

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

Petition No.: 43-005-12-1-5-00001
Petitioners: John & Martha Rose
Respondent: Kosciusko County Assessor
Parcel No.: 43-13-13-200-001.000-005
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 with the Kosciusko County Assessor on August 21, 2012.
2. The Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on December 21, 2012, lowering the assessment, but not to the level that the Petitioners had requested.
3. The Petitioners then timely filed a Form 131 petition with the Board on January 25, 2013. The Petitioners elected the Board's small claims procedures.
4. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on August 22, 2013. She did not inspect the property.
5. John and Martha Rose appeared *pro se*. County Assessor Laurie Renier represented the Respondent. All were sworn and testified.

Facts

6. The property under appeal is a single family home located at 6973 South 1000 West, in Mentone.
7. The PTABOA determined the following assessment:
Land: \$8,000 Improvements: \$51,600 Total: \$59,600
8. The Petitioners requested the following assessment:
Land: \$8,000 Improvements: \$25,000 Total: \$33,000

Record

9. 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:
 - Petitioners Exhibit 1: Rent contract, dated July 25, 2013,
 - Petitioners Exhibit 2: Form 115,
 - Petitioners Exhibit 3: Form 131.

 - Respondent Exhibit 1: Aerial photograph of the subject property,
 - Respondent Exhibit 2: Photograph of the subject property
 - Respondent Exhibit 3: 2012 subject property record card,
 - Respondent Exhibit 4: 2011 subject property record card,
 - Respondent Exhibit 5: Sales Disclosure Form from sheriff's sale, dated March, 25, 2008,
 - Respondent Exhibit 6: Copy of former owner David McCracken's mortgage,
 - Respondent Exhibit 7: MLS listings of the subject property,
 - Respondent Exhibit 8: Comparable property analysis,
 - Respondent Exhibit 9: Kosciusko County Economic Data report,
 - Respondent Exhibit 10: Legal definition of "foreclosure" from Wikipedia.

 - Board Exhibit A: Form 131 petition,
 - Board Exhibit B: Hearing notice,
 - Board Exhibit C: Hearing sign-in sheet.
 - d) These Findings and Conclusions.

Contentions

10. Summary of the Petitioners' case:
- a) In 2008, the Petitioners purchased the subject property from HSBC Mortgage Service for \$16,000. The subject property sold on the open market through a real estate advertisement. The property was not in good shape when the Petitioners bought it, but they have made some repairs and upgrades. *Rose testimony.*
 - b) The Petitioners rent the subject property for \$600 per month as of July, 2013. Before that, the subject property was vacant for two months. The Petitioners could not remember if it was rented on March 1, 2012. *Rose testimony; Pet'r Ex. 1.*

- c) The economy in Mentone is not as good as it is in other areas of Kosciusko County because there is no place to work in the immediate area. The larger businesses are in other parts of the county, thus the value of the subject property is affected. *Rose argument.*

11. Summary of the Respondent's case:

- a) The subject property sold for \$86,000 in December 2004. At the time, the Multiple Listing Service (MLS) described the property as an “[I]mmaculate Victorian with improvements throughout, newer roof, furnace, wood burner, plumbing, electrical, well, deck, windows, floor coverings, custom kitchen, large updated bath, open living room, lots of charm and history.” On April 21, 2008, HSBC Mortgage Service bought the property for \$60,552 at a Sheriff's sale. On September 19, 2008, HSBC Mortgage Service sold the property to the Petitioners for \$16,000. *Renier testimony; Resp't Ex. 5, 6, 7.*
- b) The sales involving the HSBC Mortgage Service were the result of a foreclosure. Thus, these transactions were forced sales and the subject property was, in turn, used as a “flipper” property. The amount paid for the subject property was not indicative of its market value. *Renier argument; Resp't Ex. 5, 7, 10.*
- c) On March 1, 2012, a general reassessment was done and it affected the value of the subject property. In addition to using new cost schedules, the Respondent made the following changes to the assessment:
- The cost for 1,036 square feet of living area increased from \$61,200 to \$71,900.
 - A full upper story was assessed in 2012, while only a half-story was assessed in 2011. The upper story was valued at \$23,100 in 2011 and increased to \$30,200 in 2012.
 - Prior to 2012, the subject property included 378 square feet for a basement. For the 2012 reassessment, in addition to the 378 square feet of basement, 378 square feet of crawl space was added.
 - The cost multiplier dropped from 1.08 in 2011 to 0.94 in 2012.
 - The Respondent changed the grade in 2012 from E grade to D grade.
 - Finally, prior to 2012, the effective year of construction was 1881, the actual year of construction. The Respondent noted that the home, particularly from the outside, appeared to be very well maintained. Thus, for 2012, she changed the effective year of construction to 1960.¹

Renier testimony; Resp't Ex. 2, 3, 4.

¹ The Respondent also provided un-rebutted testimony that the subject property has “new siding, it has a newer roof on it, and there's been (sic) newer windows in the home.” *Renier testimony.*

- d) To support the subject property's assessment, the Respondent pointed to what she described as four comparable properties. All four properties sold in arm's length transactions. The comparable properties' sale prices ranged from \$60,000 to \$124,000. The Respondent adjusted the sale prices for things such as location, heating and air conditioning, and outbuildings. The adjusted sale prices ranged from \$32,900 to \$110,300. *Renier testimony; Resp't Ex. 8.*
- e) Finally, the economy in Kosciusko County is not as bad as the Petitioners contend. In fact, the workforce in the county grew by 570 people in 2012.² *Renier argument; Resp't Ex. 9.*

Burden of Proof

- 12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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

- 13. Here, the parties agreed that the subject property's value increased more than 5% between March 1, 2011, and March 1, 2012. Thus, at the hearing, the ALJ made a preliminary determination that the Respondent had the burden of proving that the assessment was correct. However, during the course of the Respondent's presentation, un-rebutted evidence was offered that the Petitioners made improvements to the subject property, and that certain portions of the subject property had been incorrectly assessed in the past and were corrected for 2012. More specifically, a new roof was put on the house, siding was replaced, and new windows were installed. The Respondent also added the upper story that was not on the property record card in 2011. The basement area was changed and a crawl space addition was made as well.

² The Respondent indicated that this increase in employment increased the annual wages in Kosciusko County by \$24.5 million. *Renier argument; Resp't Ex. 9.*

14. Indiana Code § 6-1.1-15-17.2 applies where “the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the *same* property.” Ind. Code § 6-1.1-15-17.2 (emphasis added). “When faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1977), *review denied*. Here, the assessor was not assessing the “same property” in 2012 as she did in 2011. Thus, Indiana Code § 6-1.1-15-17.2 does not apply in this case.

Analysis

15. The Petitioners failed to make a prima facie case for reducing the subject property’s 2012 assessment.
- 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 to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the 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); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f).
 - c) The evidence presented by the Petitioners lacked probative value. While the Petitioners offered a rental contract showing that the subject property is rented for \$600 per month, that contract is from July 2013. The Petitioners failed to explain how this related to the valuation date of March 1, 2012. Furthermore, the Petitioners

could not remember what amount, if any, they were renting the property for in March 2012.³

- d) The Petitioners' evidence regarding their purchases price similarly lacks probative value. They purchased the subject property in 2008 for \$16,000, but they made no attempt to relate the subject property's 2008 purchase price to the March 1, 2012, valuation date. Consequently, the Board need not address the question of whether that purchase met the requirements of a market sale.
- e) Because the Petitioners failed to present any evidence regarding the subject property's value as of March 1, 2012, they failed to raise a prima facie case that the 2012 assessment is incorrect.
- f) Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2s 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Board finds for the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the 2012 assessment will not be changed.

ISSUED: February 18, 2014

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

³ The Petitioners argue that the economy in Mentone is not that of other areas of Kosciusko County. But the Petitioners failed to provide any evidence to prove this point, or to prove how this point influences the market value-in-use of the subject property. *Rose argument*.

- 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>>.