

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

Petition: 18-032-12-1-5-00003
Petitioners: John E. Mogush & Kay G. McNitt
Respondent: Delaware County Assessor
Parcel: 18-10-10-377-004.000-032
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 Petitioners initiated their 2012 assessment appeal on October 26, 2012.
2. On August 15, 2013, the Delaware 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 on September 25, 2013. They elected the Board's small claims procedures.
4. The Board issued a notice of hearing on November 26, 2014.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on January 27, 2015. She did not inspect the property.
6. John E. Mogush and Kay G. McNitt appeared *pro se*. Deputy County Assessor Kelly Hisle appeared for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a single-family home located at 9101 West Lonebeech Drive in Muncie.
8. The PTABOA determined the total assessment is \$117,200 (land \$17,600 and improvements \$99,600).
9. The Petitioners requested a total assessment of \$109,800 (land \$16,400 and improvements \$93,400).

Record

10. The official record for this matter contains the following:

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

- Petitioners Exhibit 1: Form 131 with attachments,
- Petitioners Exhibit 2: Petitioners' contentions,
- Petitioners Exhibit 3: Form 130 with attachments,
- Petitioners Exhibit 4: Subject property record card and property record card for 9105 West Lonebeech Drive,
- Petitioners Exhibit 5: Form 115,
- Petitioners Exhibit 6: "Preservation can reinvent community" article from *The Star Press*,
- Petitioners Exhibit 7: "Muncie must seek to leverage funding for development" opinion article from *The Star Press*,
- Petitioners Exhibit 8: Advertisement in *The Star Press* for October 1, 2013, tax sale,
- Petitioners Exhibit 9: Yorktown Ordinance 704 – Residential Tax Abatement Program,
- Petitioners Exhibit 10: Legal notices for Sheriff's sales and newspaper article from *The Star Press* "Local unemployment just won't go down,"
- Petitioners Exhibit 11: "Local jobless rate above 10 percent - again" article from *The Star Press*,
- Petitioners Exhibit 12: "Study says Ind. incomes are decreasing" article from *The Ball State Daily News*,
- Petitioners Exhibit 13: "Consultant answer for county budget shortfalls" article from *The Star Press*,
- Petitioners Exhibit 14: "47304 Market Overview" from Zillow.com,
- Petitioners Exhibit 15: Monthly statement from AWHR regarding water heater lease dated January 3, 2015, and e-mail from John Mogush to Angie Priddy dated November 16, 2012.

- Respondent Exhibit 1: Subject property record card,
- Respondent Exhibit 2: Property record card for 8200 West Pine Tree Lane,
- Respondent Exhibit 3: Property record card for 1206 North Buckeye Road,
- Respondent Exhibit 4: Property record card for 8501 West Thorn Tree Road,
- Respondent Exhibit 5: Property record card for 8412 West Thorn Tree Road.

- Board Exhibit A: Form 131 with attachments,
- Board Exhibit B: Hearing notice dated November 26, 2014,
- Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

- a) The subject property is assessed too high. According to the Respondent, the assessment was the result of a "state-wide annual trending of real property." Properties should be compared to those in the same "region" rather than those in "Carmel, Westfield, or Indianapolis." *Mogush argument; Pet'rs Ex. 5.*
- b) There is an inconsistency between market values and assessed values in Delaware County. In an effort to prove this, the Petitioners pointed to the sale of a neighboring property. This property sold in June of 2011 for \$57,000, or \$25.35 per square foot. It was assessed at \$110,900, or \$48.89 per square foot. Prior to the sale, this property sat vacant for four years. Not only is this property larger than the subject property, it has two barns and a patio surrounding a "filled-in swimming pool." *Mogush argument; Pet'rs Ex. 4.*
- c) The area around the subject property is "economically distressed." There are more than 4,000 abandoned properties in the vicinity of the subject property. In 2013 there were 1,930 tax sale listings. While the local government is trying to fix the problem, there are drawbacks to those efforts. For example, an effort is underway to purchase and rehabilitate houses. However, this will create competition for individuals attempting to sell their homes on the open market. *Mogush argument; Pet'rs Ex. 6, 7, 8, 9.*
- d) Unemployment continues to be high in the Muncie area. In July 2013, the unemployment rate in Delaware County was 10.3%. The county "is now poised to borrow money from commercial banks to pay bills." *Mogush testimony; Pet'rs Ex. 10, 11, 12, 13.*
- e) These issues have resulted in a depressed housing market. According to market statistics, there was a continuous decline in housing prices from 2005 to 2011. Property taxes, however, continued to rise. Currently, housing prices have only rebounded to 2008 levels. *Mogush testimony; Pet'rs Ex. 14.*
- f) Finally, the Petitioners currently lease their water heater, and "pay a monthly Indiana tax." The county assessor "considers it a part of the assessment." Thus, "in effect they are being taxed twice." *Mogush testimony; Pet'rs Ex. 4, 15.*

12. Summary of the Respondent's case:

- a) The subject property is assessed correctly at \$62.01 per square foot. In an effort to prove her contention, the Respondent analyzed four sales that occurred in the subject property's neighborhood between January 1, 2011, and February 28, 2012. *Hisle argument; Resp't Ex. 2, 3, 4, 5.*
- b) The first property, located at 8200 West Pine Tree Lane, sold for \$113,000, or \$64.65 per square foot, on January 12, 2011. This home measures 1,748 square feet while the subject property measures 1,890 square feet. This property has a concrete patio instead of an enclosed frame porch. This property also has two-and-a-half bathrooms, in comparison to the subject property only having two. The lot sizes are similar. This property has a 0.44 acre lot. The subject property has 0.40 acres. *Hisle testimony; Resp't Ex. 2.*
- c) The property located at 1206 North Buckeye Road sold for \$113,500, or \$58.15 per square foot, on February 7, 2011. The house has 1,952 square feet and on a 0.42 acre lot. This property has a wood deck and two full bathrooms. Both properties have a fireplace and central air conditioning. *Hisle testimony; Resp't Ex. 3.*
- d) The property at 8501 West Thorn Tree Road sold for \$164,400, or \$75.65 per square foot, on May 24, 2011. This house has 2,168 square feet and is situated on 0.44 acres. This home has a wood deck, fireplace, two full bathrooms, and central air conditioning. *Hisle testimony; Resp't Ex. 4.*
- e) Finally, the property located at 8412 West Thorn Road sold for \$135,000, or \$79.50 per square foot, on August 23, 2011. This home has 1,698 square feet. The property has an enclosed frame porch, wood deck, fireplace, central air conditioning and two full bathrooms. *Hisle testimony; Resp't Ex. 5.*
- f) While the subject property is assessed at \$62.01 per square foot, the average sale price of the four comparable properties is \$69.49 per square foot. Thus, the assessment is not excessive. *Hisle 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 is effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the Petitioners argue that the burden should shift to the Respondent because the 2012 assessment increased by more than 5% over the 2011 level. The Respondent did not dispute the Petitioners’ contention. The assessment went from \$109,800 in 2011 to \$117,200 in 2012. This resulted in a 6.7% increase. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessment is correct.

Analysis

17. The Respondent failed to make a prima facie case that the 2012 assessment is correct.
 - 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 a similar user, from the property." 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. *Id.* Assessing officials primarily use the cost approach. 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. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed 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 2012 assessment, the date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

- c) Here, the Respondent attempted to prove that the subject property was correctly assessed by offering sales information for four purportedly comparable properties. In doing so, the Respondent essentially relies on a sales comparison approach to establish the market value-in-use of the property. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value.”); *see also*, *Long*, 821 N.E.2d 466, 469.
- d) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e) Ms. Hisle did offer some details about the properties, but she failed to explain or account for any differences in the properties and how those differences affected the respective values. She simply calculated an average selling price per square foot of the four purportedly comparable properties and concluded that the subject property was correctly assessed. Her comparison lacked the type of analysis contemplated by *Long*. Therefore, the sales data presented lacks probative value.
- f) Because the Respondent failed to offer enough probative evidence to show the market value-in-use, he failed to make a prima facie case that the 2012 assessment is correct. Therefore, the Petitioners are entitled to have the assessment returned to its 2011 level of \$109,800. This ends the Boards inquiry because the Petitioners only requested the assessment be reduced to its 2011 level.

Conclusion

- 18. The Respondent had the burden of proving the 2012 assessment was correct, but failed to make a prima facie case. The assessment must be reduced to the previous year’s amount.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment must be changed to \$109,800.

ISSUED: July 22, 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>>.