

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

**Petition:** 45-023-18-1-4-00384-20  
**Petitioner:** Lake County Assessor  
**Respondent:** Hector Moreta  
**Parcel:** 45-07-06-104-004.000-023  
**Assessment Year:** 2018

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

**Procedural History**

1. Hector Moreta contested the 2018 assessment of his commercial property located at 5851 Calumet Avenue in Hammond. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 determination reducing Moreta’s assessment to \$55,000.
2. The Lake County Assessor then filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On December 13, 2021, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on the Assessor’s petition. Neither he nor the Board inspected the property.
3. Robert Metz, Lake County’s hearing officer, appeared for the Assessor. Moreta represented himself. Both testified under oath.

**Record**

4. The official record for this matter includes the following:
  - Petitioner Exhibit A: Appraisal prepared by Sara Janik Serratore and Andrew Sharmat of Martinez, Sharmat & Associates,
  - Petitioner Exhibit B: Sales disclosure form.
5. The record also includes: (1) all petitions and other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

**Objections**

6. Moreta objected to both the Assessor’s exhibits on grounds that the “comps” he submitted at the PTABOA hearing should carry more weight. The ALJ took the objections under advisement. Moreta’s objection goes to the weight that should be

assigned to the exhibits rather than to their admissibility. We therefore overrule the objection.

## Contentions

### A. The Assessor's Contentions

7. Moreta bought the property for \$55,000 in 2016. That might be why the PTABOA reduced the assessment to that amount. But Sara Janik Serratore and Andrew Sharmat, both of whom are certified appraisers, prepared an appraisal estimating the property's market value at \$275,000 as of January 1, 2018. And a sales disclosure form indicates that Moreta sold the property for \$255,000 on July 31, 2020. The Assessor believes the property's 2018 assessment should be increased to \$255,000. *Metz argument and testimony; Pet'r Exs. A-B.*
8. The appraisers certified that they prepared their appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). They considered all three generally accepted appraisal approaches, and developed two of them: the sales-comparison and income approaches. *Pet'r Ex. A at 43-66.*
9. For their sales-comparison analysis, the appraisers examined sales of five comparable restaurant properties that sold between May 2017 and May 2018. They adjusted the sale prices for various relevant ways in which the comparable properties differed from the subject property. The adjusted sale prices ranged from \$80.93/sq. ft. to \$90.54/sq. ft. The appraisers settled on a value of \$85/sq. ft. or \$250,000 for the subject property. *Pet'r Ex. A at 43-52.*
10. For their analysis under the income approach, the appraisers looked at leases of several comparable restaurants to estimate market rent. To that market rent, they added certain tenant reimbursements. They then adjusted that potential gross income to account for estimated vacancy and collection loss. From that effective gross income, they subtracted operating expenses and replacement reserves to project the property's net operating income ("NOI"). The appraisers then capitalized that NOI using a rate they extracted from market sales, arriving at a value of \$315,000. *Pet'r Ex. A at 53-65.*
11. In reconciling their conclusions, the appraisers gave more weight to the sales-comparison approach, and they settled on a value of \$275,000. *Pet'r Ex. A at 66.*

### B. Moreta's Contentions

12. When Moreta bought the property in 2016, the business that had previously operated in it had been closed for ten years. The property was on the "demolition list." Moreta spent \$100,000 remodeling the building and opened a café. His property taxes increased to a higher amount than any other business in the area. *Moreta testimony.*

13. The PTABOA reduced the assessment to \$55,000 based on “comps” that Moreta brought to the hearing. Moreta is “confused” as to how the Assessor can propose raising the assessment after all his work getting the taxes reduced. In any event, he no longer owns the property, and he contends that “any revaluation has to go to the new owner.” While Moreta acknowledges that he owned the property in 2018, he later sold it because Lake County “put (him) out of business.” *Moreta testimony and argument.*

### Analysis

14. The Assessor filed the appeal that is currently before us. *See* I.C. § 6-1.1-15-3(c) (allowing a county assessor who dissents from a PTABOA’s determination to obtain review by the Board). As the party seeking to change the status quo, the Assessor bears the burden of proof.<sup>1</sup>
15. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property’s “true tax value.” 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.<sup>2</sup> 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.” MANUAL at 2.
16. Evidence in an assessment appeal should be consistent with that standard. For example, a USPAP-certified market-value-in-use appraisal often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also, I.C. § 6-1.1-15-18* (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property's market value-in-use). Regardless of the method used, a party must explain how its 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). For 2018 assessments, the valuation date was January 1, 2018. *See* I.C. § 6-1.1-2-1.5.

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<sup>1</sup> Indiana Code § 6-1.1-15-17.2 contains very specific provisions about the burden of proof in two circumstances: (1) where an assessment under appeal has increased by more than 5% over the previous year’s assessment, or (2) the taxpayer successfully appealed the previous year’s assessment and the assessment currently under appeal is higher than what was determined in that earlier appeal. I.C. § 6-1.1-15-17.2 (a)-(b), (d). We need not decide whether that statute applies to appeals brought by an assessor, however, because the only reference to the subject property’s 2017 assessment indicates that it was substantially higher than the \$55,000 the PTABOA determined for 2018. *See Form 131 petition* (listing 2017 assessment at \$239,400).

<sup>2</sup> The Department of Local Government Finance has adopted a new assessment manual and guidelines that apply to assessments for 2021 forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

17. The Assessor offered a USPAP-certified appraisal valuing the property at \$275,000 as of January 1, 2018, and a sales disclosure form indicating that Moreta sold the property for \$255,000 on July 31, 2020. The sale occurred more than 2 ½ years after the valuation date, and the Assessor failed to offer any evidence relating the sale price to a value as of that date. But the appraisal estimates the property's value as of the valuation date. And the appraisers applied two generally recognized appraisal approaches in reaching their conclusion. The Assessor therefore made a prima facie case that the property's market value-in-use was \$275,000, although she only seeks an increase to \$255,000.
18. Moreta did nothing to impeach the appraisal, and he offered little market-based evidence of his own. At most, he testified that he bought the property for \$55,000 in 2016 and invested around \$100,000 in remodeling it. By themselves, those facts do not show the property's market value-in-use as of January 1, 2018. They certainly do not outweigh the appraisers' valuation opinion.
19. The rest of Moreta's testimony is even less helpful. His reference to unspecified "comps" he offered at the PTABOA hearing is too vague to carry any probative weight. The same is true for his complaint that his taxes were higher than the taxes assessed to neighboring property owners. Assuming Moreta meant that the tax disparity arose from the neighboring properties being assessed for less than the subject property, Moreta did not identify any of the properties he was referring to, much less what they were assessed for.
20. Finally, we are unsure what Moreta meant when he argued that "any revaluation (of the 2018 assessment) has to go to the new owner." Moreta owned the property on the assessment date. And the owner of real property on the assessment date of a year is liable for the taxes imposed for that year. I.C. § 6-1.1-2-4(a). Indeed, Moreta was the one who appealed the 2018 assessment in the first place.

### **Conclusion**

21. The Assessor made a prima facie case that the subject property was worth at least as much as her requested assessment of \$255,000. Moreta failed to impeach or rebut the Assessor's evidence. We therefore find for the Assessor and order the property's assessment to be increased to \$255,000.

Date: 3/14/2022

Jonathan R. Elrod

Chairman, Indiana Board of Tax Review

Betsy J. Brand

Commissioner, Indiana Board of Tax Review

Timothy Schultz

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>.