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

Petition No.: **32-012-11-1-5-00050**
Petitioners: **Neal T. & Crystal M. Fossmeyer**
Respondent: **Hendricks County Assessor**
Parcel No.: **32-10-35-178-003.000-012**
Assessment Year: **2011**

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

Procedural History

1. The Fossmeyers appealed their property's 2011 assessment to the Hendricks County Property Tax Assessment Board of Appeals ("PTABOA"). On October 23, 2012, the PTABOA issued its determination reducing the assessment, although not to the level the Fossmeyers wanted.

2. The Fossmeyers then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under our small claims procedures.

3. On June 25, 2015, the Board held a hearing through our designated administrative law judge, Dalene McMillen. Neither she nor the Board inspected the property.

4. The following people testified under oath: Neal Fossmeyer; Crystal Fossmeyer; Larry Scott, Hendricks County Assessor; and Lester Need, PTABOA member.

Facts

5. The property under appeal contains a single-family home with an in-ground pool located at 709 Masten Street in Plainfield.

6. The PTABOA determined the following values:

   Land: $29,600 Improvements: $333,800 Total: $363,400.

7. The Fossmeyers requested an assessment of $288,000.

Record

8. The official record for this matter is made up of the following:

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioners Exhibit 1:	Copy of Ind. Code § 6-1.1-15-1
Petitioners Exhibit 2:	2011 Form 115 determination for the Fossmeyers' property,
Petitioners Exhibit 3:	Fossmeyers' case summary with copies of photographs of their property,

Respondent Exhibit 1:	Photograph of the front of the Fossmeyers' property,
Respondent Exhibit 2:	Aerial photograph of the back of the property,
Respondent Exhibit 3:	Property record card for the Fossmeyers' property,
Respondent Exhibit 4:	Multiple listing sheet ("MLS") for the Fossmeyers' property,
Respondent Exhibit 5:	Sales disclosure form for the Fossmeyers' property, dated October 29, 2010,
Respondent Exhibit 6:	Pages 1 & 2 of October 29, 2010 mortgage agreement with First Merchants Bank,
Respondent Exhibit 7:	Pages 1 & 5 of October 29, 2010 second mortgage agreement with First Merchants Bank,
Respondent Exhibit 8:	A page from Fossmeyers' January 2, 2015 letter to Senator Mike Young,
Respondent Exhibit 9:	Slides from the Assessor's power point presentation,
Respondent Exhibit 10:	MLS sheets for 812 Seneff Court in Plainfield,
Respondent Exhibit 11:	*Neal & Crystal Fossmeyer v. Hendricks County Ass'r,* pet. no. 32-012-12-1-5-10000 (IBTR Nov. 10, 2014),

Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Hearing notice,
Board Exhibit C:	Hearing sign-in sheet,

   c. These Findings and Conclusions.

Summary of the Parties' Contentions

9. The Fossmeyers' case:

   a. The appeal process has been going on for almost four years,[1] yet the Assessor never formally met with the Fossmeyers to resolve their issues despite multiple attempts by the Fossmeyers. And local officials never inspected the property as 50 IAC 27-3-1 and basic assessing principles require. Had they done so, they would have known the property was assessed too high. *N. Fossmeyer; Pet'rs Ex. 1-3.*

   b. The Fossmeyers bought the property on October 29, 2010. Although they paid $412,000, Mr. Fossmeyer testified that $32,000 of that price was attributable to personal property. He also claimed they paid a premium based on the school district and the property's proximity to relatives. According to Mr. Fossmeyer, appraisers generally agree that a property's sale price and market value are equal only in a perfect market, and the Department of Local Government Finance ("DLGF") has determined that assessments should be based on market value-in-use instead of market value. *N. Fossmeyer testimony; Pet'rs Ex. 3.*

   c. The PTABOA failed to explain what assessing principles, methods, standards or depreciation factors it used to establish the property's value. Instead, "it appears the assessed value was predetermined without any concern for equalization of assessment by manipulation of grade class and depreciation factors." For example, a home owned by Daniel and Kathy Weathers was built from the same plan as the Fossmeyers' home. Yet the Weathers' home has C+2 grade and 15% depreciation, while the Fossmeyers' home has a B+2 grade (changed to B+1 by the PTABOA) and 2% depreciation.[2] Similarly, a home owned by the Mary Catherine Good Revocable Trust, which is custom built, has a B grade and only 9.7% depreciation. *N. Fossmeyer; Pet'rs Exs. 2-3.*

   d. The Fossmeyers compared their home's assessment as a function of price per square foot of living area (excluding the finished basement and attic) to the assessments for six other homes with more than 3,000 square feet, three of which they claimed were superior to their home. For 2011, the assessments for those other six homes ranged from $48/sq. ft. to $78/sq. ft; with an average of $66/sq. ft. while the Fossmeyers' home was assessed at $101/sq. ft. A simple viewing of the properties would confirm the inequity. *N. Fossmeyer; Pet'rs Ex. 3.*

   e. The Fossmeyers also pointed to two similar properties from the neighborhood that sold in 2014. The first property, 812 Seneff Court, has a 4,089-square-foot home,

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[1] The Fossmeyers also appealed their 2012 assessment. The Board issued a determination in that appeal on November 10, 2014. *Resp't Ex. 11.*

[2] Under the Real Property Assessment Guidelines for 2002 – Version A and the 2011 Real Property Assessment Guidelines, depreciation of an improvement's replacement cost new is tied to its quality grade. By reducing the quality grade, the PTABOA increased the home's depreciation, which contributed to the reduction in its assessment.

built in 1983, and has the same floor plan as the subject property. It sold twice—once on May 15 for $182,000, and again on October 10 for $295,000 after extensive refurbishing. The October sale price equaled $72/sq. ft. The second property, 805 Seneff Court, has a 3,555-square-foot ranch style home. It sold for $237,900 or $67/sq. ft. on August 25, 2014. The Fossmeyers believe their property should be valued the same as 812 Seneff Court at no more than $72 per square foot or $288,000. The Fossmeyers based their calculation on their home having 4,004 square feet, although the property record card and an MLS sheet show the home's total area as 4,605 square feet. Mr. Fossmeyer took his measurements from the home's interior rather than its exterior. *N. Fossmeyer testimony; Pet'rs Ex. 3; Resp't Exs. 3-4.*

f. The Assessor's witness, Lester Need, claimed that the Fossmeyers' home was superior to 812 Seneff Court. But he based his claim on a Multiple Listing Service ("MLS") sheet for the subject property. Realtors write the descriptions on those sheets to attract buyers and they are not always accurate. *Fossmeyer testimony.*

10. The Assessor's case:

a. In addressing the Fossmeyers' 2011 appeal, the PTABOA changed the home's quality grade from B+2 to B+1 and reduced the value for their in-ground pool. Those changes reduced the total assessment to $363,400.[3] *Need testimony; Resp't Ex. 9.*

b. The home is located in a preferential neighborhood. It has a total of 4,606 square feet—2,574 square feet in its two main levels, a 1,287-square-foot type-4 recreation room in the basement, and a 745-square-foot finished attic. The property also has two decks, an open frame porch, a 745-square-foot garage, and a 496-square-foot in-ground pool. An MLS sheet from 2010 describes the home as a "dream come true" and as having been remodeled by Whicker Homes. It also indicates that the property was "marketed well below total cost to sellers." The property was listed for $425,000 on August 5, 2010, and the Fossmeyers bought it for $412,000 approximately two months later. *Need testimony; Resp't Ex. 1-4, 9.*

c. A property's sale price is the best evidence of its value. While the Fossmeyers now claim that the $412,000 sale price included $32,000 worth of personal property, the sales disclosure form, which they signed under penalties of perjury, indicates that no personal property was included. According to the Assessor, two recorded mortgages further support the inference that the entire sale price was for the real estate. In any case, even if the sale included personal property, the portion of the sale price attributable to the real estate ($380,000) would still be higher than the assessment. *Need testimony; see also, Resp't Exs. 4-9.*

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[3] It appears that the assessment was originally $403,800, but that the Assessor reduced it to $388,700 by lowering the pool's assessment. The PTABOA then changed the quality grade, further reducing the assessment to $363,400. *See Pet'rs Ex. 2; Resp't Ex. 3.*

d. When one considers the home's entire living area, including its finished basement, the assessment translates to $78.89/sq. ft. of living area. That is in line with assessments of neighboring properties, which range from $59/sq. ft. to $87/sq. ft. *Need testimony; Resp't Ex. 3, 9.*

e. Finally, while the Fossmeyers claim that the home at 812 Seneff Court is comparable to their home, the MLS sheets for the two properties show otherwise. The Fossmeyers' home has more amenities, such as a finished attic and basement, a larger garage, an open-frame porch with a balcony, an in-ground pool, an outside kitchen with dual sinks, and a gas log fireplace. *Need testimony; Resp't Ex. 4, 9-10.*

Analysis

A. Burden of Proof

11. Generally, a taxpayer challenging an assessment must prove the assessment is incorrect and what the correct value should be. Indiana code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor where, among other things, the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. I.C. § 6-1.1-15-17.2(b). If an assessor has the burden of proof and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither party offers evidence sufficient to show the correct assessment, it reverts to the previous year's level, as last corrected by an assessing official, stipulated to by the parties, or determined on review. I.C. § 6-1.1-15-17.2(b).

12. The burden-shifting statute, however, does not apply to challenges based on a lack of uniformity and equality in assessments. *See Thorsness v. Porter County Ass'r,* 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014). In *Thorsness*, the taxpayer sought an adjustment to his assessment based on what he described as a lack of uniformity and equality and argued that the assessor had the burden of proof under Ind. Code § 6-1.1-15-1(p), a predecessor to the current burden-shifting statute. The Tax Court disagreed, explaining:

> [T]he burden-shifting rule contained in Indiana Code § 6-1.1-15-1(p) (*and its progeny*) applies only to valuation challenges, not to uniform and equal constitutional challenges for the following reasons.
>
> The language of Indiana Code § 6-1.1-15-1(p) is clear and unambiguous and the Court will not expand or contract its meaning by reading into it language that is not there…. Indiana Code § 6-1.1-15-1(p) clearly states that when an assessment increases by more than 5% from one year to the next, an assessor "has the burden of proving that <u>the assessment is correct</u>." I.C. § 6-1.1-15-1(p) (emphasis added). In Indiana, a property's assessment is the value placed on the property that reflects its market value-in-use (i.e., its market value)…. Thus, the burden-shifting rule does not apply unless the claim is that a property's assessment does not reflect its market value-in-use….[B]y

> claiming that his assessment lacks uniformity and equality, the remedy Thorsness seeks is not one of "correctness," but is, in effect, one of "incorrectness."

Thorsness, 3 N.E.3d at 52-53 (emphasis indicated by italics added).

13. In their Form 131 petition, the Fossmeyers refer mostly to what they view as the lack of uniformity and equality of their assessment as compared to the assessments of other properties from their neighborhood. But they also point to the significant increase in their assessment following 2011, and they appear to claim that it is assessed for more than its true tax value (valuation claim).

14. As to the Fossmeyers' valuation claim, the assessment increased by more than 5% between 2010 and 2011, going from $277,200 to $363,400. The Assessor therefore has the burden of proving the assessment was correct.

15. The burden of proof on the uniformity-and-equality claim is a different matter. As the Tax Court held in *Thorsness*, the burden-shifting statute does not apply to such claims. The Fossmeyers have the burden of proving they are entitled to relief based on a lack of uniformity and equality in assessments.

B. Valuation Claim

16. In Indiana, assessors value real property based on the true tax value, which the DLGF defines as the property's market value-in-use for its current use as reflected by utility the owner or a similar user receives from the property. Evidence in a tax appeal must be consistent with that standard. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs, 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. *Id.; see also,* I.C. 6-1.1-15-18.

17. Regardless of the valuation method used, a party must explain how its evidence relates to a property's value as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2011 assessments, the valuation date was March 1, 2011. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-1-2(c).

18. The Assessor offered a signed sales disclosure form showing that the Fossmeyers bought their property for $412,000 barely more than four months before the relevant valuation date. Although the Fossmeyers argue otherwise, we have repeatedly held that a property's sale price may be compelling evidence of its true tax value where the sale was at arm's length and the property was reasonably exposed to the market. There is no

allegation that the Fossmeyers were related to the sellers or otherwise negotiated at anything less than arm's length. And the property was listed on the market for approximately two months before the Fossmeyers bought it. Based on that sale price, the Assessor made a prima facie case that the property was actually assessed for less than its true tax value.

19. The Fossmeyers attempted to rebut that sale price through Mr. Fossmeyer's testimony that it included personal property and that they paid a premium. We give his testimony little or no weight. As to the first point, the Fossmeyers verified on their sales disclosure form that the sale did not include personal property. And Mr. Fossmeyer did not even bother to identify what personal property the sale included or how he assigned a value to it.[4] Even if one accepts Mr. Fossmeyer's $32,000 figure, the price attributable to the real estate was $380,000. That is still $16,600 more than the assessment.

20. We similarly give no weight to Mr. Fossmeyers' testimony that he and Ms. Fossmeyer paid a premium. Indeed, one of the reasons he offered—the school district in which the property was located—likely appealed to many buyers and does nothing to show that the Fossmeyers were atypically motivated. Without additional evidence, his other reason—that he and Ms. Fossmeyer wanted to be near relatives—carries little weight. That is particularly true given that the Fossmeyers bought the property for $13,000 less than the seller's asking price.

21. The Fossmeyers also offered their own valuation evidence, largely in the form of sale prices for two properties on Seneff Court. Those sales were from 2014, and the Fossmeyers did not even try to explain how the sales related to the relevant March 1, 2011 valuation date. They also failed to meaningfully compare the Seneff Court properties to their property in terms of relevant characteristics that affect value. And they did not explain how any relevant differences between the properties affected their relative values. *See Long*, 821 N.E. 2d at 471(finding that taxpayers' comparative sales data lacked probative value where they failed to compare the properties relevant characteristics or explain how differences affected values).

22. The Fossmeyers also offered basic assessment information for six properties, although it appears they relied on that information more to prove a lack of uniformity and equality than to show their property's true tax value. To the extent they offered that information to prove value, however, it suffers from the same problem as their sales data. Beyond some broad statements about the overall quality of the various homes and their relative sizes, the Fossmeyers did nothing to meaningfully compare the properties or explain how relevant differences affected their values. While Mr. Fossmeyer testified that simply viewing the homes would show the inequity in the Fossmeyers' assessment, he did not offer photographs of any of the six purportedly comparable homes.

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[4] An attachment to the Fossmeyers' Form 131 petition does provide an itemized list, although it does not indicate how the value for each item was determined. *See Bd. ex. A*.

23. Based on the un-rebutted evidence showing what the Fossmeyers paid for their property in an arm's-length transaction, the Assessor proved that the property was assessed for less than its true tax value.[5] Our conclusion, however, does not resolve the Fossmeyers' appeal, because they claim that other properties were assessed significantly below their true tax values, and that they are therefore entitled to an equalization adjustment based on a lack of uniformity and equality. We turn now to that claim.

B. Uniformity and Equality Claim

24. The Property taxation Clause of the Indiana Constitution requires "[t]he General Assembly [to] provide, by law, for a uniform and equal rate of property assessment and taxation and [to] prescribe regulations to secure a just valuation for taxation of all property…." IND. CONST. ART. 10 § 1; *see also*, I.C. § 6-1.1-2-2(a) ("All tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner."). Indiana courts have long held that the provision requires: "(1) uniformity and equality in assessment, (2) uniformity and equality as to the rate of taxation, and (3) a just valuation of all property." *Westfield Golf Practice Center, LLC v. Washington Twp. Ass'r,* 859 N.E.2d 396, 397 (Ind. Tax Ct. 2007).

25. In *Westfield Golf*, the taxpayer claimed that the assessment of its golf practice range violated the Property Taxation Clause based on a lack of uniformity and equality. *Id*. at 398. The Tax Court began by addressing what it means to be uniform and equal in the context of Indiana's current assessment system. As the Court explained, before the switch to our current system, true tax value was determined under Indiana's own assessment regulations and bore no relation to any external, objectively verifiable standard of measurement. *Id*. Properties within the same neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id.*

26. That changed under the new system, which incorporates market value-in-use as its external, objectively verifiable benchmark. The focus shifted from examining how assessment regulations were applied to examining whether a property's assessed value actually reflects that external benchmark. *Id*. at 399. Thus, "the end result—a uniform and equal *rate* of assessment—is required, but there is no requirement of uniform procedures to arrive at that rate." *Id. (quoting State ex. Rel. Att'y Gen. v. Lake Superior Court,* 820 N.E.2d 1240, 1250 (Ind. 2005) (emphasis in original). In a footnote, the Court explained that one method of proving a lack of uniformity and equality is to present assessment ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id.* at 399 n.3. The taxpayer in *Westfield Golf* lost its appeal because it focused solely on the base rate used to assess its driving range landing area compared to

[5] Rather than seeking an increase, the Assessor asked us to leave the assessment as it stands.

the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id.* at 399.

27. Like the taxpayer in *Westfield Golf*, the Fossmeyers focused on the Assessor's methodology—the quality grades and depreciation he used in assessing the various properties at issue—as opposed to whether his methodology yielded an unequal rate of assessment. They offered nothing to show the market value-in-use for any property in their equalization analysis. Thus, like the taxpayer in *Westfield Golf*, they failed to make a prima facie case for relief.

C. Procedural Arguments

28. The Fossmeyers make various claims about procedures at the county level of appeal. For example, they argue that the PTABOA failed to explain its determination adequately and that the Assessor refused to meet with them to resolve their appeal. Even if true, those claims do not entitle the Fossmeyers to relief in their appeal to the Board. Our proceedings are *de novo*. We do not review the PTABOA determination for an abuse of discretion. Similarly, even if the Fossmeyers were denied an informal preliminary conference below, that did not hinder them from presenting their claims to us.

Conclusion

29. Based on the price the Fossmeyers paid for their property shortly before the relevant valuation date, the Assessor proved that the assessment was, if anything, less than its true tax value. Although Fossmeyers claimed that they were nonetheless entitled to an equalization adjustment based on a lack of uniformity and equality in assessments, they focused solely on the Assessor's methodology and failed to offer probative evidence of the market value-in-use for the other properties they claim were treated more favorably. They therefore failed to make a prima facie case for an adjustment to their assessment based on a lack of uniformity and equality.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessment should not be changed.

ISSUED: September 23, 2015

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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 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>.