

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

Petition No.: 79-004-10-1-5-00001
Petitioners: Robert S. & Ava A. Englert
Respondent: Tippecanoe County Assessor
Parcel No.: 79-07-32-200-001.000-004
Assessment Year: 2010

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

Procedural History

1. The Englerts initiated an assessment appeal with the Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) by written notice dated October 16, 2011.
2. The PTABOA mailed its notice of decision, Form 115, on December 3, 2011.
3. The Englerts appealed to the Board by filing a timely Form 131 Petition for Review of Assessment on January 13, 2012. They elected to have their appeal heard under the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties on April 23, 2013.
5. Administrative Law Judge Dalene McMillen held the Board's administrative hearing on June 11, 2013.
6. Robert Englert appeared *pro se*. Tippecanoe County Assessor Linda Phillips appeared for the Respondent. Robert Englert, Linda Phillips, and Jesse Wallenfang, Sales Data & Appeals Manager for Tippecanoe County Assessor were sworn as witnesses.

Facts

7. The subject property is a single-family residential home located at 1502 South 2nd Street in Lafayette, Indiana.
8. Neither the Board nor the ALJ inspected the property.

9. For the March 1, 2010, assessment date, the PTABOA determined the assessed value of the subject property to be \$13,600 for the land and \$71,300 for the improvements, for a total assessed value of \$84,900.
10. Englert requested a total assessed value of \$13,600 for the land and \$60,000 for the improvements, for a total assessed value of \$73,600 on his Form 131.
11. The Assessor objected to Petitioner Exhibit 10 arguing that the 2011 and 2012 assessed values shown do not relate to the valuation date at issue in the Englert's appeal. The Assessor's objection goes more to the weight of the exhibit than to its admissibility. The Board therefore overrules the Assessor's objection and admits Petitioner Exhibit 10.

Record

12. The official record for this contains the following:
 - a. The Form 131 petition and related attachments;
 - b. Digital recording of the hearing;
 - c. Exhibits:

Petitioner Exhibit 1A – Website page “Tippecanoe County property taxes 2010: How much do you owe?” (“property taxes 2010”) showing the subject property,

Petitioner Exhibit 1B – Website page “Tippecanoe County property taxes 2011: How much do you owe?” (“property taxes 2011”) showing the subject property,

Petitioner Exhibit 1C – The Englert's Request for Review of 2010 Assessment form,

Petitioner Exhibit 2A – Letter from Linda Phillips to the Englerts, dated October 8, 2011,

Petitioner Exhibit 2B – Joint Report by Taxpayer/Assessor – Form 134-I, dated October 16, 2011,

Petitioner Exhibit 3 – Notice of Hearing on Petition – Real Property – Form 114, dated October 31, 2011,

Petitioner Exhibit 4A – Copy of a letter that was attached to Form 114 from the Englerts to Linda Phillips,¹

Petitioner Exhibit 4B – Website page “My HomeGain Results – My Home's Value” showing the sale prices of ten properties located at 1419 South 2nd Street, 302 Murphy Street, 1207 South 2nd Street, 108 Owen Street, 1006 South 2nd Street, 1021

¹ The Englert's original letter attached to the Form 114 was erased from the Englert's computer, so Exhibit 4A is a “similar” letter.

- South 3rd Street, 1102 Queen Street, 1403 Wabash Avenue, 200 Weaver Street, and 1012 Queen Street,
- Petitioner Exhibit 4C – Ten exterior photographs of properties described in Exhibit 4B,
- Petitioner Exhibit 5 – Notification of Final Assessment Determination – Form 115-I PT, dated December 2, 2011,
- Petitioner Exhibit 6A – Copy of the original petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
- Petitioner Exhibit 6B – Website page “My HomeGain Results – My Home’s Value” showing the sale price of nine properties located at 1419 South 2nd Street, 1404 South 3rd Street, 302 Murphy Street, 1207 South 2nd Street, 108 Owen Street, 1006 South 2nd Street, 1021 South 3rd Street, 200 Weaver Street, and 1012 Queen Street,
- Petitioner Exhibit 6C – Analysis of nine comparable properties and the subject property on sale price, 2009 assessment and 2010 assessment price per square foot and exterior photographs for the properties described in Exhibit 6B, and the subject at 1502 South 2nd Street,
- Petitioner Exhibit 7 – Indiana Board of Tax Review – Notice of Hearing on Petition, dated April 23, 2013,
- Petitioner Exhibit 8A – Revised Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,²
- Petitioner Exhibit 8B – Website page “My HomeGain Results – My Home’s Value” showing the sale prices of five properties located at 1419 South 2nd Street, 1404 South 3rd Street, 302 Murphy Street, 108 Owen Street, and 1021 South 3rd Street,
- Petitioner Exhibit 8C – Google street map showing the location of properties in Exhibit 8B, and the subject property,
- Petitioner Exhibits 8D – 8H- Exterior photographs, valuation history reports, property taxes 2010, and property taxes 2011 for properties listed in Exhibit 8B,
- Petitioner Exhibit 8I – Exterior photograph, valuation history report, property taxes 2010, and property taxes 2011 for the subject property,
- Petitioner Exhibit 8J – Analysis of five comparable properties and the subject property on sale price, 2009 assessment and 2010 assessment price per square foot for properties listed in Exhibit 8B, and the subject property at 1502 South 2nd Street,

² The Englert’s revised Form 131 petition was not filed prior to the hearing with the Board or County Assessor.

Petitioner Exhibit 9 – The Englert’s conclusion of the analysis of nine comparable homes and conclusion of analysis of five comparable homes,

Petitioner Exhibit 10 – Notice of Assessment of Land and Structures – Form 11R/A – C/I for March 1, 2012,

Respondent Exhibit 1 – County sales comparables list,

Respondent Exhibit 2 – County review of Petitioners’ nine sales comparables,

Respondent Exhibit 3 – Valuation history report for the subject property,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet,

- d. Board’s Findings and Conclusions (contained herein).

Summary of Parties’ Contentions

13. Summary of the Respondent’s case:

- a. The subject property is a well kept home with three-car garage, in a large neighborhood located in the Lafayette School Corporation. *Phillips testimony*. The homes in the subject property’s neighborhood were built between 1930 and 1955. *Id.* The homes are similar in quality and characteristics. *Id.*
- b. The subject property’s assessment history shows that in 2006, 2007, and 2008 the property was consistently assessed at \$86,700, \$87,300, and \$82,100, respectively. *Phillips testimony*. However, in 2009, the former Assessor reduced the subject property’s assessed value to \$62,100. *Id.* The reason for the decrease was a decrease in the trending factor for 2009, which is based on sales of properties in the neighborhood from the preceding 14 months.³ *Id.* Specifically, the trending factor dropped from 1.2 in 2008 to 0.95 in 2009. There was no evidence presented as to why the trending factor decreased so dramatically. *Id.*
- c. Then, in 2010, the valid sales showed the trending factor increased 1.2 for this neighborhood. *Id.* When the trending factor was applied to the subject property it resulted in an assessed value of \$84,900. *Id.* The subject property’s 2010 assessed

³ The Assessor did not explain the term “trending factor.” The Board assumes that it refers to an annual adjustment of assessed values in connection with Indiana Code § 6-1.1-4-4.5. *See* I.C. § 6-1.1-4-4.5(a) (requiring the Department of Local Government Finance to “adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took effect.”).

value is more consistent with the 2006, 2007 and 2008 assessed values and the market value of the property, according to the Assessor. *Id.*

- d. The Assessor's witness, Mr. Wallenfang, pointed to five similar properties⁴ sold in the subject property's neighborhood that support the assessed value. *Wallenfang testimony; Resp't Ex. 1.* As evidence, Mr. Wallenfang presented comparable sales analysis. *Resp't Ex. 1.* The comparable sales analysis shows the five comparable properties sold between May 19, 2009, and November 17, 2009. *Id.* It also shows sale price, size, grade, condition, year built, number of bathrooms, story height, basement area, and a description of the garage or car shed. *Id.* According to Mr. Wallenfang, the five comparable properties and the subject property were all built within a 20 year time period from 1935 to 1954, and are all within 300 square feet in size of each other. *Wallenfang testimony; Resp't Ex. 1.* The properties are all in average condition -- one-story with one bathroom, partial basements, and a C-1 grade. *Id.* The major difference between the five comparable properties and the subject property is the size and types of garages. *Id.* The subject property has a "vastly superior" three-car garage with a high middle bay, while the five comparable properties have one-car garages or car sheds. *Phillips testimony; Id.* The comparable sales analysis considers the sales as a function of price per square foot of living area, both individually and on average. *Resp't Ex. 1.* According to the comparable sales analysis, the five comparable properties sold for an average of \$89.81 per square foot, while in 2009, the subject property is assessed for \$71.71 per square foot. *Wallenfang testimony; Resp't Ex. 1.* Mr. Wallenfang argues that based on the median sale price in the area, the subject property's assessment of \$71.71 per square foot is appropriate. *Id.*
- e. At the Englert's PTABOA hearing they submitted the sale prices of nine comparable properties. *Wallenfang testimony; Resp't Ex. 2.* Upon the county's examination of the Englerts' nine comparable sales they discovered that none of the sales were arms-length transactions. *Id.* The nine comparable properties were sold either as a result of a sheriff sale or foreclosure action. *Id.* In addition, the nine comparable properties were not similar in size, style, or age to the subject property. *Resp't Ex. 2.* The nine comparable properties were not an accurate measure of the subject property's market value. *Wallenfang testimony.*
- f. The Englert's five comparable properties should be given little weight because none of those were arms-length transactions. *Phillips testimony.* Rather, the five comparable properties were sold either as a result of a foreclosure action or sheriff sale. *Id.* Further, the properties located at 1419 South 2nd Street, 1021 South 3rd Street, and 108 Owen Street are not classified in the same neighborhood as the subject property. While physically they are located in close proximity, they have different market factors and would attract different buyers than the subject property.

⁴ The properties the Assessor used for comparison are not the same properties the Englerts relied on as evidence the Assessor over-valued their home.

Id. These five comparable properties are not an accurate measure of the subject property's market value-in-use. *Id.*

14. Summary of the Petitioners' case:

- a. The assessment increased by \$22,800 from 2009 to 2010 despite the fact there were no improvements to their property. *Englert testimony; Pet'rs Exs. 1A-1C.* This increased assessment caused the taxes on the subject property to increase 82.42%. *Pet'rs Ex. 1B.*
- b. After requesting a review of their 2010 assessment, the Englerts received a letter from the Assessor stating that values were derived from sales that occurred in 2009. *Englert testimony; Pet'rs Ex. 2A.* The Englerts were unable to attend their PTABOA hearing, but they submitted a letter and "My HomeGain Results," which is a website showing a list of 20 properties that sold within a half-mile radius of the subject property. *Id.; Pet'rs Exs. 4A-4B.* In particular, the Englerts highlighted 10 properties that sold from \$25,000 to \$104,865 in 2009. *Id.; Pet'rs. Ex 4B.* According to the Englerts, all but one of the highlighted properties sold for under \$80,000. *Id.; Pet'rs Exs. 4B-4C.*
- c. The Englerts appealed the PTABOA's denial of their appeal to the Board. *Englert testimony; Pet'rs. Ex. 6A.* The Englerts attached evidence to their Form 131 petition of what they contend are similar homes in the area. They provided the assessed values as well as recent sales prices from 2009 and 2010. *Englert testimony.*
- d. At the hearing before the Board, the Englerts presented similar evidence from the "HomeGain Results" website that highlighted five comparable properties located within five blocks of the subject property that had recently sold. *Englert testimony; Pet'rs Exs. 8B-8C.* For each of the five comparable properties, the Englerts submitted a photograph, valuation history report, 2010 property taxes, and 2011 property taxes. *Pet'rs Exs. 8D-8I.* The Englert's evidence also included the sale price, the 2009 assessment, and the 2010 assessment for each property. *Pet'rs Ex. 8B.* Based on this information, they calculated a price per square foot of each of the five comparable properties. *Englert testimony; Pet'rs. Ex. 8J.* The Englerts also calculated the subject property's 2009 and 2010 assessments on the price per square foot. *Id.* The Englerts comparable analysis shows that for the five properties sold in 2009, the price per square foot ranged from \$33.80 to \$102.08. *Id.* The 2009 assessments ranged from \$47.12 per square foot to \$64.18 per square foot. *Id.* And, the 2010 assessments ranged from \$20.08 per square foot to \$52.23 per square foot. *Id.* The subject property's 2009 assessment was \$52.45 per square foot. The 2010 assessment increased to \$71.71 per square foot. *Id.* The five comparable properties show that between the 2009 and 2010 assessment years their assessments decreased on a price per square foot basis, while the subject property's assessment increased 36.7%. *Id.* This evidence, the Englerts argued, demonstrates that the subject property is over-valued. *Englert testimony.*

- e. Finally, the Assessor reduced the 2011 assessment on the subject property to \$75,100 and the 2012 assessment to \$66,500. *Englert testimony; Pet'rs Ex. 10*. The Englerts argued that this reduction demonstrates that the 2010 assessed value was over-stated. *Englert testimony*.

Burden of Proof

15. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong 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). Nevertheless, the General Assembly enacted a statute that in some cases shifts the burden of proof to the assessor:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the *same property*. 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 (emphasis added).

16. In this case, the subject property's valuation history report shows that the County Assessor assessed the property for \$62,100 in 2009. The PTABOA determined the property's March 1, 2010, value is \$84,900, which represents an increase of more than 5%. Therefore, the Assessor has the burden of proving the 2010 assessment is correct.

Analysis

17. The Assessor failed to make a *prima facie* case to support the 2010 assessment.
 - a. Indiana assesses real property based on its true tax value, which is "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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. In Indiana, assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

- b. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A party may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A party may also offer evidence of actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c. Regardless of the method used, a party must explain how each piece of evidence is relevant to the assessment. *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (explaining one must "walk the Indiana Board...through every element of the analysis"). For a 2010 assessment, the valuation date was March 1, 2010. *Pet'rs Ex. 3*. Ind. Code § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).
- d. Here, the Assessor did not meet her burden. Mr. Wallenfang relied on his analysis of five comparable sales in the area to show the assessed value for the subject property. In order to effectively use a sales-comparison analysis as evidence in a property assessment appeal, the proponent must show that the properties are truly comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Rather, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any affect the relative market values-in-use. The Assessor did not do this.
- e. The Assessor presented no evidence to show that the properties offered as comparisons were actually comparable to the property under appeal. Instead, her witness offered five properties that sold in the same area and simply compared the size, age, grade, condition, year built, basement area, and garage area of those homes to the subject property. Fatally, he did not address how these differences affected the relative values. The Assessor's evidence showed that the sale prices of properties in the area ranged from \$53.13 per square foot to \$92.59 per square foot in 2009. Thus, the Board can infer that the properties in the Englerts' area varied a great deal. Because Mr. Wallenfang made no attempt to identify or value the differences between the compared properties, the Assessor's sales comparable analysis has little probative value. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar'

or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that the comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. *These standards are no less applicable to assessing officials.*" 836 N.E.2d at 1082 (citations omitted and emphasis added).

- f. According to the Assessor, the trending factor on the subject property dropped from 1.2 in 2008 to 0.95 in 2009. But the Assessor failed to provide any documentation as to why the trending factor changed so dramatically. Then, in 2010, the trending factor returned to 1.2 for the neighborhood based on valid sales in the neighborhood from the preceding 14 months. When the trending factor was applied to the subject property it resulted in an assessed value of \$84,900. Based on this, the Assessor claims the subject property is assessed correctly. The Assessor failed to explain why the decreased trending factor in 2009 justified the 2010 assessment for the subject property.
- g. More importantly, the Assessor misunderstands the nature of her burden under Indiana Code § 6-1.1-15-17.2. When this statute applies, the Assessor's burden is not merely to explain why assessment increased, but to prove the assessment is "correct," *i.e.* that it reflects the market value-in-use. In this case, the Assessor needed to offer probative evidence addressing the subject property's actual market value-in-use. The Assessor failed to offer such evidence.
- h. Because the assessor failed to meet her burden of proof, the March 1, 2010, assessment must be reduced to the previous year's level of \$62,100.

Conclusion

- 18. The subject property's March 1, 2010, assessment increased by more than 5% over the property's 2009 value. As such, the Assessor bore the burden of proving the property's March 1, 2010, assessment was correct. The Assessor failed to raise a *prima facie* case that the assessed value was correct for March 1, 2010. Therefore, the property's assessment must be returned to its 2009 value, for a total assessed value of \$62,100. The Board finds in favor of the Englerts.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioners' property should be changed.

ISSUED: September 23, 2013

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>>.