

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

Petition: 91-016-12-1-5-00005
Petitioner: Jerry Amick
Respondent: White County Assessor
Parcel: 91-54-21-000-008.400-016
Assessment Year: 2012

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

Procedural History

1. The Petitioner initiated his assessment appeal with the White County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition on October 27, 2012.
2. The PTABOA issued a notice of its determination on May 31, 2013, denying the appeal.
3. The Petitioner filed his Form 131 petition with the Board on July 3, 2013. He elected to have this appeal heard under the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties on September 11, 2013.
5. On October 11, 2013, Administrative Law Judge (ALJ) Ellen Yuhan held the administrative hearing. The ALJ did not inspect the subject property.
6. Scott Potts, representative for the Respondent, and Jerry Amick were sworn and testified at the hearing.

Facts

7. The subject property is a residential parcel with a single-family dwelling located at 911 S. Prairie, Brookston.
8. The PTABOA determined the assessment is \$10,500 for land and \$75,900 for improvements (total \$86,400). *Board Ex. A; Respondent Exhibit 2.*

9. The Petitioner requested a value of \$10,500 for the land and \$61,900 for the improvements (total \$72,400). *Board Ex. A.*

Record

10. The official record contains the following:

- a. The Form 131 petition,
- b. Hearing notes,¹
- c. Respondent Exhibit 1 – Sales comparison approach for the subject property,
Respondent Exhibit 2 – Property record card for the subject property,

Petitioner Exhibit 1 – Form 115, Notification of Final Determination for March 1, 2010,

Petitioner Exhibit 2 – Appraised value by certified appraiser,

Petitioner Exhibit 3 – Addendum to appraisal showing cost to repair deficiencies,

Petitioner Exhibit 4 – Data showing residential real estate activity in Brookston during 2010, and 2011,

Petitioner Exhibit 5 – Comparison of the March 1, 2012 assessment with the previous assessment,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing Sign-In Sheet,

- d. These Findings and Conclusions.

Burden

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). 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

¹ A computer malfunction during the hearing destroyed the digital recording of the hearing. The notes taken by the ALJ during the hearing and confirmed in writing by the Petitioner on February 7, 2014, are part of the administrative record.

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.

12. The assessment increased from \$76,000 in 2011 to \$86,400 in 2012 or 13.7%. Therefore, Indiana Code section 6-1.1-15-17.2 applies and the parties agree that the Respondent has the burden to prove the assessment is correct. The Petitioner has the burden of proving he is entitled to any further reduction below the previous assessment of \$76,000.

Contentions

13. Summary of the Respondent's case:
 - a. For 2011, the PTABOA lowered the assessment based on an appraisal which the Respondent considered to be flawed. For 2012, the PTABOA did not consider the appraisal valid. *Potts testimony*.
 - b. In the documents the Petitioner admitted as Exhibit 4, the data showing residential real estate activity used foreclosure sales and a short sale, and not all the comparable properties were in Brookston. Further, regarding the appraisal the Petitioner admitted, the Petitioner was not the Appraiser's client for purposes of the appraisal. Rather, the appraisal was for refinancing on behalf of Quicken Loans. *Respondent's Ex. 2*. Additionally, the Petitioner has only presented two pages of the appraisal. *Potts testimony*.
 - c. There were 15 to 20 valid sales in Brookston. The Respondent prepared a sales comparison approach using three sales and adjusted the comparable properties for differences in living area, size of garage, number of bathrooms, lot size, and date of sale. The adjusted sales prices were \$102,100 for comparable #1, \$110,400 for comparable #2, and \$118,800 for comparable 3. According to Mr. Potts, comparable #1 is the closest to the subject because it has the fewest adjustments. The sales comparison indicates the subject property's assessed value is not too high, but it may be too low. *Potts testimony; Respondent Exhibit 1; Petitioner Exhibit 4*.
14. Summary of the Petitioner's case:
 - a. The PTABOA set the value for March 1, 2010, at \$75,000 based on an appraisal prepared by a certified Appraiser. The Appraiser also estimated the cost to repair deficiencies in the property at \$10,000. *Amick testimony; Petitioner Exhibits 1-3*.

- b. In 2011, there were 20 homes that sold in Brookston. The average sale price was \$77,700. This was a 2.3% increase over 2010. By contrast, there was a 13.2% increase in the assessment of the subject property. Based on an average of actual sales, the value of the subject property should be \$74,000, applying the 2.3% increase for 2011. *Amick testimony; Petitioner Exhibit 4.*
- c. The Petitioner agrees the appraisal was done to protect Quicken Loans. The Petitioner hoped for an appraisal of \$100,000 because that was what he needed in order to get the loan. The fact that the appraisal was done for refinancing should not matter. Market value is market value. *Amick testimony.*

Analysis

- 15. The Respondent did not make a prima facie case that the assessed value is correct. The Board reached this decision for the following reasons:
 - a. For 2012, 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.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. Other kinds of permissible evidence 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 type of evidence, 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. The Respondent contends the property's assessed value is possibly too low. In support of this contention, Mr. Potts presented a sales comparison analysis. Mr. Potts identified three properties and adjusted those sales for differences in lot size, amount of living space, number of bathrooms, air conditioning and size of the garage based on costs in the Indiana assessment guidelines. Mr. Potts also adjusted the sale prices for the date of sale where applicable. Mr. Potts testified comparable #1 was the closest to the subject property because it had the least number of adjustments. The adjusted sales price for comparable #1 was \$102,100.

- d. On March 7, 2013, Mr. Potts was certified by the Department of Local Government Finance (DLGF) as a professional appraiser authorized to provide technical assistance to White County. However, he did not indicate that he complied with the Uniform Standards of Professional Appraisal Practice (USPAP) in preparing the sales comparison analysis for this case. Further, Mr. Potts failed to show how he arrived at many of the adjustments he made between the comparable properties and the subject property. For example, Mr. Potts made adjustments of -\$5,100 and -\$3,200 based on sale dates. He also made adjustments for site size, number of bedrooms and bathrooms, but failed to account for how he arrived at each adjustment. It is not clear to the Board what objective data Mr. Potts used to justify the adjustments.
- e. The adjustments used to support the conclusion that the assessment should not be lowered were a significant part of the Respondent's case. Because Mr. Potts failed to show how he arrived at the specific adjustments, the Board does not find his evidence to be probative.
- f. In other cases where the Respondent has the burden to prove the assessment is correct and failed to carry that burden, the Board has ordered that the assessment be returned to the assessed value of the preceding year. In this case, the assessment is reduced to \$76,000.
- g. As explained above, the Petitioner asked the Board to reduce the subject property's assessment even further to \$72,400. The Petitioner has the burden of proving he is entitled to the additional reduction. The Board now turns to Mr. Amick's evidence.
- h. The Petitioner asserts the value could be \$72,400 based on the application of a 2.3% increase in sales in the area in 2011. This figure represent the average increase in sale price from 2010 to 2011, but not for the valuation date of March 1, 2012
- i. Further, Mr. Amick relied on the 2009 appraised value as a starting point for his 2012 appeal. The date of the appraisal was September 8, 2009, and so it does not reflect either the value or the condition of the subject property as of the March 1, 2012, assessment date. Further, the Board gives little weight to an appraisal report which includes only the cover letter and one page of an addendum.
- j. The Petitioner failed to prove he was entitled to a further reduction in the assessed value.

Conclusion

16. The Respondent failed to offer probative evidence to support the assessment and failed to meet the burden of proof. The Petitioner failed to prove he was entitled to a further reduction.

Final Determination

In accordance with the above findings of fact and conclusions of law, the 2012 assessed value should be changed to \$76,000.

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 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>>.