

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

Petition No.: 15-026-12-1-5-00131
Petitioner: MLP Services LLC
Respondent: Dearborn County Assessor
Parcel: 15-07-14-204-122.000-026
Assessment Year: 2012

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Dearborn County Assessor on October 19, 2012.
2. The Dearborn County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on January 16, 2013, denying the Petitioner any relief.
3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on February 22, 2013. The Petitioner elected the Board's small claims procedures.
4. The Board issued a notice of hearing on February 7, 2014.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on April 9, 2014. She did not inspect the property.
6. Mark Pence appeared as the authorized representative for the Petitioner. Attorney Andrew Baudendistel appeared for the Respondent. Mr. Pence, County Assessor Gary Hensley, PTABOA President Mark Neff, and Jim Davis were sworn as witnesses.

Facts

7. The property under appeal is a residential property located at 416 Elm Street, in Lawrenceburg.
8. The PTABOA determined the total assessment is \$111,900 (land \$19,000 and improvements \$92,900).
9. The Form 131 claimed the total assessment should be \$65,199. At the hearing the Petitioner requested a total assessment of \$44,000.

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:

Petitioner Exhibit 1:	Dearborn County mortgage foreclosure record for the subject property,
Petitioner Exhibit 2:	Tax deed for subject property,
Petitioner Exhibit 3:	Letter from Lawrenceburg Building Inspector to the Petitioner, dated February 23, 2012,
Petitioner Exhibit 4:	Dearborn County quiet title record for the subject property,
Petitioner Exhibit 5:	Photographs of the subject property,
Petitioner Exhibit 6:	Comparative Market Analysis (CMA) for the subject property completed by Julie Parker,
Petitioner Exhibit 7:	Appraisal of the subject property prepared by Matt Johnson with an effective date of March 1, 2012,
Petitioner Exhibit 8:	Real estate contract for the subject property,
Petitioner Exhibit 9:	Subject property record card,
Petitioner Exhibit 10:	Beacon webpage for the subject property,
Petitioner Exhibit 11:	Notification of Final Assessment Determination (Form 115) for 2013 assessment year,
Petitioner Exhibit 12:	Respondent's appraisal of the subject property prepared by Jeffrey Thomas with an effective date of March 1, 2012,
Petitioner Exhibit 13:	Multiple Listing Service (MLS) listings, property record cards, and Beacon website reports of comparable properties utilized in the appraisal presented by the Respondent.
Respondent Exhibit 1:	Appraisal of subject prepared by Jeffrey Thomas with an effective date March 1, 2012.

Board Exhibit A: Form 131 Petition with attachments,
Board Exhibit B: Notice of Hearing dated February 7, 2014,
Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a) The subject property is assessed too high. The Petitioner presented an appraisal prepared by Matt Johnson, a certified appraiser. Mr. Johnson valued the subject property at \$44,000, as of March 1, 2012. Mr. Johnson certified that he performed the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Pence argument; Pet'r Ex. 7.*
- b) The Petitioner purchased the property at a 2010 tax sale for \$2,655. However, the Petitioner went on to concede the property should be assessed higher than that. The property was in very poor condition. The home was in such disrepair the county building inspector sent the Petitioner a letter indicating repair was necessary. In June of 2012 the Petitioner began repairing and improving the property. *Pence testimony; Pet'r Ex. 1, 2, 3, 4, 5.*
- c) Mr. Johnson did not view the property in the condition it was in on March 1, 2012. He did not inspect the property until February 18, 2013, when the Petitioner had completed some of the repairs. However, he estimated the property still required an additional \$30,000 in repairs. *Pence argument; Pet'r Ex. 7.*
- d) The Petitioner also submitted a market analysis prepared by Julie Parker, an Indiana licensed realtor. Utilizing the sales comparison approach, Ms. Parker valued the subject property at \$65,199 as of March 1, 2012. *Pence testimony; Pet'r Ex. 6.*
- e) After repairs were complete, the Petitioner sold the subject property on contract for \$80,000, on June 29, 2013. Because the Petitioner was financing the property, the contract sale was higher than a normal sale would have been. *Pence argument; Pet'r Ex. 8, 9, 10.*
- f) Finally, the Respondent's appraisal has flaws that inflate the value. The Respondent's appraiser never viewed the subject property in 2012, and only an exterior inspection was completed in March 2014. This exterior inspection was completed after the house had been extensively repaired, sold on contract, and was occupied by the new owner. The appraiser, therefore, erroneously lists the condition of the property as average to good. Further, the appraiser's choice of purported comparable properties is flawed. Specifically, two properties located on High Street were purchased by the City of Lawrenceburg, and these properties were part of a group purchased with other properties. This would not be a typical market transaction. *Pence argument; Pet'r Ex. 12, 13; Resp't Ex. 1.*

12. Summary of the Respondent's case:

- a) The subject property's March 1, 2012, value should be \$86,000. The Respondent presented an appraisal completed by Jeffrey D. Thomas, a certified appraiser. Mr.

Thomas certified that he prepared the appraisal in accordance with USPAP. He performed an exterior only appraisal. *Hensley testimony; Resp't Ex. 1.*

- b) Based on the Petitioner's contract sale in 2013, the Respondent's appraisal value is more in line with the value of the subject property. Similarly, prior to the Petitioner's purchase of the property from a tax sale, the judgment on the mortgage foreclosure was close to \$130,000. *Baudendistel argument; Hensley argument.*
- c) Regarding the two comparable properties located on High Street, they appear to be averaged into the ratio study and are assumed to be reasonable. A ratio study is performed every year to obtain a percentage of increase or decrease to the neighborhood properties. *Davis testimony.*

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 section 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 section 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 is effective March 25, 2014, and has application to all appeals pending before the Board.
- 16. Here, the parties agreed that the 2012 assessment represented only a 2% increase from the 2011 level. Further, nothing in the record indicates any appeal resulted in a reduction for the 2011 assessment. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

Analysis

17. 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.
18. 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 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).
19. The parties to this appeal both offered certified appraisals done in conformance with USPAP standards and estimating the subject property's market value-in-use as of March 1, 2012. The Board must weigh the evidence to determine a correct assessment.
20. The Petitioner offered both the appraisal from Mr. Johnson, a licensed appraiser, and a comparative market analysis from Ms. Parker, a licensed realtor. The Board will first address the comparative market analysis. Granted, the analysis values the subject property as of March 1, 2012, and contains information that would normally be in a certified appraisal, however the analysis is lacking in relevant detail. For example, the Johnson appraisal indicates numerous adjustments made to the comparable properties to adjust for differences between those properties and the subject property. The Parker analysis shows no such adjustments. Ms. Parker only includes listings for the purportedly comparable properties with a spreadsheet showing the average and the median sales prices. Ms. Parker does not make any statement as to how any of these purportedly comparable properties are similar to the subject property. Further, it is not evident when Ms. Parker prepared her report or whether she took the property's condition on March 1, 2012, fully into account. For these reasons the Board does not find Ms. Parker's analysis to be probative evidence of the value as of March 1, 2012.
21. Turning to both parties appraisals, both were conducted by licensed appraisers and prepared in accordance with USPAP. Both appraisals valued the subject property using the sales comparison approach and both included valid adjustments. Granted, both appraisers valued the property as of March 1, 2012, the difference between the two appraisals is the condition of the subject property when it was inspected. The Petitioner points out that his appraiser, Mr. Johnson, did not inspect the subject property until after the repair process had commenced on February 18, 2013. However, repairs were still progressing and the property was still dilapidated. On the other hand, the Respondent's appraiser, Mr. Thomas, did not view the subject property until March of 2014. When Mr.

Thomas viewed the property the repairs were complete, and in fact the property was occupied by another family.

22. While Mr. Thomas utilized comparable sales from the proper timeframe, he made no adjustments for the extremely poor condition of the subject property. Further, Mr. Thomas acknowledges on the first page of his report that he included the “recent improvements and upgrades” in his value, and that the home’s exterior “appears to be in average-good condition.” The Petitioner, however, submitted sufficient evidence to prove that was not the case. There was no dispute about the fact that the condition of the subject property was worse on March 1, 2012. Because Mr. Thomas did not appraise the subject property based on its condition on March 1, 2012, his valuation opinion carries little, if any, weight in the Board’s determination.
23. On the other hand, Mr. Johnson concluded in his appraisal that the subject property would need an additional “\$30,000 investment to bring the condition of the subject up to similar condition as this comparable.” Furthermore, Mr. Johnson included a “market reaction” adjustment in his appraisal to account for the poor condition of the subject property. Mr. Johnson went on to state that “[B]ecause of the condition of the subject and the fact that the house is in need of substantial investment to make inhabitable, the likely market for this house would be an investor.”
24. The Petitioner did not argue that the purchase of the property from a tax sale in 2010 should be viewed as probative, but it seems to support Mr. Johnson’s opinion of value. Mr. Johnson viewed the property closest to the valuation date and when the property was still in disrepair. On the other hand, Mr. Thomas, as noted above, viewed the property after all repairs had been completed.
25. Mr. Johnson’s appraisal is more persuasive. The weight of the evidence establishes that Mr. Johnson made reasonable adjustments to account for the differences between the condition of the subject property and the comparables. Mr. Thomas’ conclusion about the condition of the subject property and the fact he did not make adjustments to account for condition is far less convincing.
26. The June 2013 contract sale for \$80,000 (after the Petitioner made repairs, improvements, and upgrades) is some evidence that the value on March 1, 2012, would have been something less. Therefore, it provides a little support for the Johnson appraisal.
27. Ultimately, the Board finds Mr. Johnson’s appraisal and its conclusions about the value of the subject property at \$44,000 is more credible than the evidence and argument presented by the Respondent.

Conclusion

28. The Board finds for the Petitioner.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment will be lowered to \$44,000.

ISSUED: October 3, 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 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>>.