

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

**Petition:** 84-002-15-1-5-01011-16  
**Petitioners:** Stephen R. & Helen J. Houser  
**Respondent:** Vigo County Assessor  
**Parcel:** 84-06-25-101-015.000-002  
**Assessment Year:** 2015

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

**Procedural History**

1. The Petitioners initiated their 2015 assessment appeal with the Vigo County Assessor on November 2, 2015.
2. On March 16, 2016, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.
4. The Board issued a notice of hearing on April 4, 2017.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on May 16, 2017. She did not inspect the property.
6. Stephen Houser appeared *pro se*. Reassessment supervisor Michael West appeared for the Respondent. Harrison Township Reassessment Supervisor Jennifer Lidster was a witness for the Respondent. All of them were sworn.

**Facts**

7. The property under appeal is a single-family residence located at 645 Oak Drive in Terre Haute.
8. The PTABOA determined the total assessment is \$131,700 (land \$35,100 and improvements \$96,600).
9. The Petitioners requested a total assessment of \$118,400 (land \$35,100 and improvements \$83,300).

## Record

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

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit A:	Summary of contentions attached to exhibit coversheet,
Petitioner Exhibit 1:	Summary of 2014 and 2015 assessed values for properties on Oak Drive,
Petitioner Exhibit 2:	Summary of 2014 and 2015 “proposed” assessed values for properties on Oak Drive,
Petitioner Exhibit 3:	Summary of assessed values for 2011 to 2017 for properties located on Oak Drive,
Petitioner Exhibit 4:	Summary of assessed values for 2011 to 2017 for the subject property,
Petitioner Exhibit 5:	Total assessed values and percentages of change for Oak Drive properties from 2011 to 2012,
Petitioner Exhibit 6:	Percentage of change in assessed value attributed to the “improvements” of Oak Drive properties from 2011 to 2012,
Petitioner Exhibit 7:	2012 Notice of Assessment of Land and Structures (Form 11),
Petitioner Exhibit 8:	2012 Notice of Hearing on Petition (Form 114) dated February 2, 2014,
Petitioner Exhibit 9:	2012 Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134),
Petitioner Exhibit 10:	Cover page of a 2012 appraisal of the subject property prepared by Richard Conley Real Estate Appraisals,
Petitioner Exhibit 11:	Special Message to Property Owner (Form TS-1A) dated April 19, 2013,
Petitioner Exhibit 12:	Real Property Maintenance Report for the subject property dated February 9, 2016,
Petitioner Exhibit 13:	2014 Form 11,
Petitioner Exhibit 14:	Form TS-1A dated April 16, 2014,
Petitioner Exhibit 15:	2015 Form 11,
Petitioner Exhibit 16:	2015 Taxpayer’s Notice to Initiate an Appeal (Form 130),
Petitioner Exhibit 17:	Form 114 dated January 8, 2016,
Petitioner Exhibit 18:	2015 Notification of final Assessment Determination (Form 115),
Petitioner Exhibit 19:	2017 Form 11.

Respondent Exhibit 1A:	2014 subject property record card,
Respondent Exhibit 1B:	2015 subject property record card,
Respondent Exhibit 2:	Memorandum from Barry Wood, Assessment Division Director, at the Department of Local Government Finance (DLGF) entitled “Release of Updated Cost Information for 2015 Annual Adjustment,” dated October 31, 2014,
Respondent Exhibit 3:	Geographical Information System (GIS) map of the subject property and four comparable properties,
Respondent Exhibit 4A:	Property record card and sales disclosure form for 510 Parkview Road,
Respondent Exhibit 4B:	Property record card and sales disclosure form for 68 Heritage Drive,
Respondent Exhibit 4C:	Property record card and sales disclosure form for 15 Heritage Drive,
Respondent Exhibit 4D:	Property record card for 690 South 34 <sup>th</sup> Street,
Respondent Exhibit 5:	Neighborhood sales for 2013, 2014, and 2015,
Respondent Exhibit 6:	Sales-comparison analysis with adjustments,
Respondent Exhibit 7:	Spreadsheet with time adjusted values and a lot size comparison.
Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of Hearing dated April 4, 2017,
Board Exhibit C:	Hearing sign-in sheet.

d) These Findings and Conclusions.

### **Objections**

11. Mr. West objected to Petitioners’ Exhibits 1 through 6 on the grounds the Petitioners failed to make any “adjustments for differences” between the subject property and the purportedly comparable properties. In response, Mr. Houser admitted he only listed the assessed values and did not make any adjustments. The ALJ took the objection under advisement.
12. The objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board overrules the objection and Petitioners’ Exhibits 1 through 6 are admitted.
13. Mr. West also objected to Petitioners’ Exhibits 10 and 19 on the grounds they are irrelevant to a 2015 assessment appeal. In response, Mr. Houser argued Petitioners’ Exhibit 10, the cover sheet to a 2012 appraisal for the subject property, is relevant because the Assessor should “build on that value” in subsequent years. Mr. Houser did not address the Respondent’s objection to Petitioners’ Exhibit 19. The ALJ took the objection under advisement.

14. Again, the Respondent's objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board again overrules the objection and Petitioners' Exhibits 10 and 19 are admitted. The Board notes, the aforementioned rulings have no effect on the final determination.

### Contentions

15. Summary of the Petitioners' case:
- a) The property's assessment is too high. The assessment increased by 13.5% from 2014 to 2015. The assessed value of a home should "be a representation of what a reasonable person would pay," but here that is not the case. *Houser testimony; Pet'rs Ex. A.*
  - b) In 2012, the property's assessment was lowered to \$112,000 based on an appraisal. The following year, the assessment was lowered to \$113,600 after the Petitioners' initiated an appeal. In 2014, the assessment increased slightly to \$116,000. However, in 2015, the assessment "inexplicably" increased to \$131,700. According to the Petitioners, once a property value is established via an appraisal, the assessor should "build on" that appraised price in the assessment years that follow. *Houser argument; Pet'rs Ex. 4, 10.*
  - c) Similar properties in the same neighborhood did not experience such a drastic increase in their 2015 assessments. For example, assessments of properties located on Oak Drive increased by an average of 0.5% from 2014 to 2015. A "fair assessment" for the subject property would be \$118,400, a 2.1% increase from 2014. *Houser argument; Pet'rs Ex. 1, 2, 3, 5, 6.*
16. Summary of the Respondent's case:
- a) The subject property is correctly assessed and was determined utilizing the state's cost tables. The assessment increased in 2015 because the state cost information was updated and a negative influence factor was removed. *West testimony; Resp't Ex. 1, 2.*
  - b) In support of the current assessment, the Respondent presented sales information for properties in the same neighborhood. The Respondent selected four properties similar to the subject property in terms of lot sizes, acreage, year of construction, home size, foundation type, number of bathrooms, and garage type. All of the comparable properties utilized are situated either on a slab or crawl space while the subject property has a basement. However, in this neighborhood a basement is not "a real defining factor." *West testimony; Resp't Ex. 3, 4, 5, 6.*
  - c) In the Respondent's analysis, adjustments were made to account for "some" differences. Most notably, "time adjustments" were made to all of the sales. In order to establish the time adjustment, the Respondent relied on the sale of the property

located at 15 Heritage Drive. This property sold on August 19, 2013, for \$117,500, and then again on December 29, 2016, for \$148,000 equating to a difference of \$30,500 or 1.1% per month. *West testimony; Resp't Ex. 6, 7.*

- d) After determining the time adjustment calculation, the Respondent divided the adjusted sale price by the square footage to determine an adjusted price per square foot. The median adjusted price per square foot equated to \$71.77. By multiplying this value by the subject property's total square footage of 1,714, the Respondent calculated an indicated value of \$123,011 for the subject property. The property is currently assessed at \$131,700 a "93.4% variance from the actual assessed value." With "less than a 10% variance" between the indicated value under the sales comparison analysis and the current 2015 assessment, the property's current assessment is "pretty close (according to) mass appraisal standards." *West argument; Resp't Ex. 6, 7.*

### **Burden of Proof**

17. 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 as amended by P.L. 97-2014 creates two exceptions to that rule.
18. 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).
19. 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 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 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.
20. Here, the Petitioners argued the assessed value of the subject property increased by more than 5% from 2014 to 2015. In fact, the total assessment increased from \$116,000 in 2014 to \$131,700 in 2015, an increase of 13.5%. The Respondent did not dispute this fact. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the burden rests with the Respondent.

## Analysis

21. The Respondent failed to make a prima facie case that the 2015 assessment was 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 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
  - c) The Respondent argued the increase to the 2015 assessment was due in part to the elimination of a negative influence factor and a change in the Guidelines' cost tables. However, arguments and evidence, such as this, have minimal to no probative weight. As the tax court has explained, strictly applying assessment regulations does not necessarily prove a property's true tax value in an assessment appeal. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006) (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence).
  - d) The Respondent did, however, offer some market-based evidence. Specifically, the Respondent offered a list of sales from the same neighborhood as the subject property. According to the analysis, the Respondent made two adjustments to the purportedly comparable properties, one for time and the other for excess frontage. Thus, the Board infers the Respondent is attempting to prove the property's value by using the sales-comparison approach.
  - e) In order to use a sales-comparison approach as evidence in an assessment appeal, however, the party must first show that the properties being examined are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property are not probative evidence. *Long*, 821 N.E.2d at 470-471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market value-in-use. *Id.*

- f) Here, the Respondent did little to compare the properties. The only adjustments that were made were to account for excess frontage and time. Other variables, such as differences in age, number of bathrooms, and other amenities received little or no consideration. For example, the subject property includes an 857 square foot finished basement, while the purportedly comparable properties are all situated on either a slab or crawl space. But the Respondent failed to make an adjustment for this difference and simply stated “a basement is not a real defining factor.”
- g) The Respondent also argued that according to his sales-comparison analysis, the subject property’s current assessment was within a “10% variance,” an acceptable range as recognized by “appraisal standards.” It appears the Respondent may have confused this notion with the requirements of a mass-appraisal ratio study. An appeal of an individual assessment is an entirely different matter. Further, the Respondent failed to provide the Board with any authority for the argument that an assessment is correct if it falls within a 10% range. For these reasons, the Respondent’s sales-comparison analysis lacks probative value.
- h) Consequently, the Respondent failed to make a prima facie case that the 2015 assessment was correct. Therefore, the Petitioners are entitled to have their assessment reduced to the 2014 level of \$116,000. However, the Petitioners specifically testified they were seeking a value of \$118,400. The Board will accept the Petitioners’ concession.

### **Conclusion**

- 22. The Respondent had the burden of proving the 2015 assessment was correct. He failed to make a prima facie case, thus the assessment would normally be reduced to the previous year’s amount, \$116,000. However, the Petitioners conceded the assessment should be \$118,400. Thus, the Board orders that the 2015 assessment be changed to \$118,400.

## Final Determination

In accordance with these findings and conclusions, the 2015 assessment must be changed to \$118,400.

ISSUED: October 12, 2017

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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>>.