

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

Petition No.: 20-031-11-1-5-00014
Petitioners: Stephen J. & Betty J. Arnold
Respondent: Elkhart County Assessor
Parcel No.: 20-03-27-258-022.000-031
Assessment Year: 2011

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

Procedural History

1. The Petitioners initiated their 2011 assessment appeal with the Elkhart County Assessor on September 14, 2011.
2. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on May 20, 2013, denying the Petitioners relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board on July 2, 2013. The Petitioners elected the Board's small claims procedures.
4. The Board issued a notice of hearing on February 4, 2014.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on April 10, 2014. She did not inspect the property.
6. Stephen J. Arnold appeared *pro se*. Attorney Beth Henkel represented the Respondent. Mr. Arnold, County Assessor Cathy Searcy, and Deputy Assessor Gavin Fisher were sworn.

Facts

7. The property under appeal is a single-family home located at 300 Maple Street, in Bristol.
8. The PTABOA determined the following assessment:
Land: \$21,800 Improvements: \$100,100 Total: \$121,900
9. The Petitioners requested the following assessment on their Form 131:
Land: \$17,900 Improvements: \$81,670 Total: \$99,570.

Record

10. The official record for this matter is made up of the following:
- a) Petition for Review of Assessment (Form 131) with attachments,
 - b) A digital recording of the hearing,
 - c) Exhibits:

- Petitioner Exhibit 1: Form 131 petition,
- Petitioner Exhibit 2: Comparable Sales Analysis cover sheet,
- Petitioner Exhibit 3: Comparable Sales Analysis spreadsheet,
- Petitioner Exhibit 4: Subject property record card (PRC),
- Petitioner Exhibit 5: PRC for 204 Chestnut Avenue,
- Petitioner Exhibit 6: PRC for 209 Vistula Street,
- Petitioner Exhibit 7: PRC for 1600 West Pike Street,
- Petitioner Exhibit 8: PRC for 1520 Birch Drive,
- Petitioner Exhibit A: PRC for 1129 Bay Street,
- Petitioner Exhibit B: PRC for 1210 Worthmore Avenue,
- Petitioner Exhibit C: PRC for 1909 Woodward Place,
- Petitioner Exhibit D: PRC for 100 Karen Drive,
- Petitioner Exhibit E: PRC for 924 South 11th Street,
- Petitioner Exhibit F: PRC for 1600 West Pike Street.

Respondent Exhibit A: “E-Valuate Report” for the subject property,
Respondent Exhibit B: Subject PRC, aerial map, and photograph.

Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Hearing notice dated February 4, 2014,
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: Ms. Henkel’s Notice of Appearance.

- d) These Findings and Conclusions.

Objections

A. The Petitioners’ objection

- 11. The Petitioners objected to Respondent Exhibit A, the “E-Valuate Report,” because they contend the Respondent’s comparable sales were outside the timeframe for a March 1, 2011, assessment. The ALJ took the objection under advisement.
- 12. This objection goes to the weight that should be given to the evidence rather than its admissibility. Thus, the objection is overruled.

B. The Respondent's objection

13. The Respondent objected to Petitioners Exhibits A-F because the Petitioners did not provide the exhibits prior to the hearing. The parties agree that the Respondent requested the evidence prior to the hearing. Mr. Arnold stated the reason why he did not provide the exhibits prior to the hearing was because he did not make the decision to use the exhibits until the night before the hearing. The ALJ also took this objection under advisement.
14. Under the Board's small claims rules, if requested no later than ten business days before a hearing, "parties shall provide to all other parties copies of any documentary evidence and names and addresses of all witnesses intended to be present at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5(d). Failure to comply may serve as grounds to exclude evidence. 52 IAC 3-1-5(f). Given the evidence was requested according to the Board's procedural rules and the Petitioners did not comply with the request, the Board sustains the Respondent's objection and excludes Petitioners' Exhibits A-F.¹
15. Finally, while not actually objecting, the Respondent voiced "concerns" with the weight that should be given to Petitioners Exhibits 4-8, because the Petitioners included 2013 property record cards rather than 2011 property record cards. To the extent that the Respondent intended to object to the admissibility of these exhibits, the objection goes to the weight of the evidence rather than its admissibility, thus it is overruled.

Contentions

16. Summary of the Petitioners' case:
 - a) The current assessed value of \$121,900 is too high in light of the Petitioners' own analysis of comparable sales. The Petitioners estimate the subject property's 2011 market value-in-use should be \$99,570. *Arnold argument; Pet'r Ex. 2, 3.*
 - b) In preparing the comparable sales analysis, the Petitioners relied on sales from March 2, 2009, to March 1, 2011. The comparable sales included homes that were similar in size and condition and two of the properties were similar in location. The Petitioners applied adjustments to the comparables for differences, basing the amounts of the adjustments on costs from the property record cards. *Arnold testimony; Pet'r Ex. 2, 3.*
 - c) The first sale in the Petitioners' analysis occurred on May 10, 2010. This sale was a 1,748-square foot two-story home located at 204 Chestnut in Bristol which sold for \$84,000. The Petitioners adjusted the sale price for quality of construction, a basement, a brick fireplace, special plumbing, a pool, garage square footage,

¹ The Respondent also objected to Petitioners Exhibits A-F on the grounds of hearsay. The exhibits have been excluded; therefore the Board does not need to address the hearsay objection.

porches, patios, stoops, and lot size. This property's adjusted value equated to \$92,090, or \$52.68 per square foot. *Arnold testimony; Pet'r Ex. 3, 5.*

- d) The second sale occurred on February 11, 2011. This was a 1,768-square foot two-story home located at 209 Vistula in Bristol. The property sold for \$97,000. The Petitioners adjusted sale price for quality of construction, bathrooms, a basement, special plumbing, a pool, garage square footage, porches and decks, and lot size. The comparable's adjusted value came out to \$97,560, or \$55.18 per square foot. *Arnold testimony; Pet'r Ex. 3, 6.*
- e) The third sale occurred on October 13, 2009. This property included a 1,905-square foot two-story home located at 1600 West Pike in Goshen. The property sold for \$103,000. The Petitioners adjusted the sale price for quality of construction, bathrooms, a basement, a fireplace, air conditioning, special plumbing, a pool, garage square footage, open and enclosed porches, a flagstone patio, and lot size. The comparable's adjusted equated to \$98,050, or \$51.47 per square foot. While this property sold again on December 31, 2010, for \$130,000, the Petitioners stated they were under the belief that this sale was a contract sale. *Arnold testimony; Pet'r Ex. 3, 7.*
- f) The last sale the Petitioners included occurred on December 30, 2009. This sale was of a 2,046-square foot one-story home located at 1520 Birch Drive in Elkhart, which sold for \$120,900. The Petitioners adjusted the sale price for quality of construction, bathrooms, a basement, a fireplace, special plumbing, a pool, garage square footage, stoops, patios, and lot size. The adjusted value came out to \$88,700, or \$43.35 per square foot. *Arnold testimony; Pet'r Ex. 3, 8.*
- g) The average adjusted price per square foot for the four comparable sales equated to \$50.67 per square foot. Because the Petitioners' home measures 1,965 square feet, the 2011 assessment should be \$99,570. *Arnold argument; Pet'r Ex. 3, 4.*
- h) Finally, the residential valuation report presented by the Respondent is flawed. The sales of the comparables presented by the Respondent occurred outside of the timeframe for a March 1, 2011, assessment. The relevant timeframe for a 2011 assessment was March 2, 2009, to March 1, 2011. Most of the Respondents sales occurred after March 1, 2011. Further, the Respondent's comparables are not located in the subject property's neighborhood, and location is the primary driver of real estate values. *Arnold argument, referring to Resp't Ex. A.*

17. Summary of the Respondent's case:

- a) The subject property's 2011 assessment is correct. The Respondent presented a sales-comparison analysis prepared by Mr. Gavin Fisher, a Level III Assessor-Appraiser, and a licensed certified appraiser.² In the general area of the subject

² Mr. Fisher testified that he prepared his analysis under certification as a Level III Assessor-Appraiser and not as a licensed residential appraiser.

property, ranch homes are more valuable than two-stories. Because the neighboring ranch homes that sold are substantially smaller than the subject property, Mr. Fisher relied on six ranch home sales located outside of the subject property's immediate neighborhood. *Henkel argument; Fisher testimony; Resp't Ex. A.*

- b) In preparing his residential valuation report, Mr. Fisher made adjustments for differences in age, square footage, basement size, and basement finish. His adjustment amounts were abstracted from the market using a multiple linear regression analysis on paired sales. No time adjustments were warranted, because ranch-home values have been stable for 36-48 months. While Mr. Fisher's estimated value is approximately \$1,000 less than the 2011 assessment, he states that "no assessor or appraiser is going to be able to go out to a house and distinguish a \$1,000 difference between them." *Fisher testimony; Resp't Ex. A.*
- c) As for the Petitioners' comparable-sale analysis, it lacks weight for two important reasons. First, the Petitioners utilized two-story homes from their neighborhood in the analysis without making adjustments to them. Two-story homes are not necessarily comparable to ranch homes because they do not have the same appeal to potential buyers in Elkhart County. Secondly, the Petitioners' analysis lacks weight because their adjustments were a "hybrid between sales comparison and replacement cost new, which doesn't typically yield a defensible market valuation." By utilizing adjustments in this fashion, it "tends to skew the bottom line." Cost does not necessarily equal value, which is why appraisal standards call for adjustments extracted from paired sales or linear regression from market sales. *Fisher argument, referring to Pet'r. Ex. 3.*

Burden of Proof

- 18. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
- 19. First, Ind. Code section 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).
- 20. Second, Ind. Code section 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." Under those circumstances, "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). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

21. Here, the Petitioners did not offer an argument that the burden should be shifted to the Respondent. Moreover, the evidence on record indicates that the assessment did not change from the previous year. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners.

Analysis

22. The Petitioners failed to make a prima facie case for reducing the subject property’s 2011 assessment.
 - a) Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the property’s market value-in-use. To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how its evidence relates to the appealed 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 Twp Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2011, assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) In this case, the Petitioners offered a sales-comparison analysis attempting to support their contention that the subject property’s assessment is too high. A party offering such evidence must show that the properties are generally comparable to each other, and also must show how any relevant differences affect the relative values. *See Long*, 821 N.E.2d at 470-71 (holding that, in applying the sales-comparison approach, the taxpayers needed to explain how any differences between their property and the properties to which they sought to compare it affected the properties’ relevant market values-in-use).
 - d) To a certain extent, the Petitioners did that. In fact, on its face, the Petitioners’ analysis and adjustments do not seem to differ much from that of a certified

appraiser in a USPAP appraisal. An appraiser's assertions, however, are backed by his or her education, training, and experience to estimate a reliable quantification. The appraiser also typically certifies that he or she complied with USPAP. Thus, the Board, as a trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. Where objective data was not available, the Board can infer that the appraiser relied on his or her education, training and experience to estimate a reliable quantification.

- e) Here, though, the Petitioners admittedly relied on cost figures from property record cards as the basis for their adjustments. This mixing of cost and appraisal methodology does not persuade the Board that the evidence is based on generally accepted appraisal or assessment practices. The Petitioners failed to reference any authority that would confirm that the methodology and data were applied according to accepted appraisal practices. The Board does not require a party to submit a USPAP complainant appraisal; however, creating an analysis that simply mirrors what you would find in a USPAP appraisal without providing explanation on the methodology utilized within, does not qualify as probative evidence.
- f) Also, the Petitioners did not go into great detail regarding how the subject property was comparable to the purported comparable properties. The Petitioners did make adjustments, but they did not explain what made the properties comparable. Three of the four comparable properties the Petitioners used were two-story homes, while the subject property was a single-story home. The Petitioners failed to make any adjustments to account for this major difference. Their evidence lacked the type of analysis contemplated by *Long*. The Board therefore finds the Petitioners' sales-comparison analysis insufficiently reliable to be probative of the property's market value-in-use.
- g) Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

23. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions of law, the 2011 assessment will not be changed.

ISSUED: July 7, 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 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>>.