

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

Petition No.: 85-009-12-1-5-00004
Petitioners: Kenneth and Penny Collins
Respondent: Wabash County Assessor
Parcel No.: 85-14-11-301-051.000-009
Assessment Year: 2012

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

Procedural History

1. The Petitioners filed a Form 130 petition with the Respondent contesting the subject property’s 2012 assessment. On October 4, 2012, the Wabash County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering the assessment, although not to the level that the Petitioners had requested.
2. The Petitioners then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On August 14, 2013, the Board’s administrative law judge, Jennifer Bippus, held a hearing. Neither she nor the Board inspected the property.
4. Kenneth Collins, Wabash County Assessor Kelly Schenkel, Deputy Assessor Brenda Conner, and William Schultz were sworn as witnesses at this hearing.

Facts

5. The subject property contains a 2,512-square-foot home with three apartments. It is located at 308 West Sinclair Street in Wabash.
6. The PTABOA determined the following assessment:
Land: \$9,100 Improvements: \$51,100 Total: \$60,200
7. The Petitioners requested the following assessment:
Land: \$6,000 Improvements: \$30,500 Total: \$36,500

Summary of the Parties' Contentions

8. The Petitioners' case:

- a) The property is assessed too high in light of what the Petitioners paid for it, the rent they receive from it, and sale and listing prices for similar properties. The Petitioners bought the property for \$12,000 in November 2008 after it had been advertised by People's Realty. *Collins testimony; Pet'rs Ex. 3.*
- b) The home is in poor condition and needs to be painted. It has asbestos siding, some of which is missing. Some windows are also missing. The roof is at the end of its useful life and has cracks. The foundation is crumbling in places and the porch is falling down. Similarly, the roof over the exterior garage needs to be replaced. Yet the Respondent chose to compare the subject property to the following properties, most of which have larger, better maintained homes:
- **24 Union Street.** The home contains 3,936 square feet and it has vinyl siding. The soffits have been re-done. The roof has five to ten years of life remaining.
 - **826 Stitt Street.** The home contains 1,906 square feet. It has vinyl siding and a newer roof. The soffits and fascia have been re-done, and the windows have been replaced. Unlike the subject home, the foundation is not crumbling.
 - **257 East Main Street.** The home contains 2,812 square feet. It has repainted vinyl siding. The roof and foundation are in good condition. Unlike the subject home, the porch is not falling down.
 - **509 North Wabash Street.** It has a four-family 3,094-square-foot home with vinyl siding and a newer roof than the subject home. The foundation is only crumbling a little. Its wood deck is in good condition.
 - **73 East Maple Street.** It has a five-family, 2,760-square-foot home with vinyl siding and shutters. It is located in a very clean neighborhood. The roof is not curled and there are no foundation issues, although the back porch needs some repair.

Collins testimony; Pet'rs Exs. 4, 10-14.

- c) Given the subject home's condition, the following properties are better comparators:
- **40 and 42 Maple Street.** This property sold for \$15,000 on October 18, 2010. Its 2,402-square-foot home looks similar to the subject home. The rear of the home has two sets of stairs and it has some plywood over one of

the doorways. It has since added another unit (44 Maple Street) and is now a triplex.

- **454 Falls Avenue.** This property sold for \$15,834 on July 2, 2012. It has a four-to-six-family home¹ with 2,174 square feet. It is similar to the subject home in that it has wood siding, an older roof, and stairs at the back.
- **143 Stitt Street.** This property sold for \$35,000 on June 15, 2012, and it was listed for \$19,900 at the time of the Board’s hearing. Its home has 2,406 square feet. The roof is in disrepair, and the home’s overall condition is comparable to the subject home.
- **162-164 North Wabash Street.** This property was offered for sale at \$37,519 in September 2012. It sold on contract for an unknown price. Its home has 3,184 square feet.

Collins testimony; Pet’rs Exs. 5-8.

- d) While the subject property can potentially generate \$1,050 per month in rent, the apartments are sometimes empty. In 2011 and 2012, the property’s expenses exceeded its income. *Collins testimony; Pet’rs Ex. 9 at 4, 9.*

9. The Respondent’s case:

- a) The property is assessed at \$60,200, which is consistent with other multi-family homes in the Wabash area. The following properties were appealed, and the Respondent adjusted their assessments as a result of informal hearings:

<u>Address</u>	<u>Assessment</u>	<u>Total Sq. Ft.</u>	<u>Price per Sq.Ft.</u>
24 Union Street	\$42,700	3,936	\$11/sq. ft.
826 Stitt Street	\$48,300	1,906	\$25/sq. ft.
257 East Main Street	\$68,800	2,812	\$24/sq. ft.
509 North Wabash Street	\$70,300	3,094	\$22/sq. ft.
73 East Maple Street	\$94,700	2,760	\$34/sq. ft.
		Median Price per Sq. Ft.	\$24/sq. ft.

Schultz testimony; Resp’t Exs. D-E. Applying the \$24/sq. ft. median to the subject property’s 2,512 square feet of finished living area yields a value of \$60,300, which closely aligns with the PTABOA’s determination. *Schultz testimony.*

- b) The sales that the Petitioners relied on were not arm’s-length transactions. It is very difficult to find arm’s-length transactions for multi-family homes, and there were none

¹ The property record card lists only two extra living units. *Pet’rs Ex. 6.*

during the window used for the 2012 general reassessment. All of the transactions during that time were either distress sales or involved repossessed properties. The sale in which the Petitioners bought the subject property was not at arm's length either because the seller was not typically motivated. The seller had bought the home from a bank for \$10,500 and re-sold it to the Petitioners less than nine months later. *Schultz testimony.*

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioners Exhibit 1: Notice of Assessment for March 1, 2012,
- Petitioners Exhibit 2: Subject property's record card printed 7/31/2012,
- Petitioners Exhibit 3: U.S. Department of Housing and Urban Development settlement statement,
- Petitioners Exhibit 4: Photographs of the subject property,
- Petitioners Exhibit 5: Property record card, assessment data, and photographs of 40-42 West Maple Street,
- Petitioners Exhibit 6: Property record card, assessment data, and photographs of 454 Fall Avenue,
- Petitioners Exhibit 7: Property record card, listing sheet, and photographs of 143 Stitt Street,
- Petitioners Exhibit 8: Property record card, emails regarding asking price, and photographs of 162-164 North Wabash Street,
- Petitioners Exhibit 9: Federal income tax statements for 2011 and 2012
(Confidential),
- Petitioners Exhibit 10: Property record card and photographs for 24 Union Street,
- Petitioners Exhibit 11: Property record card and photographs for 826 Stitt Street,
- Petitioners Exhibit 12: Property record card and photographs for 257 East Main Street,
- Petitioners Exhibit 13: Property record card and photographs for 509 North Wabash Street,
- Petitioners Exhibit 14: Property record card and photographs for 73 East Maple Street,

- Respondent Exhibit A: Form 115,
- Respondent Exhibit B: Subject property's record card printed 8/13/2013,
- Respondent Exhibit C: Sales disclosure forms dated February 5, 2008, and November 12, 2008,

Respondent Exhibit D: Property record cards for 24 Union Street, 826 Stitt Street, 257 East Main Street, 509 North Wabash Street, and 73 East Maple Street,

Respondent Exhibit E: Spreadsheet with calculation for a median price per square foot,

Board Exhibit A: Form 131,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

A. Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The taxpayer must explain how each piece of evidence relates to his requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis.”). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*: 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
12. Matters are reversed, however, where the assessment under appeal represents an increase of more than 5% over the previous year's assessment for the same property. In those cases, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2.
13. The parties agreed that between 2011 and 2012 the assessment of the subject property increased more than 5%—from \$51,200 to \$60,200. The Respondent therefore has the burden of proving that the 2012 assessment is correct. To the extent that the Petitioners seek an assessment below the previous year's level, however, they have the burden of proving a lower value.

B. Discussion

14. The Respondent failed to make a prima facie case that the 2012 assessment is correct. The Board reaches this conclusion for the following reasons:
 - a) Indiana assesses real property 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 a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). In an assessment appeal, a party may offer “[a]ny evidence relevant to the true tax value of the property as of the assessment date. . . .” *Id.* at 3. The gross rent multiplier, however, is the preferred method for valuing property with between one and four rental units. Ind. Code § 6-1.1-4-39(b).

- b) In any case, a party must explain how its evidence relates to the property’s market value-in-use 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); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2012 assessments, the valuation date was March 1, 2012. *See* I.C. § 6-1.1-4-4.5(f).
 - c) Here, the Respondent’s witness, Mr. Shultz, attempted to support the subject property’s assessment by comparing it to the assessments five other multi-family homes. Other assessments do not automatically show the market value-in-use of a property under appeal. The party relying on those assessments must (1) show that the other properties are comparable to the property under appeal, and (2) explain how relevant differences affect the properties relative values. *See* Ind. Code § 6-1.1-15-18(c)(2) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties are comparable); *see also Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value).
 - d) Beyond explaining that his purportedly comparable properties are multi-family homes, Mr. Shultz did not meaningfully compare any of those properties to the subject property much less account for any relevant ways in which they differ from each other. For instance, while the Petitioners offered undisputed testimony and photographs to show that the subject home is in worse condition than Mr. Shultz’s comparables, Mr. Shultz did not attempt to adjust any of the assessments to account for that difference.
 - e) Thus, the Respondent failed to make a prima facie case that the 2012 assessment of \$60,200 is correct. The Petitioners are therefore entitled to have that assessment reduced to its 2011 level of \$51,200. Because the Petitioners seek an even lower assessment, the Board now turns to their evidence.
15. The Petitioners failed to make a prima facie case for reducing the assessment below \$51,200. The Board reaches this conclusion for the following reasons:
- a) The Petitioners first point to the condition of their property. But simply identifying examples of deferred maintenance does little to prove a property’s market value-in-use or even a range of values. The Petitioners offered additional evidence, such as the price they paid for the property in 2008 as well as sale and listing prices for what they believe are comparable properties.

- b) Although the Petitioners bought the subject property more than three years before March 1, 2012, they failed to explain how the sale price relates to the value as of the relevant valuation date. Therefore, that sale price therefore lacks probative value.
- c) Some of the Petitioners' purportedly comparable properties sold close enough in time to the valuation date to be relevant. But the Petitioners compared those properties to the subject property in terms of only a few characteristics while omitting other relevant characteristics, such as location. The Petitioners similarly failed to explain how various relevant differences affect the relative values. Thus, the Petitioners' sale and listing evidence ultimately does not suffice to prove the subject property's market value-in-use.
- d) Finally, the Petitioners offered some basic income and expense information for the subject property. Such information is generally relevant to proving a rental property's market value-in-use. Indeed, the income capitalization approach is one of the three generally accepted approaches for valuing real property. And using a gross rent multiplier is the statutorily preferred method for valuing rental properties with four or fewer units. But those approaches contemplate more than simply offering raw data for the property being valued. They require converting the anticipated future income to a present value based on risk and various other factors that market participants typically consider. *See Indiana MHC, LLC v. Scott County Assessor*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (describing the income capitalization approach). By itself, the Petitioners' raw income and expense data does not sufficiently prove their property's market value-in-use.
- e) Because they did not offer probative evidence to show the market value-in-use, the Petitioners failed to make a case for reducing the disputed assessment below \$51,200.

Conclusion

16. The Respondent failed to meet her burden of proving that the 2012 assessment of \$60,200 is correct. The assessment therefore must be reduced to the previous year's level of \$51,200. The Petitioners, however, failed to make a prima facie case for reducing the assessment any further.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that this assessment be lowered to \$51,200.

ISSUED: February 4, 2014

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 of the date of this notice.

The Indiana Tax 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>.