

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

**Petition:** 46-022-20-1-5-00797-20  
**Petitioners:** Robert A. Weisman and Audrey Selin  
**Respondent:** LaPorte County Assessor  
**Parcel:** 46-01-21-179-007.000-022  
**Assessment Year:** 2020

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

**PROCEDURAL HISTORY**

1. The Petitioners contested the 2020 assessment of their property located at 1010 Lake Shore Drive in Michigan City. The LaPorte County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the residential property at \$262,800 (land \$159,000 and improvements \$103,800).
2. The Petitioners filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On May 11, 2021, Ellen Yuhan, our designated administrative law judge (“ALJ”) held a telephonic hearing on the petition. Neither she nor the Board inspected the property.
3. Robert Weisman appeared pro se. Attorney Brad Adamsky appeared for the Assessor. Weisman, Assessor Mike Schultz, and Chief Deputy Assessor Stacey Sweitzer testified under oath.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: Indiana Land Title Survey
  - Petitioner Exhibit B: Appraisal Report prepared by Louis Pezzuto
  - Petitioner Exhibit C: Appraisal Report prepared by William Sightes
  - Petitioner Exhibit D1-D5: Five photographs of the subject property
  
  - Respondent Exhibit 1: Notice of Hearing
  - Respondent Exhibit 2: Property record card
  - Respondent Exhibit 3: Appraisal Report prepared by Noble McFadden

- b. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

### **OBJECTIONS**

5. The Petitioners objected to the admission of the Appraisal Report prepared for the Assessor by Noble McFadden. The Petitioners questioned McFadden's judgment and argued that the properties McFadden used in his appraisal are not comparable to the subject. Our ALJ admitted the exhibit over the Petitioners' objection. Because their objection goes solely to the weight that should be given to the evidence, which is the province of the Board, we adopt our ALJ's ruling.

### **BURDEN OF PROOF**

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
7. Here, the assessment increased from \$237,400 in 2019 to \$262,800 in 2020—an increase of more than 5%. The Assessor conceded that he therefore bears the burden of proof.

### **SUMMARY OF CONTENTIONS**

8. The Assessor's case:
  - a. The Assessor provided an appraisal prepared by Noble McFadden, an Indiana certified residential appraiser. McFadden certified that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He estimated the subject property's value was \$275,000 as of January 1, 2020. The Assessor requests the Board change the assessment to reflect McFadden's opinion of value. *Schultz testimony; Sweitzer testimony; Resp't Ex. 3.*
  - b. The Petitioners' argument is solely about the value of the land. The Board has acknowledged in many previous hearings that that is not an appropriate argument. Specifically, *Hammond v. Washington Township Assessor* holds that, "The Board is reluctant to lower an improved property's land assessment without some assurance that the property as a whole is assessed for more than its market value in-use." While the subject property may not be a buildable lot if it were vacant, there is a house on the lot. *Adamsky argument.*

9. The Petitioners' case:
- a. There is no justification for the increase in the subject's land value. The parcel size is only 40 feet by 60 feet. It is actually a half lot as noted in the legal description. The lot has virtually zero value because it is unbuildable per Michigan City zoning ordinances. *Weisman testimony; Pet'r Exs. A-C.*
  - b. Not only is the lot small, but there is a prescriptive easement along the back of the subject property so people in the houses behind it can park their cars. If the Petitioners used that part of the property in any way, the people to the right of the subject property could not access their property by car. *Weisman testimony; Pet'r Exs. B, D1-D5.*
  - c. The bulk of the lot is below grade. To get to the area where the cars are parked, you must go in the front door of the house, go down to the basement, and exit the house on the level where the cars are parked. *Weisman testimony; Pet'r Exs. D1-D3.*
  - d. The Petitioners commissioned an appraisal from Louis Pezzuto, an Indiana certified residential appraiser. Pezzuto performed a USPAP-compliant appraisal and valued the land only at \$56,000 as of July 30, 2020. The Petitioners request the land value be changed to the appraised value and the improvements remain at the same value. *Weisman testimony; Pet'r Ex. B.*
  - e. The fact that the Assessor can hide behind some case that says the property must be valued as a whole is ludicrous. They cannot possibly be valuing a property this small with an easement at the value they have ascribed to it. There is no fundamental fairness in appraising their or their neighbors' properties in the way that the Assessor has when the lots are so completely stunted. *Weisman testimony.*

#### ANALYSIS

10. The Assessor made a prima facie case supporting his request to increase the 2020 assessment. The Petitioners failed to impeach the Assessor's evidence and failed to offer more persuasive valuation evidence of their own. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "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). It is instead 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.

- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property’s value as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). The valuation date for this appeal is January 1, 2020. Ind. Code § 6-1.1-2-1.5(a).
- c. As discussed above, the Assessor has the burden of proof. He offered a USPAP-compliant appraisal prepared by Noble McFadden, an Indiana certified residential appraiser. McFadden relied on the sales comparison approach and estimated the subject’s value to be \$275,000 as of January 1, 2020.
- d. The Petitioners criticized several aspects of McFadden’s appraisal, but we conclude that they failed to impeach its credibility. Their first complaint was that McFadden’s comparable sales are not truly comparable to the subject because their lot sizes are not as small as the subject’s lot. However, McFadden adjusted all four comps to compensate for their larger site sizes, and the Petitioners failed to demonstrate that his adjustments were insufficient.
- e. We also give no credence to the Petitioners’ related assertion that McFadden’s adjustment methodology is defective. While we recognize that McFadden did not attend the hearing to explain his methodology, he is a licensed appraiser who certified that he prepared the appraisal in accordance with USPAP. Thus, as the trier of fact, we may infer that he used objective data to quantify his adjustments in accordance with generally accepted appraisal principles in the absence of evidence demonstrating otherwise. Because the Petitioners offered no such evidence, their criticism has no merit.
- f. Additionally, the Petitioners submitted a USPAP-compliant appraisal prepared by William Sightes, another Indiana certified residential appraiser from the same firm where McFadden is employed. Sightes relied on the sales comparison approach and estimated the subject’s value to be \$270,000 as of December 11, 2019, only three weeks before the January 1, 2020 valuation date at issue. The fact that Sightes used three different comparable sales to reach a value conclusion so similar to McFadden’s bolsters our confidence in McFadden’s appraisal.

- g. Because the Petitioners failed to impeach the credibility of McFadden's appraisal, we find it to be probative evidence of the subject's true tax value. Accordingly, the Assessor made a prima facie case supporting his request to increase the 2020 assessment to reflect McFadden's opinion of value. The burden therefore shifts to the Petitioners.
- h. The Petitioners presented a USPAP-compliant appraisal prepared by Louis Pezzuto, an Indiana certified residential appraiser. Pezzuto relied on the sales comparison approach and estimated the subject's land value to be \$56,000 as of July 30, 2020.
- i. Pezzuto premised his appraisal on the hypothetical condition that the subject's improvements did not exist on the effective date of his appraisal. However, the Board does not generally consider land and improvements in a piecemeal manner when the property forms a single economic unit. See *Hammond v. Washington Twp. Ass'r*, Pet. No. 01-022-06-1-6-0001A (Ind. Bd. Tax Rev. March 12, 2008) (explaining that while valuing land as if it were vacant is a necessary component of the cost approach, Indiana's assessment scheme is ultimately concerned with the property's value as a whole); see also, *Pachniak v. Marshall Co. Ass'r*, Pet. No. 50-014-06-1-5-00070, et al. (Ind. Bd. Tax Rev. March 9, 2009) (explaining that where owners and the market view related parcels as one property, we ultimately care about the value of the entire property, not its individual components).
- j. Here, the Petitioners' land is currently improved with a home that the Petitioners use as their secondary residence. And given the size of their lot (40' x 60'), we have little trouble finding that the Petitioners' land and improvements form a single economic unit. Because Pezzuto's appraisal does not provide an opinion of value for the entire economic unit, we conclude it is not probative evidence of the subject's market value-in-use, which, by definition, requires us to value the subject *for its current use*.<sup>1</sup> What would be ludicrous is to permit a taxpayer to strategically word a uniform and equal true tax value by challenging only one component of the assessment
- k. Because the Petitioners offered no probative evidence proving that their property's market value-in-use was lower than \$275,000, they failed to rebut the Assessor's prima facie case.

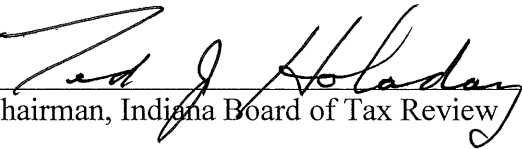
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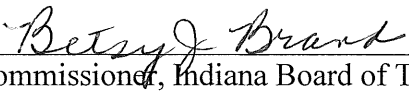
<sup>1</sup>Even if it were proper to review the value of the Petitioners' land independently from the improvements, we note that their failure to relate Pezzuto's land value conclusion to the January 1, 2020 valuation date would nevertheless undermine the probative value of his appraisal.

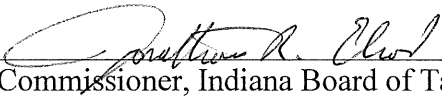
**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order the 2020 assessment changed to \$275,000.

ISSUED: 7-16-21

  
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>.