

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

Petition: 54-028-12-1-5-00086
Petitioner: Virgil Endicott
Respondent: Montgomery County Assessor
Parcel: 54-07-19-444-055.000-028
Assessment Year: 2012

The Indiana Board of Tax Review (the “Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

PROCEDURAL HISTORY

1. Vergil Endicott (the “Petitioner”) initiated an assessment appeal with the Montgomery County Property Tax Assessment Board of Appeals (the “PTABOA”) by filing a Form 130 petition on September 18, 2012.
2. On February 12, 2013, the PTABOA issued a notice of its final assessment determination on Form 115.
3. The Petitioner filed a petition for review on Form 131 with the Board on March 7, 2013.
4. The Board issued a notice of hearing (rescheduled) to the parties on January 10, 2014.¹
5. On February 27, 2014, Ellen Yuhan, the Administrative Law Judge (the “ALJ”) appointed by the Board, held the administrative hearing.
6. The Petitioner, and the Montgomery County Chief Deputy Assessor Sherri L. Bentley (the “Respondent”), were each sworn and each presented testimony.²

FACTS

7. The subject property is a single-family dwelling located at 104 Woodlawn Drive, Crawfordsville, Indiana. *Respondent Exhibit 1.*

¹ The Board initially sent a notice of hearing on July 9, 2013 indicating a hearing date of August 22, 2013. That hearing was subsequently rescheduled at the request of the Petitioner.

² Kelley Ewoldt, the Montgomery County Assessor, and Brian Thomas, an expert witness, were sworn but did not testify.

8. The PTABOA made a final determination that the 2012 assessed value is \$21,300 for the land and \$58,300 for the improvements (for a total of \$79,600). *Board Ex. A; Respondent Exhibit 1.*
9. The Petitioner is challenging the PTABOA's final determination. *Board Ex. A.*

RECORD

10. The official record contains the following:
 - a. A digital recording of the hearing
 - b. Respondent Exhibit 1 – The 2012 property record card for the subject property
Respondent Exhibit 2 – Two photographs of the subject property
Respondent Exhibit 3 – A list of three property sales with corresponding property record cards
Respondent Exhibit 4 – A GIS aerial photograph of the subject property
 - c. Board Exhibit A – The Form 131 petition and attachments
Board Exhibit B – The notice of hearing (rescheduled) dated January 10, 2014
Board Exhibit C – The hearing Sign-In Sheet
 - d. These findings and conclusions.

BURDEN OF PROOF

11. Generally, a 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. 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.
12. 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).
13. 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,

(i) 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.

14. The burden-shifting provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach. Ind. Code § 6-1.1-15-17.2(c) and (d).
15. In the case at issue, the Respondent conceded at the hearing that the 2012 assessment increased by more than 5% over the 2011 assessment. Consequently, Ind. Code §§ 6-1.1-15-17(2)(a) and (b) apply and the Respondent bears the burden of proving that the 2012 assessment is correct.

CONTENTIONS

16. Summary of the Respondent’s contentions:
 - a. The Respondent contends that the subject property is a one-story house built in 1959. The house is located in a subdivision of homogeneous ranch homes built during the period from the late 1950s through the 1970s. *Respondent Exhibit 1; Bentley testimony.*
 - b. The Respondent states that 2012 was a reassessment year and that there were new cost tables and new land values for that year. *Bentley testimony.*
 - c. To substantiate the new assessed value, the Respondent presented a list of sales of three other properties located in the immediate vicinity. The first property sold for 4% more than that property’s 2011 assessed value. The second property sold for 11% more than that property’s 2011 assessed value. The third property sold for 15% more than that property’s 2011 assessed value. *Respondent Exhibit 3; Bentley testimony.*
 - d. The Respondent contends that the assessment with regard to the subject property increased approximately 9% from 2011 to 2012. *Respondent Exhibit 1; Bentley Testimony.*
17. Summary of the Petitioner’s contentions:

- a. The Petitioner contends that there have been no improvements to the house for approximately 20 years and the house is virtually the same as when it was built in 1959. *Endicott testimony.*
- b. The Petitioner contends that he had conversations with neighbors who indicated their assessments either stayed the same or decreased. *Endicott testimony.*
- c. The Petitioner contends that a particular brick house in the neighborhood sold for less than the assessed value of the subject property. *Endicott testimony.*
- d. The Petitioner contends there is no justification for the substantial increase in the 2012 assessment over the 2011 assessment. *Endicott testimony.*

ANALYSIS

18. The Respondent failed to make a prima facie case that the assessment is correct for the March 1, 2012, assessment. The Board reached this decision for the following reasons:
 - a. For 2012, real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 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. *Id.* Other kinds of permissible evidence 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. *Id.* at 3.
 - b. Regardless of the type of evidence, a party must explain how its evidence relates to the required 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, the value as of that date. *Long*, 821 N.E.2d at 471.
 - c. To support the assessment, the Respondent offered a list of three sales that occurred in the same subdivision as the subject property and testified as to the percentage increase from the 2011 assessed values. The list of sales offered by the Respondent does not demonstrate how the properties that sold are comparable to the subject property. In order to use a sales comparison approach as evidence in an assessment appeal, the party must first show that the properties being examined are comparable

to each other. Conclusory statements that a property is “similar” or “comparable” to another property are not probative evidence. *Long*, 821 N.E.2d at 470-471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.* Such identification and explanation are especially necessary where, as in this appeal, the sales prices of the alleged comparable properties range from \$103,500 to \$119,400 and there are differences in the available living area, the type of exterior siding and other amenities. The Respondent makes no attempt to compare any differences amongst the properties or to show how those differences affect the value in question. Accordingly, the evidence offered by the Respondent is of insufficient probative value, and the Respondent has failed to establish a prima facie case for the assessment.

- d. Since the Respondent failed to make a prima facie case that the assessment is correct, the Board need not make inquiry as to whether the Petitioner has proven the assessment is incorrect.
- e. The Board has generally held that where the burden-shifting statute applies, and where an assessment amount lower than the prior year’s assessment amount was not sought, the assessment amount for the year in question should be lowered to the prior year’s assessment amount. In the present case, the Petitioner did not request a lower value than the 2011 assessment.

CONCLUSION

- 19. The Respondent failed to offer probative evidence to support the assessment. The Board finds for the Petitioner.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the 2012 assessed value should be changed to the 2011 assessment value of \$72,900.

ISSUED: August 26, 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 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>>.