

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

Petition: 72-008-15-1-5-00159-15
Petitioners: Thomas Gayle & Carolyn Jane Leisure
Respondent: Scott County Assessor
Parcel: 72-04-24-110-001.010-008
Assessment Year: 2015

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

Procedural History

1. The Petitioners initiated their 2015 assessment appeal with the Scott County Assessor on June 27, 2015.
2. On September 25, 2015, the Scott County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.
4. The Board issued a notice of hearing on March 29, 2016.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on May 11, 2016. She did not inspect the property.
6. Thomas Leisure appeared *pro se*. County Assessor Diana Cozart and Chief Deputy Assessor Jennifer Binkley appeared for the Respondent. Aaron Shelhamer and Fred Ramoni were witnesses for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a single-family residence located at 251 North Nicole Lane in Scottsburg.
8. The PTABOA determined the total assessment is \$174,200 (land \$28,300 and improvements \$145,900).

9. The Form 131 claimed the total assessment should be \$167,149 (land \$28,300 and improvements \$138,849).¹

Record

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

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit A:	Summary of the Petitioners' contentions,
Petitioners Exhibit B:	Summary of PTABOA hearing dated October 6, 2015,
Petitioners Exhibit C:	Arguments presented at PTABOA hearing dated September 21, 2015,
Petitioners Exhibit D:	Partial copy of a newspaper article dated June 24, 2015,
Petitioners Exhibit E:	Photographs of the subject property's exterior bricks,
Petitioners Exhibit F:	Photographs of a field, a drain, and a goat farm,
Petitioners Exhibit G:	Estimate from Adams Construction Services, Inc., dated September 29, 2015, for work to be done on the subject property,
Petitioners Exhibit H:	Form 131 with attachments,
Petitioners Exhibit I:	Form 130,
Petitioners Exhibit J:	Aerial photograph of the subject property with several notations.
Respondent Exhibit 1:	Form 131 with attachments,
Respondent Exhibit 2:	Subject property record card,
Respondent Exhibit 3:	Appraisal by Fred Ramoni with an effective date of March 1, 2015.
Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of hearing dated March 29, 2016,
Board Exhibit C:	Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

¹ On their Form 131, the Petitioners requested a total assessment of \$167,049 (land \$28,300 and improvements \$138,849). As noted above, their total assessment request actually equates to \$167,149.

- a) The property's assessment is too high. The assessment increased by 8% from 2014 to 2015. According to several local realtors the increase should be "adjusted down to at most 3.5%," a reasonable amount the Petitioners "would gladly pay." *Leisure argument.*
- b) Several factors negatively affect the property's value. First, a goat farm located across the street "produces an odor affecting the property." According to local assessing officials, the goat farm would be considered when assessing the subject property, but it was not. Further, the Respondent's appraisal does not account for the "odor" from the goat farm. *Leisure testimony; Pet'rs Ex. F, J.*
- c) An unfinished subdivision with small vacant lots is adjacent to the subject property. The development is "on hold," and as a result is "just a field of weeds." *Leisure testimony; Pet'rs Ex. F, J.*
- d) A local newspaper article indicates that an HIV outbreak in Scott County is lowering property values. As a result, county and school budgets are suffering. *Leisure testimony; Pet'rs Ex. D.*
- e) As for the Petitioners' home, structural damages are abundant. The exterior brick and siding is "pushed out," and the roof is leaking. In order to repair the siding, the chimney has to be removed. The estimated cost of repair is \$13,556. In addition, an issue with a culvert causes water to "back up" near the back door. *Leisure testimony; Pet'rs Ex. E, G.*
- f) The Petitioners also examined the 2014 and 2015 assessments for seven properties. These properties experienced assessment increases anywhere from .008% to 3.4%. One property saw a decrease of \$3,600. *Leisure testimony; Pet'rs Ex. C, J.*
- g) Two sales were also analyzed, further indicating property values are "not as high" as the Respondent believes. Specifically, the property labeled "312" was listed for \$279,000 and sold for \$166,000. Additionally, the property labeled "1644" was listed for \$275,000 and sold for \$166,000.² *Leisure testimony; Pet'rs Ex. C, J.*

12. Summary of the Respondent's case:

- a) The property is correctly assessed. The Respondent offered a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal prepared by Fred Ramoni, a certified residential appraiser. He estimated the total value was \$190,000 as of March 1, 2015.³ *Cozart argument; Ramoni testimony; Resp't Ex. 3.*

² The Board infers that when Mr. Leisure uses the term "listed for" he is actually referencing the properties' assessments rather than advertised sale listing.

³ While Mr. Ramoni's indicated value is more than the current 2015 assessment, the Respondent did not request the Board to increase the assessed value.

- b) Mr. Ramoni considered his appraisal a “drive-by” because he did not have access to the interior of the property. Interior amenity information was obtained from the Multiple Listing Service (MLS) and property record cards. Accordingly, he listed the interior features as “average” in condition. *Ramoni testimony; Resp’t Ex. 3.*
- c) Mr. Ramoni utilized five comparable properties in his sales-comparison analysis. The first comparable sale was given the most weight, with support from the second comparable sale. The cost approach and income approach to value were not relevant in this appeal, and thus were not considered. *Ramoni testimony; Resp’t Ex. 3.*
- d) Mr. Ramoni was not aware of the home’s structural problems and therefore did not consider them. He did, however, consider the goat farm’s effect. In considering the farm, he concluded “it is no different than the Wal-Mart; about a similar distance (away), or the other commercial factories just up the road, there is enough of a buffer zone as to where he sits to all of the other things that is not an issue.” *Cozart argument; Ramoni testimony.*
- e) The Petitioners saw a larger increase in their assessment when compared to neighboring properties because their home is newer and less depreciation was applied. The purportedly comparable properties utilized by the Petitioners in their analysis are not located in the same neighborhood. As a result, different neighborhood factors were applied to those properties. *Cozart argument.*

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 recently 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 Respondent accepted the burden, conceding the assessment increased by more than 5% from 2014 to 2015. In fact, the total assessed value increased from \$161,400 to \$174,200. Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2015 assessment is correct.

Analysis

17. The Respondent made a prima facie case that the 2015 assessment was correct.
 - 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 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *O'Donnell*, 854 N.E.2d at 94; *Kooshtard Prop. VI, LCC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Here, the Respondent offered a USPAP-compliant appraisal prepared by Fred Ramoni, a licensed residential appraiser. Mr. Ramoni valued the property at \$190,000 as of March 1, 2015. Mr. Ramoni's final reconciliation of value is based solely on the sales-comparison approach to value. While the Respondent offered additional arguments in support of the assessment, Mr. Ramoni's appraisal alone is enough to establish a prima facie case. The burden therefore shifts to the Petitioners.
 - d) The Petitioners attempted to impeach the appraisal by arguing that Mr. Ramoni failed to consider the structural problems with the home and the proximity to a goat farm. With regard to the problems with the brick and siding, there is at least some validity to the Petitioners' argument. Mr. Ramoni conceded that he did not consider the structural issues. But, while the Petitioners offered the estimated cost to cure the problems, they failed to show a dollar-for-dollar relationship between the cost to cure and a decrease in the market value-in-use. Thus, they failed to show how Mr.

Ramoni's failure to consider the structural issues materially affected his final valuation conclusion.

- e) Mr. Ramoni testified that he *did* consider the goat farm. He concluded that "it is no different than the Wal-Mart; about a similar distance (away), or the other commercial factories just up the road there is enough of a buffer zone as to where he sits to all of the other things that is not an issue." Thus, Mr. Ramoni concluded no adjustment was necessary. As an experienced, licensed appraiser, Mr. Ramoni is well-qualified to make that determination.
- f) While the Petitioners point to issues such as structural damage, a goat farm, an unfinished subdivision, a local HIV outbreak, and a damaged culvert, these issues fail to prove the property's market value-in-use. Additionally, they fail to prove the 8% increase in their assessment is too high. Many, if not all of these issues, certainly could have a negative effect on value. But more is required of a party than simply listing problems. The Petitioners needed to offer evidence of the property's market value-in-use. Conclusory opinions that the assessment is too high are insufficient. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003)(stating that conclusory statements are not probative evidence); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- g) The Petitioners did attempt to offer some market-based evidence by offering a comparison of seven other assessments. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided these comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1).
- h) The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales-comparison approach. *Id*; see also *Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected the value).
- i) Here, the Petitioners did not even attempt to argue that the properties they chose for their analysis are comparable to the subject property. In fact, they did not dispute the Respondent's argument that their purportedly comparable properties are located in different neighborhoods. Moreover, the Petitioners seem more concerned with comparing increases in assessments rather than actual values. Again, the amount an assessment has increased or decreased from the previous year is a different question than whether the assessment is correct.

- j) The Petitioners also attempted to introduce evidence of two sales. Mr. Leisure referred to the properties as “312” and “1644” and that both sold for \$166,000. The Petitioners’ offering here is too vague to refer to it as a “sales-comparison approach.” Mr. Leisure made no attempt to argue that the properties he considered were comparable to the subject property. Further, he failed to make any adjustments to account for differences between the properties. Mr. Leisure merely offered his conclusory opinion that the subject property’s assessment is too high. This falls short of the type of evidence contemplated by *Long*. As such, the Petitioners’ evidence lacks probative value.
- k) Here, the Respondent made a prima facie case that the Petitioners failed to rebut. Additionally, the Respondent offered sufficient evidence to support an increase in the 2015 assessment. However, the Respondent did not expressly request that the assessment be increased. Thus, we infer that the Respondent was only seeking to have the current assessment sustained.

Conclusion

18. The Board finds for the Respondent. The 2015 assessment will not be changed.

Final Determination

In accordance with these findings and conclusions, the 2015 assessment will remain at \$174,200.

ISSUED: August 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>>.