

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

Petition: 76-014-21-1-5-00727-21
Petitioner: Wilma J. Sutton
Respondent: Steuben County Assessor
Parcel: 76-12-29-000-020.000-014
Assessment Year: 2021

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

PROCEDURAL HISTORY

1. Wilma J. Sutton contested the 2021 assessment of her property located at 9705 W. Turkey Creek Road in Hudson. On October 1, 2021, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination valuing the subject property at \$118,100 (\$36,400 for land and \$81,700 for improvements).
2. Sutton timely filed a Form 131 petition¹ with the Board and elected to proceed under our small claims procedures. On September 26, 2022, our designated administrative law judge, David Smith (“ALJ”), held a telephonic hearing on Sutton’s petition.² Neither he nor the Board inspected the subject property.
3. Sutton appeared pro se. Attorney Zachary Price represented the Assessor. Sutton and appraiser William F. Schnepf, Jr. testified under oath.

RECORD

4. Sutton submitted the following exhibits:

Petitioner Exhibit 1:	Form 131 Petition for Review of Assessment
Petitioner Exhibit 2:	Form 130 Taxpayer’s Notice to Initiate Appeal
Petitioner Exhibit 3:	Form 115 Notification of Final Assessment Determination
Petitioner Exhibit 4:	2019 pay 2020 property tax payment receipt
Petitioner Exhibit 5:	Excerpt from 2019 pay 2020 Form 53569

¹Although Sutton’s Form 131 petition identifies the assessment year under appeal as 2020, the Form 130 notice initiating her county-level appeal and the PTABOA’s Form 115 determination identify it as 2021. Accordingly, our final determination will only address the 2021 assessment year.

²The parties agreed to waive the 30-day hearing notice required by Ind. Code § 6-1.1-15-4 after we granted the Assessor’s request to continue the hearing from September 21, 2022 to September 26, 2022.

Petitioner Exhibit 6:	Excerpt from 2020 pay 2021 Form 53569 ³
Petitioner Exhibit 8:	2020 Form 11 Notice of Assessment
Petitioner Exhibit 9:	2021 Form 11 Notice of Assessment
Petitioner Exhibit 10:	April 11, 2022 letter from Steuben County Assessor
Petitioner Exhibit 11:	History of Sutton's prior property tax bills

5. The Assessor submitted the following exhibits:

Respondent Exhibit A:	Appraisal Report of William F. Schnepf, Jr.
Respondent Exhibit B:	2022 Property Record Card for subject property
Respondent Exhibit C:	April 11, 2022 letter from Steuben County Assessor
Respondent Exhibit D:	March 31, 2022 email from Assessor to Sutton
Respondent Exhibit E:	Declaration of Kim Anderson, Steuben County Assessor ⁴
Respondent Exhibit J:	2021 Property Record Card for subject property
Respondent Exhibit L:	Corrected photographs of comparable sales (pp. 27-28 of Schnepf Appraisal)

6. The official record for this matter 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

7. The Assessor objected to the admission of Petitioner's Exhibits 4, 5, and 6 on relevance grounds because the exhibits relate to the amount of taxes due instead of the assessed value of the subject property. Sutton replied that she was offering them for informational purposes. Because all three exhibits provide tax and assessment information about the subject property, we find them to be at least minimally relevant to the issue at hand and overrule the objection.
8. The Assessor also objected to Petitioner's Exhibit 12 arguing that it was hearsay and violated Indiana's "best evidence" rule. Sutton responded that she was offering the exhibit in place of recordings of the two voicemails due to technical issues she had trying to preserve them. Our procedural rules allow us to admit hearsay, but if it is properly objected to and does not fall within a recognized exception to the hearsay rule, we may not base our final determination solely on the hearsay evidence. 52 IAC 4-6-9(d).
9. We agree that the exhibit contains hearsay that does not fall within any of the recognized exceptions. The exhibit also fails to satisfy Indiana Rule of Evidence 1002 (commonly referred to as the "best evidence" rule) because it is not an original recording of either voicemail. We therefore sustain the objection and exclude Petitioner's Exhibit 12, noting

³Sutton did not offer an Exhibit 7.

⁴The Assessor did not offer Exhibits F, G, H, I, or K.

however, that it would have had no bearing on our final determination even if we had admitted it.

FINDINGS OF FACT

10. The subject property is located at 9705 W. Turkey Creek Road in Hudson. It consists of a one-story, single-family home built in 1965 situated on 2.93 acres of land zoned for agricultural use. The home has 1,368 square feet of living area constructed on a concrete slab foundation and includes two bedrooms, one bathroom, and a gas log fireplace. Other improvements include a detached two-car garage with an unfinished shop area, a covered porch, front and side concrete patios, a rear storage shed, and a concrete driveway. It has public electricity, central air conditioning, propane, geothermal heat, an on-site well, and a private septic system. *Schnepf testimony; Resp't Ex. A at 3-4.*

SUMMARY OF CONTENTIONS

11. **Sutton's case:**
 - a. Sutton is an honest, responsible, law-abiding taxpayer who has lived at the subject property for almost 50 years. Her property tax bills have increased an average of 1-3% per year for the last 40 years. However, she does not think the 21% increase in her assessment since 2019, which has doubled her tax bill⁵, is appropriate. Sutton has kept the subject property well-maintained, but she has made no improvements to it that could justify the tax increase. And while she understands supply and demand, she cannot understand how the market justifies the increase. Sutton believes the Assessor raised her taxes due to a personal dispute between them, and she thinks the Assessor's communications with her in this matter have been unprofessional. *Sutton testimony. Pet'r Exs. 5, 6, 8, 9, 10, 11.*
12. **The Assessor's case:**
 - a. The Assessor offered an appraisal report from William N. Schnepf, Jr., a certified general appraiser licensed in both Indiana and Michigan. Schnepf has been appraising property since the early 1970's and he is a member of the Appraisal Institute and an SRA-certified appraiser. *Schnepf testimony; Resp't Ex. A at 30.*
 - b. On July 19, 2022, Schnepf completed an interior and exterior inspection of the subject property. He developed a sales comparison approach and a cost approach, but he did not develop an income approach because homes like the subject property are not typically purchased for income production. Schnepf valued the subject property's

⁵Although the 2020 pay 2021 tax year is not before us, we note that a large portion of the increase in Sutton's total tax liability for that year appears attributable to the loss of the "Over 65" deduction and resulting loss of savings under the "over 65 circuit breaker credit." See *Pet'r Ex. 6*. Because Sutton has not raised this issue, we cannot address it. However, we note that the county auditor, rather than the Assessor, is charged with applying credits.

fee simple interest as of January 1, 2021, and certified that his appraisal complies with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Schnepf testimony; Resp’t Ex. A at 2-5, 7-11.*

- c. Schnepf started his cost approach by looking for vacant land sales in rural southwestern Steuben County from which to develop a site value. He selected 10 vacant land sales from 2019 and 2020 with between 0.96 and 7.85 acres of land, which he felt bracketed the subject property’s 2.93 acres quite well. The sales had unit prices ranging from \$4,342 to \$14,655/acre. Schnepf reconciled to a unit price of \$7,600/acre, producing an indicated value of \$22,000 (rounded) for the subject property’s 2.93 acres. *Schnepf testimony; Resp’t Ex. A at 10.*
- d. He consulted the Marshall & Swift Residential Cost Handbook to determine the replacement cost new of the improvements and used a comparative cost multiplier to adjust the cost data back to January 1, 2021. Using a base cost of \$113.02/SF, Schnepf estimated the replacement cost new for the home to be \$154,611. He also estimated replacement costs new of \$7,147 for the covered porches and patios and \$27,968 for the garage. Next, he used the age/life method to calculate the physical, functional, and external depreciation affecting the subject property. After deducting his market-extracted depreciation estimate of \$110,041 and adding in his \$25,000 estimate for the site improvements, Schnepf reached an indicated value of \$126,700 (rounded) under the cost approach. *Schnepf testimony; Resp’t Ex. A at 4.*
- e. For his sales comparison approach, Schnepf searched for comparable sales of one- and two-story rural residences of a similar vintage as the subject property in the southwestern portion of Steuben County. Because his search produced limited results, Schnepf expanded his search to all of rural Steuben County. He likewise had to expand the timeframe he was searching back to January 1, 2019 due to limited results in his initial search period of the 12 months prior to January 1, 2021. Schnepf also had to broaden his search beyond residences with between 1,200 and 1,600 square feet, and had to include residences with basements due to the limited number of sales during this timeframe. *Schnepf testimony; Resp’t Ex. A at 9.*
- f. Schnepf ultimately selected six sales of comparable properties that were all located within 8.75 miles of the subject property. Four of the sales closed in 2020 and two closed in late 2019. He applied adjustments for sales or financing concessions, site size, room count, gross living area, basement finish, heating/cooling, garages, fireplaces, and outbuildings. After adjustment, the comparable sales had prices ranging from \$101,300 to \$138,300 (rounded), with average and median values of \$123,567 and \$128,900, respectively. Schnepf gave the greatest weight to Sale 1 and reconciled to an indicated value of \$126,000 under the sales comparison approach. *Schnepf testimony; Resp’t Ex. A at 4-5, 9-10.*
- g. In his reconciliation, Schnepf gave greater weight to his sales comparison approach due to the difficulty in quantifying depreciation in the cost approach and because it is

more reflective of the market. Based on his analysis, Schnepf reconciled to a retrospective opinion of the subject property's market value-in-use of \$126,000 as of January 1, 2021. *Schnepf testimony; Resp't Ex. A at 10.*

- h. The Assessor requested the Board find Schnepf's appraisal supports the \$118,100 assessment determined by the PTABOA. Alternatively, if the Board should not uphold that value, the Assessor requests the Board determine an appropriate value based on the evidence presented. *Price argument.*

ANALYSIS

- 13. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving that the assessment is incorrect and what the correct assessment should be. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).⁶
- 14. 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); MANUAL at 2. 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.
- 15. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with USPAP 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). So may cost or 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. *Eckerling*, 841 N.E.2d at 678.
- 16. 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); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466,471 (Ind. Tax Ct. 2005). The valuation date for this appeal is January 1, 2021. I.C. § 6-1.1-2.1.5(a).

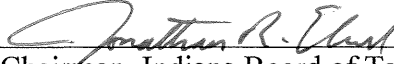
⁶ The Legislature repealed the burden-shifting statute, I.C. § 6-1.1-15-17.2, on March 21, 2022. P.L. 174-2022 § 32 (repeal effective on passage). In the same bill, a new statute created a substitute burden-shifting statute, I.C. 6-1.1-15-20, for new appeals filed after the effective date of March 21, 2022. P.L. 174-2022 § 34 (effective on passage). Because Sutton filed her appeal with the PTABOA before March 21, 2022, and our hearing on this appeal occurred after the Legislature repealed I.C. § 6-1.1-15-17.2, neither the new nor the repealed statute apply to this case. Regardless, we note that Sutton offered no argument that the burden of proof should shift to the Assessor under either statute.

17. As discussed above, Sutton contends that we should reduce the 2021 assessment. Although she did not specify a value at hearing, she requested a total assessment of \$100,500 on her Form 131 petition. However, Sutton failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674, 678 (Ind. Tax Ct. 2006).
18. Because Sutton failed to offer any probative market-based evidence to demonstrate the property's correct market value-in-use for 2021, she failed to make a case for a lower assessment.⁷

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2021 assessment.

ISSUED: DECEMBER 21, 2022



 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>>.

⁷Although the Assessor submitted a USPAP-compliant appraisal, she offered it in support of the current assessment. Thus, we need not evaluate it.