

REPRESENTATIVES FOR THE PETITIONERS: Lawrence A. & Yolanda A. Vierra, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Cathy Searcy, Elkhart County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lawrence A. & Yolanda A. Vierra,)	Petition Nos.: 20-015-23-1-5-00723-23
)	
Petitioners,)	Parcel No.: 20-11-14-351-044.000-015
)	
v.)	County: Elkhart
)	
Elkhart County Assessor,)	Assessment Year: 2023
)	
Respondent.)	

November 14, 2024

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. Lawrence and Yolanda Vierra (“Petitioners”) appealed the 2023 assessment of their residential property in Elkhart County. The Assessor had the burden of proof and failed to provide reliable, market-based evidence supporting any value for the subject property. The Petitioners likewise failed to present probative evidence supporting a specific value. Thus, we order the assessment reduced to the prior year’s assessment of \$421,600.

PROCEDURAL HISTORY

2. The Petitioners filed a Form 130 appeal on May 26, 2023, appealing the 2023 assessment of their property located at 1912 Woodstone Court in Goshen.
3. The Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) held a hearing on October 10, 2023. The PTABOA issued its determination on October 30, 2023, reducing the assessment to \$48,000 for land and \$481,500 for improvements for a total of \$529,500.¹ On December 27, 2023, the Petitioners filed a Form 131 petition with the Board.
4. On July 16, 2024, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Lawrence Vierra, Yolanda Vierra, and Elkhart County Assessor Cathy Searcy testified under oath.
6. The Petitioners offered the following exhibits:

Petitioner Exhibit 1A:	Taxpayer’s Notice to Initiate an Appeal – Form 130,
Petitioner Exhibit 1B:	Petition for Review of Assessment Before the Indiana Board of Tax Review – Form 131,
Petitioner Exhibit 2:	IN Citizen’s Guide to Property Tax,
Petitioner Exhibit 3:	2020 subject property record card,
Petitioner Exhibit 4:	2023 subject property record card,
Petitioner Exhibit 5:	USAA subject property value estimates,
Petitioner Exhibit 6:	PTABOA website information,
Petitioner Exhibit 7:	Notification of Final Assessment Determination – Form 115,
Petitioner Exhibit 8:	Emails between Yolanda Vierra and Elkhart County Assessor’s office,
Petitioner Exhibit 9:	Tax bill detail sheets, multiple listing sheets, photographs and Google maps for 1908, 1912 and 1913 Woodstone Court and 1801 College Avenue,

¹ The Petitioners argued the value from the Form 115 was impermissibly determined by the Assessor, rather than the PTABOA, because “county law” requires the PTABOA to make the decision. But the Form 115 indicates the PTABOA voted to accept the Assessor’s recommended value. Thus, we find the value from the Form 115 is the assessment of record.

- Petitioner Exhibit 10: The subject property's 2006-2023 historical assessed values, dollar increase and percentage of increase,
Petitioner Exhibit 11: Common problems with old houses information,
Petitioner Exhibit 12: Four photographs of the subject property and two estimates for replacement of windows from Renewal by Andersen,
Petitioner Exhibit 13: 2006 list of 81 deficiencies on subject property prepared by Calvin Bolt Home Inspections.²

7. The Respondent offered the following exhibits:

- Respondent Exhibit 1: *Lawrence A. & Yolanda A. Vierra, Co-Trustees v. Elkhart County Assessor*, IBTR Pet. Nos. 20-015-20-1-5-00467-22 & 20-015-21-1-5-00468-22 (April 26, 2023) and IBTR Pet. No. 20-015-22-1-5-00391-23 (March 28, 2024),
Respondent Exhibit 2: 2023 original subject property record card,
Respondent Exhibit 3: 2023 revised subject property record card,
Respondent Exhibit 4: Assessor's evidence request response form.

8. 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.

FINDINGS OF FACT

9. The subject property is a two-story partial brick home located on a 219 ft. by 147 ft. lot in Goshen. The home suffers from several deficiencies such as inefficient windows, water damage, and faulty toilets. *Y. Vierra testimony; L. Vierra testimony; Pet'r Exs. 11-13; Resp't Exs. 2 & 3.*
10. The 2023 assessment under appeal of \$529,500 is an approximately 25.6% increase over the prior year's assessment of \$421,600. *Resp't Ex. 3.*

² Petitioners' exhibit coversheet lists an Exhibit 14, but none was submitted.

RESPONDENT'S CONTENTIONS

11. The Assessor conducted a field inspection of the subject property at the request of the PTABOA. As a result of this inspection, she updated the property record card to reduce the amount of finished basement, remove a concrete patio, and correct the number of bathrooms and plumbing fixtures. The Assessor also reviewed the grade, obsolescence, and depreciation of the home and found all were correct. As a result of these corrections, the PTABOA lowered the assessment from \$558,400 to \$529,500. *Searcy testimony; Resp't Exs. 2-4.*

PETITIONERS' CONTENTIONS

12. The Petitioners presented a 2006 home inspection showing 81 deficiencies and a list from a website showing common problems with old houses. They argued these issues, along with the home's inefficient windows and water damage, detract from the condition and overall value of the property. *Y. Vierra testimony; L. Vierra testimony; Pet'r Exs. 11-13.*
13. The Petitioners claimed that USAA's home value monitoring service valued the subject property at \$402,000 market value and \$455,300 tax value, while the assessment was \$529,500. They argued this demonstrated that the subject property was over-assessed. *Y. Vierra testimony; Pet'r Ex. 5.*
14. Next, the Petitioners compared the 2022 taxes of three properties located in the same area that had similar or greater square footage than the subject property. The tax bills for those properties ranged from \$4,702.88 to \$6,952.40, while the subject property's tax bill was \$6,529.46. They noted that one house was much larger than their home, but they pay more in taxes. *Y. Vierra testimony; Pet'r Ex. 9.*
15. The Petitioners presented a map of properties in their subdivision with assessments ranging from \$273,000 to \$525,000, noting that the subject property was "originally" assessed at \$558,000. *Y. Vierra testimony; Pet'r Ex. 9.*

BURDEN OF PROOF

16. Generally, the taxpayer has the burden of proof when challenging a property tax assessment. Accordingly, the assessment on appeal, “as last determined by an assessing official or the county board,” will be presumed to equal “the property’s true tax value.” Indiana Code § 6-1.1-15-20(a) (effective March 21, 2022).
17. However, the burden of proof shifts if the property’s assessment “increased more than five percent (5%) over the property’s assessment for the prior tax year.” I.C. § 6-1.1-15-20(b). Subject to certain exceptions, the assessment “is no longer presumed to be equal to the property’s true tax value, and the assessing official has the burden of proof.” *Id.*
18. If the burden has shifted, and “the totality of the evidence presented to the Indiana board is insufficient to determine the property’s true tax value,” then the “property’s prior year assessment is presumed to be equal to the property’s true tax value.” I.C. § 6-1.1-15-20(f).
19. Here, the current assessment is approximately 26.5% over the prior year’s assessment. Thus, the Assessor has the burden of proof.

ANALYSIS

20. The Indiana Board of Tax Review is the trier of fact in property tax appeals, and our charge is to “weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence before us.” I.C. § 6-1.1-15-20(f). Our conclusion of a property’s true tax value “may be higher or lower than the assessment or the value proposed by a party or witness.” *Id.* Regardless of which party has the initial burden of proof, either party “may present evidence of the true tax value of the property seeking to decrease or increase the assessment.” I.C. § 6-1.1-15-20(e).
21. 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, true tax value is found 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.” 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

22. To meet its burden of proof, a party “must present objectively verifiable, market-based evidence” of the property’s value. *Piotrowski v Shelby Cty. Ass’r*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal “methodology” of the “assessment regulations.” *PIA Builders & Developers, LLC v. Jennings Cty. Ass’r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). This is because the “formalistic application” of the procedures and schedules from the DLFG’s assessment guidelines lacks the market-based evidence necessary to establish a specific property’s market value-in-use. *Piotrowski*, 177 N.E.3d at 133.
23. Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is ‘similar’ or ‘comparable’ simply because it is on the same street are nothing more than conclusions . . . [and] do not constitute probative evidence.” *Marinov v. Tippecanoe Cty. Ass’r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property’s value as of the valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For the 2023 assessment, the valuation date was January 1, 2023. I.C. § 6-1.1-2-1.5(a).
24. In this case, the Assessor has the burden of proof. But the Assessor primarily offered evidence regarding how the current assessment was developed. As discussed above, simply relying on the mass appraisal methodology is insufficient to establish a value for a specific property on appeal. Instead, the Assessor needed to use market-based evidence to “demonstrate that the suggested value accurately reflects the property’s true market

value-in-use.” *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). But she did not provide any market-based evidence of value. For this reason, we find the Assessor failed to meet her burden of proof. We now turn to whether the Petitioners provided evidence supporting a different value.

25. Likewise, the Petitioners failed to support a specific value. Although they presented evidence of several deficiencies in the subject property, they failed to present reliable evidence quantifying the effect those deficiencies had on the overall value of the property as of the valuation date. 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). They did cite to values from a USAA home monitoring service, but they failed to show who exactly developed the estimates, what expertise they had, what methodology they used, or what research they did. For these reasons we find this evidence to be unreliable.
26. The Petitioners did present some evidence in the form of comparable assessments from their subdivision. But a party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable properties are comparable to the property under appeal. *See Long*, 821 N.E.2d at 470-71. Conclusory statements that properties are “similar” or “comparable” do not suffice. Instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Id.* at 471. They must similarly explain how relevant differences affect values. *Id.* Here, the Petitioners did not offer the type of analysis contemplated by *Long*. They did not meaningfully analyze the relevant differences between the purportedly comparable properties and the subject property, nor did they provide reliable evidence quantifying the effect those differences had on value. Without such analysis, this evidence is insufficient to support any reduction in the assessment.
27. In addition, it appears the Petitioners may have been challenging the uniformity and equality of the assessment as mandated by I.C. § 6-1.1-2-2 and Article 10 of the Indiana

Constitution. As the Tax Court has explained, “when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Westfield Golf Practice Center v. Washington Twp. Ass’r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

28. When a ratio study shows that a given property is assessed above the common level of assessment, the property’s owner may be entitled to an equalization adjustment. *See Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so “they bear the same relationship of assessed value to market value as other properties within that jurisdiction.” *Thorsness v. Porter County Assessor*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm’rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1 (a) of Indiana’s Constitution, however, does not guarantee “absolute and precise exactitude as to the uniformity and equality of each individual assessment.” *State Bd. of Tax Comm’rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998).
29. As discussed above, one of the requirements for a reliable ratio study is a comparison between the assessments used and objectively verifiable market data such as sale prices or appraisals. But the Petitioners did not demonstrate that they provided a statistically reliable sample of properties, nor did they compare the assessments of the purportedly

comparable properties with objectively verifiable market data. For these reasons, they failed to show they are entitled to any relief.

30. Finally, the Petitioners claimed that the subject property received higher tax bills than other similar properties. Tax bills are not only developed from assessments, but also from the application of other factors such as deductions, credits, and local taxing rates. The Petitioners did not analyze these other components, nor did they cite to any relevant authority that demonstrated they are entitled to any relief on these grounds.

SUMMARY OF FINAL DETERMINATION

31. Because the burden of proof shifted and the totality of the evidence was insufficient to support any value, the prior year's assessment is presumed correct. I.C. § 6-1.1-15-20(f). Thus, we order the 2023 assessment reduced to the prior year's value of \$421,600.

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>>.