

REPRESENTATIVE FOR PETITIONERS:  
Donald Fulk, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:  
Scott Potts, White County Consultant

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Cynthia, Donald, & Matthew Fulk	)	Petition No.:	91-013-17-1-5-00283-18
	)		
Petitioners,	)	Parcel No.	91-83-32-000-008.500-013
	)		
v.	)	County:	White
	)		
White County Assessor,	)	Township:	Monon
	)		
Respondent.	)	Assessment Year:	2017

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

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**October 11, 2018**

**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:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**INTRODUCTION**

1. The Respondent had the burden to prove the subject property's January 1, 2017, assessment was correct. Did the Respondent prove the 2017 assessment was correct?

## **PROCEDURAL HISTORY**

2. The Petitioners initiated their 2017 appeal with the White County Assessor. On December 29, 2017, the White County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board and opted out of the Board's small claims procedures.
3. On July 17, 2018, the Board's Administrative Law Judge (ALJ), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Donald Fulk and Scott Potts were sworn and testified.
5. The Petitioners offered the following exhibits:
  - Petitioner Exhibit 1 – Petitioners' written testimony,
  - Petitioner Exhibit 2 – Square footage analysis of comparable properties,
  - Petitioner Exhibit 3 – Assessment comparison analysis,
  - Petitioner Exhibit 4A – Two exterior photographs of subject property,
  - Petitioner Exhibit 4B – Two exterior photographs of 5064 East Quiet Water Court,
  - Petitioner Exhibit 4C – Four exterior photographs of 5202 East Quiet Water Court,
  - Petitioner Exhibit 4D – One exterior photograph of 4377 East Lake Road 42 East,
  - Petitioner Exhibit 4E – Two exterior photographs of 5532 East Golden Acres Court,
  - Petitioner Exhibit 4F – Two exterior photographs of 6862 North Apple Knob Drive.
6. The Respondent offered the following exhibits:
  - Respondent Exhibit A – 2017 sales ratio report for neighborhood 910541,
  - Respondent Exhibit B – Property record card for 5202 East Quiet Water Court,
  - Respondent Exhibit C – Property record card for 5064 East Quiet Water Court,
  - Respondent Exhibit D – Department of Local Government Finance (DLGF) Professional Appraisal Certification for Mr. Potts dated March 7, 2013; copy of 50 IAC 15-4-1; copy of Ind. Code § 6-1.1-31.7; and Mr. Potts' Application for

Certification as a Professional Appraiser under Ind.  
Code § 6-1.1-31.7.

7. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.
8. The property under appeal is a single family residence located at 5853 North Lake Road 52 West in Monticello.
9. The PTABOA determined the total 2017 assessment is \$182,000 (land \$66,300 and improvements \$115,700).
10. At the hearing, the Petitioners requested a total assessment of \$145,000.

**JURISDICTIONAL FRAMEWORK**

11. 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 to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

**PETITIONERS' CONTENTIONS**

12. The subject property's assessment is too high. The total assessment increased from \$163,700 in 2016 to \$182,000 in 2017. The subject property consists of a .091 acre lot with a home, wood deck, and a one-car detached garage. Due to the size of the lot, the county has prohibited adding any improvements to the home, such as an awning or front porch. The subject property's 2017 assessment should be reduced to \$145,000. *Fulk argument; Pet'r Ex. 1.*
13. In support of their position, the Petitioners presented an assessment comparison analysis comparing the 2017 assessed values of the five properties utilized in the Respondent's

sales ratio report to the subject property. The lot sizes of the comparable properties range in size from .17 acre to .243 acre and the accompanying assessed values range from \$2.44 to \$8.10 per square foot. The subject property's current land assessment is \$16.73 per square foot. *Fulk testimony; Pet'r Ex. 2.*

14. The five comparable properties include homes that range in size from 1,144 to 1,664 square feet. The assessed values range from \$59.20 to \$84.61 per square foot. The subject property is currently assessed at \$85.58 per square foot. Not only are the comparable properties assessed at a lower rate, they also include more amenities such as sheds, larger garages, pole barns, and pools. *Fulk testimony; Pet'r Ex. 2, 3, 4A-4F.*
15. The overall assessed values of the five comparable properties increased from \$6,900 to \$22,500 between 2016 and 2017. The subject property's overall assessed value increased by \$18,300. The Respondent has never been able to explain the various inconsistencies in assessed values of properties in the same neighborhood. *Fulk testimony; Pet'r Ex. 3.*

#### **RESPONDENT'S CONTENTIONS**

16. The subject property is correctly assessed. The Respondent's representative, Mr. Potts, explained the property under appeal is a 26 foot by 52 foot mobile home constructed in 2006 with a detached garage. The lot is a .091 acre "wedge" shape with "about 40 feet of frontage." *Potts testimony.*
17. Mr. Potts continued by providing a general overview on the process the county used to assess single-wide mobile homes and double-wide mobile homes versus conventional stick built homes after the 2012 reassessment. Mr. Potts also explained that mobile homes located "on-water" were shown to have higher land values than mobile homes located "off-water." In 2017, the county created four separate neighborhoods for mobile homes: non-water front single-wide mobile homes, non-water front double-wide mobile homes, waterfront single-wide mobile homes, and waterfront double-wide mobile homes. *Potts testimony.*

18. Mr. Potts offered the 2017 sales ratio report for the Petitioners' neighborhood. The five properties included in the report sold between April 14, 2015, and November 4, 2016. The neighborhood includes a total of 59 properties, therefore, these five properties "represent 8.5% of the sales in the neighborhood for 2015 and 2016." According to standards established by the International Association of Assessing Officers (IAAO), 3% of the sales in a particular neighborhood is sufficient to establish value. Additionally, the standard set by the DLGF indicates five sales in a neighborhood is sufficient, regardless of the neighborhood's size. As such, both the IAAO and DLGF standards were met by the county in establishing the neighborhood values. *Potts testimony; Resp't Ex. A.*
19. In support of the current assessment, Mr. Potts offered testimony regarding two of the sales included in the ratio report. The first sale, located at 5202 East Quiet Water Court, sold for \$209,900 on August 11, 2016. This property is a 28 foot by 52 foot mobile home with a detached garage built in 1993 that is situated on a .34 acre lot with 30 feet of frontage. *Potts testimony; Resp't Ex. A, B.*
20. The second property, located at 5064 East Quiet Water Court, sold for \$150,100 on November 4, 2016. This smaller mobile home measures 26 foot by 44 foot and lacks a detached garage. The lot measures .17 acres and is "wedge" shaped similar to the subject property. This sale, however, was "probably a duress sale because the sellers dropped the sales price three times in six months." If this property was not sold under duress, it would have sold for "around 90% of its \$198,500 list price or approximately \$180,000." *Potts testimony; Resp't Ex. A, C.*
21. In rebuttal testimony, Mr. Potts addressed the differences in square foot rates of the land values. He explained "economy of scale" applies, and the larger the size of the lot, the lower the unit price or price per square foot. Therefore, because the subject property is smaller than the other properties in the neighborhood, it shows a higher square foot rate, but the total land value is in line with the comparable properties. *Potts testimony.*
22. Mr. Potts also addressed the physical depreciation assigned to the property located at 5202 East Quiet Water Court. According to Mr. Potts, this home was built in 1993, while

the subject property was built in 2006. Thus, based on the wear and tear normally associated with a property, an older property would receive more depreciation, therefore, this property displayed a smaller increase in assessed value between 2016 and 2017 when compared to the subject property. *Potts testimony*.

### **BURDEN OF PROOF**

23. 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.
24. 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 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.” Ind. Code § 6-1.1-15-17.2(b).
25. 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.

26. Here, the parties agree the total assessment increased by more than 5% from 2016 to 2017. The total assessment increased from \$163,700 in 2016 to \$182,000 in 2017. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2017 assessment is correct. To the extent the Petitioners request an assessment below the 2016 level of \$163,700, they have the burden to prove that lower value.

#### ANALYSIS

27. 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 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.
28. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *See 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 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.
29. The Respondent had the burden of proof in this case. Mr. Potts initially attempted to explain the increase in the assessed value from 2016 to 2017 was due to the fact the subject property was a mobile home located “on-water.”<sup>1</sup>
30. The Respondent’s burden, however, is not merely to explain why the assessment increased. Instead, the Respondent must offer probative evidence proving the subject

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<sup>1</sup> While the Respondent offered a ratio study to indicate “IAAO and DLGF standards were met by the county in establishing the neighborhood values” she never attempted to argue the ratio study supported the subject property’s current assessment. The Board has previously held that, according to IAAO, “ratio study statistics cannot be used to judge the level of appraisal of an individual parcel.” INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES, VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 7/21/2007).

property's market value-in-use. *See* Ind. Code § 6-1.1-15-17.2. This was not accomplished by merely stating the assessment increased because the property was located "on-water."

31. The Respondent did offer some market based evidence by introducing the sales of two purportedly comparable properties. In presenting these two sales, the Board can infer Mr. Potts is attempting to rely on the sales comparison approach to establish the market value-in-use of the subject property.
32. For sales data to be probative, the properties must be sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not show comparability. *See Long*, 821 N.E.2d 466, 470. Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the sold properties and how any relevant differences affect the properties' relative market values-in-use. *Id.* at 471.
33. The type of analysis required is lacking from the Respondent's case. The evidence fails to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the subject property. While Mr. Potts did testify regarding differences between the properties, he did not adequately quantify or adjust for specific differences.
34. Additionally, Mr. Potts failed to offer any evidence that simply submitting sale prices of two purportedly comparable properties to support the value of the subject property comports with generally accepted appraisal principles. For these reasons, the Respondent failed to offer enough probative evidence to prove the 2017 assessment was correct. Therefore, the Petitioners are entitled to have the assessment returned to its 2016 level of \$163,700. However the Board's inquiry does not end here because the Petitioners requested an assessed value of \$145,000. The Board therefore turns to the Petitioners' evidence.

35. The Petitioners presented what amounts to an assessment comparison using five properties from the neighborhood. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of the property under appeal. Ind. Code § 6-1.1-15-18(c). Here, however, the Petitioners merely compared the assessed values and prices per square foot of the purportedly comparable properties to the subject property. That, by itself, does not support a finding that the subject property was assessed incorrectly. Furthermore, while the size, age, quality of construction, and condition of amenities all play a role in determining value, the Petitioners made some attempt to identify similarities and differences in the properties, but failed to value the differences. Consequently, the Petitioners failed to make a case that the assessment should be reduced below the 2016 level of \$163,700.

#### **SUMMARY OF FINAL DETERMINATION**

36. The Respondent had the burden of proving the 2017 assessment was correct. For the reasons stated above, the Respondent failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioners sought an assessment lower than the 2016 level but likewise failed to make a prima facie case. Thus, the Board orders the 2017 assessment be reduced to the 2016 value of \$163,700.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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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 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>>.