

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

Petition No.: 06-019-14-1-5-00074
Petitioners: The Georgian Group, LLC
Respondent: Boone County Assessor
Parcel No.: 019-14704-05
Assessment Year: 2014

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

Procedural History

1. The Georgian Group LLC (“Petitioner”) initiated its 2014 appeal with the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130.
2. On December 18, 2014, the PTABOA issued its final determination.
3. Petitioner filed a Form 131 petition with the Indiana Board of Tax Review (“Board”) on January 9, 2015.
4. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the proceeding removed from the Board’s small claims procedures.
5. On January 19, 2016, Dalene McMillen, the Board’s administrative law judge (“ALJ”) held a hearing. Neither the Board nor the ALJ inspected the property.
6. Keith Wagoner, member of the Georgian Group, LLC, was sworn and testified for Petitioner. Lisa Garoffolo, Boone County Assessor (“Respondent”), and Peggy Lewis, former member of the PTABOA, were also sworn and testified.

Facts

7. The property under appeal is a residential condominium located at 217 Manchester Drive in Zionsville.
8. The PTABOA determined the following values:

Land: \$51,000 Improvements: \$270,000 Total: \$321,000.

9. At the hearing, Petitioner requested the property's total assessed value be reduced to \$275,000.

Record

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

a. A digital recording of the hearing,

b. Exhibits:

- Petitioner Exhibit 1: Residential appraisal report prepared by Robert D. Goar of R.D. Goar Company, dated January 15, 2016,
Petitioner Exhibit 2: Price trend chart for residential sales from March 1, 2013, to February 28, 2014,
Petitioner Exhibit 3: Price trend chart for average sale prices per month from March 1, 2013, to February 28, 2014,
Petitioner Exhibit 4: 2013, 2014 & 2015 assessments of twenty-five condominiums on Manchester Drive,
- Respondent Exhibit 1: Petition for Review of Assessment by Local Assessing Official – Property Tax Assessment Board of Appeals – Form 130, dated August 25, 2014,
Respondent Exhibit 2: Boone County Appeal Worksheet,
Respondent Exhibit 3: 2014 subject property record card,
Respondent Exhibit 4: Multiple listing sheet for the subject property,
Respondent Exhibit 5: Notice of Preliminary Hearing on Appeal, dated September 9, 2014,
Respondent Exhibit 6: Notice of Preliminary Hearing on Appeal, dated October 14, 2014,
Respondent Exhibit 7: Photograph of subject property,
Respondent Exhibit 8: Notice of Hearing on Petition – Real Property – Form 114,
Respondent Exhibit 9: Notification of Final Assessment Determination – Form 115,
Respondent Exhibit 10: The Board's Notice of Hearing on Petition,
Respondent Exhibit 11: Assessor's comparative market analysis,
- Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
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 his 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). A burden-shifting statute creates two exceptions to that rule.
12. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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(b).
13. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The parties agreed that the assessment increased by more than 5% between 2013 and 2014. Respondent therefore has the burden of proof.

Objections

16. Petitioner objected to Respondent's Exhibit 11, arguing that some of the sales in the analysis are not comparable to the subject property. Petitioner's objection goes to the weight of the exhibit rather than its admissibility. Thus, the Board overrules Petitioner's objection and Respondent's Exhibit 11 is admitted.
17. Respondent objected to Petitioner's Exhibit 2, arguing that the data in the price trend charts are inaccurate. She also objected to Petitioner's Exhibit 4, arguing that the 2015 assessments are beyond the timeframe for a March 1, 2015 assessment. These objections

go to the weight of the exhibits rather than their admissibility. The Board overrules Respondent's objections and Petitioner's Exhibits 2 and 4 are admitted.

Summary of the Parties' Contentions

18. Respondent's case:

- a. The subject property's original 2014 assessed value was \$303,000. Respondent claims that the PTABOA increased the assessed value to \$321,000 based on sales of similar properties. Respondent believes the property under appeal is correctly assessed. *Garoffolo testimony; Resp't Ex. 2-3 & 9.*
- b. Respondent contends that Petitioner's appraisal should be given little weight. According to Ms. Lewis, the appraiser inspected the property in January of 2016 and because the condominium is a rental property, the condition may have changed between 2014 and 2016. *Lewis testimony.*
- c. Respondent contends that Petitioner's price trend charts are flawed. Ms. Lewis claims the first chart, which shows residential sales, has nothing to do with price and is only reflective of the number of units sold in Eagle Township for the year. The second chart, which shows average sales prices, is limited to sales of \$250,000 or less. Ms. Lewis claims that information would not be applicable to Manchester Square, as Petitioner's appraisal shows the cheapest sale price of a condominium was \$260,000. Consequently, the price trend charts do nothing to show the subject property is overvalued. *Lewis testimony.*

19. Petitioner's case:

- a. Mr. Wagoner presented an appraisal report prepared by Robert Goar, an Indiana-licensed residential appraiser. Mr. Goar prepared the appraisal to provide information for a real estate property tax assessment. He certified that he appraised the property and prepared his report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He estimated the property's value at \$275,000 as of February 28, 2014. *Wagoner testimony; Pet'r Ex. 1.*
- b. Mr. Goar relied on the sales-comparison approach to value. He also developed the cost and income approaches as support for his analysis. He used three sales within 0.02 miles of the subject property. He adjusted two of the sales to account for various relevant ways in which the properties differed from the subject property. The adjusted sale prices ranged from \$260,000 to \$297,000. He considered all of the sales and settled on a middle range for his estimate of value. *Pet'r Ex. 1.*
- c. Petitioner submitted two multiple listing price trend charts for properties in Eagle Township. The first price trend chart shows residential property sales from March 1, 2013, through February 28, 2014. The chart shows a decline in residential sales for

- that time. The second price trend chart shows residential property sales that sold for \$250,000 or less. According to Petitioner, this chart shows that lower-priced properties remained steady from March 1, 2013 through February 28, 2014. *Wagoner testimony; Pet'r Ex. 2 & 3.*
- d. Petitioner submitted the 2013, 2014 and 2015 assessments of the subject property as well as information about twenty-four three bedroom condominiums in the Manchester subdivision. In 2014, the subject property became the highest assessed condominium in the complex. *Wagoner testimony; Pet'r Ex. 4.*
 - e. According to Petitioner, between 2014 and 2016, no significant improvements were made to the condominium. The condominium was painted and the carpets cleaned. *Wagoner testimony.*
 - f. Petitioner also contended that the condominium is located in the original part of Manchester Square. It was built by Gunstra Builders, who ultimately went into bankruptcy and did not finish the original units. At the time of purchase, the subject unit had no furnace and only had drywall. In addition, the deck was constructed with inferior material and had to be replaced. *Wagoner testimony.*
 - g. Petitioner contends that the county is comparing the original condominium units to the newer condominium units. According to Mr. Wagoner, the newer units are constructed with superior interior details and finishes. They are located on the trail and have never been through foreclosure. Petitioner argues that because of their amenities, the newer condominium units sell for much more than the original condominium units. Mr. Wagoner claims he has continually pointed this fact out to the county, but they have refused to accept this argument and lower the assessment. *Wagoner testimony.*
 - h. Petitioner confirmed that the subject property was listed for sale in 2010. It was listed for three months, but there were no offers to buy it. *Wagoner testimony.*
 - i. Petitioner claims the properties in the market analysis on Wakefield Way are located on the trail and they sold for more than the properties on Manchester Drive. *Wagoner testimony.*

Analysis

- 20. Respondent failed to provide sufficient evidence to establish a prima facie case that the assessed value was correct in 2014. The Board reaches that conclusion for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's ("DLGF") rules. The DLGF's 2011 Real Property

- Assessment Manual defines true tax value as “the 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.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
- b. Regardless of the type of evidence offered, a party must explain how that 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); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2014 assessments, the valuation date was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Respondent had the burden of proving that the subject property’s total assessment of \$321,000 is correct. Respondent primarily focused on comparable sales and Petitioner’s 2010 list price.
 - d. Respondent argues that Petitioner’s property was valued correctly in 2014 based on comparable condominium sales in Manchester Square. She did little to compare those properties to the subject property beyond offering the comparable market analysis of three-bedroom condominiums in the neighborhood. She did not attempt to account for any relevant differences. Her analysis consequently falls short of what is required for comparative sales data to carry probative weight. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471.
 - e. Prices for condominiums in Manchester Square varied a great deal during the year at issue. Because Respondent made no attempt to identify or value differences between the properties, Respondent’s comparable market analysis has little probative value.
 - f. Respondent cited Petitioner’s 2010 list price of \$309,000. It was approximately four years before the relevant valuation date. Respondent did not introduce sufficient evidence to relate the listing price to March 1, 2014. Furthermore, the undisputed evidence was that there were no offers to buy.
 - g. Because Respondent failed to meet its burden of proof, the 2014 assessment must be reduced to the previous year’s level of \$278,200. That, however, does not end the Board’s inquiry because Petitioner requested an assessed value of \$275,000 for the

property. As explained above, Petitioner has the burden of proving that it is entitled to that additional reduction. The Board therefore turns to Petitioner's evidence.

- h. Petitioner offered a USPAP compliant appraisal estimating the subject property's value at \$275,000 as of February 28, 2014. The appraiser, Mr. Goar, arrived at his opinion using the sales comparison approach – a generally recognized valuation method and supported by the cost and income approaches. His appraisal makes a prima facie case for changing the assessment to \$275,000.
- i. Respondent claimed that the appraiser did not inspect the property until January of 2016 and because it is a rental property the condition of the property may have changed between 2014 and 2016. Without more, the record does not establish the appraiser used erroneous data or failed to account for the property's condition. Respondent needed to provide specific reasons why it believes the condition of the property is inaccurate or changed. Thus, Respondent failed to rebut or impeach Petitioner's prima facie case.

Conclusion

- 21. Respondent failed to prove the 2014 assessment is correct. Furthermore, the most persuasive evidence shows the value of the subject property was \$275,000 based on the appraised value.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed value will be reduced to \$275,000 as of March 1, 2014.

ISSUED: April 18, 2016

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>>.