

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

Petition No.: 64-004-08-1-5-00003
Petitioners: Brian and Susan Harmon
Respondent: Porter County Assessor
Parcel No.: 64-09-24-408-002.000-004
Assessment Year: 2008

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

Procedural History

1. The Petitioners initiated their assessment appeal with the Porter County Property Tax Assessment Board of Appeals (PTABOA) by written request on April 14, 2008.
2. The PTABOA issued notice of its decision on May 30, 2012.
3. The Petitioners filed a Form 131 petition with the Board on June 5, 2012. They elected the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 2, 2013.
5. Administrative Law Judge Ellen Yuhan (the ALJ) held an administrative hearing on September 4, 2013. Neither she nor the Board inspected the property.
6. Petitioner Brian Harmon, Porter County Assessor Jon Snyder, and Appeals Director John Yanek were sworn as witnesses at the hearing.

Facts

7. The property is a single-family home located at 704 Erie Street in Valparaiso.
8. The PTABOA determined the 2008 assessed value is \$66,800 for the land and \$168,300 for the improvements (total assessed value of \$235,100).
9. The Petitioners did not request a specific value, but claimed it might be \$150,000 or \$160,000.

Contentions

10. Summary of the Petitioners' case:

- a. The actual property does not match the property record card data found on the assessor's website. The assessor shows the finished living area at 2,520 square feet. There is a notation on the property record card that the house is 240 square feet smaller than shown on the property record card, but the house is actually 413 square feet smaller.
 - The living room ceiling is vaulted so there is only a partial second floor. This open area is 217 square feet.
 - The first-floor room at the northwest corner that measures 165 square feet is unfinished and is only used for storage.
 - There is only attic area along the upstairs hallway, which is 27 square feet.
 - The attic area in the northwest room is unfinished and only used to store clothing. This area is 104 square feet.There is no way to come up with the correct numbers without an explanation or an interior inspection. *Harmon testimony; Pet'r Ex. 1, 6, and 9.*
- b. Calculating the room sizes results in an even smaller area of living space. Based on the room sizes, the total finished area is 1281.5 square feet on the first floor and 493 square feet on the second floor. It is much less than the 2,520 square feet listed on the property record card. *Harmon testimony; Pet'r Ex. 9.*
- c. The house is listed as 2 ½ stories, but it is only 1 ½ stories. The second floor ceiling height is eight feet only in the middle and on one side of the second floor. It should not be treated the same as the full, finished rooms on the first floor. *Harmon testimony; Pet'r Ex. 6 and 9.*
- d. There are only three bathrooms. The assessor lists two full baths and two half baths. *Harmon testimony; Pet'r Ex. 8 and 9.*
- e. The property record card shows the basement is 1,000 square feet, but the basement is only under the new addition, which is 610 square feet. The other side has a large crawl area. On that side there is a fruit cellar, called a Michigan basement. It has no true walls. In the past this area collapsed and had to be shored up. No one could call it a basement. These two areas are not connected. *Harmon testimony; Pet'r Ex. 8 and 9.*
- f. Contrary to the Respondent's testimony, the Petitioners did not build an \$80,000 addition indicated on the building permit. Rather, they had the addition framed and then had to finish it themselves because they fired the builder. The addition was never built the way it was intended. As a result, the house is falling apart. The house is not a year 2000 construction. *Harmon testimony.*

- g. The assessor shows the neighborhood life cycle stage as static, but this neighborhood is changing. Many houses have gone from owner-occupied to rentals. The neighbor's house is deteriorating. Only one owner-occupied house on this block is in good shape. About three or four years ago, some property owners petitioned the city to designate the neighborhood as a historical area to help with the upkeep of the houses. The initiative, however, fell apart. Now the neighborhood is in worse shape than before. *Harmon testimony; Pet'r Ex. 4, 5, 7, and 9.*
- h. The Petitioners' property would be hard to sell because it is quirky. The best estimate of value is approximately \$150,000 or \$160,000. The house across the street was a HUD house that sold for \$1. The house next door sold for about \$100,000. It is older. The Petitioner's house and the house next door are both 1 ½-story houses. The house next door has a finished upstairs, a basement and a garage. The subject property, however, is probably nicer and has an extra lot. *Harmon testimony.*
- i. The properties that the Respondent relied on (300 Evans, 410 Franklin, and 258 Plum) are not in the same district as the subject property. The house at 202 Michigan is one of the finest houses in Valparaiso. It is brick and built in 1920. The house at 702 Chicago listed for \$210,000. Only one of the assessor's purported comparables was built in 1880. And contrary to the assessor's opinion, there is a lot of difference between a home built in 1880 and a home built in 1920. The basements were built differently. A 1920 house has modern beams, but the 1880 house has beams that were hewn with axes. The 1880 house has horsehair plaster, which was out of style in 1920. The plaster is falling down in the subject property. Consequently, the Petitioners have to try to save it or tear it all out and start over. The Petitioners are working on the plaster, but it is not finished. *Harmon testimony; Resp Ex. 2.*

11. Summary of the Respondent's case:

- a. The house was measured for the reassessment. Exterior measurements are the standard of measurement throughout the county. This is the first claim that the measurements on this property are incorrect. *Snyder testimony.*
- b. The house is listed as a full two-story on a small portion of the home only. Approximately 416 square feet of the upper level is listed as a half-story because it is not a full wall height. Thus, the 2 ½ story listing means there is a two-story and a half story. The Respondent considered the fact that the wall height is not full wall height. The base rate for the half-story is a lot lower than the base rate for the full story. This point is just descriptive and does not affect value. *Yanek testimony.*
- c. Sales in this neighborhood support the disputed assessed value. The property at 300 Evans Avenue is less than one-tenth mile from the Petitioners' property. That house was built in 1921. The Petitioner's house and that house are similar in quality. This comparable sold for \$110 per square foot in November 2007. *Yanek testimony; Resp Ex. 2.*

- d. The house at 702 E. Chicago is one block south of the Petitioners' property and was built in 1920. It sold in August 2007 for \$118 per square foot of living space. *Yanek testimony; Resp Ex. 2.*
- e. The property located at 202 Michigan sold for \$287,000 in August 2007. This house is similar to the Petitioners' house and is comparable in size. It was built in 1910 and sold for \$94 per square foot. *Yanek testimony; Resp Ex. 2.*
- f. The property at 410 Franklin is seven blocks from the subject property, but it is considered the same neighborhood for assessment purposes. This house was built in 1880 and sold in April 2007 for \$83 per square foot. *Yanek testimony; Resp Ex. 2.*
- g. The property located at 258 Plum Street has a home built in 1924. It is similar in quality, but slightly smaller than the subject property. It sold for \$84 per square foot. *Yanek testimony; Resp Ex. 2.*
- h. The average sale for the five homes is \$98 per square foot. The Petitioners' property is assessed at \$93 per square foot. *Yanek testimony.*
- i. It could be argued that the Petitioners' home is actually newer than an original 1920's home. Records indicate a 1,200 square-foot addition was added much later. There is a building permit for an \$80,000 addition in 1999/2000. *Yanek testimony.*
- j. The Petitioners' photographs are not dated and do not necessarily represent the condition of the property for the assessment date. *Snyder testimony; Yanek testimony.*

Record

- 12. The official record contains the following items:
 - a. Petition for Review Assessment (Form 131),
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Photograph of the vaulted ceiling in living room,
Petitioner Exhibit 2 – Photograph of the northwest room on the first floor,
Petitioner Exhibit 3 – Photograph of the northwest room on the first floor,
Petitioner Exhibit 4 – Photograph of 701 Chicago Street,
Petitioner Exhibit 5 – Photograph of 701 Chicago Street,
Petitioner Exhibit 6 – Photocopy of floor plan for 704 Erie Street,
Petitioner Exhibit 7 – Page 1 of the subject property record card,
Petitioner Exhibit 8 – Page 2 of the subject property record card,
Petitioner Exhibit 9 – Petitioners' issues,

Respondent Exhibit 1 – Letter from the Porter County Assessor’s office dated April 5, 2011, copy of the envelope for proof of mailing, and copy of the Form 115,

Respondent Exhibit 2 – Multiple Listing Service (MLS) information for 300 Evans Avenue, 702 E. Chicago, 202 Michigan, 410 N. Franklin, and a property record card for 258 Plum Street,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of hearing, dated August 2, 2013,

Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

13. The Respondent objected to the photographs of the subject property because they were not dated and may not accurately represent the condition of the property on March 1, 2008. This objection goes to the weight of the evidence, not the admissibility. The ALJ overruled the objection and admitted the photographs into the record.
14. The Petitioners objected to Respondent Exhibit 2 because the properties are newer construction. Again, the objection goes to the weight of the evidence. The ALJ overruled the objection and admitted Respondent Exhibit 2.

Burden of Proof

15. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving an 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 Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

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.

16. In this case, the assessed value decreased from 2007 to 2008. Therefore, Ind. Code § 6-1.1-15-17.2 does not apply. The Petitioner has the burden of proof.

Analysis

17. The Petitioners failed to make a prima facie case for any assessed value change.
- a. Real property is assessed based on "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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. Either party is permitted to offer evidence relevant to market value-in-use to sustain or rebut that presumption. 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. MANUAL at 5.
 - b. A taxpayer does not rebut the presumption that an assessment is correct by simply contesting methodology. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show the assessment does not accurately reflect market value-in-use. *Id.*
 - c. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the 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). For the 2008 assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
 - d. The Petitioners primarily argue that the Assessor misapplied the Guidelines. They claim measurements are wrong, the number of stories is wrong, the number of bathrooms is wrong, the basement area is wrong, the condition rating is wrong, and the neighborhood life cycle is wrong. Indeed, some of the data regarding the subject property may be wrong. Some of the Petitioner's claims, however, would fail based on a strict application of the Guidelines. For example, exterior measurements are to be used, not interior measurements. But more importantly, the Petitioners failed to present any evidence to show the impact of any erroneous data on value. And to repeat, claims based on strict application of the Guidelines are insufficient to rebut the presumption that the assessment is correct. *O'Donnell*, 854 N.E.2d at 95; *Eckerling*, 841 N. E. 2d at 678. *To obtain any change to their assessment, the Petitioners needed to show the assessment is not accurate market value-in-use and offer probative evidence regarding a more accurate value.*

- e. The Petitioners established that a HUD property across the street sold for a \$1. Another neighboring HUD home sold for approximately \$100,000. But the Petitioners failed to establish a meaningful basis for comparing these properties with their own or to account for any ways the properties may differ. Accordingly, these sales lack probative value for this case. *See Long*, 821 N.E.2d at 471 (finding that sales data lacked probative value where taxpayers did not compare the characteristics of the subject property to those of the sold properties or explain how differences affected the relative market values-in-use).
- f. The Petitioners did not present a prima facie case for a reduction in assessed value. Where the Petitioner has not supported its claims 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

- 18. The Petitioners failed to establish a prima facie case. Therefore, the Board finds for the Respondent.

Final Determination

- 19. In accordance with the above findings of fact and conclusions of law, the 2008 assessed value must remain unchanged.

ISSUED: October 28, 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>>.