot water tank, and remodeling of bathrooms. *Surface testimony; Resp't Ex. C.*

c) As a result of these upgrades, the Respondent changed the subject property's grade and effective age. Additionally, the Department of Local Government Finance (DLGF) cost schedules changed in 2018, and the median sales price of homes in Monroe County increased 11% from June 2017 through May 2018. All of these factors contributed to the 2018 assessment increase. *Surface testimony; Resp't Ex. A, E.*

d) Indiana's assessment system is no longer a cost-oriented system with values derived through lines and boxes in the property record card. The sale price of a property is an objective fact, and is often the best evidence of market value. The Petitioner did not sufficiently rebut that evidence. Additionally, the Petitioner's evidence lacked any meaningful analysis and in-depth comparison of properties needed to prove the current assessment is incorrect. *Meighen argument; Resp't Ex. D.*

Burden of Proof

15. 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.

16. 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 appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

17. 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). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

18. Here, the Respondent accepted the burden of proof. The total assessment increased from $235,100 in 2017 to $289,700 in 2018, an increase of 23%. Accordingly, the burden

shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the burden is on the Respondent to prove the current assessment is correct.

Analysis

19. The Respondent made a prima facie case that the 2018 assessment is correct:

a) Real property is assessed based on its market value-in-use. 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. 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 (Ind. Tax Ct. 2005). For a 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.

c) In an effort to support the current assessment, the Respondent pointed to the Petitioner's April 14, 2017, purchase of the subject property for $290,000. The purchase price of a property can be the best evidence of its value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, the sale occurred less than nine months before the 2018 valuation date and within the calendar year immediately preceding the valuation date as prescribed by 50 IAC 27-3-2(a) for annual adjustments. Additionally, nothing in the record indicates the purchase was anything but a valid arm's-length transaction. The purchase price was only $300 more than the current assessment, and the Board finds the Respondent made a prima facie case supporting the current assessment. The burden now shifts to the Petitioner to rebut the Respondent's case.

d) In an effort to rebut the Respondents case, the Petitioner began by arguing the sale of her property was only one sale, and does not necessarily establish the market. She argued that other market evidence should have been considered, and calculations performed, in computing her assessment. She also alleged the Respondent engaged in sale chasing, and implied her assessment was not uniform and equal.

e) In *Hubler Realty*, the taxpayer presented a substantially similar argument, accusing the Hendricks County Assessor of sales chasing and arguing that market evidence should carry more weight than one sale of the subject property. The taxpayer also offered additional market-based evidence itself, in the form of an appraisal. Nonetheless, in that case, the Board found that while the market evidence produced a

credible estimate of the property's value, the actual sale was an objective fact, and therefore even more persuasive as to the property's value. *See Hubler Realty Co. v. Hendricks Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. Nos. 32-012-06-1-4-00115, *et al.* (December 17, 2009). The Tax Court affirmed that determination, stating that it "was well within the purview" of the Board. *Hubler Realty,* 938 N.E.2d at 315.

f) Here, a comparison between the two types of evidence is moot, because the Petitioner failed to offer any market-based evidence that produced a competing estimate of value. Further, she failed to offer any evidence or argument specifically explaining why her purchase price was *not* probative evidence of her property's market value-in-use. Therefore, she failed to rebut the Respondent's case with this argument.

g) Next, the Petitioner alleged that the Respondent engaged in sales chasing. "Sales chasing" or "selective reappraisal" is the "practice of selectively changing values for properties that have been sold, while leaving other values alone." *Big Foot Stores, LLC v. Franklin Twp. Ass'r,* 818 N.E.2d 623 (Ind. Tax Ct. 2009) (citing *Co. of Douglas v. Nebraska Tax Equalization and Rev. Comm'n,* 635 N.W.2d 413, 419 (Neb. 2001)).

h) Here, while the Respondent acknowledged the sale of the subject property and admitted that some of the updates to the assessment were derived from the MLS sheet, the Respondent also testified the entire neighborhood was reassessed as part of the cyclical reassessment. The record, including documents submitted by the Petitioner herself, appears to corroborate that testimony. Specifically, the property record cards for 3510 South Oak Ridge Drive and 3485 South Oak Ridge Drive indicate these properties were field inspected in August 2017, similar to the subject property, and changes were made to both of those assessments as a result. True, the assessment changes to these properties were not as substantial as the changes to the subject property, but the Petitioner did not establish that her property was assessed any differently than other similar properties. Absent that showing, the Petitioner failed to raise any cognizable claim.

i) In *Hubler Realty*, the Tax Court stated that merely considering a subject property's sale in determining its assessment does not constitute "sales chasing." In that case, the Tax Court stated that "the PTABOA's 'consideration' of Hubler's sales disclosure form does not mean that it engaged in sales chasing or that it selectively reappraised Hubler's properties. Rather, the testimony merely suggests that the PTABOA *reviewed* Hubler's sales disclosure form in order to determine whether the properties were over-assessed." *Hubler Realty,* 938 N.E.2d at 315 (emphasis in original). Similarly, in this case, the Respondent's testimony indicates that she reviewed the subject property's MLS sheet, along with performing other reassessment functions, to determine a more accurate assessment.

j) The Board notes that assessing properties at or near their actual market values is the goal of Indiana's market value-in-use system. *See P/A Builders & Developers v. Jennings Co. Ass'r,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the

current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is actually correct.")

k) The Petitioner also submitted a spreadsheet listing 2016, 2017, and 2018 assessments for various properties in her neighborhood. While the Board infers that her purpose in doing this was to substantiate her sales chasing allegation, it is also possible to establish a property's market value-in-use using an assessment-comparison analysis. Ind. Code § 6-1.1-15-18(c)(1). But the Petitioner needed to do more than just offer assessed values to accomplish that goal. She needed to establish the comparability of the properties to the subject, and explain how any differences between those properties and the subject affect their relative market value-in-use. *Long*, 821 N.E.2d 470, 471. The Petitioner failed to do this.

l) Finally, to the extent the Petitioner attempted to argue the 2018 assessment is not uniform and equal, she failed to make a case. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment, one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Ass'r,* 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *See 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. *See 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)).

m) 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 the 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 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).

n) Similar to the taxpayer in *Westfield Golf*, the Petitioner's argument is flawed. Here, the Petitioner failed to offer a ratio study that indicated the subject property was assessed above the common level of assessment. Instead, the Petitioner's argument focused on the increase in her assessment compared to the increase in other properties' assessments. That is not sufficient to establish that her 2018 assessment violated the requirements of uniformity and equality. The Petitioner failed to offer any other type of evidence showing that the current assessment does not accurately reflect the subject property's market value-in-use. For the reasons set forth, she failed to rebut the Respondent's case.

o) While the evidence indicates the 2018 assessment should be $290,000, the Respondent only argued the current assessment of $289,700 was correct, and did not request an increase. The Board finds the purchase price supports the current assessment and accepts the Respondent's concession that the assessment should remain at $289,700.

Conclusion

20. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2018 assessment will remain at $289,700.

ISSUED: October 22, 2019

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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 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>.