

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

Petitions: 39-007-16-1-5-02087-17
Petitioner: Agust Eiriksson
Respondent: Jefferson County Assessor
Parcel: 39-13-03-113-005.000-007
Assessment Year: 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Eiriksson contested the 2016 assessment of his property located at 803 W. Second Street in Madison, Indiana. The Jefferson County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination valuing the subject property at \$184,600 on October 6, 2017.
2. Eiriksson filed a timely Form 131 petition, and elected to proceed under our small claims procedures. On September 13, 2018, David Smith, our designated administrative law judge (“ALJ”), held a hearing on Eiriksson’s petition. Neither he nor the Board inspected the subject property.
3. Karen Mannix, the Jefferson County Assessor and Agust Eiriksson, the Petitioner, appeared *pro se*. Agust Eiriksson, Karen Mannix, and Angela Smith, testified under oath.

RECORD

4. The official record includes the following:
 - Petitioner’s Ex. 1: May 2017 letter to Jefferson County Assessor,
 - Petitioner’s Ex. 2: Computations of implied assessed value of 803 W. 2nd Street,
 - Petitioner’s Ex. 3: Photo of 803 W. 2nd Street,
 - Petitioner’s Ex. 4: Photo of 956 W. 2nd Street,
 - Petitioner’s Ex. 5: Photo of 816 W. 2nd Street,
 - Petitioner’s Ex. 6: Photo of 910 W. 2nd Street,
 - Petitioner’s Ex. 7: Photo of 916 W. 2nd Street,
 - Petitioner’s Ex. 8: Photo of 944 W. 2nd Street,

 - Respondent’s Ex. A: Property Record Card for 2016 assessment,

Respondent's Ex. B: Letter from Taxpayer requesting appeal of 2016 pay 2017 assessment and supporting Property Record Cards,
 Respondent's Ex. C: E-mail dated March 27, 2017,
 Respondent's Ex. D: E-mail dated April 21, 2017,
 Respondent's Ex. E: E-mail dated May 9, 2017,
 Respondent's Ex. F: E-mail dated June 15, 2017,
 Respondent's Ex. G: E-mails from August 21-23, 2017,
 Respondent's Ex. H: E-mail dated October 20, 2017,
 Respondent's Ex. I: E-mails from October 20-24, 2017,
 Respondent's Ex. J: E-mails from November 24-27, 2017,
 Respondent's Ex. K: Form 115, PTABOA determination dated October 10, 2017,
 Respondent's Ex. L: Recording of PTABOA hearing dated September 25, 2017,
 Respondent's Ex. M: E-mail dated July 20, 2018,
 Respondent's Ex. N: E-mail dated July 31, 2018,
 Respondent's Ex. O: E-mail delivery confirmation,
 Respondent's Ex. P: Sales Disclosure Form and deed dated August 25, 2008,
 Respondent's Ex. Q: Appraisal of subject property by Angela Smith,
 Respondent's Ex. R: 2016 property record cards for sales comparables,
 Respondent's Ex. S: 2016-2016 subject property record cards.

5. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) a digital recording of the hearing.

BURDEN

6. 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, 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. I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
7. The subject property's 2015 assessment was \$152,300. In 2016, the assessment increased to \$184,600. Both parties agreed on the record that the increase in assessment from 2015 to 2016 was greater than 5% of the 2015 value and the Assessor conceded she had the burden of proof. We agree and find the burden lies with the Assessor.

OBJECTIONS

8. Eiriksson objected to Respondent's Ex. Q, the appraisal report, on three separate grounds. Initially, he objected on the basis of his belief that the exhibit was the same appraisal Smith had prepared at his request in 2015. He also argued that there was a "proprietary" issue. Smith and Mannix stated that the exhibit was a new appraisal prepared at the request of the Assessor. Smith also testified that no information previously provided by the Petitioner was used in the 2018 appraisal. We credit Smith's testimony that it was not the same appraisal she prepared for Eiriksson. In addition, even if it had been the same appraisal, Eiriksson pointed to no authority that would require its exclusion. Thus, we overrule this objection. *Eiriksson, Mannix, and Smith testimony.*
9. Eiriksson also objected to the appraisal on the grounds that Smith had a "conflict of interest" because she had previously appraised the subject property for him. He pointed to no authority for this objection. The fact that an appraiser has previously appraised the subject property for the opposing party does not affect the admissibility of the exhibit. Therefore, we overrule this objection.
10. Finally, Eiriksson objected on the grounds that an appraisal is not necessary under Indiana Law. Although he is correct that parties are not required to submit an appraisal under Ind. Code § 6-1.1-15-1.2(h), this law does not prohibit a party from submitting an appraisal. In fact, appraisals are often the best evidence of value. *Kooshtard Prop. VI, LLC v. White River Twp, Assessor*, 836 N.E.2d 501, 507. Thus, we overrule the objection and admit Respondent's Ex. Q.

SUMMARY OF CONTENTIONS

11. **Assessor's case:**
 - a. Mannix contends she assessed the subject property using techniques, guidance and materials provided by the Department of Local Government Finance ("DLGF"). She noted that Jefferson County is currently in a staged re-assessment process, and they have become aware of a "sound" value adjustment that was previously applied to many properties including the subject. A sound value is an adjustment that is commonly applied to uninhabited properties, sheds, and damaged structures. Mannix testified that a sound value should not be applied to an inhabited home like the subject property. The removal of this sound value, coupled with trending, resulted in the increased assessment for 2016. *Mannix testimony.*
 - b. Angela Smith, a licensed residential appraiser, appraised the subject property for the Assessor. She completed the appraisal solely from external inspection or "drive by."¹ Smith stated that she was "not a fan" of this type of appraisal because of its limited

¹ The Assessor testified extensively about Eiriksson's refusal to allow an interior inspection of the subject property. We note that this is a small claims proceeding in which discovery is generally prohibited. 52 IAC 3-1-5(c). The Assessor did not opt out of the small claims procedures as permitted under 52 IAC 3-1-3.

- accuracy. Smith certified that the appraisal complied with the Uniform Standards of Professional Appraisal Practice (“USPAP”) standards. *Resp’t Ex. Q at 4; Smith testimony.*
- c. Smith performed a sales comparison analysis using four sales comparables from Madison. She adjusted the sales for several factors, including a quality of build, lot size, lack of garage, and less square footage. Based on these sales, she arrived at a value of \$212,000 under the sales-comparison approach. *Smith testimony; Resp’t Ex. Q at 1-2.*
 - d. In addition, Smith developed a cost approach in which she estimated a site value, replacement cost new, and physical depreciation. She concluded to value of \$216,869 under this approach. She gave greater weight to the sales-comparison approach, and reached a final estimate of value \$212,000. *Smith testimony; Resp’t Ex. Q.*
 - e. Finally, the Assessor claimed that the Eiriksson’s purchase of the subject property for \$183,000 in 2008 supports the current assessment. *Mannix testimony; Resp’t Ex. P.*

12. **Eiriksson’s case:**

- a. Eiriksson argued that the Assessor erred when she increased the quality grade of his home from C to C+2. In support of this, he presented photos of nearby properties that he felt were similar or better quality than his house but received lower quality grades. He then calculated several hypothetical assessments for his property based on the assessments of other nearby properties. *Eiriksson testimony; Pet’r Exs. 1-8.*
- b. He also testified that although he paid \$183,000 for the house in 2008, he overpaid due to “unique personal circumstances.” He based this assertion on a statistical analysis he did in 2008 in which he determined the house’s value to be \$160,000-\$165,000. *Resp’t Ex. P; Eiriksson testimony.*

ANALYSIS

13. The Assessor established a prima facie case to support the assessment, and Eiriksson failed to provide any reliable evidence in rebuttal. The Board reached this decision for the following reasons:
- a. Indiana assesses property based on its “true tax value”, which is determined under the rules of the DLGF. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c) and (e). The DLGF defines “true tax value” as “market value-in-use”, which it in turn defines as “[t]he 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. Evidence in an assessment appeal should be consistent with the standard. For example, USPAP-compliant

- market value-in-use appraisals will often be probative. *See id.*; *see also, Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
- b. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value 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). Even if the Assessor made errors, simply attacking her methodology is insufficient to rebut the presumption that the assessments are correct. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*
 - c. In support of her assessment, the Assessor primarily offered the Smith appraisal. Smith is a licensed residential appraiser and she certified that her appraisal complied with USPAP. Eiriksson failed to offer any significant impeachment of her data or analysis. We find the appraisal credible and sufficient support for the assessment. We now examine whether Eiriksson offered sufficient evidence to rebut the Assessor's prima facie case.
 - d. As discussed above, Eiriksson primarily contested the quality grade of his home. But contesting the methodology the Assessor used is insufficient to make a prima facie case of an error in the assessment. *Eckerling* at 677. Instead, a taxpayer needs to show the assessment does not accurately reflect the subject property's market value-in-use. *Id.* *See also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is.).
 - e. Eiriksson did offer some evidence of other assessments as permitted by Ind. Code § 6-1.1-15-18. But he failed to show those properties were comparable using generally accepted appraisal practices as required by that statute. Thus, we are unable to rely on Eiriksson's evidence.
 - f. The Assessor made a prima facie case supporting the assessment. Eiriksson failed to rebut the Assessor's case with reliable evidence. The Assessor did not request an increase in the assessment, thus we order no change.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order no change to the subject property's 2016 assessment.

ISSUED: December 10, 2018

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>>.