

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

Petition: 45-004-12-1-5-00006
Petitioners: Michael and Katherine Pelinovich
Respondent: Lake County Assessor
Parcel: 45-08-33-278-020.000-004
Assessment Year: 2012

The Indiana Board of Tax Review (the “Board”) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioners appealed their 2012 assessment on February 14, 2013.
2. The Lake County Property Tax Assessment Board of Appeals (the “PTABOA”) failed to hold a hearing within 180 days as required by statute. *See* Ind. Code § 6-1.1-15-1(k) (requiring a PTABOA to hold a hearing not later than 180 days after a taxpayer files notice for review). On July 7, 2014, the Petitioners exercised their option to file a Form 131 petition with the Board. I.C. § 6-1.1-15-1(o) (allowing a taxpayer to appeal to the Board after the maximum time for the PTABOA to hold a hearing elapses). They elected to have their appeal heard under our small claims procedures
3. On September 14, 2015, our designated administrative law judge, Ellen Yuhan (“ALJ”), held a hearing. Neither she nor the Board inspected the property.
4. Katherine Pelinovich and Robert Metz, a hearing officer for the Lake County Assessor, were sworn and testified.

Facts

5. The property under appeal contains a home located at 4750 Washington Street in Gary.
6. The property was assessed as follows:

Land: \$7,400	Improvements: \$67,600	Total: \$75,000
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7. On their Form 131 petition, the Petitioners requested the following assessment:

Land: \$7,400	Improvements: \$17,600	Total: \$25,000
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Record

8. The official record contains the following:
 - a. A digital recording of the hearing.
 - b. Exhibits:

Petitioner Exhibit 1: Residential Client Detail Report for 4848 Washington Street,
Petitioner Exhibit 2: CMA 2 Line Report,

Respondent Exhibit A: Property record card,
Respondent Exhibit B: Spreadsheet of sales.
 - c. All motions and documents filed by the parties as well as all orders and notices issued by the ALJ or Board.
 - d. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. 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 specified circumstances, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. I.C. § 6-1.1-15-17.2(a) and (b). If the assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. See I.C. § 6-1.1-15-17.2(b).
10. The subject property's assessment increased by 19.6% between 2011 and 2012, rising from \$62,700 to \$75,000. The Respondent acknowledged he had the burden of proof.

Contentions

11. Summary of the Respondent's case:
 - a. The Respondent conceded that the assessment is too high. The Calumet Township Assessor had used the average price per square foot for sales from the subject property's area, but later conceded that the median should be used. Based on that median price per square foot, the Respondent offered a corrected assessment of \$56,900. *Metz testimony; Resp't Ex. B.*
 - b. The Petitioners offered Residential Client Detail Report with listing and sale information for 4848 Washington Street. The information does not describe the property's condition beyond saying that the home was "[i]n need of updating, but

ready to move in.” The Respondent’s witness, Mr. Metz, did not know what the market resistance to the property was or why it did not sell for its original asking price of \$55,000. When the seller reduced the asking price, the property sold in seven days. *Metz testimony; Pet’r Exs. 1-2.*

12. Summary of the Petitioners’ case:

- a. In 2013, Marilyn Tolhuizen of McColly Real Estate prepared a “CMA 2 Line Report” addressing sales and listings of single-family homes with detached garages within a .25-mile radius of 4755 Washington Street. The report includes seven sales between September 28, 2012, and August 7, 2013, five of which occurred more than a year after the assessment date at issue in this appeal. The average sale price was \$36,044. *Pelinovich testimony; Pet’r Ex.2.*
- b. The home at 4848 Washington is a duplicate of the Petitioners’ home. It is brick and has two bedrooms and one bath. It was listed as a contingent sale at \$55,000, but it did not sell. The owners dropped the price to \$30,000, and it finally sold for \$25,000 on November 15, 2013. *Pelinovich testimony; Pet’r Exs. 1-2.*
- c. A property at 128 W. 49th, which is one house from the subject property, was originally listed for \$80,000. It finally sold for a price in the mid-\$60,000 range. The home is much larger than the subject home. It has five bedrooms, two bathrooms and is on a doublewide lot. The Respondent is saying the subject property was worth only \$5,000 less than that superior property “in the same time period.” According to the Petitioners, that is “pretty absurd.” *Pelinovich testimony.*
- d. Some properties on the Respondent’s spreadsheet are from outside the subject property’s subdivision. And some of the sales are from 2010. After the real estate bubble popped, everything declined precipitously. *Pelinovich testimony; Resp’t Ex. B.*

Analysis

13. The Respondent did not even attempt to support the assessment of \$75,000, conceding instead that it should be reduced to \$56,900. That is even lower than the previous year’s level of \$62,700. To the extent the Petitioners seek an assessment below what the Respondent has conceded, they have the burden of proving that lower amount.
14. The Petitioners failed to make a prima facie case for a further reduction. We reach this decision for the following reasons:
 - 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 by a similar user, from the property.” I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL 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 the Uniform Standards of Professional Appraisal Practice often will be probative. *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 accepted appraisal principles. *See id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable assessments to determine an appealed property's market value-in-use).
- b. In any case, 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). Otherwise, the evidence lacks probative value. *See id.* The valuation date for the assessment at issue in this appeal was March 1, 2012. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. The Petitioners offered a CMA report with information regarding the sale and list prices for properties within a .25-mile radius of the subject property. Most of the sales and listings were from after the relevant valuation date, and neither the report nor the Petitioners explain how the sale or list prices relate to the values as of that date.
 - d. More importantly, the CMA report does not purport to estimate a value for the subject property. While the report identifies some basic property characteristics, it does not explain how relevant differences between the subject property and the properties covered by the report affect their relative values. *See Long*, 821 N.E.2d at 471 (holding that taxpayers' comparative sales data lacked probative value where they failed to compare relevant characteristics or explain how relevant differences affected value). The Petitioners point to the average sale price from the report. But they have not shown that valuing the subject property by simply picking the average of all sale prices for single-family homes with detached garages complies with generally accepted appraisal principles.
 - e. The Petitioners also point to the sale price for a nearby home at 4848 Washington Street. But that property sold in November 2013, more than 20 months after the valuation date at issue in this appeal. And the Petitioners did not explain how the sale price related to the valuation date. The sale therefore lacks probative value. *See Long*, 821 N.E.2d at 471.
 - f. In addition, although the Petitioners offered information to show significant similarities between 4848 Washington Street and the subject property, they again failed to explain how any relevant differences affected relative values. Nor did they explain why a contingent sale at a price much closer to the value the Respondent has conceded for the subject property fell through.

- g. Ms. Pelinovich also testified that a nearby property at 128 W. 49th sold in the mid-\$60,000 range. She offered almost no details about the property, other than to say the home was larger than the subject home, had more bedrooms and bathrooms, and sat on a doublewide lot. She offered even fewer details about the sale itself, including when it occurred. At most, she referred to the Respondent valuing the subject property at only \$5,000 less “during the same period.” Ms. Pelinovich’s testimony about the sale is too vague to draw any conclusions about the subject property’s true tax value. At most, one might argue that the sale shows the subject property is worth something less than “the mid-\$60,000” range. But the Respondent has already conceded a value of \$56,900.

Conclusion

15. The Respondent conceded the assessment should be reduced to \$56,900. The Petitioners failed to prove they were entitled to a lower value.

Final Determination

In accordance with the above findings of fact and conclusions of law, the assessment should be changed to \$56,900.

ISSUED: February 5, 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 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>>.