

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

Petition: 36-012-12-1-5-00001
Petitioners: Kevin G. and Sheryl L. Burke
Respondent: Jackson County Assessor
Parcel: 36-66-04-402-014.000-012
Assessment Year: 2012

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

Procedural History

1. Kevin and Sheryl Burke appealed their assessment to the Jackson County Property Tax Assessment Board of Appeals (“PTABOA”). On January 30, 2014, the PTABOA issued its determination. The Burkes responded by timely filing a Form 131 petition with the Board. They elected to proceed under the Board’s small claims rules.
2. On February 25, 2016, our designated administrative law judge, Gary Ricks (“ALJ”), held a hearing on the Burkes’ petition. Neither he nor the Board inspected the property. The Burkes and Jackson County Assessor Katie Kaufman were sworn as witnesses.
3. The property is a 0.499-acre parcel with a home located at 1901 N. Ewing Street in Seymour.
4. The PTABOA determined the following values:

Land: \$16,900	Improvements: \$105,800	Total: \$122,700
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5. On their Form 131 petition, the Burkes asked for the following assessment:

Land: \$15,300	Improvements: \$92,700	Total: \$108,000. ¹
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6. The official record consists of the following:
 - a. A digital recording of the hearing.

¹ At the hearing, the Burkes requested an assessment for 2012 that was below the 2011 level of \$100,900.

b. Exhibits:

Petitioners Exhibit A: Certificate of Review Appraiser and Conclusion of Fair Market Value,

Petitioners Exhibit B: Notice of Assessment of Land and Improvements,

Petitioners Exhibit C: FHFA House Price Index History for USA.

Respondent Exhibit A: 2012 Property Record Card (“PRC”) for subject property,

Respondent Exhibit B: 2010 PRC for the subject property,

Respondent Exhibit C: Spreadsheet with sale prices and adjustments for comparable properties,

Respondent Exhibit D: PRC for 4713 N. U.S. Hwy. 31,

Respondent Exhibit E: PRC for 11634 E. Co. Rd. 900 N.,

Respondent Exhibit F: PRC for 9075 N. Co. Rd. 1200 E.,

Respondent Exhibit G: PRC for 10557 N. U.S. Hwy. 31.

Board Exhibit A: Form 131 petition with attachments,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions.

Objection

7. The Assessor objected to Petitioners’ Exhibit C, an FHFA price index history for the United States, on grounds that it did not focus on the local market. The ALJ took the objection under advisement. While we agree the exhibit has limited relevance, the Assessor’s objection goes more to its weight rather than admissibility. We overrule the objection.

The Assessor’s Contentions

8. The property is assessed based on the home having 1,272 square feet, but that might not be accurate. *Kaufman testimony.*
9. Before the 2012 reassessment, the property was assessed too low. During that reassessment, the Assessor noted a change in the size of the detached garage. It had been assessed as being 12' x 18' but actually measured 20' x 26'. She also changed the basement to a crawl space. In addition, the state bought a section of the land to widen State Road 11. The 2012 property record card reflects a decrease in the parcel’s size from .560 acres to .499 acres, and the Assessor took that reduction into account in computing the assessment. *Resp’t Exs. A-B; Kaufman testimony.*

10. The Assessor offered sales data for four other properties. She acknowledged she is “not an appraiser” but explained that she took “some basic comparable properties that maybe had basements and things like this.” They did not have in-ground pools like the subject property, but some had pole barns and sheds, which she described as being “like amenities kind of.” She tried to find properties that were on a highway, albeit not the same highway as the subject property. *Kaufman testimony.*
11. The four properties sold on July 28, 2009, November 4, 2009, January 12, 2010, and June 8, 2011, for prices ranging from \$123,500 to \$143,500. The Assessor adjusted the sale prices to account for the following ways in which the properties differed from the subject property: the sizes of the sites, homes, and garages; the age and condition of the homes; and amenities. Although she assigned a dollar value to each adjustment, she did not explain how she quantified those amounts. The average adjusted price was \$117,965. *Kaufman testimony; Resp’t Exs. C-G.*

The Burkes’ Contentions

12. The parcel’s size decreased when the state bought part of it to widen the road. Yet the land assessment remained the same, and the Assessor actually increased the value for the improvements. She should have lowered the assessment instead. Based on a Certificate of Review Appraiser and Conclusion of Fair Market Value, the state’s appraiser estimated property was worth \$127,000 before the state took part of it and \$118,325 after the taking, for a difference of \$8,675. *K. Burke testimony and argument.*
13. The state did not adequately compensate the Burkes for the effect the taking had on the home’s setback. The setback is now only 62 feet, far less than the recommended distance of 85 feet. It is almost impossible to get out of the driveway, and the home shakes when semis pass, causing pictures to fall off the wall. The road widening has decreased all property values in the area. While the Assessor pointed to what she claimed were four comparable sales, those homes are all set back further from the highway than the subject property. *Pet’rs Ex. A; K. Burke and S. Burke testimony and argument.*
14. The Assessor justified the increase by saying the size of garage increased. But the garage has not changed since 1993, when Kevin Burke’s father added on to it. The increased assessment also ignores the market. According to the real estate sales website Zillow, property values still have not recovered to pre-recession levels from 2008. *K. testimony.*

Burden of Proof

15. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year’s assessment for the same property or (2) the taxpayer successfully appealed the prior

year's assessment and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). Even where those circumstances exist, the burden remains with the taxpayer if assessment that is the subject of the current appeal was based on structural improvements, zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-1.1-15-17.2(c). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

16. The assessment increased more than 5% between 2011 and 2012, going from \$109,900 to \$122,700. Given that increase, the Assessor conceded she had the burden of proof.²

Analysis

17. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the rules of the Department of the Local Government Finance ("DLGF"). I.C. § 6-1.1-3-16(c). 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 2 (incorporated by reference at 50 IAC 2.4-1-2).
18. Evidence in a tax appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC 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, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also, I.C. § 6-1.1-15-18* (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use). In any case, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012 assessments, that valuation date was March 1, 2012.
19. The Assessor explained some aspects of her methodology in computing the assessment, such as changing the size of the garage and reducing the site size following the taking. But that limited explanation says little about how she computed the overall assessment. In any case, strictly applying the DLGF's assessment guidelines does little to show a property's true tax value in an assessment appeal. *See Eckerling*, 841 N.E.2d at 678.

² In discussing the merits, the Assessor testified that the assessment changed between years partly because she discovered the detached garage was larger than what the property record card had reflected for 2011. She did not argue that her discovery should preclude the burden from shifting.

20. The Assessor, however, also offered some market data. She pointed to the average adjusted sale price for four properties she viewed as similar to the subject property. For sales data to be probative, the party offering it must show the sold properties are sufficiently comparable to the property under appeal. *See Long*, 821 N.E.2d 466, 470. Conclusory statements that properties are comparable to each other do not suffice. Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the sold properties and how any relevant differences affect values. *Id.* at 470-71.
21. The Assessor followed the approach laid out by the Tax Court in form but not in substance. She compared the sold properties to the subject property along at least some lines that likely affect market value. For example, she looked for properties that, like the subject property, were located along highways. But she failed to adequately explain how relevant differences affected values. Granted, she adjusted the sale prices. But she did not explain how she quantified those adjustments much less show that her methodology complied with generally accepted appraisal principles.
22. Also, while three of the Assessor's four sales were from more than two years before the relevant March 1, 2012 valuation date, she did not explain how those sale prices related to that date. For those reasons, her comparative sales data does not make a prima facie case either to support the assessment or to establish a different value, and the Burkes are entitled to have the 2012 assessment revert to its 2011 level of \$100,900.
23. To the extent the Burkes believe that the assessment should actually have decreased from its 2011 level, it was their burden to prove a lower value. They pointed to the decrease in their home's setback after the state took part of their land to widen the road. While that change likely affected the property's value, the Burkes did little to quantify that effect. At most, they offered the certificate from the state's review appraiser. There are several reasons why the certificate lacks probative weight, including the fact that it only includes the appraiser's conclusions. It says nothing about how he reached those conclusions.
24. In any case, although the appraiser found that the overall value of the property decreased after the taking, he still estimated the post-taking value at \$118,325, which is more than the 2011 assessment.

Conclusion

25. The Assessor failed to meet her burden of proving the 2012 assessment was correct. The assessment must be reduced to its 2011 value of \$100,900.

Final Determination

In accordance with these findings of fact and conclusions of law, the assessment must be changed to \$100,900.

Issued: May 23, 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 within 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>.