

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

Petition: 06-010-12-1-5-00528
Petitioner: Frank J. Loughery Revocable Trust
Respondent: Boone County Assessor
Parcel: 010-01320-06
Assessment Year: 2012

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

Procedural History

1. The Petitioner initiated a 2012 assessment appeal with the Boone County Property Tax Assessment Board of Appeals (PTABOA) by written document on August 24, 2012.
2. The PTABOA mailed notice of its decision, Form 115, on October 24, 2012.
3. The Petitioner appealed to the Board by timely filing a Form 131 petition on December 6, 2012, and elected to have the case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 21, 2013.
5. Administrative Law Judge Ronald Gudgel held the Board's administrative hearing on July 23, 2013. He did not inspect the property.
6. Frank J. Loughery, owner/trustee, represented the Petitioner. Lisa C. Garoffolo, Boone County Assessor, appeared as the Respondent. Peggy J. Lewis, an appraiser and member of the PTABOA, also appeared on behalf of the Respondent. All were sworn as witnesses.

Facts

7. The property is a single family residence located at 9451 Pleasantview Lane, Zionsville, Indiana.
8. The PTABOA determined that the property's assessed value is \$214,500 for the land and \$950,300 for the improvements (a total of \$1,164,800).
9. The Petitioner contends the total assessed value of the property should be \$930,000.

Objection

10. The Respondent objected to the admission of Petitioner's Exhibit G (an appraisal prepared by Jean Ankrom) because the document was not presented during the PTABOA hearing. At a hearing before the Board, however, "[a] party...is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county board." Ind. Code § 6-1.1-15-4(k). Consequently, the Respondent's objection was overruled and the Petitioner's Exhibit G was admitted into the record.

Record

11. The official record for this matter contains the following:
- a. Digital recording of the hearing,
 - b. Petitioner Exhibit A – Petitioner's summary comments,
Petitioner Exhibit B – Grid Report - Comparative Market Analysis (grid report),
Petitioner Exhibit C – Petitioner's analysis of the grid report,
Petitioner Exhibit D – Multiple Listing Service (MLS) report for property one on the grid report,
Petitioner Exhibit E – MLS report for property two on the grid report,
Petitioner Exhibit F – MLS report for property three on the grid report,
Petitioner Exhibit G – Appraisal prepared by Jean Ankrom,

Respondent Exhibit 1 – Appeal Worksheet,
Respondent Exhibit 2 – Notice of Hearing on Petition (Form 114),
Respondent Exhibit 3 – 2012 property record card of the parcel under appeal,
Respondent Exhibit 3A – Property record cards of improved properties in the Petitioner's neighborhood,
Respondent Exhibit 4 – Building permits for the property under appeal,
Respondent Exhibit 4A – Comparative Market Analysis (CMA) of current listings in the Petitioner's subdivision,
Respondent Exhibit 5 – CMA for the period January 1, 2010, through March 1, 2012 (same as the grid report, Pet'r Ex. B),
Respondent Exhibit 5A – Statement of Peggy Lewis, PTABOA member/appraiser,
Respondent Exhibit 6 – Appraisal prepared by Stephen Clifford,
Respondent Exhibit 7 – Notification of Final Assessment Determination (Form 115),
Respondent Exhibit 8 – Property record card reflecting the PTABOA's decision,
Respondent Exhibit 9 – Petition to the Board (Form 131),
Respondent Exhibit 10 – Board's Notice of Hearing on the Petition,

Board Exhibit A – Form 131 Petition,

Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,

- c. These Findings and Conclusions.

Contentions

12. Summary of the Petitioner’s case:

- a. An appraisal prepared by Jean Ankrom, a licensed appraiser, concluded the property’s value was \$930,000 as of February 28, 2012. *Loughery testimony; Pet’r Ex. G at 5.*
- b. The Respondent presented a 2010-2012 Comparative Market Analysis (grid report) (*Resp’t Ex. 5*) that includes properties that are not comparable to the property under appeal. *Loughery testimony; Pet’r Exs. B and C.* The first property on the grid report was the 2010 Indianapolis Monthly Dream Home. Among other features, it has seven fireplaces, geothermal heating and cooling, and hand carved cabinetry. *Loughery testimony; Pet’r Exs. A and D.* The second property on the grid report has a 762 square foot master bedroom with its own laundry room, 16 foot ceilings and custom Amish cabinetry. *Loughery testimony; Pet’r Exs. A and E.* The third property on the grid report was the “Best of Show” in the 2008 Home-A-Rama. It has five bathrooms, a theater, and an exercise/spa room, among other features. *Loughery testimony; Pet’r Exs. A and F.*
- c. An appraisal of the property is better evidence than using average selling prices of homes within a particular price range. *Loughery testimony; Pet’r Ex. A at 2.*

13. Summary of the Respondent’s case:

- a. During the informal conference with the assessor, the Petitioner presented an appraisal prepared by Stephen Clifford. This appraisal concluded the property’s value was \$925,000 as of August 15, 2012. *Resp’t Ex. 6 at 8.* The sales used in the appraisal were too recent (April and June 2012) and two of the comparable properties are from subdivisions with few homes in the million dollar range. *Lewis testimony; Resp’t Exs. 5A and 6 at 2.* Further, the appraisal’s cost approach arrived at a value of \$1,133,714. *Resp’t Ex. 5A and 6 at 4.*
- b. The Petitioner purchased the lot in 2007 for \$240,000. *Resp’t Ex. 5A.* Local building permits show the improvements cost \$1,027,000 to construct in March 2009. *Lewis testimony; Resp’t Ex. 4.*
- c. The two grid reports support the current assessment. The first grid report identifies a property in the Petitioner’s subdivision that was listed for \$1,250,000 on April 15, 2013, with a \$256.00 per square foot listing price. Applying that listing price to the square footage of the Petitioner’s property results in an

assessed value of \$1,278,315. *Lewis testimony; Resp't Ex. 4A and 5A.*
Combining the purchase price of the vacant lot and the improvements cost from the 2009 building permits results in a total estimated value of \$1,267,000. *Lewis testimony; Resp't Ex. 5A.*

- d. The second grid report examined twelve other properties that sold during 2010-2012. The average price per square foot of those properties was \$224.00; the average sales price of the properties was \$1,212,282. *Resp't Ex. 5.*

Analysis

14. 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

15. Turning to the case at hand, both parties agreed the Petitioner had the burden of proving that the March 1, 2012 assessment is in error and what the correct assessment should be. *Loughery testimony; Garoffolo testimony.*
16. The Petitioner established a prima facie case that supports lowering the assessment. The Respondent presented some evidence in rebuttal but the weight of the evidence supports the Petitioner's claim that the assessment must be reduced.
 - a. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2. The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual

construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

- b. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471. The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. The most effective method to show that the value assigned by the assessor is incorrect is often through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 n. 3 (Ind. Tax Ct. 2006) (*citing Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005)).
- d. In this case, the Petitioner submitted an appraisal, valuing the subject property at \$930,000 as of February 28, 2012. *Pet'r Ex. G*. During the informal hearing with the Respondent, the Petitioner presented a different appraisal, valuing the property at \$925,000 as of August 15, 2012. *Resp't Ex. 6*. The Board affords great weight to the February 28, 2012 appraisal as market value-in-use evidence of the subject property on March 1, 2012. In addition, while the August 15, 2012 appraisal valued the property a few months after the relevant valuation date in this case, the two appraisals, prepared by two different appraisers, support each other by arriving at similar conclusions of value in 2012. Accordingly, the Board concludes that the Petitioner provided sufficient evidence to establish a prima facie case that the parcel should be assessed for \$930,000.
- e. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276, 281 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *See id.* at 282; *Meridian Towers*, 805 N.E.2d at 479.
- f. The Respondent presented evidence that local building permits indicate that the property's improvements cost \$1,027,000 to construct in March of 2009. *Resp't Ex. 4*. No explanation was offered, however, to relate this amount to the valuation date of March 1, 2012. This evidence, therefore, has no probative value. *Long*, 821 N.E.2d at 471.
- g. The Respondent also presented two grid reports. The first grid report reviewed a property in the Petitioner's subdivision that was listed for \$1,250,000 on April 15,

2013. The Respondent determined that the listing price per square foot for that property was \$256.00. The Respondent applied the \$256.00 per square foot price to the subject property to arrive at an assessed value of \$1,278,315.¹ *Resp't Ex. 4A and 5A* (footnote added).

- h. The second grid report identifies twelve other properties that sold during 2010-2012 and concludes the average square foot value of those properties was \$224.00. *Resp't Ex. 5*.
- i. In order to use a sales-comparison approach as evidence in an assessment appeal, one must first show that the properties being examined are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property are not probative of the properties' comparability. *Long*, 821 N.E.2d at 470-471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- j. Here, both the 2013 and 2010-2012 grid reports offer only a minimal description of the homes' features. Further, although the 2010-2012 report showed sales prices ranging from \$685,000 to \$2,200,000, the Respondent offered no additional comparison of the properties or an analysis of the wide range of value differences among them.
- k. Instead, the Respondent merely showed the average sales price per square foot and listing price per square foot of other properties. The Respondent applied those prices to the subject property, without any explanation or evidence demonstrating that the properties were actually comparable to the subject property. Further, the Respondent failed to show how those prices related to the March 1, 2012, valuation date. Thus, the grid reports do not constitute probative evidence of the property's market value-in-use for the March 1, 2012, assessment.
- l. The Respondent failed to present any meaningful market value-in-use evidence to support the accuracy of the existing assessment. Accordingly, the parcel's March 1, 2012 assessment must be reduced.

¹ The Respondent applied the \$256.00 per square foot price to 5,013 square feet to determine the subject property's value. The Respondent obtained the 5,013 square-foot figure from the August 15, 2012 appraisal. The Board notes, however, that the February 28, 2012 appraisal and the property record card indicate a different amount of square footage. *See Pet'r Ex. G and Resp. Ex. 3*. Moreover, the Board notes that the Respondent's mathematical calculation is erroneous. Indeed, \$256.00 multiplied by 5,013 equals \$1,283,328, not \$1,278,315.

Conclusion

17. The Petitioner made a prima facie case that the assessed value of the property should be reduced to \$930,000. The Respondent failed to successfully rebut the Petitioner's evidence.

Final Determination

18. In accordance with the above findings and conclusions, the 2012 assessment shall be reduced to \$930,000.

ISSUED: September 10, 2013

Commissioner, Indiana Board of Tax Review

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IMPORTANT NOTICE

- 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>>.