

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

Petition: 18-003-12-1-5-00271
Petitioner: Robert W. Coombes
Respondent: Delaware County Assessor
Parcel: 18-11-08-181-007.000-003
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 Petitioner initiated his 2012 assessment appeal with the Delaware County Assessor on November 21, 2012.
2. On April 25, 2013, the Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued a determination lowering the assessment, but not to the level the Petitioner requested.
3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on June 7, 2013. He elected the Board's small claims procedures.
4. The Board issued a notice of hearing on December 10, 2013.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on January 16, 2014. She did not inspect the property.
6. Robert Coombes appeared *pro se*. Deputy County Assessor Kelli Hisle appeared for the Respondent. Both were sworn.

Facts

7. The property under appeal is a single-family home, located at 2601 West South Parkway Drive in Muncie.
8. The PTABOA determined the following assessment:

Land: \$51,900	Improvements: \$238,300	Total: \$290,200.
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9. The Petitioner requested the following values:

Land: \$40,000	Improvements: \$200,000	Total: \$240,000.
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Record

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

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1 – Property record summary,
Petitioner Exhibit 2 – Comparable sales chart,
Petitioner Exhibit 3 – Comparable sales chart prepared for PTABOA hearing,
Petitioner Exhibit 4 – Interior and exterior photographs of the subject property.

Respondent Exhibit 1 – Aerial map of the subject property and two comparables,
Respondent Exhibit 2 – Subject property record card (PRC),
Respondent Exhibit 3 – Summary sales report,
Respondent Exhibit 4 – Comparable sales analysis,
Respondent Exhibit 5 – PRC for 1020 East Parkway Drive,
Respondent Exhibit 6 – Multiple Listing Service (MLS) sheet for 1020 East Parkway Drive,
Respondent Exhibit 7 – PRC for 2606 West Berwyn Road,
Respondent Exhibit 8 – MLS sheet for 2606 West Berwyn Road.

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a) The subject property is assessed too high. The property is assessed at \$290,000, but it is worth no more than \$240,000. There are several problems and inconsistencies with not only the subject property's assessment, but also with the assessments of other properties in the neighborhood. *Coombes argument.*
- b) The online property record summary indicates the subject property has 5,584 square feet of finished area. This is incorrect because 1,140 square feet is garage area, with the living area of the home measuring 4,444 square feet. The inclusion of the garage as part of the living area is confusing and makes it difficult to calculate the square-foot price of the garage. *Coombes argument; Pet'r Ex. 1.*

- c) The Petitioner also analyzed assessments of twenty-eight other neighborhood properties. The Petitioner pointed out that while the subject property's assessment increased 26% in 2012, most other property owners saw their assessments decrease. Specifically, the assessments for Rosenman, Mullins, Kozel, Galliher, Johnson, Poltz, and Painter all went down in 2012, some as much as 25%. *Coombes testimony; Pet'r Ex. 2.*
- d) The Petitioner went on to point out that several neighborhood properties' assessments do not reflect their sales prices, even though "Indiana assessments are supposed to be based on market values." The following properties have inconsistent assessments:
- The McGill property sold for \$450,000 in 2010, but its 2010 assessment was only \$383,000.
 - The Bracken property sold for \$438,000 in 2012, but its 2012 assessment was only \$394,000.
 - The Musal property sold for \$790,000 in 2005, but its 2012 assessment was only \$581,000.
 - The Johnson property sold for \$480,000 in 2012, while its 2012 assessment was significantly higher at \$565,000.
 - The Reilly property sold for \$406,000 in 2003, but its 2012 assessment was only \$302,000.
 - The Ford property sold for \$375,000 in 2003, but its 2012 assessment was only \$243,000.
 - The Clasby property sold for \$380,000 in 2006, but its 2012 assessment was only \$283,000.
 - The DeWeese property sold for \$180,000 in 2007, but its 2012 assessment was only \$136,000.

Coombes testimony; Pet'r Ex. 2.

- e) One factor that causes assessments to be incorrect is the fact that the assessor only views the property from the exterior. Assessments do not reflect the interior condition of the homes. For example, the subject property is "dated" with its original kitchen but it is being assessed similarly or higher than homes that have new kitchens with granite countertops. Further, the subject property has water damage in two bathrooms and water damage in the foyer which is yet to be repaired. This damage certainly has a negative effect on its market value. *Coombes argument; Pet'r Ex. 4.*
- f) Finally, the Muncie community has a negative impact on property values. Muncie has only two major employers, the university and the hospital. Further, the Muncie Community School district has a "bad reputation." Thus, potential buyers with children will not likely want to purchase the Petitioner's home. These things need to be taken into consideration when assessing a property that has not sold in 20 years. *Coombes argument.*

12. Summary of the Respondent's case:

- a) The subject property's assessment is accurate. In valuing the subject property, the Respondent utilized the cost approach and followed both state guidelines and cost schedules. The main reason the subject property saw an increase in the 2012 assessment was because it was a general reassessment year. This general reassessment resulted in updated cost tables and depreciation schedules. *Hisle argument; Resp't Ex. 2.*
- b) The assessment of the subject property's garage is correct and in accordance with state guidelines. The home's 4,444 square feet of living area includes a 1,140 square foot integral garage. An integral garage has living area on two sides and is initially included in the finished square footage calculation. There is a \$10,700 deduction in the pricing ladder, under the line for garages, to account for the initial pricing of the integral garage in the finished square foot pricing. Further, the subject property's lot was correctly assessed using two different dimensions, because it is a pie-shaped lot. *Hisle argument; Resp't Ex. 2.*
- c) Two sales of comparable properties, both located in the subject's neighborhood, support the subject property's assessment. Both comparables are similar to the subject property in size. *Hisle argument; Resp't Ex. 2, 3, 4, 5, 6, 7, 8.*
- d) The first comparable property, located at 1020 East Parkway, sold on June 21, 2010, for \$294,900, or \$86.00 per square foot. This 3,410-square-foot home was built in 1953 and is in excellent condition. It has a partial basement, two open frame porches, a concrete patio, two fireplaces, and an attached garage all located on a 1.04-acre lot. *Hisle testimony; Resp't Ex. 5, 6.*
- e) The second comparable property, located at 2606 West Berwyn Road, sold on September 1, 2011, for \$179,000, or \$54.00 per square foot. This 3,318-square-foot home was built in 1951 and is in good condition. It has a partial basement, two open frame porches, a fireplace, and an attached garage all located on a 0.52-acre lot. *Hisle testimony; Resp't Ex. 7, 8.*
- f) The average price per square foot for the two comparable properties equates to \$70. The subject property, with 4,444 square feet of living area and a 0.88-acre lot, is assessed for only \$65.30 per square foot. *Hisle testimony; Resp't Ex. 4.*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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 burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

14. First, Ind. Code section 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code section 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
16. At the hearing, both the Respondent and the Petitioner agreed that the 2012 assessed value increased by more than 5% over the 2011 value. In fact, the assessment increased from \$265,400 to \$290,200. Thus, according to Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the 2012 assessment is correct. To the extent that the Petitioner seeks an assessment below \$265,400, the 2011 assessment, he bears the burden of proving that lower value.

Analysis

17. The Respondent failed to make a prima facie case that the 2012 assessment was correct.
 - a) In Indiana, assessors value real property based on the property’s true tax value, which the Department of Local Government Finance (DLGF) defines as the property’s market value-in-use. Thus, a party’s 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 (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs or 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.
 - b) Regardless of the method used, a party must explain how its evidence relates to the appealed 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); *see also Long v. Wayne Twp Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2012, assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).

- c) A portion of the Respondent’s argument related to how the cost approach and the 2012 general reassessment is supposed to work, as well as how the Respondent met those responsibilities through the use of cost and depreciation tables. In other words, the Respondent contends it followed state guidelines and regulations in computing the assessment. The important question, though, is not whether the Respondent followed certain guidelines and methodologies, but whether the resulting assessment is an accurate measure of “true tax value.” 50 IAC 2.4-1-1(c); *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax 2006).
- d) The Respondent did attempt to address that question by offering the sales of two purportedly comparable properties. In doing so, the Respondent recognized that one can estimate the value of a subject property through a sales-comparison approach. In order to use comparable sales effectively, the proponent must establish the comparability of the properties being examined. Simple conclusory statements that a property is “similar” or “comparable” are not probative evidence. *Long*, 821 N.E.2d at 470. The Respondent needed to establish the characteristics of the Petitioner’s property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the market values-in-use. *Id.* at 471. While the Respondent offered a few details about the comparable properties, she offered nothing to explain or account for any differences in the properties and how those differences affected the respective values. She simply calculated an average selling price per square foot of the two properties. She failed to show that is a generally accepted method for valuing property. Her evidence lacked the type of analysis contemplated by *Long*.
- e) Because the Respondent did not offer probative evidence to show the market value-in-use, she failed to make a prima facie case that the 2012 assessment is correct. Therefore, the Petitioner is entitled to have the assessment returned to its 2011 level of \$265,400. The Petitioner, though, sought an even lower assessment. The Board now turns to the Petitioner’s evidence.

18. The Petitioner failed to make a prima facie case for reducing the subject property’s assessment below the 2011 value.

- a) In an attempt to prove the subject property’s 2012 assessment was incorrect, the Petitioner offered his opinion as to declining housing values in Muncie, and specifically in the Muncie Community School district. However, the Petitioner failed to offer any market-based evidence to prove that claim, nor did he offer any market-based evidence specific to his property. Thus, the Petitioner’s opinions and statements are merely conclusory in nature.¹ Such statements, unsupported by

¹ The Petitioner’s comments regarding the assessment of his garage are also not sufficient to establish an error in assessment. The Respondent stated that the Petitioner was given a \$10,700 deduction to account for the initial pricing of the integral garage in the finished square foot pricing. The Petitioner failed to provide probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm’rs*, 765 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).

- b) The Petitioner did offer evidence of several neighborhood properties' assessments and sale prices, contending that the data shows inconsistencies. When comparing assessments, a party must both prove comparability and account for any differences between the properties by using generally accepted appraisal practices. Ind. Code § 6-1.1-15-18. The Petitioner's evidence lacks any of that type of analysis. To make a case, the Petitioner was required to offer probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 765 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- c) While the Petitioner discussed some of the purported comparable properties' characteristics, such as condition, age, upgrades, and lot sizes, he did not meaningfully compare the properties to the subject property, much less account for any relevant differences between them. Thus, at best, the Petitioner has shown that some of his neighbor's assessments are strikingly different than their purchase prices. But that does nothing to prove the subject property's value, or prove that its assessment is wrong. Thus, the Petitioner failed to offer probative evidence of what the accurate valuation should be.
- d) The Petitioner failed to make a prima facie case for lowering the subject property's 2012 assessment below the 2011 assessed value.

Conclusion

- 19. The Respondent had the burden of proving the 2012 assessment was correct. She failed to make a prima facie case, and thus the assessment must be reduced to the previous year's amount. The Petitioner sought an assessment lower than the 2011 value, but likewise failed to make a prima facie case. Thus, the Board orders that the subject property's 2012 assessment be reduced to the 2011 value of \$265,400.

Final Determination

In accordance with these findings and conclusions of law, the 2012 assessment must be changed to \$265,400.

ISSUED: July 11, 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 Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court Rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.