

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

Petition No.: 43-023-12-1-5-00027
Petitioner: Jerald L. Morgan
Respondent: Kosciusko County Assessor
Parcel No.: 43-08-16-400-017.000-023
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 his 2012 assessment appeal with the Kosciusko County Assessor on August 29, 2012.
2. The Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on February 20, 2013, lowering the assessment, but not to the level that the Petitioner requested.
3. The Petitioner timely filed a Form 131 petition with the Board on April 4, 2013. He elected the Board's small claims procedures.
4. The Board issued a notice of hearing on November 6, 2013.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on December 10, 2013. She did not inspect the property.
6. Jerald Morgan appeared *pro se* with his witness Phillip Unger.¹ County Assessor Laurie Renier and Chief Deputy Susan Engelberth appeared for the Respondent. All were sworn as witnesses.

Facts

7. The property under appeal is a residential lake property, located at 41 EMS T02A Lane in North Webster.

¹ While Mr. Unger appeared only as a witness, he signed the Form 131 petition as a Certified Tax Representative. See 52 IAC 1-2-1 for the practice requirements for Certified Tax Representatives. Mr. Unger's name, however, does not appear on the Department of Local Government Finance's (DLGF) most recent list of Certified Tax Representatives. See http://www.in.gov/dlgf/files/Certified_Tax_Representatives_02_07_2014.pdf. Unless and until the DLGF certifies Mr. Unger, he should not represent himself as a Certified Tax Representative on any future appeal petitions, as he would not be permitted to practice before the Board in that capacity.

8. The PTABOA determined the following assessment:
 Land: \$240,000 Improvements: \$20,500 Total: \$260,500
9. At the hearing, the Petitioner requested the following assessment:²
 Land: \$169,000 Improvements: \$10,000-\$12,000 Total: \$179,000-\$181,000

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:³

- Petitioner Exhibit 1: Report from Beacon website for property located at 3 EMS T52D Lane, North Webster,
- Petitioner Exhibit 2: Report from Beacon website for the subject property.
- Respondent Exhibit 1: Geographic Information System (GIS) map of the subject property,
- Respondent Exhibit 2: Photograph of subject property,
- Respondent Exhibit 3: 2012 subject property record card,
- Respondent Exhibit 5: Letter from John P. Beer, Appraiser, to the “Indiana Board of Tax Appeals,” dated December 9, 2013,
- Respondent Exhibit 6: GIS map and property record card for 31 EMS T5A Lane, Leesburg,
- Respondent Exhibit 7: GIS map and property record card for 3 EMS T52D Lane, Leesburg,
- Respondent Exhibit 8: GIS map and property record card for Vacant Lot 38 on East Forest Glen Avenue, Leesburg,
- Respondent Exhibit 9: GIS map and property record card for 4030 East Forest Glen Avenue, Leesburg,
- Respondent Exhibit 10: GIS map showing Tippecanoe, James, and Oswego Lakes,
- Respondent Exhibit 11: 2012 Tippecanoe trending worksheet, dated December 9, 2013,
- Respondent Exhibit 12: GIS map, Multiple Listing Service (MLS) listing, and property record card for 176 EMS T49 Lane, Syracuse,
- Respondent Exhibit 12A: GIS map, MLS listing, and property record card for 96 EMS T13E Lane, Leesburg,

² On his Form 131 petition, the Petitioner requested the following values: Land \$217,500, improvements \$12,800, for a total assessment of \$230,300.

³ The Respondent omitted Respondent Exhibit 4.

Respondent Exhibit 12B: GIS map and property record card for 125 EMS T36 Lane, Leesburg,

Respondent Exhibit 12C: GIS map, MLS listing, and property record card for 6543 North Kalorama Road, Leesburg,

Respondent Exhibit 12D: GIS map, MLS listing, and property record card for 4046 East Forest Glen Avenue, Leesburg.

Board Exhibit A: Form 131 petition with attachments,

Board Exhibit B: Hearing notice, dated August 29, 2013,

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 currently over assessed. The property should be valued at \$169,300 for the land and \$10,000-\$12,000 for the improvements. The land should be valued no higher than that of a property located at 3 EMS T52D Lane, North Webster. This property's land is flat, and "you could put a croquet court up, a badminton court, or anything in the yard." While the Petitioner's lot is so hilly that the he has to "mow it with a pair of golf shoes on." Further, the lake is 35 steps away from the house. *Morgan argument; Unger testimony; Pet'r Ex. 1, 2.*
- b) The home located on the subject property is merely a cottage. It cannot be used as a year-round home because it lacks heat, has only one bedroom, and the fireplace does not work. *Morgan argument; Pet'r Ex. 1, 2.*
- c) According to current property listings, the subject property would only sell for \$100,000 to \$149,000.⁴ *Morgan argument.*
- d) The Petitioner disagrees with the Respondent's contention that James Lake and Tippecanoe Lake are comparable. Further, the Petitioner questions some of the figures that appear on the subject property's record card, such as what appeared to be the neighborhood factor, and the land front-foot value. *Morgan argument; Unger argument.*

12. Summary of the Respondent's case:

- a) The subject property is assessed correctly. The 2012 assessment increased because there was a general reassessment in Indiana, and the cost schedules changed. Costs increased, resulting in an increased assessment for most taxpayers. *Renier testimony.*

⁴ While the Petitioner referred to what appeared to be a home listing booklet, he did not present the booklet as an exhibit.

- b) In addition, “trending” is performed each year to make sure that that assessments accurately reflect the market. The study for Tippecanoe Township resulted in general lake-area land assessment increase of 10%, and an improvement increase of 17%. A ratio study was performed that confirmed the trending percentages were correct. *Renier testimony; Resp’t Ex. 5, 11.*
- c) In mass appraising, the assessments are not going to be exact. If a property’s assessment is within 10% of its market value that is acceptable. *Renier argument.*
- d) Several sales support the subject property’s current assessment. First, the Respondent pointed to three sales on James Lake, the first property sold for \$604,000. This lot is half the size of the subject property’s lot. The Respondent pointed to another sale, a property that sold for \$620,000. This property was assessed at \$621,300, and is nearly identical to the sale price. Further, the land for this property consists of three parcels, is assessed for a total of \$351,300. Finally, the Respondent pointed to a third lot, a lakefront lot approximately the same size as the subject property’s lot that sold for \$287,500 in March 2010. These assessments and sales, as well as the subject property’s assessment, are in line with the market. *Renier argument; Resp’t Ex. 6, 7, 8, 9.*
- e) In addition, the Respondent offered five other sales, one from James Lake and four from Tippecanoe Lake. The James Lake property sold for \$425,000. This property’s lot is larger than the subject property’s lot, and the house was built in 1947, compared to the home located on the subject property that was built in 1930. *Renier testimony; Resp’t Ex. 12.*
- f) James Lake properties are just as valuable as properties on Tippecanoe Lake. Thus, the Respondent pointed to a sale of a structure on a rented land in the Niebert Park area on Tippecanoe Lake for \$115,000. Three other sold properties are all located directly on Tippecanoe Lake. Two of the properties sold conventionally for \$400,000 and \$450,000, respectively. The other sale was a bank sale, and sold for \$391,780. These properties’ lots were similar in size to the subject property’s lot. These sales also indicate the subject property’s assessment is in line with the market. *Renier argument; Resp’t Ex. 12A, 12B, 12C, 12D.*
- g) The property immediately to the south has a total assessed value of \$281,700, and the property immediately to the north has a total assessed value of \$295,600, further proving that the subject property’s assessment is correct. *Renier 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. 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). 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. At the hearing, both the Respondent and the Petitioner agreed that the 2012 assessed value increased by more than 5% over the 2011 value. In fact, the assessment increased from \$230,300 to \$260,500. Thus, according to Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the 2012 assessment is correct. To the extent that the Petitioner seeks an assessment below \$230,300, the 2011 assessment, he bears the burden of proving that lower value.

Analysis

17. The Respondent failed to make a prima facie case that the 2012 assessment was correct.
 - a) In Indiana, assessors value real property based on the property’s true tax value, which the Department of Local Government Finance (DLGF) defines as the property’s market value-in-use. Thus, a party’s evidence in a tax appeal must be consistent with that standard. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI 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 or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how its evidence relates to the appealed 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 Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2012,

assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).

- c) First, regarding the Respondent's claim that an assessment is acceptable if it is within 10% of the property's market value-in-use, it appears she may have confused that with the requirements of a mass-appraisal ratio study. An appeal of an individual assessment, however, is an entirely different matter. Further, the Respondent failed to provide any authority for her contention that an individual assessment is correct if it falls within 10% of the value.
 - d) In any case, the Respondent's evidence does little to prove the subject property's value. Regarding her offering of purportedly comparable sales, the Respondent recognizes that one can estimate the value of a subject property by analyzing the sales of comparable properties. A party offering such evidence must show that the properties are generally comparable to each other, and also must show how any relevant differences affect the relative values. *See Long*, 821 N.E.2d at 470–71 (holding that, in applying the sales-comparison approach, the taxpayers needed to explain how any differences between their property and the properties to which they sought to compare it affected the properties' relevant market values-in-use). Here, the Respondent did little to prove that the other properties were actually comparable to the subject property, as many of the purportedly comparable properties are not even located on the same lake. Moreover, she offered nothing to explain or account for any differences in the properties, and how those differences affected the respective values. Her evidence lacked the type of analysis contemplated by *Long*.
 - e) Her comparison to neighboring properties' assessments similarly lacks probative value. True, a party to an appeal proceeding may introduce evidence of assessments of comparable properties located in the same taxing district or within two miles of the boundary of the taxing district. *See* Ind. Code § 6-1.1-15-18. But just as with the sales-comparison approach, the determination of whether the properties are comparable shall be based on generally accepted appraisal and assessment principles. Once again, the Respondent failed to offer a meaningful comparison of the parcels in terms of characteristics that would affect their respective market values-in-use.
 - f) Because the Respondent did not offer probative evidence to show the market value-in-use, she failed to make a prima facie case that the 2012 assessment is correct. Therefore, the Petitioner is entitled to have that assessment returned to its 2011 level of \$230,300. The Petitioner, though, sought an even lower assessment. The Board now turns to the Petitioner's evidence.
18. The Petitioner failed to make a prima facie case for reducing the subject property's assessment below the 2011 value.
- a) The Petitioner offered assessment data for a nearby property and argued that his land assessment should be no higher than that property. Again, when comparing assessments, a party must both prove comparability and account for any differences

between the properties by using generally accepted appraisal practices. Ind. Code § 6-1.1-15-18. The Petitioner's evidence lacks any of that type of analysis. And while the Petitioner offered evidence that his lot is heavily sloped, merely establishing the existence of something that may affect a property's value is not enough to require changing the assessment. To make a case, the Petitioner was required to offer probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 765 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Here, the Petition failed to offer probative evidence of what the accurate valuation should be.

- b) Further, the Petitioner argued that, for various reasons, his house was overvalued, and that a more accurate value would be between \$10,000 and \$12,000. But he offered no probative evidence to support that argument. Thus, his contention amounts to little more than a conclusory statement. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d at 1113, 1119 (Ind. Tax Ct. 1998).
- c) The Petitioner failed to make a prima facie case for lowering the subject property's 2012 assessment below the 2011 assessed value.

Conclusion

- 19. The Respondent had the burden of proving the 2012 assessment was correct. She failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioner sought an assessment lower than the 2011 value, but likewise failed to make a prima facie case. Thus, the Board orders that the subject property's 2012 assessment be reduced to the 2011 amount of \$230,300.

Final Determination

In accordance with these findings and conclusions of law, the 2012 assessment must be changed to \$230,300.

ISSUED: June 2, 2014

Chairman, 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>>.