

REPRESENTATIVE FOR THE PETITIONERS:
Larry Davis, Certified Tax Representative

REPRESENTATIVE FOR THE RESPONDENT:
Susan Engelberth, Kosciusko County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Russell & Dena Willis,)	Petition No.: 43-021-20-1-5-00757-20
)	
Petitioners,)	Parcel No.: 43-14-27-300-550.516-021
)	
v.)	County: Kosciusko
)	
Kosciusko County Assessor,)	Assessment Year: 2020
)	
Respondent.)	

Appeal from the Final Determination of the
Kosciusko County Property Tax Assessment Board of Appeals

September 20, 2021

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. The Respondent had the burden to prove the 2020 assessment was correct. She offered a market analysis and several comparable sales in support of the assessment. We find the evidence unreliable because she failed to show how it complied with generally accepted

appraisal practices. Because the Respondent did not meet her burden of proof, the assessment must revert to the prior year's value.

PROCEDURAL HISTORY

2. The Petitioners appealed the 2020 assessment of a single-family home and utility shed located at 6750 West 900 South, Lot 16 in Claypool with the Kosciusko County Assessor on June 12, 2020.¹ The Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) upheld the \$46,900 assessment on the improvements. The Petitioners timely appealed to the Board.
3. On June 24, 2021, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
4. Russell Willis, Certified Tax Representative Larry Davis, Kosciusko County Assessor Susan Engelberth, and Christy Doty, an employee of the Assessor, all testified under oath.
5. The parties offered the following exhibits:²
 - Petitioner Exhibit 1: 2018 subject property record card,
 - Petitioner Exhibit 2: Form 115,
 - Petitioner Exhibit 4: Kosciusko County Board of Zoning Appeals Hearing Notice,
 - Petitioner Exhibit 5: Kosciusko County Area Plan Commission Improvement Location Permit,
 - Petitioner Exhibit 6: Construction proposal from Hooks Construction,
 - Petitioner Exhibit 7: 2019 subject property record card,
 - Petitioner Exhibit 8: 2020 subject property record card,
 - Petitioner Exhibit 9: 2020 property record card for 6750 West 900 South – lot 12,
 - Petitioner Exhibit 10: Sales disclosure form for 6750 West 900 South – lot 12 dated August 7, 2018,
 - Petitioner Exhibit 11: Four photographs of 6750 West 900 South – lot 12,
 - Petitioner Exhibit 12: Sales disclosure form for 6750 West 900 South – lot 14 dated September 24, 2017,

¹ The Petitioners are not appealing the land portion of the assessment because the home is located on land leased from Indiana North Association of the Church of God, Inc. *Pet’r Ex. 12*.

² The Petitioners’ exhibit coversheet listed Petitioner Exhibits 3 and 18, but they were not submitted for the record.

Petitioner Exhibit 13: 2020 property record card for 6750 West 900 South – lot 14,
Petitioner Exhibit 14: Two photographs of 6750 West 900 South – lot 14,
Petitioner Exhibit 15: YCL Rules of Conduct,
Petitioner Exhibit 16: Three photographs of the subject property,
Petitioner Exhibit 17: 2020 lease extension billing statement and Yellow Creek Lake Camp and Ministry Center Lakefront Cottage Space Lease for the subject property,
Petitioner Exhibit 19: Kosciusko County 2020 Ratio Study,
Petitioner Exhibit 20: 2020-2021 Uniform Standards of Professional Appraisal Practice (“USPAP”) – Ethics Rule page 7,
Petitioner Exhibit 21: 52 IAC 4-8-1 – Evidence exchange rule,
Petitioner Exhibit 22: 2002 subject property record card,
Petitioner Exhibit 23: 2005 subject property record card,
Petitioner Exhibit 24: 2008 subject property record card,
Petitioner Exhibit 25: Petitioners’ written presentation to PTABOA dated October 20, 2020,
Petitioner Exhibit 26: Certificate of Service and copy of envelope from Kosciusko County Assessor to Larry Davis.

Respondent Exhibit A: 2018, 2019 and 2020 subject property record cards,
Respondent Exhibit B: 2002, 2005 and 2019 aerial photographs of the subject property,
Respondent Exhibit C: Four photographs of the subject property,
Respondent Exhibit D: Kosciusko County Area Plan Commission Improvement Location Permit,
Respondent Exhibit E: 2019 subject property record card with preliminary hearing notes dated July 12, 2019,
Respondent Exhibit F: Assessor’s parcel note on subject property dated October 1, 2019,
Respondent Exhibit G: Indiana Association of Realtors – Local Market Update for December 2017, December 2018 and November 2019,
Respondent Exhibit H: Email from Russell Willis to Yellow Creek Association homeowners dated September 30, 2020,
Respondent Exhibit I: Petitioners’ letter withdrawing 2019 appeal dated October 1, 2019,
Respondent Exhibit J: Email exchanges between Larry Davis and Kosciusko County Assessor,
Respondent Exhibit K: Appeal Market Analysis on the subject property prepared by Christy Doty with an effective date of January 1, 2020, and supporting documents,
Respondent Exhibit L: Indiana Association of Realtors market indicators – time adjustment of Petitioners’ sales for lot 12 and 14,

- Respondent Exhibit M: Kosciusko County Board of Zoning Appeals – Request for Variance and minutes for subject property,
- Respondent Exhibit N: Property record cards and sales disclosure forms for 6750 West 900 South – lot 42, 6750 West 900 South – lot 13 and 6750 West 900 South – lot 9,
- Respondent Exhibit O: Email between Lee Ann Taylor, Enforcement Officer for Kosciusko County Area Plan Commission and Kosciusko County Assessor dated May 27, 2021, Kosciusko County Board of Zoning Appeals – Request for Variance and voided Improvement Location Permit for 6750 West 900 South – lot 12,
- Respondent Exhibit P: 2020 and 2021 property record cards for 6750 West 900 South – lot 12 and 6750 West 900 South – lot 14,
- Respondent Exhibit Q: Yellow Creek Lake Ministries Campground layout and list of lessee names and contact information.

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 the ALJ; and (3) a digital recording of the hearing.

OBJECTIONS

7. Mr. Davis objected to Respondent’s Exhibits K and N, the market analysis and three property record cards and sales disclosures, on the grounds that the Respondent failed to timely exchange the evidence. Mr. Davis stated the Assessor’s certificate of service shows it was deposited in the U.S. mail on June 16, 2021, however, the mailing label is postmarked June 17, 2021. He received the Respondent’s evidence on June 21, 2021. Mr. Davis argued the Board’s discovery rules state when mailing evidence, three days must be added to the five business days requirement. Because the hearing was scheduled for June 24, 2021, the deadline for mailing evidence was June 14, 2021.
8. Ms. Engelberth stated the county uses an “online data service” for mailing and she placed the Respondent’s evidence in the mail on June 16, 2021. She could not explain why the online data service mailed it on June 17, 2021. Ms. Engelberth also noted that the Board’s administrative code states that if a private carrier that guarantees next day

delivery is used then the evidence must be sent one day before the specified deadline, which in this case was June 16, 2021. The ALJ took the objection under advisement.

9. The Board's administrative rules require that parties shall exchange evidence at least five business days before the hearing. 52 IAC 4-8-1(a) & (b). To comply with this rule, parties must use personal hand delivery or deposit the materials in the United States mail or with a private carrier three days before the deadline. If a party uses a private carrier that guarantees next day delivery, the materials must be sent one day before the specified deadline. 52 IAC 4-8-1(c).
10. Five business days before the hearing was June 17, 2021. The Respondent deposited the evidence on June 16, though it appears it was not received by the post office until the next day. While the Respondent cited the rule regarding carriers that guarantee next day delivery, she offered no testimony that established that she was using such a carrier. In addition, the Petitioners did not receive the evidence until four days after the postmark date, indicating next day delivery was not used. Thus, the Respondent should have mailed the exhibits by June 14, 2021, at the latest. Under these circumstances, we find the Respondent failed to comply with the exchange deadlines and Respondent's Exhibits K and N should be excluded.³
11. Mr. Davis also objected to Respondent's Exhibit H, an email from Russell Willis to Yellow Creek Association homeowners, on the grounds it has no relevance to the January 1, 2020, assessment date. In response, Ms. Engelberth argued the email shows the character of Mr. Davis and Mr. Willis that she has dealt with in this appeal process. The ALJ took the objection under advisement. We find the exhibit bears at least some relevance as it references the appeal at issue. Accordingly, the Board overrules the objection and Respondent's Exhibit H is admitted.

³ The Petitioner's did not object to Ms. Doty's testimony about her analysis and we do not exclude it.

PETITIONERS' CONTENTIONS

12. The Petitioners argued that the subject property is over-assessed. Mr. Willis testified that the property is a “wood cabin” without heat that sits on land leased from the Indiana North Association of the Church of God, Inc. He noted that the lease has numerous restrictions, including that it can only be used from April 15th to October 15th each year and that it may not be used as a primary residence. *Willis testimony; Pet'r Ex. 17.*

13. Mr. Willis testified that his 2002 property record card⁴ showed the original cabin was 432 square feet of living area and built in 1921, with an effective age of 1933 and an assessed value of \$9,300. The cabin was renovated in 2005 with a second story, a wood deck and a concrete patio, at a cost of \$28,000. Based on this renovation, he found that the 2005 assessment of \$29,600 “seemed reasonable.” He also stated that the renovation cost did not include some items such as electrical work, carpet, additional windows and a countertop. He estimated these items cost an additional \$2,000 to \$3,000. *Willis testimony; Pet'r Exs. 4, 5, 6, 22 & 23.*

14. Mr. Willis testified his assessed value increased 55% between 2018 and 2019, so he filed an appeal to “figure out why.” During discussions with the Assessor, Mr. Willis was surprised to learn the information on his 2019 property record was incorrect because a water heater, sink, and utility shed were omitted. He ultimately withdrew this appeal. He appealed the 2020 assessment because the property’s value increased with no changes to the property. The Petitioners requested an assessment of \$32,900. *Willis testimony; Pet'r Exs. 1, 2, 7 & 8.*

RESPONDENT'S CONTENTIONS

15. The Assessor testified that the subject property is a “cottage” and utility shed on leased land at Yellow Creek Lake Campground. The campground is owned by Indiana North Ministerial Assembly Incorporated. She noted that the 2018 assessment shows the

⁴ Mr. Willis identified the 2002, 2005 and 2008 property record cards on the record by the date the card was printed. For example, the 2002 property record card was printed on July 14, 2003.

cottage was built in 1933 with an effective age of 1969. The grade was D-1 in fair condition. In 2019, the property record card shows the concrete patio was changed to an open frame porch. In addition, the grade was changed to D and the condition to average. *Engelberth testimony; Pet'r Ex. A.*

16. The Assessor testified that during the course of the 2019 appeal she discovered that the original one-story cottage was removed and replaced with a two-story cottage. In addition, the two-story cottage was “moved over” 10 feet. She testified that the parties agreed the changes would be made for the 2020 assessment year.⁵ *Engelberth testimony; Pet'r Exs. A-F & I.*
17. For the 2020 assessment year, the subject property was changed to a two-story cottage with an open frame porch and wood deck. The year built and effective age were changed to 2004. The grade remained D and the condition average. A half-bathroom was removed, and a full bathroom added. Also, 6 foot by 9 foot utility shed was added with a year built of 2006. The changes were confirmed by a field inspection on June 27, 2020. *Engelberth testimony; Pet'r Exs. A-F.*
18. To support the 2020 assessment, the Respondent offered an appeal market analysis prepared by Christy Doty, a licensed residential appraiser, and part-time county assessor employee.⁶ Based on her appeal market analysis, Ms. Doty estimated the reconciled value of the property to be \$45,400 for the 2020 assessment year. *Doty testimony; Resp't Ex. K.*
19. In developing her market analysis, Ms. Doty selected four comparable properties located in the subject neighborhood of Yellow Creek Off Water. The comparable properties sold from March 15, 2019, to November 4, 2019. To arrive at a value for just the improvements, she deducted the assessed value for land from the sale prices for the three sales that included land. She also adjusted for certain items such as garages and

⁵ We note that the Assessor did not represent that this constituted an enforceable settlement agreement.

⁶ Ms. Doty is employed in the Trending Department. Her duties included annual trending of properties, develop the ratio study and verify information on sales disclosure forms.

outbuildings, as well as for quality of construction. She concluded to an average adjusted sale price of \$53.41/sq. ft. She then estimated a value for the subject property of \$45,400 as of January 1, 2020. *Doty testimony.*

20. In addition, Ms. Doty analyzed two sales submitted by the Petitioners. She adjusted the sales to the assessment date which resulted in adjusted sale prices of \$31,530 and \$36,356. The Assessor also submitted three “recent” sales of homes in the subject property’s neighborhood to show “values are rising.” She also noted that the subject property was not being correctly assessed for a kitchen sink, a water heater, and an overhang. Based on these adjustments she thought \$1,400 should be added to Ms. Doty’s market analysis. *Doty testimony; Resp’t Exs. G & L.*

BURDEN OF PROOF

21. 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).
22. Here, the parties agreed the assessed value of the subject property increased by more than 5% from 2019 to 2020.⁷ The property record card shows the assessment increased from \$32,900 in 2019 to \$46,900 in 2020. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the Respondent has the burden to prove the 2020 assessment is correct.

⁷ The Assessor did not argue that the burden should not shift based substantial renovations as defined in Ind. Code § 6-1.1-15-17.2(c)(2).

ANALYSIS

23. 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.
24. 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 2020 assessment, the valuation date was January 1, 2020. *See* Ind. Code § 6-1.1-2-1.5.
25. Here, the Respondent had the burden to prove the 2020 assessment was correct. To support the assessment, the Respondent primarily relied on a market analysis prepared by a licensed residential appraiser. In her analysis, Ms. Doty examined four purportedly comparable properties and concluded to a value of \$45,400 as of January 1, 2020.
26. A party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the properties from which the data is drawn are comparable to the property under appeal. *See* Ind. Code § 6-1.1-15-18(c); *see also 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. *Long*, 821 N.E.2d at 471. She must similarly explain how relevant differences affect values. *Id.*
27. The four purported sales were from the same neighborhood as the subject property. Simply because a property is located in the same neighborhood does not mean it is

comparable. The appraiser offered largely conclusory explanations for how the comparables were chosen or how they were different or similar than the subject property.

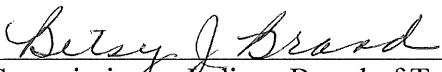
28. Even more troubling was how she chose to deal with the land component of the sale prices. As discussed above, this appeal deals only with the improvements because the Petitioners do not own the underlying land. To isolate the sale prices to just the improvements, the appraiser simply deducted the assessed value for land from each of the comparables. We find this to be insufficient. The appraiser did not provide any market based evidence supporting the use of land assessments developed for mass appraisal to adjust comparable sales. Nor did she show that such a technique complied with generally accepted appraisal practices. Finally, as the Petitioners point out, she performed no analysis of how the restrictions on the ground lease, such as use being limited to certain months of the year, would impact the value of the improvements. For all these reasons we find her opinion of value unreliable.
29. The Assessor also offered several additional comparable sales but did little to show how they related to the subject property or any analysis that complied with generally accepted appraisal principles. Thus, we find the Respondent failed to offer probative evidence showing the 2020 assessment is correct. Because the Respondent failed to meet their burden of proof, the Petitioners are entitled to have their assessment reverted to its 2019 value of \$32,900.

SUMMARY OF FINAL DETERMINATION

30. In accordance with the above findings and conclusions, the Board finds for the Petitioners. We order the 2020 assessment reduced to \$32,900.

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>.