

REPRESENTATIVE FOR THE PETITIONER: Donald L. Steiner, Trustee

REPRESENTATIVE FOR THE RESPONDENT: Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Steiner Living Trust,)	Petition No.: 71-003-19-1-5-00433-21
)	
Petitioner,)	Parcel No.: 71-04-19-426-018.000-003
)	
v.)	County: St. Joseph
)	
St. Joseph County Assessor,)	Assessment Year: 2019
)	
Respondent.)	

January 25 2022

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:

INTRODUCTION

1. Steiner Living Trust (the “Trust”) appealed its 2019 assessment of a residential property in St. Joseph County. The Assessor had the burden to prove the assessment was correct. But the Assessor failed to present reliable evidence in support of that value. Likewise, the Trust did not present reliable evidence in support of its requested assessment. Thus, the 2019 assessment must revert to the 2018 value.

PROCEDURAL HISTORY

2. The Trust appealed the 2019 assessment of a single-family home and utility shed located at 18045 Chipstead Drive in South Bend. On March 31, 2021, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination upholding the assessment at \$23,500 for land and \$77,100 for improvements for a total of \$100,600. The Trust timely filed an appeal with the Board.
3. On October 27, 2021, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
4. Donald L. Steiner, Trustee of the Steiner Living Trust, St. Joseph County Assessor Rosemary Mandrici, and Jason Kane, an employee of the Assessor, testified under oath.
5. The parties offered the following exhibits:
 - Petitioner Exhibit 1: Subject property’s history of assessed values and request assessment,
 - Petitioner Exhibit 2: Petitioner’s written evidence to support requested assessment,
 - Petitioner Exhibit 3: Form 134s for 2017 and 2018 assessment years,
 - Petitioner Exhibit 4: Form 11s for 2017, 2018, 2019, 2020 and 2021,
 - Petitioner Exhibit 5: Letter from At Home Realty Group,
 - Petitioner Exhibit 6: Multiple listing sheet (“MLS”) for 18050 Chipstead Drive and photographs of two vacant lots located between 18240 & 18280 Chipstead Drive,
 - Petitioner Exhibit 7: Photograph of 18100 Amberly Lane,
 - Petitioner Exhibit 8: Photographs of 18145 & 18195 Brightlingsea Drive,
 - Petitioner Exhibit 9: Photographs of 52684, 52429 & 52565 Bamford Drive,
 - Petitioner Exhibit 10: Photographs of 52615, 52685, 52680 & 52605 Walsingham Drive,
 - Petitioner Exhibit 11: Photograph of 18382 Clairmont Drive.
 - Respondent Exhibit 1: Form 131 petition,
 - Respondent Exhibit 2: Form 115,
 - Respondent Exhibit 3: Form 134,
 - Respondent Exhibit 4: Form 130 petition,
 - Respondent Exhibit 5: CMA summary report, MLS sheets for 18135 Heatherfield, 18290 Chipstead, 18165 Amberly, 18060

Bariger Place & 52670 Walsingham Lane, Google map
and Google map view,

Respondent Exhibit 6: ProVal comparable sales report,

Respondent Exhibit 7: Subject property valuation history and “memo” list,

Respondent Exhibit 8: Subject property record card,

Respondent Exhibit 9: Photograph of the subject property.

6. 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) a digital recording of the hearing.

PETITIONERS' CONTENTIONS

7. The Trust argued that the subject property is over-assessed. In support of this, Steiner testified that after settling the 2018 assessment at \$90,500, the 2019 assessment increased to \$100,600 or 11.2%. He noted that the Federal Reserve Bank has shown the inflation rate to be 2% per year for the last 20 years. He testified that this rate should be applied to the 2018 stipulated value of \$90,500, for a 2019 assessed value of \$92,310.¹ *Steiner testimony; Pet'r Exs. 1-3.*
8. Steiner also testified that “eyesore” properties in the neighborhood affect the subject property’s value. To support this claim, he pointed to one multiple listing sheet and 13 photographs of various homes and vacant lots in the neighborhood. He noted the neighborhood does not have a homeowner’s association to regulate the condition of the homes. He also testified that the homes are very modest and were built 60 years ago. He pointed to an August 20, 2015 sale of one house for \$70,000. In addition, he noted that one property on Chipstead Drive had a dilapidated home on it for 15 to 20 years that was finally removed in the summer of 2020. *Steiner testimony; Pet'r Exs. 5-11.*

¹ Mr. Steiner testified that he also has appealed his 2020 and 2021 assessment years, which are not yet before the Board. He requested the Board to “clean that all up.” *Steiner testimony; Pet'r Ex. 1.* Because we have no authority to act on years not properly appealed, we do not recount the arguments and testimony relating to those years.

RESPONDENT'S CONTENTIONS

9. The Assessor requested the current assessment be increased from \$100,600 to \$156,000. In support of this, the Assessor offered a certified market analysis prepared by Jason Kane, a real estate broker with 16 years of experience, certified Level II Assessor-Appraiser, and full-time county assessor reassessment employee. Based on analysis, Kane determined the value of the property to be \$156,000 for the 2019 assessment year. *Kane testimony; Resp't Ex. 5.*
10. To develop his opinion of value, Kane selected five comparable properties located in the subject neighborhood. The comparable homes were tri-level construction, similar in age and size to the subject property. They sold from August 10, 2018, to December 7, 2018, for prices ranging from \$125,900 to \$161,000. He concluded that the median sale price of \$156,000 best represented the property's market value-in-use as of January 1, 2019.² *Kane testimony; Resp't Ex. 5.*
11. Kane also submitted a ProVal comparable sales report. The ProVal system analyzes information from sales disclosure forms and property record cards to produce a value estimate. This report yielded five comparable properties. Kane noted that three of the five sales were also used in his certified market analysis. The adjusted sale prices of these sales ranged from \$135,320 to \$196,820 and a comparable value estimate of \$156,000. *Kane testimony; Resp't Ex. 6.*
12. The Assessor also testified that the subject property's 2019 assessment of \$100,600 was calculated using mass appraisal techniques and conforms to the principles of uniformity in the county. She testified that a trending factor is calculated annually based on sales from the previous year and then applied to a property assessed value. She noted that the Assessor's office does not use the federal rate of inflation or the consumer price index to establish assessed values. *Mandrici testimony; Resp't Ex. 8.*

² Kane noted the median price per square foot was \$91.18, and if applied to the property's 2,119 square feet, it showed an estimated value of \$193,210. He felt the \$193,210 overstated the market value of the property. *Kane testimony; Resp't Ex. 5.*

BURDEN OF PROOF

13. 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. Ind. Code § 6-1.1-15-17.2(b) and (d).
14. Here, the parties agreed the assessed value of the subject property increased by more than 5% from 2018 to 2019. The property record card shows the assessment increased from \$90,500 in 2018 to \$100,600 in 2019. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the Assessor has the burden to prove the 2019 assessment is correct.
15. The Indiana Supreme Court recently addressed the burden shifting statute in *Southlake Ind., LLC v. Lake Cty. Assessor*, 2021 Ind. LEXIS 590 (Ind. 2021). In that case, the assessor had the burden of proof. The Board came to a conclusion different than either party's requested assessment. The Indiana Supreme Court reversed, finding:

Section 17.2, by its plain terms, imposes the initial burden on the assessor to prove its original assessment was correct. If the assessor fails, the burden shifts to the taxpayer to prove the correct assessment value. If neither party meets its burden, section 17.2's reversionary clause applies, and the assessment reverts to the assessment for the prior tax year. *Id.* at 5.

Thus, while a taxpayer is permitted to provide evidence supporting any assessment that they may proffer, the assessor is confined to providing evidence showing the original assessment was correct. Since then, in *Southlake Ind., LLC v. Lake Cty. Assessor*, 2021 Ind. Tax LEXIS 48 (Ind. Tax Ct. 2021), the Indiana Tax Court has held that correct means “exactly the same as the original assessment.” *Id.* at 9. Thus, to meet her burden, the Assessor must provide probative, market-based evidence that the original assessment is exactly correct.

ANALYSIS

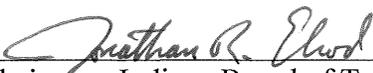
16. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales-comparison approach, and the income approach are three generally accepted techniques to calculate 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 property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
17. 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 the 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.
18. Here, the Assessor had the burden to prove the 2019 assessment was correct. But the Assessor did not provide any evidence showing that the original assessment of \$100,600 was correct. Rather, the Assessor requested and provided evidence in support of a higher value of \$156,000. Thus, the Assessor failed to meet her burden of proof to show the original assessment was correct.³
19. Because the Assessor did not meet her burden of proof, we now turn to the Trust's evidence. The Trust requested a value of \$92,310, which Steiner calculated by applying an inflation rate to the previous year's assessment. But he failed to show that applying such a rate was a generally accepted method of valuing property. Thus, we find his evidence unreliable.

³ We note that even if the burden-shifting provisions did not apply, we still would have found that the Assessor failed to make a prima facie case for value because Kane did not explain the relevant differences between his comparison properties and the subject property or the effect those differences had on their respective values as required by *Long*, 821 N.E.2d at 471.

FINAL DETERMINATION

20. Because the burden-shifting provision applies, the Assessor failed to meet her burden of proof, and the Trust did not provide reliable evidence of value, we order the subject property's assessment reverted to the prior year's value of \$90,500.

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