

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

Petition: 06-019-10-1-5-00343
Petitioner: Constance E. McLain
Respondent: Boone County Assessor
Parcel: 019-05990-00
Assessment Year: 2010

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 an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) by written notice on November 8, 2010.
2. The PTABOA mailed notice of its decision, Form 115, on December 16, 2010.
3. The Petitioner appealed to the Board by filing a Form 131 petition on January 25, 2011, and elected to have the case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 6, 2013.
5. Administrative Law Judge Ronald Gudgel held the Board’s administrative hearing on September 19, 2013. Neither he nor the Board inspected the property.
6. Constance E. McLain appeared pro se. Melinda L. Simon, a neighbor, was a witness for the Petitioner. Boone County Assessor Lisa C. Garoffolo also appeared pro se. Peggy J. Lewis, an appraiser and member of the PTABOA, was a witness for the Respondent. All were sworn as witnesses.

Facts

7. The property is a single family residence located at 615 Sugarbush Drive in Zionsville. The issue on appeal is whether the 2010 assessment exceeds the market value-in-use.
8. The PTABOA determined the assessed value is \$87,200 for the land and \$216,800 for the improvements (a total of \$304,000).
9. The Petitioner contended the total assessed value should be \$272,000.

Record

10. The official record for this matter contains the following:
- a. Digital recording of the hearing,
 - b. Petitioner Exhibit 1 – Uniform Residential Appraisal Report,
Petitioner Exhibit 2 – Boone County Comparative Market Analysis,
Petitioner Exhibit 3 – Metropolitan Indianapolis Board of Realtors sales descriptions and related property record cards,
Petitioner Exhibit 4 – Form 131,
Petitioner Exhibit 5 – Boone County Appeal Worksheet,
Petitioner Exhibit 6 – Notice of Final Assessment Determination,
Petitioner Exhibit 7 – Change of hearing date request (January 24, 2012),
Petitioner Exhibit 8 – Change of hearing date request (February 27, 2013),

Respondent Exhibit 1 – Boone County Appeal Worksheet,
Respondent Exhibit 2 – Letter from the Petitioner with appraisal,
Respondent Exhibit 2A – Statement from Peggy Lewis,
Respondent Exhibit 3 – Notice of Hearing on Petition (Form 114),
Respondent Exhibit 4 – Property record card,
Respondent Exhibit 5 – Photograph of the Petitioner’s property,
Respondent Exhibit 6 – Comparative market analysis of neighborhood sales,
Respondent Exhibit 7 – Notification of Final Assessment Determination (Form 115),
Respondent Exhibit 8 – Petition to the Board (Form 131),
Respondent Exhibit 9 – Notice of Hearing,
Respondent Exhibit 10 – Notice of Hearing,
Respondent Exhibit 11 – Change of Date Request,
Respondent Exhibit 12 – Approval of Continuance Request,
Respondent Exhibit 13 – Notice of Hearing,
Respondent Exhibit 14 – Notice of Hearing,

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

11. Summary of the Petitioner’s case:
- a. The Petitioner’s home is a single story C++ residence with original appliances. Stacie Johnting, a licensed Indiana appraiser, prepared an appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) and

concluded the value was \$272,000 as of March 1, 2010. *Simon testimony; Pet'r Ex. 1.*

- b. The assessment of the subject property was determined by using a comparative market analysis that concluded an average value of \$138 per square foot, which was applied to the square footage of the Petitioner's home. *Simon testimony.*
- c. That comparative market analysis is not based on comparable properties. The purportedly comparable property at 835 Sugarbush is an A+ grade home with four bedrooms and a three car attached garage. It is a multi-level home with two fireplaces and considerably more square footage. It also has new appliances and granite countertops. *Simon testimony, Pet'r Exs. 2 and 3.*
- d. The property at 750 Sugarbush Drive is a five bedroom B+ grade home with more square footage. It is a two-level home with updated kitchen and appliances, a skylight, and a balcony. *Simon testimony; Pet'r Exs. 2 and 3.*
- e. The third property identified in the Respondent's comparative market analysis, 630 Morningside Drive, also appeared as a comparable property in the Appraisal. In fact, it was given the most weight in the Appraisal. It is a C+ grade home on one level. The number of bedrooms and square footage is the same as the Petitioner's home, but it has lots of updates. It also has new dimensional shingles. *Simon testimony, Pet'r Exs. 2 and 3.*
- f. The property at 705 Sugarbush Drive is a C++ grade, two-level home. It was listed at \$234,900 and sold for \$222,500. *Simon testimony, Pet'r Exs. 2 and 3.*

12. Summary of the Respondent's case:

- a. The comparables used in the appraisal are all smaller than the Petitioner's property. The adjustment for these differences was only \$20 per square foot, which is a very small amount. *Lewis testimony; Resp't Ex. 2A.*
- b. The below ground pool received an adjustment of \$6,500 in the appraisal, which is a typical amount used by appraisers. *Garoffolo testimony.* Indiana's cost tables, however, include an adjustment of \$12,600 for this feature. *Lewis testimony; Resp't Ex. 2A.*
- c. The appraiser gave the most weight to the property at 630 Morningside Drive, which sold for \$126 per square foot. Multiplying this amount by the square footage of the Petitioner's home results in a value of \$277,704. Adding the cost of the pool brings the total value to approximately \$290,000. Further, the Appraisal made no adjustments for condition despite alleged upgrades. *Lewis testimony.*

Analysis

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that an 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). 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.

14. In this case both parties agree the Petitioner has the burden of proof.
15. The Petitioner made a prima facie case for lowering the current assessment.
- a. Real property is assessed based on "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 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana had Guidelines that explain the application of the cost approach for 2010 assessments. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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. MANUAL at 5.
 - 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). The valuation date for a 2010 assessment was March 1, 2010. Ind. Code § 6-1.1-

4-4.5(f); 50 IAC 27-5-2(c). Therefore, any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of March 1, 2010. *Long*, 821 N.E.2d at 471.

- c. The most effective method to show the value assigned by the assessor is incorrect can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 n. 3 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Here, an appraisal prepared by a licensed appraiser in accordance with USPAP determined the value of this property was \$272,000 as of March 1, 2010. That appraisal is sufficient to make a prima facie case. Therefore, the burden shifted to the Respondent to rebut or impeach the appraisal. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
- d. The Respondent offered a comparative market analysis to support the assessment. It examined four nearby properties and concluded their average square foot value was \$138. It relies on the sales comparison approach, but in order to use that approach effectively one must show that the properties being examined are comparable. Conclusory statements that they are “similar” or “comparable” are not enough. Such statements are not probative evidence. *Long*, 821 N.E.2d at 470-471. To make such a showing, 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 affect their relative market values-in-use. *Id.*
- e. In this case, the comparative market analysis is not probative. It offered only a minimal description of the comparables and its purported valuation failed to take into account differences between the subject property and the comparables—even though the evidence identified several differences. For example, the subject property is a C++ grade home built in 1982. It has original carpeting, tile and vinyl flooring. The subject property also has 3 bedrooms, is single story with 2½ baths and original appliances. The subject property also has a two car attached garage. In contrast, comparable 1 (835 Sugarbush) is an A+ grade home with 4 bedrooms, a three car attached garage, multiple levels, 2 fireplaces, new appliances, granite countertops and is considerably larger. Comparable 2 (750 Sugarbush) is a 5 bedroom B+ grade home with two levels, updated appliances, a skylight, a balcony, and is larger. These differences are significant. Nevertheless, the Respondent failed to address these differences or offer an analysis of how they impact the relative values of the properties. On the other hand, the comparative market analysis considered the property at 630 Morningside Drive to be the most similar to the subject property. It is a one level C+ grade home in the same neighborhood as the subject property. It has 3 bedrooms and approximately the same square footage as the subject property. Furthermore, the Appraiser considered it as a comparable and gave its \$271,940 value the most weight.

- f. The Respondent merely calculated the average sales price of the four properties on the comparative market analysis at \$138 per square foot, and used that figure to conclude the value of the subject property. Nothing in the record indicates that this kind of methodology conforms to generally accepted appraisal principles. Conclusory statements regarding value based on an average square foot selling price are not sufficient to establish a relevant or accurate valuation for the subject property. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- g. The Respondent “questioned” some of the adjustments made by the appraiser. For example, the Respondent claimed the appraiser’s \$20 per square foot adjustment on the comparable sales is too low, but offered no probative evidence for what a more accurate adjustment would be. Merely making such bald assertions does not rebut the Petitioner’s case. *Id.* The Respondent also claimed the pool adjustment should have been determined using the cost tables contained in the Guidelines—even though the appraised value was not based on the cost approach and no evidence was presented to establish the cost of a pool results in a dollar-for-dollar increase in the market value-in-use of the residence. The Board ultimately is not persuaded that any of the purported weaknesses of the appraisal seriously harm its credibility and reliability in this case.

Conclusion

- 16. The Petitioner made a prima facie case the assessed value of the property should be reduced to its appraised value. The Respondent did not successfully rebut this evidence.

Final Determination

- 17. In accordance with the above findings and conclusions, the assessment will be reduced to \$272,000.

ISSUED: November 8, 2013

Commissioner, Indiana Board of Tax Review

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- 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>>.