

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

Petition No.: 06-019-14-1-5-00036
Petitioners: Anthony M. & Katie A. Merlie
Respondent: Boone County Assessor
Parcel No.: 019-1556132
Assessment Year: 2014

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

Procedural History

1. The Merlies appealed their 2014 assessment to the Boone County Property Tax Assessment Board of Appeals (“PTABOA”), which mailed notice of its determination on October 1, 2014.
2. The Merlies then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under our small claims procedures.
3. On May 12, 2015, we held a hearing through our designated administrative law judge, Dalene McMillen. Neither she nor the Board inspected the property.
4. The following people testified under oath: Anthony Merlie; Lisa Garoffolo, Boone County Assessor; and Dan Spiker.

Facts

5. The property under appeal contains a single-family home located at 30 Catalina Circle in Zionsville.
6. The PTABOA determined the following values:

Land: \$31,500	Improvements: \$205,700	Total: \$237,200.
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7. The Merlies requested the following assessment:

Land: \$31,500	Improvements: \$189,500	Total: \$221,000.
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Record

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

a. A digital recording of the hearing,

b. Exhibits:

Petitioners Exhibit 1: Residential appraisal report prepared by Laura A. Geier of Geier Appraisal Services, Inc., dated March 3, 2013,

Petitioners Exhibit 2: May 31, 2013 sales disclosure form for 10 Catalina Circle in Zionsville,

Petitioners Exhibit 3: August 30, 2013 sales disclosure form for 15 Catalina Circle in Zionsville,

Respondent Exhibit 1: Boone County Appeal Worksheet,

Respondent Exhibit 2: 2014 subject property record card,

Respondent Exhibit 3: Multiple listing sheet for the subject property, dated October 29, 2008,

Respondent Exhibit 4: Exterior photograph of the subject property,

Respondent Exhibit 5: Notice of Preliminary Hearing on Appeal,

Respondent Exhibit 6: Notice of Hearing on Petition – Real Property – Form 114,

Respondent Exhibit 7: Notification of Final Assessment Determination – Form 115,

Respondent Exhibit 8: The Board’s hearing notice,

Respondent Exhibit 9: Assessor’s comparative market analysis,

Board Exhibit A: Form 131 petition,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden of Proof

9. 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 its correct assessment should be. If the taxpayer makes a prima facie case, the assessor must offer evidence to impeach or rebut the taxpayer’s evidence.

10. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment for the same property, the assessor has the burden of proving that the assessment under appeal is

correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase" I.C. § 6-1.1-15-17.2(d).

11. Neither circumstance applies here. The parties agreed that the Merlies did not appeal the property's 2013 assessment. They further agreed that the assessment did not increase by more than 5% between 2013 and 2014. Thus, the Merlies have the burden of proof.

Summary of the Parties' Contentions

12. The Merlies' case:

- a. The assessment is too high in light of an appraisal report prepared by Laura Geier, an Indiana licensed residential appraiser. Ms. Geier prepared her report for a mortgage lender prior to the Merlies refinancing a loan. She certified that she appraised the property and prepared her report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). She estimated the property's value at \$221,000 as of March 1, 2013. *Merlie testimony; Pet'r Ex. 1.*
- b. Ms. Geier relied on the sales-comparison approach to value. She did not develop the cost or income approaches because of the home's age and the lack of data to support a gross rent multiplier. She used five sales from within a few blocks of the subject property. She adjusted the sale prices to account for various relevant ways in which the properties differed from the subject property. Her gross adjustments ranged from 4.2% to 12.3% of the sale prices, and her net adjustments ranged from .4% to 3% of those sale prices. The adjusted sale prices ranged from \$214,700 to \$238,000. She considered all of the sales and settled on the midrange for her estimate of the value. *Pet'r Ex. 1.*
- c. According to Mr. Merlie, the Merlies have not made any significant improvements to their home since Ms. Geier appraised it. *Merlie testimony.*
- d. The Merlies also offered sales disclosure forms for two sales from their neighborhood—a May 31, 2013 sale for \$227,000, and an August 30, 2013, sale for \$193,000. *Pet'r Exs. 2-3.*

13. The Assessor's case:

- a. The Assessor offered her own comparative market analysis. She used sales of three two-story homes with basements from the subject property's neighborhood, Village Walk. The properties sold between March 15, 2013, and June 3, 2013, for prices ranging from \$102 /sq. ft. to \$126/sq. ft., with an average of \$112/sq. ft. That translates to a value of \$261,600 for the subject property. According to the

Assessor's witness, Dan Spiker, Village Walk is a "pretty homogeneous" market. The homes are roughly the same size and were built around the same time. While the Assessor's comparative market analysis focuses on the three homes with basements, 13 homes sold within the time window for 2014 assessments. The average sale price supports the subject property's assessment. *Garoffolo testimony; Spiker testimony; Resp't Exs. 1, 9.*

- b. By contrast, Ms. Geier underestimated the value. Two appraisers from the PTABOA reviewed her appraisal and found that she valued the basement at only \$28/sq. ft, which they believed was too low. She also adjusted her comparable sale prices for "everything," and valued the property as of March 1, 2013, rather than March 1, 2014.¹ Given those facts, the assessment is more accurate than Ms. Geier's appraisal. *Garoffolo testimony; Spiker testimony.*

Analysis

14. The Merlies made a prima facie case for reducing their assessment. We reach this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as "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). Evidence in an assessment appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See id; see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b. The Merlies offered a USPAP-compliant appraisal estimating the subject property's value at \$221,000 as of March 1, 2013. The appraiser, Ms. Geier, arrived at her opinion using the sales-comparison approach—a generally recognized valuation method. Her appraisal makes a prima facie case for changing the assessment to \$221,000.
 - c. The Assessor claimed that two PTABOA members thought Ms. Geier undervalued the basement. Those unsupported hearsay statements have no probative value; the Assessor did not even identify the PTABOA members much less explain how they

¹ Ms. Geier measured the home at 2,256 square feet. The property record card shows 2,336 square feet. *Pet'r Ex. 1; Resp't Ex. 2.*

- reached their conclusions. Mr. Spiker's claim that Ms. Geier adjusted her comparable properties' sale prices "for everything" is similarly unpersuasive. He did not offer anything to show that the characteristics for which Ms. Geier adjusted were unrelated to value in the market. And her overall adjustments were relatively modest.
- d. We agree that Ms. Geier valued the property as of March 1, 2013, rather than as of the relevant March 1, 2014 valuation date that applies to 2014 assessments. And parties generally must explain how their evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Absent evidence to the contrary, however, we have recognized that proof of a property's value within a year of the relevant valuation date bears at least some relationship to its value as of that valuation date. The Assessor offered nothing to dispute that relationship. Indeed, she used sales from March and April of 2013 in her own comparative market analysis without adjusting the sale prices for differences in market conditions.
 - e. We also give little weight to the Assessor's comparative market analysis. She simply took the average sale price for other Village Walk properties. She did little to compare those properties to the subject property beyond offering Mr. Spiker's broad testimony that homes in the neighborhood were similarly sized and built around the same time. And she did not even attempt to account for any relevant differences. Her analysis therefore falls well short of what is required for comparative sales data to carry probative weight. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (holding that taxpayers' comparative sales data lacked probative value where they failed to compare relevant characteristics or explain how relevant differences affected value).

Conclusion

- 15. The Merlies offered probative evidence showing that their property's true tax value was \$221,000, which is less than the amount for which it was assessed. The Assessor failed to rebut or impeach the Merlies' evidence. We therefore find in the Merlies' favor and order that the 2014 assessment be changed to \$221,000.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessment should be changed.

ISSUED: September 25, 2015

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>>.