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

Petitions: **84-009-12-1-5-04200**
84-009-13-1-5-05765
Petitioner: **Arnold and Carol Brames Joint Revocable Trust**
Respondent: **Vigo County Assessor**
Parcel: **84-07-30-253-010.000-009**
Assessment Year: **2012, 2013**

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Arnold and Carol Brames Joint Revocable Trust filed Form 130 petitions challenging its 2012 and 2013 assessments. On September 10, 2014, the Vigo County Property Tax Assessment Board of Appeals issued determinations upholding those assessments.

2. The Trust then timely filed Form 131 petitions with the Board. It elected our small claims procedures.

3. On October 31, 2016, our designated administrative law judge, Gary Ricks ("ALJ"), held a hearing on the Trust's petitions. Neither he nor the Board inspected the property.

Hearing Facts and Other Matters of Record

4. Arnold Brames, trustee, appeared for the Trust. The Vigo County Assessor was represented by Michael West, her reassessment supervisor. The following people were sworn as witnesses: Mr. Brames, Larry Bohnert, an Indiana certified general appraiser, Mr.West, and Susan McCarty, chief deputy assessor.

5. The subject property is a residence located at 779 S. Forest Drive in Terre Haute. It is in a subdivision known as "the Woods."

6. The PTABOA determined the following values:

Year	Land	Improvements	Total
2012	$60,100	$219,200	$279,300
2013	$60,900	$227,400	$288,300

7. The Trust requested changes in the land portion of each assessment, which would lead to the following values:

Year	Land	Improvements	Total
2012	$24,000	$217,200	$241,200
2013	$25,000	$227,400	$254,400

8. The official record of the hearing consists of the following:

a. A digital recording of the hearing.

b. Exhibits:

Petitioner's Exhibit 1: Rescheduled hearing notice, witness list, and motion for exchange of evidence,
Petitioner's Exhibit 3: Form 11 Notice of Assessment of Land and Structures ("Form 11 notice") for 2012, Taxpayer Notice to Initiate Appeal, Form 115 determination, and Form 131 petition,
Petitioner's Exhibit 4: Form 11 notice, Form 130 petition, Form 115 determination, and Form 131 petition
Petitioner's Exhibit 5: Two appraisal reports for the subject property prepared by Larry Bohnert,
Petitioner's Exhibit 6: Summary of sales information for various properties,
Petitioner's Exhibit 7: Sales disclosure forms reports for seven properties,
Petitioner's Exhibit 8: Form 11 notice for 2014,
Petitioner's Exhibit 9: Form 11 notice for 2015,
Petitioner's Exhibit 10: Form 11 notice for 2016,
Petitioner's Exhibit 11: Form 11 notice and sales disclosure form for 781 S. Forest Drive.[1]

Respondent's Exhibit 1: Aerial map of neighborhood # 12051[1],
Respondent's Exhibit 2: Spreadsheet with data from sales disclosure database for neighborhood # 120511,
Respondent's Exhibit 3: Sorted list of data from disclosure database for neighborhood # 120511,
Respondent's Exhibit 4: 2012 Property Record Card (PRC) for subject property and copy of sales disclosure form,
Respondent's Exhibit 5: Copy of email messages between Arnold Brames and Michael West,
Respondent's Exhibit 6: Typed definitions from glossary to 2011 Real Property

[1] The Trust identified a schematic drawing as Petitioner Exhibit 2, but decided not to offer it as evidence.

Assessment Guidelines, pages 12 and 23 from Guidelines,
Respondent's Exhibit 7: Worksheet #1 with analysis of vacant land sales,
Respondent's Exhibit 8: 2012 PRCs and sales disclosures for parcels in Respondent's exhibit 7,
Respondent's Exhibit 9: GIS map of subject property from 2012 and 2016,
Respondent's Exhibit 10: Worksheet #2 with analysis of "Improved Land Value," plus handwritten notes and table regarding costs for installing various items and other development costs.

Board Exhibit A: Form 131 petitions,
Board Exhibit B: Hearing notices,
Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions.

Objections

9. The parties made several objections at the hearing, all of which the ALJ took under advisement. We address each in turn, beginning with the Trust's objections.

A. The Trust's Objections

10. The Trust objected to Respondent's Exhibits 2-3, and 8-11 on grounds of relevance. We overrule all those objections. They go to the weight we should give to the exhibits more than to the threshold question of their admissibility. To the extent it is necessary, we can deal with the exhibits' probative weight when we address the merits.

11. The Trust next objected to Respondent's Exhibit 6—excerpts from the glossary of the 2011 Real Property Assessment Guidelines. The Trust argued that the exhibit is irrelevant because (1) it refers to improvements, while the Trust challenges only the land portion of its assessment, and (2) it is incomplete. We overrule both objections. As we explain in our discussion of the merits, the definition of "improved land" relates to how assessors consider development costs, such as the costs of connecting to utilities, when determining a property's assessment. And that issue is central to this appeal. As for the lack of completeness, the exhibit is merely demonstrative and highlights definitions the Assessor relied on in making her arguments. The Trust was free to point to any portions of the 2011 Guidelines it believed were necessary to give a more complete picture.

12. The Trust made three objections to Respondent's Exhibit 10—a worksheet with Mr. West's calculations for the depreciated costs of developing the subject land. First, the Trust argued that the exhibit should be excluded because it was prepared after the assessment dates at issue. Second, the exhibit includes costs the Trust believes are already included in the improvements portion of the assessment. Finally, the Trust argued that the exhibit is inadmissible hearsay, because Mr. West got his cost information

from contractors who were not at the hearing.

13. We overrule all three objections. The first two require little discussion. Witnesses in an assessment appeal may give opinions of value. And those opinions will often be prepared after the assessment date. The Trust's own witness, Mr. Bohnert, prepared his appraisals after the assessment dates at issue. As to the Trust's claim that Mr. West included development costs that were already part of improvements portion of the property's assessment, we explain why we disagree with that assertion in our discussion of the merits.

14. As for the Trust's hearsay objection, Mr. West testified that he got his basic cost information from conversations with contractors and responses to anonymous mailers he sent out in preparing for the 2018 assessment. Thus, to the extent the Assessor offered the exhibit as substantive evidence to prove the base costs that contractors charge for various services, the exhibit contains hearsay. *See* Ind. Evidence Rule 801 (defining hearsay as a statement not made by a declarant while testifying at a hearing or trial that is offered to prove the truth of the matter asserted).

15. But our procedural rules allow us to admit hearsay, with one caveat: if the opposing party objects and the evidence does not fall within a generally recognized exception to the hearsay rule, it cannot form the sole basis for our determination. 52 IAC 3-1-5. We therefore overrule the Trust's objection and admit Respondent's Exhibit 10. But we do not rely on the exhibit as substantive evidence of the costs of developing the subject land much less base our determinations of these appeals solely on that evidence.

B. The Assessor's Objection

16. The Assessor objected to Petitioner's Exhibit 5—Mr. Bohnert's appraisals of the subject land—on grounds that Mr. Bohnert used sales of vacant lots, whereas the Trust's lot is improved. We take this as an objection to the relevance of the appraisal, and we overrule it. As we explain below in our discussion of the merits, we agree that Mr. Bohnert's failure to take development costs into account ultimately deprives his appraisal of probative value. But that goes more to the exhibit's weight than to the threshold question of its admissibility.

Contentions

A. Summary of the Trust's case

17. The land was assessed too high for both years, as shown by appraisals from Larry Bohnert, a certified general appraiser. Mr. Bohnert prepared the appraisals in conformance with the Uniform Standards of Professional Appraisal Practice. He estimated the land's value at $24,000 as of March 1, 2012 and $25,000 as of March 1, 2013. *Brames argument, Bohnert testimony, Pet'r Ex. 5.*

18. Mr. Bohnert used the sales-comparison approach to estimate the land's value "as if vacant ready for development." He viewed the land as if ready to be connected to various utilities at the street, but not the value of any lines running from the street to the property or the value of a driveway or landscaping. He used six sales of vacant land for the 2012 appraisal and three sales for the 2013 appraisal. Utilities were available for those lots at the street, but they were not connected, and the lots did not have driveways or landscaping. By contrast, the Assessor's witness, Michael West, included things such as utility lines running from the subject lot to the street, as well as lot's driveway and landscaping in estimating its value. Mr. Bohnert had never heard of appraisers including those items when valuing vacant land. *Pet'r Ex. 5; Bohnert testimony*.

19. This appeal only involves the value of the subject land, not its improvements. The lot should therefore be valued as vacant land. As explained on the Form 11 assessment notices for 2014 and 2015:

> The term improvements includes, but is not limited to, buildings, structures, fixtures, and appurtenances. It represents a value added to the value of the land to equal the property's total market value-in-use. It should not be confused with improvements resulting from routine maintenance to the property, such as painting a house.

Resp't Exs. 8-9. Items such as utility lines and the driveway are fixtures. By including them in the land portion of the assessment, the Assessor is "double dipping." *Brames testimony and argument (citing Kooshtard Property I, LLC v. Monroe County Ass'r,* Pet. 53-017-08-1-4-00001 (IBTR Oct. 12, 2012).

20. Arnold and Carol Brames bought the subject lot for $39,500 in 2006. The Trust also offered a spreadsheet with sale prices and land assessments for several other lots from the Woods, including a lot adjacent to the subject property that Arnold Brames bought in December 2014. Those lots sold between 2012 and 2014 for prices ranging from $30,000 to $33,000. *Brames testimony; Pet'r Exs. 6-7.*

B. Summary of the Assessor's case

21. Mr. West, the Assessor's reassessment supervisor, analyzed the value of the subject land using the sales-comparison approach. There were 11 sales of vacant lots from the Woods between 2006 and 2014. Three sales involved two lots for which the consideration was an exchange of deeds and a $6,000 payout from a third party. The settlement statements for those sales listed prices of $23,500 and $29,500, respectively. Two other lots had $0 listed as their sale price. Mr. West took the median price per acre for the remaining sales and applied it to the subject lot to come up with a value of $29,800 for the vacant land. When he added in the sales from the deed exchange, the median per-acre price was $28,500. He came to the same number when he added in two older sales from 2004.

West testimony, Resp't Ex. 7.

22. Mr. West then examined the costs to develop the land so a house could be built on it. He used costs from 2016, which he got from various contractors. He then depreciated those costs to reflect 2012 values and added them to the value of the vacant land to reach the following value for the "improved land":

1) Water line installation:	$2,208
2) Sewer line installation:	$3,312
3) Electric line installation:	$1,035
4) Communication line installation:	$1,035
5) Excavation/grading/site preparation:	$15,000
6) Driveway installation:	$6,000
7) Concrete:	$4,286
8) Landscaping/finishing work:	$10,000
Calculated vacant land value:	$28,500
Total land value for 2016:	$70,617
2012 to 2016 difference of 12% (+3% per year):	-$8,474
2012 Value:	$62,100 (rounded)

West testimony; Resp't Ex. 10.

23. The 2011 Real Property Assessment Guidelines contradict the Trust's argument that the subject lot should be valued as vacant land. It is an improved lot. The Guidelines define "[i]mproved land" as "[l]and developed with a water well/septic system or water hook-up/sewage disposal hook-up, and landscaping, walkways and residential driveway." And they indicate that those development costs should be included in determining the land value for improved lots. *McCarty testimony, Resp. Exs. 6-7.*

Burden of Proof

24. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property (as last corrected by an assessing official, stipulated to by the parties, or determined by a reviewing authority), or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15- 17.2(a), (b) and (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. §6-1.1-15-17.2(b).

25. Although the Trust focuses on the land portion of its assessment, we have explained that

we treat the burden-shifting statute as a threshold issue before analyzing the grounds for appeal. The statute does not expressly contemplate a separate analysis for land-only appeals, and we "tend[] to disregard piecemeal approaches" in applying it. *Mac's Convenience Stores, LLC v. Hamilton County Ass'r*, pet. no. 29-006-12-1-4-02050 (IBTR Nov. 14, 2014). Thus, we look at whether a property's assessment as a whole increased between years. *Id*.

26. While the land portion of the subject property's assessment jumped from $26,500 to $60,100 between 2011 and 2012, that increase was more than offset by a corresponding decrease in the improvements portion of the assessment. Thus, the property's overall assessment dropped from $292,700 down to $279,300. The burden of proof therefore remained with the Trust for its 2012 appeal.

27. At the hearing's outset, the Assessor's representative, Michael West, indicated that the Assessor had the burden of proof for 2012. That statement likely stemmed from his misunderstanding of how we apply the burden-shifting statute. Ordinarily, if a party agrees she has the burden of proof, we will accept her position without further analysis. In this case, however, doing so would lead to an untenable result. If the Assessor had the burden and failed to prove the property was correctly assessed, the assessment would revert to the previous year's level, at least without the Trust offering probative evidence for a different amount. But that would mean the assessment would actually *increase*. We cannot sanction a result where a taxpayer, such as the Trust, would actually be in a worse position when its opponent failed to meet her burden of proof than it would have been in had it retained the burden and failed to meet it.

28. We also note that the Trust is not prejudiced by our looking past Mr. West's statement accepting the burden of proof. The Trust offered an appraisal report and testimony from its expert, Mr. Bohnert, to support what it believes is the land's true tax value. We may comfortably assume the Trust would have done the same thing had Mr. West remained silent and the ALJ ruled that the Trust had the burden of proof from the outset.

29. Under those circumstances, we find that the Trust had the burden of proof for 2012. Because the starting point for comparing the 2012 and 2013 assessments will be the value we determine for 2012, we cannot decide who has the burden for 2013 until we resolve the 2012 appeal.

Analysis

30. Real property is assessed based on its true tax value, which the 2011 Real Property Assessment Manual defines as "the 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." I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost, sales-comparison, and income approaches are three generally accepted techniques used to determine true tax value. Assessing officials

primarily use a mass-appraisal version of the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs or sales information for the property under appeal, sales or assessment information for comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also*, I.C. § 6-1.1-15-18.

31. Regardless of the method used, a party must explain how its 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). Otherwise, that evidence lacks probative value. *Id*. For the 2012 and 2013 assessment years, the valuation dates were March 1, 2012, and March 1, 2013, respectively.

A. 2012 Appeal

32. The Trust primarily relied on Mr. Bohnert's appraisals. Mr. Bohnert valued the land "as if vacant ready for development," meaning that he did not consider various development costs, such as costs for the driveway and landscaping and for connecting to the sewer system and other utilities. As the Assessor pointed out, all those costs are considered in determining land value under the 2011 Real Property Assessment Guidelines. Thus, in valuing "improved vacant platted lots"

> The improved land value estimate represents the cost of vacant land, plus the depreciated cost of a water well and septic system or public utility hook-up fees plus any costs, such as landscaping and private walkways and residential driveways incurred to make the parcel suitable for building.

2011 GUIDELINES, ch. 2 at 16; *see also id*. at 53 (describing the improved land value of homesites assessed on an acreage basis).

33. The 2011 Guidelines are an administrative rule, and they reflect how assessors normally value real property. The Trust's citation to a note on two Form 11 notices indicating that the term "improvements" includes fixtures does not change the plain meaning of the language from the Guidelines. Instead, the note seeks to explain to taxpayers that the term "improvements" is a term of art for assessment purposes, and that its meaning may depart from how they commonly understand it.

34. The subject property is developed for, and actually has, a house. It is connected to various utilities. It also has a driveway. Mr. Bohnert's appraisal does not account for how those things contribute to the land's value. Even if, as Mr. Bohnert testified, appraisers do not account for those development costs in estimating the value of vacant land, the Trust is challenging the subject property's *assessment*. And the 2011 Guidelines include those costs in the land component of that assessment rather than in the

improvement component. Under those circumstances, Mr. Bohnert's appraisal does not show the land assessment is incorrect.

35. The problem is of the Trust's own making. The Trust is correct that a taxpayer is allowed to challenge only one component of its assessment. And if the taxpayer offers probative evidence to show that component is incorrect, it may succeed in its appeal.[2] But as this case illustrates, it is a problematic approach. Had the Trust dealt with the property's overall value, we would not be particularly concerned with how that value was allocated between land and improvements. As it is, the Trust's approach omits part of the property's value. The development costs are not included in the improvement component of the assessment, and the Trust omitted them from its estimate of the land component as well.

36. The Trust also pointed to sales of several other lots from the Woods. Aside from their location in the same subdivision, the Trust did not explain how those lots compared to the subject lot. For example, it is not clear whether the sales were for developed sites or undeveloped lots. The Trust also failed to explain how any relevant differences between those other lots and the subject lot affected their relative values. Without that type of analysis, the sales and assessment data for the other lots lacks probative value. *See Long v Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (holding that the taxpayers' sales data lacked probative value where they did not explain how the characteristics of their property compared to the characteristics of the purportedly comparable properties or how any differences affected values).

37. As for the Brames' purchase of the subject lot, the Trust did not offer any evidence to show whether the lot was developed for improvements at the time of that sale. In any case, the sale was from 2006, and the Trust did not explain how the sale price related to the lot's value as of the March 1, 2012 valuation date.

38. Because the Trust failed to make a prima facie case showing that the 2012 assessment was incorrect, we order no change to that assessment.

B. 2013 Appeal

39. The subject property's assessment increased by 3.2% between 2012 and 2013, going from $279,300 (as we uphold in our determination) to $282,900. Neither trigger under the burden-shifting statute applies—the increase was less than 5%, and the Trust did not succeed in its appeal of the previous year's assessment. The Trust therefore had the burden of proof for 2013.

40. The Trust offered an appraisal from Mr. Bohnert estimating the land's value for March 1,

[2] Of course, the taxpayer would be vulnerable to evidence showing that the total assessment nonetheless reflects the property's overall value.

2013. But his approach was otherwise the same as in his appraisal for 2012. Thus, for the reasons we have already discussed, the appraisal does not show that the land assessment for 2013 was incorrect. All the other evidence was the same for the 2013 appeal as for the 2012 appeal, and we reach the same conclusions about its probative weight. The Trust therefore failed to make a prima facie case for changing the 2013 assessment.

Final Determination

41. The Trust had the burden of proof for each year under appeal. It failed to make a prima facie case that any part of the subject property's assessment was incorrect. We therefore find for the Assessor and order no change to either assessment.

Issued: January 30, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 within forty-five (45) days of 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>.