

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

Petition No.: 45-014-13-1-5-14337-15
Petitioner: Golden Gate Development Corp.
Respondent: Lake County Assessor
Parcel No.: 45-15-27-454-005.000-014
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. Golden Gate Development Corp. (“Petitioner”) filed a Form 130 with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on May 14, 2014. The PTABOA issued notice of its determination on January 30, 2015.
2. The Petitioner timely filed the Form 131 petition with the Board, electing to have its appeal heard under the Board’s small claims procedures. The Respondent did not elect its option to remove.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on May 9, 2016. Neither the ALJ nor the Board inspected the property.
4. Greg Schafer, President of Golden Gate Development Corp., was sworn and testified for the Petitioner. Robert Metz and Thesia Stewart, Hearing Officers for the Lake County Assessor’s office, were sworn and testified for the Respondent.

Facts

5. The property under appeal is a single-family home located at 13913 Huseman Street, Cedar Lake, Indiana.
6. For 2013, the PTABOA determined the assessed value of the property to be \$12,000 for the land and \$64,800 for the improvements, for a total assessed value of \$76,800.
7. For 2013, the Petitioner requested an assessed value of \$41,254 (the 2011 purchase price), trended to the assessment date.

Record

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

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1:	Seven (7) interior photographs of the subject property,
Petitioner Exhibit 2:	Form 130 (page 1),
Petitioner Exhibit 3:	Sales disclosure form for the subject property dated October 27, 2011,

Respondent Exhibit 1:	Subject property record card,
Respondent Exhibit 2:	Form 115,
Respondent Exhibit 3:	Multiple Listing Service (“MLS”) report from October 4, 2010,
Respondent Exhibit 4:	MLS report from February 29, 2012,
Respondent Exhibit 5:	MLS report from April 5, 2013,
Respondent Exhibit 6:	MLS report from December 31, 2013,
Respondent Exhibit 7:	MLS report from May 27, 2014,
Respondent Exhibit 8:	Sales disclosure form dated May 23, 2014,

Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Hearing sign-in sheet.

c. These Findings and Conclusions.

Objections

9. The Petitioner objected to the MLS reports (Respondent Ex. 3-7) because the Respondent had no first-hand knowledge of their accuracy. Mr. Schafer, the President of Golden Gate Development Corp., was the listing agent for the reports. He testified that realtors frequently engage in “puffing” reports by describing items that are planned to be included in the house, but may not yet be installed. To the extent the Petitioner makes a hearsay objection, we note that hearsay may be admitted under our procedural rules, provided it does not form the sole basis for our determination. 52 IAC 2-7-3. Moreover, we note that the Petitioner suffered no prejudice because its Representative was the listing agent. Thus, he was available to testify as to the accuracy of the reports. To the extent the Petitioner objects that the Respondent did not lay a proper foundation for the exhibits, we find the Respondent laid sufficient foundation, and note again that Mr. Schafer was available to testify as to their accuracy.

10. The Respondent objected to Petitioner Ex. 1, the interior photographs, because there was no date stamp on them. Mr. Schafer testified that the photographs were taken sometime after the Petitioner acquired the property. This objection goes to the weight of the evidence rather than its admissibility. We admit the exhibit over the Respondent's objection.

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its 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). The burden-shifting statute creates two exceptions to the rule.
12. First, Ind. Code § 6-1.1-15-17.2 (a) "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." Under Ind. Code § 6-1.1-15-17.2(b), "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."
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 Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "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).
14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The Petitioner testified that the PTABOA reduced the 2012 assessment of the subject property to \$38,400. It submitted a Form 130 from 2012 in support of this. Based on this testimony, the ALJ initially ruled that the Respondent had the burden of proof under Ind. Code § 6-1.1-15-17.2(d).
16. During the hearing, the Respondent submitted the subject's property record card. This card, printed on May 5, 2016, indicates that the Petitioner's 2012 appeal was denied at the informal hearing level. It does not show any PTABOA action on that year, but lists

the 2012 assessment at \$76,100. The Petitioner did not submit a 115 for that year, but argued that the Respondent should have the records. We find the property record card to be the most reliable evidence in the record. Because it does not show any successful appeal of the 2012 assessment, and the 2013 assessment is not 5% more than the 2012 assessment, we determine that the Petitioner has the burden of proof. We also note that the Petitioner made a number of improvements to the subject property. While the exact timing of these improvements is not in the record, there is reliable evidence that the property changed between the 2012 and 2013 assessment dates, which also prevents the application of the burden-shifting statute.

Contentions

17. Summary of the Petitioner's case:

- a. The Petitioner argued that it performed a service to the community by rehabilitating abandoned properties and that the community appreciates these efforts. *Schafer testimony.*
- b. The Petitioner purchased the property on October 27, 2011 for \$41,254. The property was in poor condition. All the plumbing fixtures had been removed. The waste pipe had also been removed and there was raw sewage in the basement. The back door had been kicked in and four or five windows were broken. The house was also 7 ½ inches off level which was very expensive to repair. *Schafer testimony.*
- c. The MLS reports may list improvements that will be made to the house, but have not yet been completed. In addition, the Respondent should not be assessing the property based on the listing because it is not a recognized approach to value property. The listing has nothing to do with the value of the property. *Schafer testimony.*
- d. Mr. Schafer testified that under cost approach, the Petitioner would have been better off tearing down the structure. He based this on his personal knowledge of the property. *Schafer testimony.*
- e. Under the sales-comparison approach, the Petitioner argued that it presented multiple comparables that showed houses of similar condition, similar, size, and similar age valued between \$15,000 and \$40,000.¹ *Schafer testimony.*
- f. The Petitioner argued that under the income capitalization approach, the value of the property would be \$0, because no income could be generated because the property was legally uninhabitable. Mr. Schafer testified that the health department would not let a resident live in the property because raw sewage was pouring directly into the basement. *Schafer testimony.*

¹ Although unclear from the record, it appears that the Petitioner is referring to evidence submitted to the PTABOA. The hearing instructions that accompanied the Notice of Hearing state: "Materials submitted at the PTABOA hearing will not be made a part of the IBTR's record unless submitted to the IBTR."

- g. The Petitioner also argued that because it purchased the property for resale, it believed improvements remain inventory until the property sells and a market value is established. According to the Petitioner, this was akin to a baker baking a loaf of bread to sell. In addition, the Petitioner testified that developers are not required to pay taxes on improvements made to vacant land. The Petitioner argued that this was a violation of equal protection, due process, and the Federal and State constitutions. *Schafer testimony.*
- h. Finally, the Petitioner argued that because primary residences have a 1% tax cap, while all other residential property is capped at 2%, it is paying more taxes as soon as it purchases a house. The Petitioner questioned whether a property that is uninhabitable should be considered a residence. *Schafer testimony.*

18. Summary of the Respondent's case:

- a. The October 4, 2010, MLS report states, "The seller has spent several thousand dollars replacing vinyl siding, new roof, new windows, furnace and new exterior deck. Exterior is in excellent condition. Interior still requires some upgrades." The Respondent argued that Mr. Schafer was the listing agent for the property and must have done his due diligence to have that information. *Metz testimony; Resp't Ex. 3.*
- b. The Petitioner purchased the property on October 27, 2011 for \$41,254. It later listed the property for \$75,900. In 2013, presumably after making some improvements to the property, the Petitioner listed the property for \$159,000. *Metz testimony; Resp't Ex. 4, 5.*
- c. The assessed value of the property for 2013 adequately recognized the condition of the property. The assessor's office does not go through the MLS looking for values. *Metz testimony.*

Analysis

19. The Petitioner failed to establish a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:

- a. 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 by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value.

MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

- b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2013 assessment was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. The Petitioner contends the property should be considered inventory. The subject improvements do not fall within the statutory definition of inventory because only personal property qualifies as inventory. A home is generally considered real property. *See* Ind. Code. § 6-1.1-1-15 (defining real property as, among other things, "a building or fixture situated on land located within this state.")²
- e. To the extent the Petitioner's appeal is a constitutional challenge, the Board can offer no remedy. As an administrative agency, the Board lacks the power to declare a statute unconstitutional. *See Bielski v. Zorn*, 627 N.E.2d 880 at 88 (Ind. Tax Ct. 1994) ("Allegations that a statute is unconstitutional are matters solely for judicial determination.") The Petitioner also appears to argue that it should receive an exemption for the service it provides to the community. If the Petitioner believes its property to be exempt, it may seek an exemption under Ind. Code § 6-1.1-10. Because the Petitioner did not follow the procedures necessary to apply for an exemption, we can offer no relief.
- f. The Petitioner contends the assessed value should be reduced to the 2011 purchase price trended to the assessment date. The Board finds the 2011 purchase price too far removed from the 2013 assessment date to be probative. *See Jon & Linda Knecht v. Kosciusko County Assessor* at 10 (IBTR January 24, 2014). (Finding that a purchase price more than one year removed from the valuation date is not probative when not properly related to the valuation date.) Nor did the Petitioner present any reliable evidence to trend or relate the purchase price to the relevant assessment date as required by *Long*. In addition, the Petitioner failed to account for any improvements made to the property. While Mr. Schafer claimed that listing information may include items that are not yet finished on the property, a comparison of the pictures of the kitchen on Respondent Ex. 4, listing date 11/01/11, and Respondent Exhibit 5, listing date 09/09/12, show significant improvements to the kitchen.
- g. The Petitioner briefly argued that the property should receive a valuation of \$0 using the income capitalization approach because the property was uninhabitable. However, it failed to point to any authority for this proposition. We decline to make a

² As a residence is an improvement, I.C. § 6-1.1-4-12 (the "developer's discount") does not apply.

categorical determination that any residential property that is not legally inhabitable should be valued at \$0.

- h. Finally, we note that the Petitioner has not provided any other reliable evidence of value. While it argued that sales comparables showed the value of the property, it did not present those comparables, nor did it provide any analysis of them. Likewise, while the Petitioner argued that the subject property's assessment should be reduced under the cost approach, it failed to provide any reliable evidence or meaningful analysis to support this. We find the Petitioner has failed to make a prima facie case for any reduction in the assessment.
- i. Where the Petitioner has not supported his 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).

CONCLUSION

- 20. The Petitioner failed to establish a prima facie case for a reduction in the assessed value. The Board finds for the Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 assessed value should remain at \$76,800.

ISSUED: August 8, 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 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>>.