

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

Petition: 06-010-12-1-5-00591
Petitioners: Robert J.M. and Kimberly D. Smith
Respondent: Boone County Assessor
Parcel: 010-00150-00
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 Petitioners initiated an 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 December 21, 2012 (the PTABOA resent this Form 115 on January 2, 2013).
3. The Petitioners appealed to the Board by filing a Form 131 petition on February 20, 2013, 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. He did not inspect the property.
6. Robert and Kimberly Smith appeared pro se. Boone County Assessor Lisa C. Garoffolo appeared as the Respondent. Peggy J. Lewis, an appraiser and member of the PTABOA, appeared on behalf of the Respondent. All were sworn as witnesses.

Facts

7. The property is a single family residence located at 6490 East 100 North, Lebanon, Indiana. The issue on appeal is whether the 2012 assessment exceeds the market value in use. *See* Form 131.
8. The PTABOA determined the assessed value is \$46,800 for the land and \$71,300 for the improvements (a total of \$118,100).
9. The Petitioners contended on their Form 131 the total assessed value should be \$95,000.

Record

10. The official record for this matter contains the following:

- a. Digital recording of the hearing,
- b. Petitioners Exhibit 1 – Form 131,
Petitioners Exhibit 2 – Comparative market analysis,
Petitioners Exhibit 3 – Appraisal,¹

Respondent Exhibit 1 – Boone County Appeal Worksheet,
Respondent Exhibit 2 – 2012 property record card,
Respondent Exhibit 2A – 2011 property record card,
Respondent Exhibit 3 – Joint Report by Taxpayer / Assessor to the County Board
of Appeals of a Preliminary Informal Meeting (Form
134),

Respondent Exhibit 4 – Notice of Hearing on Petition (Form 114),
Respondent Exhibit 5 – Picture of the property,
Respondent Exhibit 6 – Comparative market analysis used by the Assessor,
Respondent Exhibit 7 – Appraisal,
Respondent Exhibit 8 – Notification of Final Assessment Determination (Form
115),
Respondent Exhibit 9 – Petition to the Board for Review of Assessment (Form
131),
Respondent Exhibit 10 – Board’s Notice of Hearing on 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

Burden of Proof

11. 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 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). Recently, 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

¹ The Petitioners’ Exhibit Coversheet lists a fourth document, the Boone County Appeal Worksheet. This document had previously been admitted into the record as Resp’t Ex. 1 and, accordingly, was not offered by the Petitioners.

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.

The 2011 assessment was \$91,400.00 and the 2012 assessment was \$118,100.00. This increase is more than 5%. Moreover, the parties agree the Respondent has the burden of proving the 2012 assessment is correct.

Contentions

12. Summary of the Respondent's case:

- a. The Assessor and the PTABOA both concluded the Department of Local Government and Finance cost tables overvalued the greenhouses on the property. As a result, the value of the greenhouses was lowered from \$156,100 to \$118,100 for the 2012 assessment. *Garoffolo testimony; Resp't Ex. 2, 2A.*
- b. A Comparative Market Analysis was prepared using Union Township properties in the Zionsville school district. *Garoffolo testimony; Resp't Ex. 6.*
- c. There are two reasons the 2012 assessment increased from 2011. First, the appraisal shows that the State raised the cost tables. Second, Boone County changed the effective age of the home from 1926 to 1945. *Lewis testimony; Resp't Ex. 2A.*
- d. The principle objection to the Petitioner's appraisal is that none of the alleged comparable properties is located in the Zionsville school district, the finest in the county. The subject property is located in the Zionsville school district, but the comparable properties in the appraisal are all in the Lebanon school district.
- e. Further, the subject property sits on a rural lot that is .65 acres. The comparable properties in the appraisal are all located on small city lots in Lebanon. No adjustments were made in the appraisal for size differences in the lots and the appraisal did not include the greenhouses.
- f. One the comparable properties identified in the appraisal is a sale from June 2012. This is outside the window set by the Department of Local Government Finance, which determined that sales data should come from 2011 and the first two months of 2012 for the assessment date of March 1, 2012. *Lewis testimony.*

13. Summary of the Petitioners' case:

- a. The Petitioners contacted a local realtor and received a comparative market analysis primarily based on comparables in Union Township. The realtor concluded the property was worth \$103,200 as of July 13, 2012. *K. Smith testimony; Pet'rs Ex. 2.*
- b. The bank subsequently requested an appraisal of the property. An appraisal prepared in accordance with the Uniform Standards of Professional Appraisal Practice by Curt Johnson, a licensed Indiana appraiser, concluded the property's value was \$85,000 as of August 24, 2012. *K. Smith testimony; Pet'rs Ex. 3.*
- c. A range of values has been established for this property ranging from \$85,000.00 as found by the appraisal, all the way to \$118,100.00 as found by PTABOA. The correct assessment should be in the middle of this range. *K. Smith testimony.*
- d. The parcel under appeal is barely within Union Township. The value of property in adjoining townships is lower than in Union Township. This difference should be considered when assessing the Petitioners' property. *K. Smith testimony.*
- e. There have been no significant upgrades to the shell of the home. The assessment does not accurately account for the home's depreciation and inefficiencies, such as an old furnace and old windows. *K. Smith testimony.*
- f. The Respondent's comparative market analysis identified homes with a variety of ages and only one has a detached garage like the Petitioners' home. Additionally, two of the comparable homes were sold in 2010, which is outside of the of 2011 – 2012 window the assessor was supposed to use. *K. Smith testimony.*
- g. The Assessor must consider the market for the home. If being in the Zionsville school system is important to prospective buyers, they will likely be looking at larger homes with room for children. The Petitioners' home has two bedrooms and only one bath. Further, the appraisal contains inaccuracies that inflate the value. For example, the appraiser concluded the home has central air conditioning, a feature the subject property does not have. *R. Smith testimony.*

Analysis

14. The Respondent failed to make a prima facie case that supports the assessment. The Board reaches that conclusion for the following reasons:

- 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." 2011 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. *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 improvement 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 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 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). 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.
- c. To support the assessment, the Respondent offered a comparative market analysis that examined three nearby properties. It concluded the average square foot value of those properties was \$116. *Resp't Ex. 6*.
- d. The comparative market analysis relies on the sales comparison approach to establish value. 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 evidence. *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.* This is especially true where, as in this appeal, the sales prices of the alleged comparable properties range from \$85,000 to \$197,500. Here, the comparative market analysis offers only a minimal description of the homes' features.
- e. Undisputed testimony from the Petitioners identified significant differences among the homes, yet the Respondent offered no additional comparison of the properties or an analysis of the impact on value resulting from these differences. Further, the Respondent's witness testified sales from 2011 and 2012 were to be examined for the 2012 assessment. Two of the identified sales, however, occurred in 2010, yet the comparative market analysis showed no adjustment for time of sale. Accordingly, this comparative market analysis is of no probative value.

- f. The Board has generally held that if the burden-shifting statute applies, the assessor's failure to prove that the assessment was correct requires lowering the property's value to the previous year's level, in this case \$91,400. The Petitioners, however, asserted the correct assessment should be \$95,000, which approximates both the prior year's assessment and the middle of the range of values provided by the Petitioners. Under these circumstances, the Board will not make the assessed value less than the Petitioners claimed. The total assessment therefore will be reduced to the value proposed by the Petitioners, \$95,000.

Final Determination

15. The Respondent did not make a prima facie case in support of the current assessment. The total 2012 assessment will be changed to \$95,000.

ISSUED: November 22, 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>>.