

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

**Petition:** 18-014-20-1-5-00839-20  
**Petitioners:** John E. Mogush & Kay G. McNitt (Husband & Wife)  
**Respondent:** Delaware County Assessor  
**Parcel:** 18-10-10-377-004.000-032  
**Assessment Year:** 2020

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

**Procedural History**

1. The Petitioners initiated their 2020 assessment appeal with the Delaware County Assessor on May 29, 2020.
2. On November 18, 2020, the Delaware 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, electing the Board's small claims procedures.
4. On April 8, 2021, Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing. Neither the Board nor the ALJ inspected the property.
5. John E. Mogush appeared *pro se*.<sup>1</sup> Abby McDaniel, the Delaware County Assessor's Appeals Clerk, appeared for the Respondent. Both were sworn and testified.

**Facts**

6. The property under appeal is a single-family residence located at 9101 West Lone Beech Drive in Muncie.
7. The PTABOA determined a 2020 assessment of \$120,300 (land \$19,400 and improvements \$100,900).
8. On their Form 131, the Petitioners requested an assessment of \$111,900 (land \$19,400 and improvements \$92,500).

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<sup>1</sup> Kay G. McNitt was also sworn but did not testify.

## Record

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

a) A digital recording of the hearing.

b) Exhibits:

- Petitioners Exhibit 1: Form 131,  
Petitioners Exhibit 2: Request to correct the spelling of Kay G. McNitt's name;  
Defect Notice,  
Petitioners Exhibit 3: Joint Report by Taxpayer/Assessor to the County Board of  
Appeals of a Preliminary Informal Meeting (Form 134),  
Petitioners Exhibit 4: Taxpayer's Notice to Initiate an Appeal (Form 130) with  
attached contentions,  
Petitioners Exhibit 5: Letter from Abby McDaniel to the Petitioners with a listing  
of 26 properties that sold in the same neighborhood dated  
October 19, 2020,  
Petitioners Exhibit 6: Listing and Beacon property reports for the 26 properties  
that sold in the same neighborhood in 2019 (labeled 6-1  
through 6-26),  
Petitioners Exhibit 7: Property report for the subject property,  
Petitioners Exhibit 8: Property report for 9105 West Lone Beech Drive,  
Petitioners Exhibit 9: Property report for 405 North Dogwood Lane,  
Petitioners Exhibit 10: "47304 Home Prices and Home Values" from Zillow.com,  
Petitioners Exhibit 11: "Future of Muncie Mall uncertain as owner plans to return  
it to bank" from *The Star Press* (May 30, 2019),  
Petitioners Exhibit 12: "Muncie mayor touts home sales, but stats may not give the  
full picture" from *The Star Press* (September 18, 2020),  
Petitioners Exhibit 13: "Honest self-assessment key to future growth" from *The  
Star Press* (October 18, 2020),  
Petitioners Exhibit 14: "Michael Hicks: The recovery has not been kind to  
Indiana" from *The Star Press* (December 8, 2019),  
Petitioners Exhibit 15: "Has prolonged FBI probe found a 'culture of corruption'  
here?" from *The Star Press* (July 27, 2019),  
Petitioners Exhibit 16: "Muncie mayor Dennis Tyler arrested by FBI agents" from  
*The Star Press* (November 19, 2019),  
Petitioners Exhibit 17: Various Delaware County population statistics,  
Petitioners Exhibit 18: United States Census Bureau population data for  
"incorporated places in Indiana,"  
Petitioners Exhibit 19: Delaware County home prices and values from Zillow.com,  
Petitioners Exhibit 20: Advertisement from F.C. Tucker Muncie Realtors,  
Petitioners Exhibit 21: Advertisement for an April 30<sup>th</sup> Commissioners Deed Sale,  
Petitioners Exhibit 22: Advertisement for a July 23<sup>rd</sup> Commissioners Deed Sale,  
Petitioners Exhibit 23: "What does the data show about the need for rentals in  
Muncie?" from *The Star Press* (May 16, 2019),

- Petitioners Exhibit 24: Yorktown ordinance regarding “Residential Tax abatement program” dated April 11, 2013; and five photographs.
- Respondent Exhibit 1: 2019 subject property record card,  
 Respondent Exhibit 2: 2020 subject property record card,  
 Respondent Exhibit 3: Annual Adjustment of Assessed Values Fact Sheet from Department of Local Government Finance dated September of 2018,  
 Respondent Exhibit 4: List of properties that sold in the subject property’s neighborhood in 2019 and used for trending,  
 Respondent Exhibit 5: List of properties that sold in 2019 on Lone Beech Drive.
- c) 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.

### Contentions

10. Summary of the Petitioners’ case:
- a) The subject property’s assessment is incorrect. The Petitioners do not agree with the data and methodology the Respondent used to compute the assessment. *J. Mogush argument.*
- b) The Respondent took “the easy way out” by using “aggregate sales data.” The Respondent used 26 sales to trend the assessment but failed to relate any of the sales to the subject property. Most of the properties the Respondent used are larger, and most have amenities the subject property does not, including extra bathrooms and fixtures, decks, and open-frame porches. *J. Mogush argument; Pet’rs Ex. 5, 6, 7.*
- c) In the Petitioners’ neighborhood and surrounding area, homes must be “guttled” and “re-done” before they will sell. There are “hundreds and hundreds” of new homes being built in the area because buyers prefer new and “re-done” homes. Local government officials have pushed buyers towards new homes. The Respondent failed to take any of that into account when assessing the property. *J. Mogush argument; Pet’rs Ex. 8, 9, 10, 24.*
- d) Muncie is a depressed economy. The Muncie Mall is “defunct” after losing all the anchor tenants. Other employers have left the area, the population is decreasing, and home prices are forecasted to fall. *J. Mogush argument; Pet’rs Ex. 11, 14, 17, 19.*
- e) Delaware County government has been fraught with corruption. The Petitioners contend “the system has been gamed” and things are supported with “falsified data.” *J. Mogush argument; Pet’rs Ex. 13, 16.*

11. Summary of the Respondent's case:

- a) The subject property's assessment is correct. The only change to the assessment was an increase in the "market model" from 1.1536 to 1.2574. This increase was due to trending. Everything else, including grade and condition, remained the same. *McDaniel testimony; Resp't Ex. 1, 2.*
- b) To determine the "market model," the Respondent used approximately 26 sales from the same neighborhood as the subject property, including 5 located on the same street. Sale values outpaced assessed values by 8.5%, or \$12,687 per sale. The average assessment increased 7.8%, or \$11,681. The average sale price for the five properties located on the same street as the subject property was \$124,200. *McDaniel testimony; Resp't Ex. 3, 4, 5.*

**Burden of Proof**

12. 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.
13. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
14. 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).
15. Here, the parties agree the burden of proof is on the Respondent. According to the subject property record card the assessment increased from \$111,900 in 2019 to \$120,300 in 2020, an increase of 7.5%. Therefore, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the burden rests with the Respondent.

## Analysis

16. The Respondent failed to make a prima facie case that the current 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 2020 assessment, the valuation date was January 1, 2020. *See* Ind. Code § 6-1.1-2-1.5.
  - c) As stated above, the burden of proof rests with the Respondent. In an effort to meet that burden, Ms. McDaniel introduced sales information for approximately 26 properties in the subject property's neighborhood. Ms. McDaniel explained that when the sale prices were compared to the assessments in the neighborhood, the "market model" increased from 1.1536 to 1.2574.
  - d) In other words, the Respondent argued the increase in the assessment was based on the results of the neighborhood ratio study. However, the Respondent failed to offer any support for the notion that a ratio study may be used to prove that an individual property's assessment reflects its market value-in-use. Indeed, the International Association of Assessing Officials Standard on Ratio Studies, which 50 IAC 27-1-44 incorporates by reference, says otherwise:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . . **However, the ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel.** Such statistics can be used to adjust assessed values on appealed properties to a common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES, VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 7/21/2007) (bold added, italics in original).

- e) The Respondent's burden is not merely to explain why the assessment increased. The Respondent must offer probative evidence proving the market value-in-use. *See* Ind. Code § 6-1.1-15-17.2. Because the Respondent failed to do that, she failed to make a prima face case that the 2020 assessment is correct. Therefore, the Petitioners are entitled to have their assessment returned to the 2019 level of \$111,900. Because that is the amount the Petitioners requested on their Form 131, the Board's inquiry ends here.
- f) To be clear, the Petitioners did not prevail in this case because they made a showing that the Respondent's ratio study was wrong or supported with "falsified data," or that "the system is gamed." They prevailed because the Respondent's ratio study evidence was insufficient to make a prima facie case.

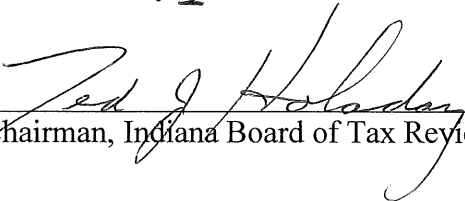
### Conclusion

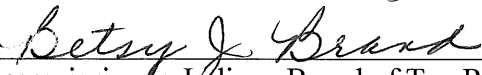
17. The Board finds for the Petitioners.

### Final Determination

In accordance with the above findings and conclusions, the assessment must be reduced to \$111,900.

ISSUED: July **1**, 2021

  
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>.