

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

Petition: 45-023-17-1-4-00801-18
Petitioners: Lee & Sandy Breitowich
Respondent: Lake County Assessor
Parcel: 45-07-06-351-001.000-023
Assessment Year: 2017

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

PROCEDURAL HISTORY

1. The Breitowichs contested the 2017 assessment of their property located at 6303 Calumet Avenue in Hammond. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant commercial lot at \$199,600 for 2017.
2. The Breitowichs filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On April 1, 2019, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on the Breitowichs’ petition. Neither she nor the Board inspected the property.
3. Lee Breitowich appeared pro se. Appraiser Thomas S. Bochnowski appeared as a witness for the Breitowichs. The Assessor appeared by its Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record contains the following:
 - a. Petitioner Exhibit 1: Appraisal of Thomas S. Bochnowski
 - Respondent Exhibit 1: 2017 property record card
 - Respondent Exhibit 2: Comparable sales analysis
 - Respondent Exhibit 3: Loopnet listing of subject property
 - Respondent Exhibit 4: Loopnet listing of comparable sale #2
 - Respondent Exhibit 5: Current listing for 6524 Calumet Avenue
 - Respondent Exhibit 6: Current listing for 6433 Kennedy Avenue
 - Respondent Exhibit 7: Current listing for 1647 167th Street
 - Respondent Exhibit 8: Current listing for Indianapolis Blvd @ I-94

- b. The record for this matter also includes the following (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances---where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
6. Here, the property's assessment increased from \$79,900 for 2016 to \$199,600 for 2017. The Assessor agreed he had the burden of proof.

SUMMARY OF CONTENTIONS

7. The Assessor's case:
 - a. The Assessor presented a comparable sales analysis using four comparable properties sold between June 8, 2013 and August 14, 2015. The properties were vacant lots at the time of sale and were either located on a corner or near a corner, similar to the subject property. These properties were also the most comparable in size to the subject property. The four comparable properties sold for an average of \$141,060/acre while the subject is assessed at \$71,286/acre. *James testimony; Resp't Ex. 2.*
 - b. The Assessor realizes that the market dynamics of the subject property may be different than his comparable properties. That was taken into consideration when he calculated the assessed value and that is supported by the fact that the sales prices are about twice as much as the subject property's assessed value. *James testimony; Metz testimony*
 - c. The subject property is currently listed on Loopnet for \$379,000. The Assessor contends that, based on the sales and the current listing of the property, the increase in assessed value is justified. *James testimony; Resp't Exs. 2 & 3.*
 - d. The property was listed for \$350,000 in June 2018. Now it is listed for \$379,000. The listing price keeps going up. It is confusing that the listing price is \$379,000, the assessed value is \$199,600, and the appraised value is \$84,500. Looking at the listing price, the Assessor believes the Breitowichs' realtor would agree the value is higher than \$84,500 or the \$199,600 assessed value. *James testimony.*

- e. Even if the property cannot be used for a gas station, there are other uses for the property. All the Assessor's comparable properties sold for uses other than a gas station. *James testimony.*

8. The Breitowichs' case:

- a. The Assessor's comparable sales do not share the same market dynamics as the subject property. The two properties on Carlson Drive are in a new development area that is significantly more valuable than the subject property. 2248 New York, in terms of market demand, is not great and that is evidenced by the sale price of \$87,500. The property at 147 Sibley is in a redevelopment area within the City of Hammond. *Bochnowski testimony.*
- b. The Breitowichs submitted an appraisal prepared by Thomas S. Bochnowski, an Indiana certified general appraiser. Bochnowski estimated the property's value to be \$84,500 as of January 1, 2017. *Pet'r Ex. 1.*
- c. The site size, configuration, accessibility and market location in a less desirable area all detract from the value of the property. There are no curb cuts on Calumet Avenue, so the subject has no direct access to Calumet Avenue. The site size of 2.8 acres is excessively large for permitted commercial uses in the C-1 to C-4 categories. The conventional size is 40,000 square feet to 65,000 square feet. The rest of the subject site is surplus land with no contributory value. After adjustments to the comparable properties, he valued the land at \$1.30 per square foot.¹ Multiplying that value by the largest typical lot size of 65,000 square feet results in a value of \$84,500. *Bochnowski testimony; Pet'r Ex. 1.*
- d. Other issues affect the marketability of the subject property. There is a school across the street and a school behind the subject. Also on the same block of Calumet Avenue, there are six dwellings. For years, the house next to the property was boarded up. The city finally knocked it down. But there is another house at the end of the block that is boarded up. This makes the subject property a tough sell. *Breitowich testimony.*
- e. The subject property is zoned C-4 General Commercial, which is the largest density commercial use with uses ranging from automotive service stations to hotels and restaurants. In the past, the owner had people interested in the property for a gas station but the City of Hammond would not support that use. *Breitowich testimony; Bochnowski testimony; Pet'r Ex. 1.*

¹ Bochnowski did not include the grid showing the adjustments to the comparable properties because his secretary was not available to type the report.

- f. A listing price can be any value. The reality is that there are not many buyers in the marketplace for \$199,600 or \$379,000. Otherwise, the subject property would be sold. It has been on the market for over 25 years. *Bochnowski testimony*.

ANALYSIS

9. The Assessor failed to make a prima facie case that the 2017 assessment is correct. The Board reached this decision for the following reasons:
 - a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he 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.” MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for 2017 was January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).
 - c. As discussed above, the Assessor had the burden of proving that the subject property’s 2017 assessment is correct. The Assessor offered evidence regarding the sales of four purportedly comparable properties. In doing so, the Assessor essentially relied on a sales comparison approach. The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable properties that have sold in the market.” MANUAL at 2.
 - d. 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” do not suffice. Instead, the proponent must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. The proponent must similarly explain how relevant differences affect their values. *Id.*

- e. The Assessor stated that all the comparable properties were vacant lots, similar in size, and either on a corner or near-corner location. However, even if we accept the Assessor's sales as reasonably comparable, he failed to establish how differences between the subject property and his sales affect their relative market value-in-use.
- f. Additionally, the Assessor did not use his sales comparison approach to produce a suggested value. Instead, he simply calculated an average price per acre and an average assessed value per acre from the unadjusted prices of his four sales. The Assessor claimed that the average he computed supports the subject property's current assessment because it is higher than that assessment. While the Assessor's sales did produce a higher average price per acre than the subject's current assessment, he failed to demonstrate that this method conforms to generally accepted appraisal principles.
- g. Given the significant problems discussed above, the Assessor's sales comparison approach is insufficiently reliable to be probative evidence of the subject property's market value-in-use.
- h. The Assessor also offered the current listing of the subject property. Listings typically do little to show the market value-in-use of a property or even a range of values. In this case, the property has been on the market for many years and the listings, for whatever price, have been unsuccessful. Under those circumstances, we give little weight to the list price as independent evidence of the property's market value-in-use or as support for the assessed value.
- i. The Assessor also included current listings for four other commercial properties. Again, the Assessor did not establish the comparability of the properties or how they compare to the subject property. This falls short of his burden to show comparability between the properties.
- j. The Assessor failed to make a prima facie case that the subject property's 2017 assessment is correct. The Breitowichs are therefore entitled to have the 2017 assessment reduced to its 2016 value of \$79,900.
- k. The Breitowichs, however, presented an appraisal prepared by Thomas Bochnowski, an Indiana certified general appraiser. Bochnowski estimated the value at \$84,500 for 2017, which is an increase over the 2016 assessed value. The Board will not reduce the assessment below the amount requested.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board finds for the Breitowichs and orders the 2017 assessment be reduced to \$84,500.

ISSUED: June 14, 2019

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>>.