

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

Petition No.: 84-004-22-1-5-00828-22
Petitioner: Dwight McKay
Respondent: Vigo County Assessor
Parcel: 84-09-13-254-005.000-004
Assessment Year: 2022

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

Procedural History

1. Dwight McKay (“Petitioner”) filed a Form 130 on May 9, 2022, contesting the 2022 assessment of his residential property located at 5669 Idle Creek Lane, Terre Haute, Indiana, 47802. The Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at:

Land: \$55,600 Improvements: \$301,300 Total: \$356,900
2. The Petitioner timely appealed to the Board, electing to proceed under the small claims procedures. On April 20, 2023, Natasha Marie Ivancevich, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the subject property.
3. Dwight McKay and Kevin Gardner, the Vigo County Assessor, appeared *pro se*. Both were sworn and testified.

Record

4. The official record for this matter is made up of the following:
 - a) Exhibits:

Petitioner Ex. 1:	Assessment History
Petitioner Ex. 2:	Google Maps aerial photos
Petitioner Ex. 3:	2021-2022 Comparison Assessments
Petitioner Ex. 4:	2018 Form 134
Petitioner Ex. 5:	2018 Revised Form 134
Petitioner Ex. 6:	Computation of Improvement Value
Petitioner Ex. 7:	Comparison Assessments

Respondent Ex. 1: Valuation Report prepared by Kevin Gardner

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

Findings of Fact

5. The subject property is an 1,873 sq. ft. single family residence with an additional 1,873 sq. ft. of finished basement situated on 0.29 acres in Terre Haute, Indiana. *Pet'r. Ex. 6 and 7; Resp't Ex. 1.*

Contentions

6. Summary of the Petitioners' case:
 - a) The Petitioner claimed the assessment should be \$273,100. He arrived at this number by adjusting a 2018 appraisal value of \$219,300 upwards at the same rate that the assessments of several nearby properties increased over the same period of time. *McKay testimony; Pet'r Exs. 4-6.*
 - b) In addition, the Petitioner argued that the subject property was assessed inconsistently with other properties in the same neighborhood because the Assessor ignored factors such as pools and proximity to the golf course which made the other properties more valuable than the subject property. *McKay testimony; Pet'r Exs. 1-3, 7.*
 - c) Finally, the Petitioner claimed that the subject property was assessed inequitably because the comparables used in the Gardner valuation were assessed below their sale prices while the subject property was assessed at its market value. *McKay testimony; Resp't Ex. 1.*
7. Summary of the Respondent's case:
 - a) Kevin Gardner, a Level III Assessor-Appraiser, and the Vigo County Assessor, submitted a valuation report that he prepared. To arrive at his opinion of value, Gardner developed a sales-comparison approach. He selected six comparable properties that sold between June 2021 and May 2022, for prices ranging from \$365,000 to \$450,000. He adjusted the comparables for a number of factors such as square footage, grade/condition, bathrooms, and garage. After adjustment, the comparables ranged in price from \$352,000 to \$454,900. He reconciled these to a value of \$356,900. He stated that his analysis complied with USPAP. *Gardner testimony; Resp't Ex. 1.*

Burden of Proof

8. Generally, the taxpayer has the burden of proof when challenging a property tax assessment. Accordingly, the assessment on appeal, “as last determined by an assessing official or the county board,” will be presumed to equal “the property's true tax value.” I.C. § 6-1.1-15-20(a) (effective March 21, 2022).
9. However, the burden of proof shifts if the property's assessment “increased more than five percent (5%) over the property's assessment for the prior tax year.” I.C. § 6-1.1-15-20(b). Subject to certain exceptions, the assessment “is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof.” *Id.*
10. If the burden has shifted, and “the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value,” then the “property's prior year assessment is presumed to be equal to the property's true tax value.” I.C. § 6-1.1-15-20(f).
11. Here, the current assessment of \$356,900 is an increase of more than 5% over the previous assessment of \$280,400. Thus, the Assessor has the burden of proof.

Analysis

12. The assessment must revert to the prior year's value.
 - a) The Indiana Board of Tax Review is the trier of fact in property tax appeals, and its charge is to “weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence before it.” I.C. § 6-1.1-15-20(f). The Board's conclusion of a property's true tax value “may be higher or lower than the assessment or the value proposed by a party or witness.” *Id.* Regardless of which party has the initial burden of proof, either party “may present evidence of the true tax value of the property, seeking to decrease or increase the assessment.” I.C. § 6-1.1-15-20(e).
 - b) In order to meet its burden of proof, a party “must present objectively verifiable, market-based evidence” of the value of the property. *Piotrowski v. Shelby Cty. Assessor*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal “methodology” of the “assessment regulations.” *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900, (Ind. Tax Ct. 2006). This is because the “formalistic application of the Guidelines' procedures and schedules” lacks the market-based evidence necessary to establish the market value-in-use of a specific property. *Piotrowski*, 177 N.E.3d at 133.

- c) Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is 'similar' or 'comparable' simply because it is on the same street are nothing more than conclusions . . . [and] do not constitute probative evidence.” *Marinov v. Tippecanoe Cty. Assessor*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property’s value as of the valuation date. *O’Donnell v. Dept. of Local Gov’t. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006).
- d) Here, the Assessor had the burden of proof. To meet this burden, he relied on a valuation opinion that he prepared. The Assessor is certified as a Level III Assessor-Appraiser. This certification indicates expertise in mass appraisal and assessment regulations. It does not necessarily indicate an expertise in the use of market-based evidence to value a specific property. Here, the Assessor did little to explain how he arrived at his opinion of value. Although he selected comparables and made adjustments to them, he did not show how he arrived at the specific amount for each adjustment. Nor did he provide any market-based evidence supporting those adjustments. While his analysis might superficially mirror the sales-comparison approach in form, it lacks the underlying substance necessary to carry probative weight. For these reasons, we find the Assessor failed to meet his burden of proof.
- e) We now examine whether the Petitioner provided reliable evidence of value. He argued the subject property’s assessment should be \$273,100. He testified this value would result from adjusting the 2018 appraisal at the same rate that the assessments from other nearby properties increased over the same period of time. As discussed above, all evidence must be related to the valuation date, but the Petitioner did not demonstrate that this was a reliable or accepted method of adjusting an older appraisal to the valuation date at issue. In addition, the Petitioner did not submit the appraisal into evidence. For these reasons, we find his requested value unsupported.
- f) The Petitioner did also offer some additional evidence in the form of comparable assessments. But a party offering sales or assessment data must use generally accepted appraisal or assessment practices to show the purportedly comparable properties are comparable to the property under appeal. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 470-71 (In. Tax Ct. 2005). Conclusory statements that properties are “similar” or “comparable” do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Id.* They must similarly explain how relevant differences affect values. *Id.* Opinions that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). Here, the Petitioner did not offer the type of analysis contemplated by *Long*. While the Petitioner did identify some differences between the comparable properties and the subject property, he did not offer any evidence or analysis demonstrating how those differences affected the

properties' overall market values-in use. Without such analysis, this evidence is insufficient to support any reduction in value.

- g) Finally, the Petitioner made some claims about how his assessment was inequitable compared to other properties. We interpret this as a challenge to the uniformity and equality of the assessment as mandated by I.C. § 6-1.1-2-2 and Article 10 of the Indiana Constitution. As the Tax Court has explained, “when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm’rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)). But the Petitioner did not demonstrate that he provided a statistically reliable sample of properties, and while there was objectively verifiable market data for the comparison properties, there was no such data for the subject property as of the valuation date. For these reasons, we are unable to offer any relief on these grounds.
- h) Neither party presented reliable, market-based evidence sufficient to support any value for the subject property. Thus, because the burden of proof has shifted under I.C. § 6-1.1-15-20, the prior year’s assessment of \$280,400 is presumed to equal the subject property’s true tax value.

Final Determination

13. We order the assessment reduced to the prior year’s value of \$280,400.

ISSUED: JULY 18, 2023



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>>.