

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

Petition No.: 43-034-12-1-5-00005
Petitioner: John & Martha Rose
Respondent: Kosciusko County Assessor
Parcel No.: 43-09-34-400-150.000-034
Assessment Year: 2012

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

Procedural History

1. The Petitioners initiated their 2012 assessment appeal with the Kosciusko County Assessor on August 24, 2012.
2. The Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on December 21, 2012, lowering the assessment, but not to the level that the Petitioners had requested.
3. The Petitioners then timely filed a Form 131 petition with the Board on January 25, 2013. The Petitioners elected the Board's small claims procedures.
4. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on August 22, 2013. She did not inspect the property.
5. John and Martha Rose appeared *pro se*. County Assessor Laurie Renier represented the Respondent. All were sworn in and testified.

Facts

6. The property under appeal is a single-family residential rental property located at 3327 South State Road 19, in Mentone.
7. The PTABOA determined the following values for the subject property:
Land: \$14,700 Improvements: \$71,500 Total: \$86,200
8. The Roses requested the following assessment:
Land: \$14,700 Improvements: \$45,300 Total: \$60,000

Record

9. The official record for this matter is made up of the following:

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1: Rental contract for the subject property, dated December 1, 2011,

Petitioners Exhibit 2: Appraisal conducted by Paul Reith, with an effective date of December 31, 2011,

Petitioners Exhibit 3: Form 131,

Petitioners Exhibit 4: Form 115,

Petitioners Exhibit 5: Form 130,

Petitioners Exhibit 6: Form 11R/A.

Respondent Exhibit 1: Aerial photograph of the subject property,

Respondent Exhibit 2: Photograph of the subject property,

Respondent Exhibit 3: 2012 subject property record card,

Respondent Exhibit 4: Analysis of comparable property located at 514 South Franklin Street, Mentone,

Respondent Exhibit 5: Sales Disclosure Form from sheriff's sale, dated June 1, 2010, for a price of \$138,623,

Respondent Exhibit 6: Copy of former owner Russell Roesner's mortgage,

Respondent Exhibit 7: Kosciusko County Economic Data report,

Respondent Exhibit 8: Legal definition for "foreclosure" from Wikipedia.

Board Exhibit A: Form 131 with attachments,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Contentions

10. Summary of the Petitioners' case:

- a) In July 2011, the Petitioners purchased the subject property for \$31,000. After it was purchased, drywall was replaced due to flooding, carpets were cleaned, and a new furnace was installed. Currently the basement is unfinished. The Petitioners still experience problems with mold. *Rose testimony.*

- b) The Petitioners began renting the subject property in December 2011. It rents for \$600 per month and was rented throughout 2012. *Rose testimony; Pet'r Ex. 1.*
- c) The Petitioners presented an appraisal completed by Paul E. Reith, an Indiana Licensed General Appraiser. Mr. Reith certified that he prepared his appraisal in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). According to the appraisal, the subject property was worth \$60,000, as of December 31, 2011. Mr. Reith relied mainly on the sales-comparison method. *Rose testimony; Pet'r Ex. 2.*
- d) The Petitioners point out that the Respondent incorrectly lists an "out building" on the property record card measuring 10-foot by 12-foot on the subject property. Further the Petitioners point out that their basement is incorrectly measured on the property record card.¹ *Rose testimony; Pet'r Ex. 2; Resp't Ex. 3.*

11. Summary of the Respondent's case:

- a) The current assessment of the subject property is correct. The subject property is a 1,471 square foot brick home built in 1964. *Renier argument; Resp't Ex. 2.*
- b) On January 26, 2010, Mid-first Bank transferred the subject property to Housing and Urban Development (HUD) for \$138,623.² On July 8, 2011, the Petitioners purchased the subject property from HUD for \$31,000.³ *Renier testimony; Resp't Ex. 5.*
- c) The Petitioners' appraisal should be given little weight. The Respondent argues that "when an appraiser, they ask what appraisals are done for, a lot of times to give them a value that they are looking to arrive at (sic)."⁴ Mr. Reith used comparables that were "all bank sales or forced sales." The Respondent does not recognize transactions resulting from foreclosures when considering annual trending. The area that the subject property is located in is not "rampant with foreclosures." Furthermore, the Respondent argues that there were better comparables that could have been utilized. *Renier argument; Resp't Ex. 8.*
- d) The property located at 514 South Franklin Street, in Mentone, is more comparable to the subject property than any property used in the Petitioners' appraisal. This property sold on October 14, 2011, for \$115,000. *Renier testimony; Resp't Ex. 4.*

¹ The Petitioners claim the basement should be 1,218 square feet, while the Assessor stated the basement area was "1,400 and some square feet." According to the property record card, the basement measures 1,471 square feet. *Resp't Ex. 3.* While the Petitioners' appraisal has the basement measuring 1,218 square feet. *Pet'r Ex. 2.*

² The subject property's former owner held a mortgage for \$114,900. However, the subject property was repossessed from this owner. *Renier testimony; Resp't Ex. 6.*

³ The Respondent states the subject property was listed with Cole Real Estate Group, who "sells the foreclosure properties in our county." *Renier testimony.*

⁴ It appears as if the Respondent is arguing that appraisers inquire about what the appraisal will be used for, and then they pick comparable properties to obtain a specific value, even if those properties are not the best choices available.

- e) As to the Petitioners comments on the foundation shifting, which they stated on their Form 131, the Respondent points out that in Mr. Reith's appraisal he states "the subject appears to be in an average state of repair, as being appraised on an as is basis." Mr. Reith did not make a comment about a shifting foundation, or that the structure was not "stable property." *Renier argument; Pet'r Ex. 2, 3.*

Burden of Proof

12. 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.

13. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2011 to 2012. Accordingly, the burden shifting provision of Ind. Code § 6-1.1-15-17.2 does not apply.

Analysis

14. The Petitioners made a prima facie case for reducing the subject property's 2012 assessment.
- 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* 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 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); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f).
- c) First, the Board turns to the Petitioners' purchase of the subject property. True, the Petitioners purchased the property for \$31,000 in July 2011. That purchase occurred only eight months before the March 1, 2012, which normally would lead the Board to conclude that their purchase price gives at least some indication of the property's value on the assessment date. But here, the Petitioners' purchase was most likely not a reliable indication of the true value of the subject property on the open market. The Board does not need to look any further than the Petitioners' own appraisal of the property to draw that conclusion.
- d) The Petitioners hired Mr. Reith, certified appraiser, who performed an appraisal in accordance with USPAP. Mr. Reith estimated the subject property's value at \$60,000 as of December 31, 2011. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479. Further, the appraisal's effective date is only two months removed from the assessment's valuation date. Thus, the Board finds that the Petitioners raised a prima facie case for reducing the assessment to \$60,000.
- 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 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
- f) The Respondent first attempted to impeach the Petitioners' appraisal. Specifically, she claimed that the appraiser chose invalid sales in his sales-comparison analysis. However, the Respondent offered no actual evidence that the appraiser was biased or that the appraisal was flawed. It is well within an appraiser's expertise to choose sales he deems most comparable to the property under appeal and apply adjustments to those comparable properties to value the differences between them. Absent probative evidence to the contrary, the comparable properties the appraiser chose, and the adjustments he made in a USPAP-compliant appraisal will be deemed reasonable. Conclusory statements that the appraiser used invalid sales are not sufficient to rebut the Petitioners' case. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) ("In none of these exchanges, however, did

Mr. McHenry offer evidence rebutting the validity of Mr. Russel's calculations. Rather, he merely made conclusory statements"). The Respondent, therefore, failed to rebut or impeach the Petitioners' evidence that their property was over-valued for the 2012 assessment year.

- g) The Respondent also tried to rebut the appraisal by offering a competing sales-comparison analysis for one property, located a mile away from the subject property. She argued that this property was a better comparable because it was not a foreclosure or distress sale. The Respondent failed to make a meaningful comparison of the subject property to this comparable property. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- h) The Respondent did make a few adjustments to the sales price on her comparable property. Those adjustments are not explained. While the appearance of her analysis may not differ significantly from one made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. There is no evidence that the Respondent is a licensed appraiser in Indiana. Moreover, she did not certify that her analysis complied with USPAP. The Board therefore finds that the Respondent's sales-comparable analysis is insufficiently reliable to be probative of the property's market value-in-use.
- i) The Respondent did not support the assessment with substantial evidence.
- j) In the alternative, the Board finds the creditability of the appraisal offered by the Petitioners to outweigh the Respondent's evidence of value.

Conclusion

- 15. The Petitioners made a case for reducing the assessed value to \$60,000. The Respondent failed to impeach or rebut the Petitioners' evidence. Thus, the Board finds in favor of the Petitioners.

Final Determination

In accordance with the above findings of fact and conclusions of law, the assessment will be changed to \$60,000.

ISSUED: February 18, 2014

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 of 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>>.