

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

Petition No.: 06-005-15-1-5-00336-15
Petitioners: Michael & Claire Fisher
Respondent: Boone County Assessor
Parcel No.: 06-04-10-000-001.055-029
Assessment Year: 2015

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

Procedural History

1. Petitioners initiated their appeal with the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130 dated July 22, 2015. On November 30, 2015, the PTABOA issued its Notification of Final Assessment Determination. Petitioners then timely filed a Form 131 petition on December 9, 2015, with the Board.
2. Petitioners elected to have their appeal heard under the Board’s small claims procedures. Respondent did not elect to have the proceedings removed from those procedures.
3. On March 10, 2016, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.
4. The following people testified under oath:
 - Michael Fisher, owner,
 - Claire Fisher, owner,
 - Lisa Garoffolo, Boone County Assessor,
 - Carol Nist, PTABOA member.

Facts

5. The property under appeal is a single-family home located at 9332 Irishman’s Lane in Zionsville.
6. The PTABOA determined the following values:

Land: \$131,900 Improvements: \$507,300 Total: \$639,200.

7. Petitioners requested the following assessment:

Land: \$131,900 Improvements: \$398,100 Total: \$530,000.

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: Petitioners’ written presentation,
- Petitioners Exhibit 2: Residential appraisal report dated February 2, 2015,

- Respondent Exhibit 1: Taxpayer’s Notice to Initiate an Appeal – Form 130,
- Respondent Exhibit 2: Boone County Appeal Worksheet,
- Respondent Exhibit 3: 2015 subject property record card (“PRC”)
- Respondent Exhibit 4: Four pages of Petitioners’ residential appraisal report,
- Respondent Exhibit 5: Assessor’s Notice of Preliminary Hearing on Appeal,
- Respondent Exhibit 6: Petitioners’ residential appraisal report prepared by Leesa Todd of Accurate Appraisals, dated February 2, 2015,

- Respondent Exhibit 7: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134,

- Respondent Exhibit 8: Notice of Hearing on Petition – Real Property – Form 114,

- Respondent Exhibit 9: Notification of Final Assessment Determination – Form 115,

- Respondent Exhibit 10: Petition for Review of Assessment – Form 131,
- Respondent Exhibit 11: 2015 subject PRC,
- Respondent Exhibit 11A: Assessor’s comparative market analysis,
- Respondent Exhibit 12: Board’s Notice of Hearing on Petition,

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

c. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what the 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). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 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).
11. Second, Ind. Code § 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," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "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).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. Respondent assessed the subject property for \$566,300 in 2014. For 2015, the PTABOA determined the assessment at \$639,200. The parties agreed the assessment increased by more than 5%. Respondent therefore has the burden of proving that the 2015 assessment is correct. To the extent that Petitioners seek an assessment below the previous year's level, however, they bear the burden of proving that lower value.

Summary of the Contentions

14. Respondent's case:
 - a. Respondent offered a comparative market analysis. She used sales of three homes from the subject property's neighborhood. The properties sold between January 31, 2014, and November 14, 2014. The sale prices ranged from \$161 per square foot to \$261 per square foot, with an average of \$219 per square foot. That

translates to a value of approximately \$913,000 for the subject property.¹ The PTABOA felt using the average neighborhood per square foot price overstated the value and ultimately decided on a value of \$639,200. *Garoffolo testimony; Nist testimony; Resp't Ex. 11A.*

- b. Respondent contends that Petitioners' appraisal should be given little weight. According to Respondent, the appraiser failed to make an adjustment for the land sites. The appraisal shows a wide range of land sizes from 17,860 square feet to 33,106 square feet. In addition, two of the comparable properties were located outside of the subject neighborhood. Given these facts, Respondent contends the assessment is more accurate than Petitioners' appraisal. *Garoffolo testimony; Nist testimony.*

15. Petitioners' case:

- a. The assessment is too high in light of an appraisal report prepared by Leesa Todd, an Indiana licensed residential appraiser. She certified that she appraised the property and prepared her report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). She estimated the property's value at \$530,000 as of February 2, 2015. *M. Fisher testimony; Pet'r Ex. 2.*
- b. Ms. Todd relied on the sales comparison approach to value. She used three sales within 0.61 miles of the subject property. She adjusted the sales to account for various differences among the properties. The adjusted sale prices ranged from \$526,550 to \$564,310. She considered all of the sales in arriving at her estimate of value. *Pet'r Ex. 2.*
- c. Petitioners criticized Respondent's comparative market analysis. They claim that the purportedly comparable property at 9468 Sullivan Place was the 1998 "dream home" that is a large expensive home built with numerous amenities not found in other homes in the neighborhood. It sold for \$1,725,000 on January 31, 2014. *M. Fisher testimony; Pet'r Ex. 1.*
- d. Petitioners testified that a home located across the street from the subject property has been listed for approximately 283 days and the sale price has been reduced five times. That home has 7,000 square feet of living space and is listed at an average per square foot price of \$131.56. *C. Fisher testimony.*
- e. The subject property, on the other hand, was built in 1999 for \$480,000. There are several factors that negatively impact the property including a gas pipeline and fiber optic cable running through the yard, water drainage from three neighboring properties, and interstate noise. *M. & C. Fisher testimony.*

¹ The PRC shows the subject home has 3,665 square feet of living area. The average sale price of \$219 per square foot multiplied by 3,665 square feet equals \$802,635.

Analysis

16. Respondent failed to provide sufficient evidence to establish a prima facie case that the 2015 assessed value was correct. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's ("DLGF") rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value 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." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b. Regardless of the type of evidence offered, a party must explain how that 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); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2015 assessments, the valuation date was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. As stated above, Respondent had the burden of proving that the subject property's total assessment of \$639,200 was correct. She offered a comparative market analysis of properties in the neighborhood. She based her analysis on an average price per square foot. She did not attempt to account for any relevant differences among the properties. Consequently, her analysis has little or no probative value. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that the comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. *These*

standards are no less applicable to assessing officials.” 836 N.E.2d at 1082 (citations omitted and emphasis added).

- d. Consequently, Respondent’s analysis falls well short of what is required for comparative sales data to carry probative weight. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (holding that taxpayers’ comparative sales data lacked probative value where they failed to compare relevant characteristics or explain how relevant differences affected value). Furthermore, she testified that even the PTABOA did not use the average sale prices from her analysis because they felt it overstated the market value of the subject property.
- e. Thus, Respondent failed to establish a prima facie case that the 2015 assessed value was correct. Because she failed to meet her burden of proof, the March 1, 2015, assessment must be reduced to the previous year’s level of \$566,300. That, however, does not end the Board’s inquiry because Petitioners requested an assessed value of \$530,000 for the property. As explained above, Petitioners have the burden of proving that they are entitled to that additional reduction. The Board therefore turns to Petitioners’ evidence.
- f. Petitioners offered an appraisal estimating the value at \$530,000 as of February 2, 2015. Respondent sought to impeach the appraisal by pointing out that the appraiser did not adjust for land sites. The appraisal is silent on why Ms. Todd did not adjust for land sites and her testimony did not address that issue. But merely noting a lack of land adjustments without offering proof that specific adjustments were required, but not made by the appraiser, does not substantially impeach the appraisal. There is no evidence in the record to indicate the appraiser used erroneous data. Furthermore, she conducted the appraisal pursuant to USPAP and arrived at her opinion using the sales comparison approach which is a generally recognized valuation method. Consequently, the Board finds the appraisal is sufficient to make a prima facie case for changing the assessment to \$530,000.

Conclusion

17. Respondent had the burden of proving the 2015 assessment was correct and failed to do so. Ordinarily the assessed value would return to its 2014 value of \$566,300. Petitioners, however, requested a further reduction and bore the burden of proving that lower value. The Board finds Petitioners met that burden and therefore holds that the 2015 value should be \$530,000.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed value of Petitioners' property should be reduced to \$530,000 for 2015.

ISSUED: June 3, 2016

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>>.