

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

Petition No.: 12-008-15-1-5-00959-16
Petitioner: Ann Phillips Living Trust
Respondent: Clinton County Assessor
Parcel No.: 12-05-20-452-003.000-008
Assessment Year: 2015

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

Procedural History

1. Petitioner initiated a 2015 appeal with the Clinton County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a request for review on August 24, 2015. On March 18, 2016, the PTABOA issued its Notification of Final Assessment Determination. Petitioner then timely filed a Form 131 petition on April 25, 2016, with the Board.
2. Petitioner elected to have its appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On December 7, 2016, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.
4. The following people testified under oath.¹
 - Thomas H. Phillips, Trustee of the Ann Phillips Living Trust,
 - James “Jay” Morris, Ad Valorem Solutions, LLC.

Facts

5. The property under appeal is a single-family home lot located at 8435 West Southfork Drive in Mulberry.
6. The PTABOA determined the following values for 2015:

¹ Dana Myers, Clinton County Assessor, was sworn but did not testify.

Land: \$33,500 Improvements: \$237,300 Total: \$270,800.

7. At the hearing, Petitioner requested a 2015 assessment of:

Land: \$33,500 Improvements: \$212,400 Total: \$245,900.

Record

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

a. A digital recording of the hearing,

b. Exhibits:

- Petitioner Exhibit 1: Petitioner’s Beacon residential comparable properties,
- Petitioner Exhibit 2: Beacon aerial map,
- Petitioner Exhibit 3: Beacon summary property report for subject property,
- Petitioner Exhibit 4: Beacon summary property report for 8527 Valley Farm Road,
- Petitioner Exhibit 5: Beacon summary property report for 8632 Valley Farm Road,
- Petitioner Exhibit 6: Petitioner’s comparable analysis,
- Petitioner Exhibit 7: Property record card (“PRC”) for 8445 West Southfork Drive,
- Petitioner Exhibit 8: PRC for 8425 West Southfork Drive,

- Respondent Exhibit R1: Respondent’s summary of exhibits & testimony,
- Respondent Exhibit R2: 2011 Real Property Assessment Manual (“Manual”) page 2,
- Respondent Exhibit R3: 2011 Manual page 6,
- Respondent Exhibit R4: Clinton County’s paired sales analysis for 2015 trending,
- Respondent Exhibit R5: Beacon aerial map of the subject property,
- Respondent Exhibit R6: Sales ratio study for Madison Township,
- Respondent Exhibit R7: Respondent’s sales comparison analysis,
- Respondent Exhibit R8: Subject PRC,
- Respondent Exhibit R9: PRC for 8450 West Southfork Drive,
- Respondent Exhibit R10: PRC for 8451 West Southfork Drive,
- Respondent Exhibit R11: PRC for 8425 West Southfork Drive,
- Respondent Exhibit R12: 2015 Department of Local Government Finance (“DLGF”) sales ratio approval letter,

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

9. 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.
10. 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).
11. 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).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value increased from \$235,200 in 2014 to \$270,800 in 2015. The parties agreed the assessment increased by more than 5% and that Respondent has the burden of proof for 2015.

Summary of the Parties' Contentions

14. Respondent's case:

- a. Respondent's expert witness, James Morris, is a senior partner at Ad Valorem Solutions, LLC. He is a certified Level III Assessor-Appraiser with 28 years of experience. *Morris testimony.*
- b. Mr. Morris first notes that Petitioner purchased the property on October 2, 2012, for \$339,900. *Morris testimony; Resp't Ex. 7.*
- c. Mr. Morris next contends the subject property's assessment was determined using mass-appraisal techniques, whereby properties are valued using common data, standardized methods, and statistical testing as set forth in the 2011 Manual. Under these techniques, a structure's physical attributes are priced using the Real Property Assessment Guidelines ("Guidelines") for 2011, subtracting for depreciation, and adding that amount to the established land value. Those values are compared to neighborhood sales, and trending factors are calculated to adjust the values to market conditions.
- d. A sales ratio study is then performed to ensure that the trended values are within a statistically acceptable range. In this case, the DLGF approved the ratio study for Clinton County which included the subject property's neighborhood. That study resulted in a median-to-sales ratio of 94.70%. *Morris testimony; Resp't Ex. R1-R3, R7, & R12.*
- e. Mr. Morris then performed a sales-comparison analysis in which he used three purportedly comparable properties. All of the sales are located in the same neighborhood as the subject property. The sales occurred between 2012 and 2014. Mr. Morris adjusted each sale price upward by 3% annually to account for market-related differences between the sale dates and March 1, 2015. *Morris testimony; Resp't Ex. R1, R4 & R7.*
- f. Mr. Morris then considered adjustments for various other differences between the subject property and the comparable properties, including: location, land size, quality grade, age, condition, above-grade living area, plumbing fixtures, basement or crawl space size, the presence of an attic or garage, exterior features, and outbuildings. *Morris testimony; Resp't Ex. R1 & R6-R11.*
- g. The adjusted sale prices ranged from \$269,632 to \$302,741, with an average sale price of \$286,711 and a median value of \$287,759. Mr. Morris applied the subject property's median-to-sales ratio of 94.70% which indicated values ranging between \$271,000 and \$272,000. Because the assessed value falls below this

range, Mr. Morris contends no reduction is warranted. *Morris testimony; Resp't Ex. R1 & R6-R11.*

- h. In rebuttal testimony, Mr. Morris pointed out that Petitioner Exhibit 1 indicates that on March 1, 2015, Petitioner's comparable properties were assessed at \$308,200 and \$317,100 respectively, while the subject property was assessed for \$270,800. He argues this demonstrates that the subject property may in fact be undervalued for 2015. *Morris testimony.*
15. Petitioner's case:
- a. Petitioner contends the assessed value is too high. In his analysis, he presented two purportedly comparable properties. *Phillips testimony; Pet'r Ex. 1-6.*
 - b. The first property at 8527 Valley Farm Road is located three houses east of the subject property. It is a two-story home with 2,872 square feet of living area and was constructed in 2011. He calculated that between March 1, 2013, and March 1, 2015, the property's assessed value increased by \$16,300, or 5.98%. *Phillips testimony; Pet'r Ex. 4 & 6.*
 - c. The second property at 8632 Valley Farm Road is located five houses east of the subject property. It is a two-story home with 2,891 square feet of living area and was constructed in 2010. He calculated that between March 1, 2013, and March 1, 2015, the property's assessed value increased by \$11,900, or 4.66%. *Phillips testimony; Pet'r Ex. 5 & 6.*
 - d. The subject property is a two-story home with 2,780 square feet of living area that was constructed in 2012. Petitioner contends that over the same assessment period, the subject property's assessed value increased from \$201,700 to \$237,300, an increase of \$35,600, or 17.65%. *Phillips testimony; Pet'r Ex. 3 & 5-6.*
 - e. Next, Petitioner determined that the two comparable properties increased by an average of 5.32%. He then subtracted the 5.32% from the subject property's increase of 17.65% and determined that his property was overcharged by 12.33%, or \$24,900. He contends he subtracted \$24,900 from the county's March 1, 2015, assessed value of \$237,300 to determine the assessed value of the subject property's improvements should be reduced to \$212,400. *Phillips testimony; Pet'r Ex. 6.*
 - f. As rebuttal evidence, Petitioner noted errors on the PRCs of two properties located in the subject neighborhood. The first house, located at 8425 West Southfork Drive, is assessed with a full unfinished basement. However, the house

is built on a slab. The second house, located at 8445 West Southfork Drive, is assessed with a full unfinished basement. However, the basement is finished with two bedrooms, a bathroom, a family room, and a kitchen. In addition, two fireplaces were omitted. He argues that a calculation using an assessment and sale price, which are based on incorrect data, will lead to an inaccurate trending factor. That inaccurate trending factor could then potentially be applied and have an effect on every property in the neighborhood. *Phillips testimony; Pet'r Ex. 7 & 8.*

Analysis

16. Respondent failed to provide sufficient evidence to establish a prima facie case that the 2015 assessed value was correct. The Board reached this decision 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 2015 assessments, the valuation date was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Respondent first testified that Petitioner purchased the property for \$339,900 on October 2, 2012. Generally, the purchase price of a subject property can often be the best evidence of its value. However, in this case the date of purchase is over

two years removed from the valuation date of March 1, 2015. Further, Respondent failed to offer any evidence to relate the purchase price to the assessment date. Thus, for 2015, the 2012 purchase price lacks probative value.

- d. Respondent presented a sales ratio study, but offered no authority to support using a ratio study to prove that an individual property's assessment reflects its true tax value. In fact, the IAAO Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, prohibits using ratio studies for that purpose:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of finding distributions, the merits of class action claims, or the degree of discrimination... However, ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007).

- e. Respondent offered a sales comparison analysis to support the 2015 assessment. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *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.*
- f. On its face, Respondent's analysis does not appear to differ significantly from one made by a certified appraiser in an appraisal report. Mr. Morris attempted to account for differences between the subject property and the purportedly comparable properties by making adjustments for certain items. However, he did not adequately explain the reasons for those adjustments. Furthermore, a certified appraiser's assertions are backed by his education, training, and experience, as well as a certification that the analysis conforms to generally accepted appraisal principles and USPAP. Here, Mr. Morris did not certify that he complied with USPAP in performing his valuation analysis. Consequently, Respondent's analysis is not enough to prove the market value-in-use of the subject property.
- g. Thus, Respondent failed to establish a prima facie case that the 2015 assessed value was correct. Because Respondent failed to meet the burden of proof, the

March 1, 2015, assessment must be reduced to the previous year's level of \$235,200. Petitioner did not request any further reduction.

Conclusion

17. Respondent failed to make a prima facie case that the 2015 assessment was correct. Therefore, the assessment must revert to its 2014 assessed value of \$235,200.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2015 assessed value should be changed.

ISSUED: March 6, 2017

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>>