

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

Petitions: 71-026-21-1-5-00679 and 71-026-22-1-5-00793-22
Petitioner: Dennis E. Driscoll
Respondent: St. Joseph County Assessor
Parcel: 71-08-01-227-003.000-026
Assessment Years: 2021 and 2022

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

Procedural History

1. These appeals have a somewhat lengthy procedural history leading up to our hearing, relevant portions of which include the following:

- May 25, 2021 Driscoll filed a Form 130 petition contesting the 2021 assessment of his property at 720 Peashway Street in South Bend, Indiana. He completed section II of the form in which he gave the following reasons for appealing the “current assessment”: “626 Peashway total valuation little changed from 1-1-17 through 1-1-21.” *Resp’t Ex. 4.*
- March 24, 2022 The St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 determination upholding the 2021 assessment of \$163,800 (\$60,000 for land and \$103,800 for improvements).
- May 19, 2022 The Assessor received a second Form 130 petition for the 2021 assessment year from Driscoll (the petition was signed May 18, 2022). This time, he completed Section III of the form reserved for “Correction of Error Per IC 6-1.1-15.1-1(a) and (b).” He did not check any of the boxes to specify the category of error he was alleging. In the section for providing the reasons justifying why he contended an error had been made, Driscoll wrote, “720 Peashway paying higher property tax in 2022 than a similar house at 626 Peashway with rental income.”
- June 6, 2022 Driscoll filed a Form 130 petition contesting his 2022 assessment.
- Aug. 29, 2022¹ Driscoll filed a Form 131 petition with us for his 2021 assessment. As grounds for his appeal, Driscoll compared the assessments of his

¹ This is the date we received the petition. The postmark on the envelope Driscoll used to mail the petition is illegible.

property and 626 Peashway from 2017 through 2021. He also compared the taxes that were due on each property in 2022. Driscoll did not attach his Form 130 petition or the PTABOA's determination.

- Aug. 29, 2022 We issued a Notice of Defect in Appeal Form to Driscoll instructing him to provide copies of his Form 130 petition and the PTABOA determination.
- Sep't 8, 2022 Driscoll provided copies of his May 19, 2022 Form 130 petition and the PTABOA's March 24, 2022 determination.
- Sep't 8, 2022 We issued a second defect notice indicating that it appeared Driscoll's Form 131 petition was untimely and asking him to forward any evidence to show it was timely.
- Sep't 14, 2022 The PTABOA issued a Form 115 determination affirming the 2022 assessment of \$169,400 (\$41,000 for land and \$128,400 for improvements). The PTABOA also wrote, "Correction of error has been denied by the Board for 2021."
- Sep't 19, 2022 We received Driscoll's response to our second defect notice, in which he wrote, "[w]hen I found 720 Peashway 2022 payable tax was more than 626 Peashway rental 2022 payable tax[,] I filed Form 131 herein as a reasonable action."
- Sep't 29, 2022 Driscoll filed a Form 131 petition seeking review of the PTABOA's determination for his 2022 assessment.

2. On August 9, 2023, our designated administrative law judge, Joseph Stanford ("ALJ"), held a hearing on Driscoll's Form 131 petitions. Neither the ALJ nor the Board inspected the property. Driscoll appeared *pro se*. Frank Agostino appeared as counsel for the Assessor. The following people testified under oath: Driscoll, St. Joseph County Assessor Michael Castellon, and Castellon's deputy assessor, Shannon Schalk.

Record

3. The official record for this matter includes the following:²

For the 2021 appeal

Respondent Exhibit 1:	Form 131 petition,
Respondent Exhibit 2:	Form 115 determination,
Respondent Exhibit 3:	Form 134 report,
Respondent Exhibit 4:	Form 130 petition,
Respondent Exhibit 5:	Comparable sales report,

² Driscoll did not offer any exhibits.

- Respondent Exhibit 6: 2021 property record card (“PRC”) for Driscoll’s property,
Respondent Exhibit 7: Memorandum list; valuation history.

For the 2022 appeal

- Respondent Exhibit 1: Form 131 petition,
Respondent Exhibit 2: Form 115 determination,
Respondent Exhibit 3: Form 130 petition,
Respondent Exhibit 4: 2022 PRC for Driscoll’s property,
Respondent Exhibit 5: Memorandum list; valuation history.

4. The record also includes: (1) all petitions and other documents filed in these appeals, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Findings of Fact

5. Driscoll’s property contains a 1,285-square-foot, single-family home with a 642-square-foot unfinished basement. It is located at 720 Peashway Street in South Bend. *Driscoll testimony; Resp’t Ex. 6(2021); Resp’t Ex. 4(2022).*

Parties’ Contentions

A. Driscoll’s Contentions

6. Driscoll complains that his assessment has gone up continuously over the five years leading up to his appeals, while a property located at 626 Peashway Street was consistently assessed for around \$72,000 during that period. Driscoll therefore contends that his 2021 and 2022 assessments should be reset to what his property was assessed for “several years ago” before the increases. *Driscoll testimony and argument.*
7. Driscoll also believes it is unfair that he pays more property tax than the owner of 626 Peashway, because that home is in better shape than Driscoll’s home. The 626 Peashway home has a new asphalt roof and new windows. Driscoll, by contrast, has not renovated his home. It still has the original roof, windows, and doors. And 626 Peashway generates rental income, while Driscoll’s property does not. 626 Peashway sold for \$123,000 in 2017. *Driscoll testimony and argument.*

B. The Assessor’s Contentions

8. The Assessor contends that Driscoll’s 2021 and 2022 assessments are correct. Driscoll’s property is in a neighborhood close to the University of Notre Dame, where homes are highly sought after. As a result, values have rapidly increased. *Castellon testimony and argument.*

9. To support the assessments, the Assessor offered a “Comparable Sales Report” generated by ProVal, a computer-assisted mass-appraisal program. The report identifies three purportedly comparable properties that sold in 2020. It adjusts the properties’ sale prices to account for various ways in which those properties differ from the subject property. But neither the report nor the Assessor’s witnesses explained the method for quantifying those adjustments. Instead, the Assessor’s deputy, Shannon Schalk, testified that the adjustments were all made within the computer program. *Schalk, Castellon testimony; Resp’t Ex. 5 (2021)*.
10. The adjusted values range from \$222,409 to \$308,200. The report sets forth a value estimate of \$261,000 for Driscoll’s property, although there is no indication as to how that estimate was determined. The Assessor also offered a spreadsheet with information for four sales from 2018. The median sale price was \$137.35/sq. ft. That unit price translated to a value of \$176,500 for Driscoll’s 1,285-square-foot home. The Assessor, however, does not ask us to increase the 2021 or 2022 assessments to reflect the values from the ProVal report or the spreadsheet. He instead asks that the assessments remain as they are. *Schalk testimony; Agostino argument; Resp’t Ex. 5 (2021)*.
11. Finally, the Assessor points out that Driscoll received a homestead deduction and has a 1% tax cap. Because 626 Peashway is a rental property, its owner did not receive a homestead deduction, and the property has a 2% tax cap. The Assessor therefore argues that it is wrong to compare the taxes assessed to the two properties. In any event, the Assessor does not compute taxes, but only determines assessments. *Castellon testimony; Agostino argument*.

Conclusions of Law

A. We dismiss Driscoll’s appeal of his property’s assessed value for 2021 because he did not timely file his Form 131 petition.

12. In order to obtain review of a county PTABOA’s determination, a taxpayer must file a petition with us not later than 45 days after the county PTABOA gives notice of its determination. I.C. § 6-1.1-15-3(a)(1). The PTABOA mailed notice of its Form 115 determination for Driscoll’s appeal of his 2021 assessment on March 24, 2022. Driscoll did not file his Form 131 petition with us until August of that year, well past the 45-day deadline.
13. When we issued a defect notice noting the petition’s apparent untimeliness and asking Driscoll to forward any evidence that would show the petition was timely, Driscoll merely explained that he felt the filing was reasonable because he had discovered that his taxes were higher than the taxes for 626 Peashway. We must follow the law, and Driscoll has failed to raise grounds that would extend the deadline or excuse the belated filing. We therefore dismiss Driscoll’s Form 131 petition for the 2021 assessment year.
14. The fact that Driscoll filed a second Form 130 petition does not change our analysis. Driscoll filed that second petition after the PTABOA issued its determination on

Driscoll's original Form 130 petition contesting his property's assessed value. Although in completing his second petition Driscoll filled out section III, which is reserved for claiming enumerated categories of error other than errors relating to a property's assessed value, he did not raise a claim under any of those categories. The error he did assert—that his taxes were higher than the taxes for 626 Peashway—is duplicative of his original petition. Driscoll cannot circumvent the appeal deadline by filing a successive Form 130.

B. There is insufficient evidence to rebut the presumption that the 2022 assessment for Driscoll's property equals its true tax value.

1. Unless rebutted, we must presume the 2022 assessment equals the property's true tax value.
15. 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).
16. 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, 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.* 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).
17. The assessment for Driscoll's property increased by less than 5% between 2021 and 2022. We therefore must assume that the 2022 assessment equals the property's true tax value.
2. The totality of the evidence does not rebut the presumption that the 2022 assessment equals the property's true tax value.
18. 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 "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).
19. 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.
20. 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.
21. 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 2022 assessments, the valuation date was January 1, 2022. I.C. § 6-1.1-2-1.5(a).
22. Driscoll failed to offer any market-based evidence to rebut the presumption that the challenged assessment reflected his property’s true tax value. Instead, he compared the increases in his property’s assessment over the previous five years to the stable assessment level for 626 Peashway over the same period. But the amount by which a property’s assessment increases year-by-year says little about its market value-in-use. Indeed, it is a well-settled concept that “each tax year—and each appeal process—stands alone.” *Fisher v. Carroll Cnty. Ass’r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. *See, e.g., Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 805 n.14 (Ind. Tax Ct. 1998).
23. To the extent Driscoll believes that 626 Peashway’s assessment shows the value of his property, he failed to offer any evidence to support that conclusion. He did little to explain how the two properties compared to each other beyond testifying that 626 Peashway’s home had been updated with a new roof, doors, and windows, while his home had not. That falls well short of the type of analysis required for comparable sale or assessment data to be probative. *See Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (finding that taxpayers’ comparative sales data lacked probative value where they failed to explain how the purportedly comparable properties compared to their property or how relevant differences affected the properties’ relative values).

24. Nor did the Assessor's comparative sales data suffice to show the market value-in-use of Driscoll's property. The Assessor's ProVal report at least identified various characteristics of Driscoll's property and three other properties and adjusted the sale prices where the characteristics differed. But the Assessor offered nothing to show the basis for those adjustments. Instead, the Assessor's deputy testified that the adjustments were made within the computer program. On those facts, we find that the Assessor failed to show that the ProVal report complied with generally accepted appraisal principles. In addition, the Assessor did not show how sales from 2020 related to the property's value as of the January 1, 2022 valuation date.
25. The Assessor's spreadsheet computing the median sale price for four properties that sold in 2018 similarly lacks probative weight. The Assessor offered nothing to show how those properties compared to Driscoll's property or how any relevant differences affected their relative values. And the sales were even further removed from the valuation date than were the sales from the ProVal report.

C. Driscoll failed to prove he was entitled to an equalization adjustment.

26. Finally, we recognize that Driscoll may have been as concerned with the equity of his assessment compared to 626 Peashway's assessment as he was with whether his property was being accurately assessed for its true tax value. As the Tax Court has explained, "[o]ne way to measure uniformity and equality in property assessment is through an assessment ratio study." *Thorsness v. Porter Cty. Ass'r*, 3 N.E.3d 49, 51 (Ind. Tax Ct. 2014). Such a 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.* at 51 (citation omitted). Where a ratio study shows an actionable lack of uniformity, a taxpayer may be entitled to an equalization adjustment bringing its assessment to the common level shown by the study. *Id.*
27. In *Thorsness*, the taxpayer offered evidence showing that while his property was assessed at 99.9% of its sale price, six other properties from his subdivision were assessed at an average of 79.5% of their recent sale prices. *Thorsness*, 3 N.E.3d at 50. At the administrative level, we rejected the taxpayer's claim on grounds that it neither conformed to professionally accepted standards, nor was based on a statistically reliable sample of properties. *Id.* Although the Tax Court recognized that the taxpayer's evidence was relevant, it affirmed our conclusion that the evidence failed to show that his assessment exceeded the common level of assessment for the township. *Id.* at 54.
28. Driscoll did even less to show a lack of uniformity and equality than did the taxpayer in *Thorsness*. Driscoll did not attempt to perform a ratio study. Instead, he pointed to the assessment of one other property. And he did not offer probative evidence from which to determine the market value-in-use of either that property or his own property.³ *See*

³ We have already explained why the evidence failed to show the market value-in-use of Driscoll's property. Driscoll testified that 626 Peashway sold for \$123,000 in 2017, but he did not offer any evidence to prove that the sale price reliably showed the property's value more than four years later on the January 1, 2022 assessment date.

Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (rejecting a claim of lack of uniformity and equality where the taxpayer failed to show the market value-in-use of its property or of any of the comparable properties on which it based its claim). Driscoll therefore failed to make a case for an equalization adjustment.

Conclusion

29. We dismiss Driscoll's appeal of his property's 2021 assessment because his Form 131 petition was untimely. And he failed to rebut the presumption that the 2022 assessment reflected his property's true tax value or to show that he was entitled to an equalization adjustment. We therefore find for the Assessor and order no change to the 2022 assessment.

Date: March 6, 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 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>>.