

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

Petition: 53-009-20-1-5-00564-20
Petitioner: Mark Sauter
Respondent: Monroe County Assessor
Parcel: 53-08-11-114-003.000-009
Assessment Year: 2020

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Mark Sauter contested the 2020 assessment for his property located at 3704 East Bridgewater Court in Bloomington. The Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) lowered the original value from \$456,100 to \$423,400. Seeking a further reduction, he then timely appealed to the Board, electing to proceed under the Board’s small claims procedures.
2. On December 3, 2020, Ms. Jennifer Thuma, the Board’s designated Administrative Law Judge (“ALJ”), heard the case telephonically. Neither she nor the Board inspected the property.
3. Mr. Sauter appeared *pro se*. Marilyn Meighen represented the Monroe County Assessor Judith Sharp. Ms. Sharp and Mr. Sauter were sworn as witnesses.

RECORD

4. Mr. Sauter submitted the following exhibits:
 - Petitioner’s Ex. 1: Data Sheet Comparing Subject & St. Remy property
 - Petitioner’s Ex. 2: Pictures and Maps of Subject Property with Flooding
 - Petitioner’s Ex. 3: Description & Pictures of house in St. Remy neighborhood

 - Respondent’s Ex. A: Property Record Card-Subject
 - Respondent’s Ex. B: Notification of Final Assessment (Form 115)
 - Respondent’s Ex. C: GIS of Subject
 - Respondent’s Ex. D: GIS -- Neighborhood
 - Respondent’s Ex. E: Sales in subject neighborhood with property record cards
 - Respondent’s Ex. F: Property Record Card-St. Remy Circle

5. The official record also contains (1) all pleadings, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code. § 6-1.1-15-17.2(b) and (d). The 2019 assessment was \$374,800. Because the property's assessed value increased more than 5% from the prior year, even after the PTABOA's reduction, the Assessor accepted the burden of proof. We agree that the Assessor had the burden of proof.

SUMMARY OF CONTENTIONS

7. **The Assessor presented the following case:**
 - a. The Assessor testified that the PTABOA directed her to raise land rates across the county to offset heavier tax burdens which were falling on structures because neighborhood factors were too high. The Department of Local Government Finance ("DLGF") flagged the neighborhood factors in Monroe County. In Silver Creek, Mr. Sauter's area, she stated that the neighborhood factor is 1.8 and anything over one is high. Mr. Sauter's land rates for his .42 of an acre went up because of this countywide change which placed the land rate for one acre in his area at \$195,000. The value of his structure should have gone down because of the land base rate changes but it did not. It increased because the Hyde Park area which includes Silver Creek, is popular and sales reflect higher values. *Sharp testimony; Resp't. Exs. A, B, D, E, F.*
 - b. She contended that Mr. Sauter's neighborhood, Silver Creek, is very desirable and there are few sales, which indicate that people like living there in the planned condominium development and many stay there until death. Thus, the neighborhood factor is high because the area is popular. Owners there also own the land with their condominium, which is different from other condominium developments. Owners at Silver Creek are assessed for land values. The Assessor also provided a list of recent sales in the Silver Creek neighborhood and their price per square foot. She noted that the subject property had the second lowest assessment when compared to these sales. *Sharp testimony, Resp't. Exs. A, B, C, D, E, F.*
 - c. While Mr. Sauter contends that a home on St. Remy Circle is comparable to his, it is in a different neighborhood. These are planned developments, and his home is in a completely different planned development. The quality is better in his development

and prices are higher. Thus, the two areas, while close in proximity, are not comparable. *Sharp testimony; Resp't. Exs. A, D, E, F.*

- d. The Assessor agrees that Mr. Sauter must contend with a difficult situation with severe flooding in his back yard many times a year. The development's builder created a culvert and retaining pond and the water into those flows through Mr. Sauter's yard. She testified that he cannot plant grass or do anything with that part of his yard, which is the reason the PTABOA valued the back-yard area at zero, placing a negative influence factor of 25% on the property which more than covers the 22% of total land area impacted by the flooding. The PTABOA lowered the assessed value of his land to account for the flooding issue. Thus, the PTABOA already adjusted his assessed value correctly. The rest of his yard is very nice, and the value of his home is in line with other home values in his development which are highly valued by owners and buyers. No additional adjustment was needed for the house or rest of the property. *Sharp testimony; Resp't. Exs. A, B, D, E, F.*

8. **Mr. Sauter presented the following case:**

- a. Mr. Sauter's condominium in Silver Creek includes .42 acres of land. His property's back yard comprises 22% of his land and is adjacent to his patio and condo. A wooded area connects to his back yard. The rainwater run-off from several neighborhoods floods through his property. He dug a creek himself to take the water before it flows into the culvert in an attempt to alleviate some of the flooding. The flood waters also brings lawn chairs, rain barrels, sticks, mud, sludge, and other debris from surrounding areas. *Sauter testimony; Pet'r. Ex. 2.*
- b. While the Assessor discounted the back yard with a 25% negative influence factor and valued it at zero, she did not consider that the severe flooding impacts the value of the rest of the property. The increase in assessed value to the home is not supported when this particular property in the development is different from the rest because of the flooding issue. *Sauter testimony; Pet'r. Ex. 2.*
- c. Additionally, his assessed value is unfair when compared to a property on St. Remy Circle, a nearby neighborhood. It sits on a tranquil pond, is much bigger and has a significantly lower assessed value at \$383,200. Even at the lower price, it remained on the market for over 500 days. His home is similar to this comparable property and should have a similar assessed value. *Sauter testimony; Pet'r. Exs. 1, 2, 3.*

ANALYSIS

9. The Assessor did not meet her burden of proof. Thus, the assessment must revert to the prior year's value. We reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind.Code § 6-1.1- 31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value in use," which it in turn defines as "[t]he 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." MANUAL at 2.
- b. All three standard appraisal approaches-the cost, sales-comparison, and income approaches-are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, a USPAP-compliant, market-value-in-use appraisal is often the best evidence of a property's true tax value. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer any other evidence that is relevant to a property's true tax value, such as actual construction costs, sales information for the property under appeal, and sales or assessment information for comparable properties. MANUAL at 3; *see also Eckerling*, 841 N.E. at 674; Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals). Conclusory statements that a property is "similar" or "comparable" do not suffice; instead, taxpayers must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471(Ind. Tax Ct. 2005). Simply attacking the methodology used to compute an assessment or strictly applying the assessment guidelines normally does not suffice to make a case. *See Eckerling*, 841 N.E.2d at 678. In any case, a party must relate its evidence to the relevant valuation date. *Long* at 471. Otherwise, the evidence lacks probative value. *Id.*
- c. As discussed above, the Assessor had the burden of proof. She provided some testimony in support of the assessment, but it was largely anecdotal such as her reference to the desirability of the subject property's neighborhood. She did provide some recent sales, but she did not adjust those sales for the relevant differences between the sold properties and the subject property. Nor did she adjust the sales to the relevant valuation date. She did not provide an appraisal or any other sort of market-based evidence compiled in accordance with generally accepted appraisal principles as required by *Eckerling*. For that reason, she has failed to meet her burden of proof and the assessment must revert to the prior year's value.
- d. To the extent that Sauter may have been requesting a value lower than the prior year's assessment, we note that he also failed to provide reliable market-based evidence. Although he did provide one comparable assessment, he did not adjust this property for its differences from the subject property using generally accepted appraisal

techniques as required by *Long*. Thus, he has failed to make a prima facie case in support of a lower value.

FINAL DETERMINATION

10. The Assessor had the burden of proof but failed to make a prima facie case in support of the assessment. For that reason, we order the 2020 assessment for the subject property reverted to the prior year's value of \$374,800.

ISSUED: February 19, 2021

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>>.