

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

Petition: 84-002-13-1-5-06210
Petitioner: Jeri L. Driskill
Respondent: Vigo County Assessor
Parcel: 84-06-14-360-019.000-002
Assessment Year: 2013

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

Procedural History

1. The Petitioner initiated her 2013 assessment appeal with the Vigo County Assessor on February 14, 2014.
2. On October 7, 2014, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board. She elected the Board's small claims procedures.
4. The Board issued a notice of hearing on June 28, 2016.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on August 11, 2016. She did not inspect the property.
6. Jeri L. Driskill appeared *pro se*. Harrison Township Assessor Donald Pruett appeared for the Respondent.¹ Jimmie E. Jeffers was a witness for the Petitioner. All of them were sworn.

Facts

7. The property under appeal is a single family residence located at 2224 Third Avenue in Terre Haute.

¹ Even though Mr. Pruett made the original assessment, the Harrison Township Assessor is not a party to this appeal. The Vigo County Assessor is the statutorily designated Respondent. See Ind. Code § 6-1.1-15-3(b). However, Mr. Pruett testified that he "received an email from the county" so it is possible that the County Assessor authorized Mr. Pruett to represent her. While Mr. Pruett failed to provide the email or any additional evidence in support of his position, the Petitioner did not object. As such, the Board will view Mr. Pruett's appearance as authorized by the County Assessor as 52 IAC 2-2-4(2) provides. For future hearings however, the Board cautions the County Assessor to make sure she is properly represented.

8. The PTABOA determined the total assessment is \$44,300 (land \$5,800 and improvements \$38,500).
9. The Form 131 claimed the total assessment should be \$31,000 (land \$5,000 and improvements \$26,000).

Record

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

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: Appraisal of the subject property completed by Brandon McKinney, effective June 26, 2015.

Respondent Exhibit 1: Photograph of the front of the subject property,
Respondent Exhibit 2: Subject property photographs of the side, back and the detached garage,

Respondent Exhibit 3: Subject property record card including a declined settlement offer.

Board Exhibit A: Form 131 with attachments,

Board Exhibit B: Notice of Hearing dated June 28, 2016,

Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a) The property's assessment is too high. The assessed value increased from \$31,000 in 2011 to \$44,300 in 2013. In 2012, the assessed value was \$43,700, but the Petitioner "overlooked" filing an appeal. *Driskill testimony.*
- b) The property was purchased in 2007 for \$30,000. At the time of purchase, it appraised for \$24,000. No improvements have been made to the outside of the home since it was purchased. The neighborhood has "gone downhill and is depressed overall," as such, the Petitioner would be "lucky to get \$30,000." *Driskill argument.*
- c) On June 27, 2015, the home was destroyed by a fire. Prior to the fire, the Petitioner's insurance company hired an appraiser to appraise the property. Certified residential

appraiser Brandon McKinney completed a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal estimating the property's value at \$26,000 as of June 26, 2015. *Driskill testimony; Pet'r Ex. 1.*

12. Summary of the Respondent's case:
- a) Granted this is a 2013 appeal, but it is necessary to explain why the 2012 assessment increased. First, a ratio study was performed indicating homes in the neighborhood were selling for amounts higher than they were currently assessed. Second, the previous assessor "removed obsolescence that had been applied to the dwelling four or five years ago when the Petitioner offered an appraisal." The 2012 assessment of the home is now correct. *Pruett testimony.*
 - b) Nonetheless, Mr. Pruett believes that the grade and condition of the garage could be changed to "D and fair" lowering the total assessment to \$41,300. In fact, this offer was made to the Petitioner, but she declined. She requested a lower total value. *Pruett testimony; Resp't Ex. 3.*

Burden of Proof

13. 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 amended by P.L. 97-2014 creates two exceptions to that rule.
14. 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).
15. 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." 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 was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the parties agree the assessed value of the subject property increased from \$43,700 in 2012 to \$44,300 in 2013, an increase of less than 5%. Further, the Petitioner failed to

offer any argument that the burden should shift to the Respondent for the current year under appeal. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

Analysis

17. The Petitioner failed to make a prima facie case for reducing the 2013 assessment.
 - a) Real property is assessed based on its market value-in-use. 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. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may 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 method used, a party must explain how the evidence relates to 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 a 2013 assessment, the valuation date was March 1, 2013. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) In support of her argument, the Petitioner offered a certified appraisal of the property. However, the appraisal valued the property as of June 26, 2015, over two years after the relevant valuation date. The Petitioner failed to explain how an appraisal two years beyond the relevant valuation date proves the property's market value-in-use on March 1, 2013. As such, the appraisal has little probative value. Similarly, the Petitioner's 2007 purchase price also does little to prove the value as of March 1, 2013.
 - d) In addition, the Petitioner offered general arguments the property is overvalued. Ms. Driskill argued she would be "lucky to get \$30,000" for the property because the neighborhood is deteriorating and depressed. While these factors could have a detrimental effect on the property's value, they do not establish that the assessment was made in error. The Petitioner needed to offer timely, probative evidence that establishes the effect those factors have on the property's market value-in-use as of the relevant valuation date. *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329 (Ind. Tax Ct. 1999) (citing *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d at 1119 (Ind. Tax Ct. 1998)). She failed to do so.
 - e) Consequently, the Petitioner failed to make a prima facie case that the 2013 assessment is incorrect. Generally, where the Petitioner has not supported its 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). Nevertheless, Mr. Pruett

offered rather detailed testimony that appears to indicate he believes the assessment should be lowered. Specifically, he testified that, while he agreed with the assessment of the home, the grade and condition of the garage could be lowered to “D and fair” lowering the assessment to \$41,300. The Board will accept Mr. Pruett’s concession and order the assessment be lowered to \$41,300.²

Conclusion

18. The Petitioner failed to make a prima facie case for reducing the assessment. However, the Board accepts the Respondent’s concession that the assessment should be lowered to \$41,300.

Final Determination

In accordance with these findings and conclusions, the 2013 assessment must be lowered to \$41,300.

ISSUED: November 9, 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 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>>.

² The Board notes that settlement offers alone do not constitute evidence of error in the assessment. In this case, though, the Board infers from Mr. Pruett’s testimony that he concedes the grade and condition of the garage should be changed, thereby lowering the total assessment.