

REPRESENTATIVE FOR PETITIONER:

Maurice O. Fuller, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Cathy Isaacs, Cass County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Maurice O. Fuller,)	Petition No.: 09-014-17-1-5-00505-18
)	
Petitioner,)	Parcel No.: 09-05-16-300-011.000-014
)	
v.)	County: Cass
)	
Cass County Assessor,)	Township: Jefferson
)	
Respondent.)	Assessment Year: 2017

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

April 2 , 2019

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

ISSUE

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

PROCEDURAL HISTORY

2. The Petitioner initiated his 2017 appeal with the Cass County Assessor on August 21, 2017. On March 28, 2018, the Cass County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. On May 1, 2018, the Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On November 20, 2018, the Board's administrative law judge (ALJ), Patti Kindler, held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Maurice O. Fuller appeared *pro se*. County Assessor Cathy Isaacs and Karen Moss appeared for the Respondent. All of them were sworn.
5. The Petitioner did not offer any exhibits.
6. The Respondent offered the following exhibits:
 - Respondent Exhibit 1: "Cass County—Jefferson Township Trended Improved Sales Data Report" dated March 15, 2017,
 - Respondent Exhibit 2: "Cass County—Jefferson Township Trending Factors" for 2016 and 2017,
 - Respondent Exhibit 3: 2016 subject property record card,
 - Respondent Exhibit 4: 2017 subject property record card,
 - Respondent Exhibit 5: Petitioner's Request for Review dated August 21, 2017,
 - Respondent Exhibit 6: Taxpayer's Notice to Initiate an Appeal (Form 130),
 - Respondent Exhibit 7: Form 131,
 - Respondent Exhibit 8: Letter from Mr. Fuller to Ms. Isaacs dated March 31, 2018.
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; (3) the digital recording of the hearing; and (4) these findings and conclusions.
8. The property under appeal is a single family residence located at 1278 North CR 900 West in Logansport.

9. The PTABOA determined the following assessed values:
Land \$19,000 Improvements \$59,700 Total \$78,700.
10. The Petitioner never requested a specific assessment.

OBJECTIONS

11. Mr. Fuller objected to Respondent’s Exhibits 3 and 4, the subject property record cards, on the grounds his “home was worth more than that” and that he did not “see nobody (sic) getting sold or anything in 2017.” Mr. Fuller further argued that while he does not “go on the road and look for sales, but I haven’t seen one for sale.” The Respondent did not respond to the objection. Mr. Fuller’s objection goes more to the weight of the exhibits rather than the admissibility. Accordingly, the Board overrules the objection and the exhibits are admitted to the record.

JURISDICTIONAL FRAMEWORK

12. 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.

PETITIONER’S CONTENTIONS

13. The property’s assessment is too high. According to Mr. Fuller, the assessment experienced a “major increase in 2016” before “going down a tad in 2017.”¹ *Fuller argument.*

¹ According to the property record card, the 2015 total assessment was \$72,100, the 2016 total assessment was \$74,800, and the 2017 total assessment was \$78,700. *See Resp’t Ex. 4.*

14. According to Mr. Fuller, the Assessor incorrectly uses the term “improvements.” According to the English dictionary, “improvements” signify “adding another building or whatever to the property.” No “improvements” have been made to the subject property. *Fuller argument.*
15. Because nothing sold in 2017 near the subject property, Mr. Fuller does not “believe in trending.” The property tax system “needs to be a change.” The Assessor is “going to lower the tax one year and then raise it the next year.” The property tax system “is very complicated” and Mr. Fuller is “not confident they know what they are doing.” *Fuller argument.*
16. According to the Constitution of the United States of America, if a tax on the people creates a hardship, the tax shall not be used. This is “not a fair tax, it’s lopsided.” *Fuller argument.*

RESPONDENT’S CONTENTIONS

17. The property is correctly assessed. The assessment increased due to an 8-percent increase in trending. The sales listed in the sales ratio study support the increase in trending. There are a “number of sales” where the assessed value was “considerably less than the sales price” justifying an increase in the trending factors. *Moss argument; Resp’t Ex. 1, 2.*
18. Other than trending, the assessment of the “structures” listed on the property record card has not changed. The home continues to be listed as “fair condition” with the addition of a 17 percent obsolescence adjustment for issues that are not “quite up to par.” The property includes a small barn that is “site-valued” at \$400, a detached garage valued at \$13,800, and a porch that is attached to the detached garage “site-valued” at \$200. *Isaacs testimony; Resp’t Ex. 3, 4.*
19. The Petitioner has questioned the use of the term “improvements.” It is common terminology in the property tax realm that “improvements” signifies “structures.” When

the term “improvements” is used in describing a property assessment, it does not mean that someone “improved the property.” Instead, it is referencing the buildings located on vacant land. *Isaacs testimony*.

20. The Petitioner failed to provide any evidence proving the assessment should be changed. *Moss argument*.

BURDEN OF PROOF

21. 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.
22. 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).
23. 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.

24. Here, the Respondent conceded the total assessment increased by more than 5% from 2016 to 2017. In fact, the total assessment increased from \$74,800 in 2016 to \$78,700 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 Petitioner requests an assessment below the 2016 level of \$74,800, he has the burden to prove that lower value.

ANALYSIS

25. 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.
26. 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. 2005); *see also Long v. Wayne Twp. Ass'r*, 841 N.E.2d 466, 471 (Ind. Tax Ct. 2006). For the 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.
27. The Respondent had the burden to prove the assessment was correct. In an attempt to prove the property is correctly assessed, the Respondent offered a list of parcel numbers for properties that sold in the subject property's neighborhood, a spreadsheet purporting to show how those sales affected the trending factors between 2016 and 2017, and two subject property record cards indicating the only change to the assessment between 2016 and 2017 was the “trending factors.”

28. The Respondent's burden, however, is not merely to explain why the assessment increased. Instead, the Respondent must offer probative evidence proving the subject property's market value-in-use. *See* Ind. Code § 6-1.1-15-17.2. This was not accomplished by attempting to establish the assessment increased merely because of trending.
29. The Respondent did offer some market based evidence by introducing the sales of several properties that were used to develop the neighborhood trending figures. In presenting these sales, the Board can infer the Assessor is attempting to rely on the sales comparison approach to establish the market value-in-use of the subject property. 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.
30. The Respondent failed to perform such an analysis. The sales evidence fails to provide enough information for the Board to conclude the properties that sold are in fact comparable to the subject property. No testimony was offered regarding the similarities and differences between the properties. As a result, the Respondent's evidence lacks probative value. Therefore, the Petitioner is entitled to have the assessment returned to its 2016 level of \$74,800. Even though the Petitioner never requested a specific value, the Board will nonetheless address the Petitioner's arguments.²
31. The Petitioner made a number of claims regarding how the property was assessed. Mr. Fuller focused primarily on how the property had been assessed in prior years, the "complicated" tax and assessment systems, the use of the term "improvements" by assessing officials, and whether any sales occurred in his neighborhood. None of these

² The Board notes, Mr. Fuller stated his "home was worth more than that." With that being said, Mr. Fuller never expanded on his comment nor did he provide a specific dollar amount.

claims prove the market value of the subject property for the 2017 assessment year. As a result, these claims lack probative value.

32. The Petitioner also argued “raising property taxes creates a hardship” and violates the United States Constitution. The Petitioner failed to provide any argument as to how the assessment violates his constitutional rights or even identify which provisions of the Constitution he claims have been violated. Therefore, the Petitioner failed to establish any constitutional violation.
33. Finally, any argument made by Mr. Fuller regarding the qualifications of assessors and the property tax system in general are better addressed to the General Assembly. The Board lacks jurisdiction to address those arguments.
34. Because the Petitioner did not indicate a specific value for the subject property or offer anything in support of that value, he failed to make a case for reducing the assessment below the 2016 level of \$74,800.

SUMMARY OF FINAL DETERMINATION

35. 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 2016 level of \$74,800. The Petitioner failed to present any probative evidence indicating the assessment should be lowered any further. Accordingly, the Board orders the 2017 assessment must be reduced to \$74,800.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first 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 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>>.