

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

Petition No.: 06-019-19-1-5-00887-19
Petitioners: Peter J. Rusthoven & Erin J. Roth
Respondent: Boone County Assessor
Parcel No.: 019-00560-01
Assessment Year: 2019

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 2019 assessment appeal with the Boone County Assessor on May 6, 2019.
2. On August 8, 2019, the Boone County Property Tax Assessment Board of Appeals (PTABOA) issued its Notification of Final Assessment Determination (Form 115) lowering the assessment, but not to the level requested by the Petitioners.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On July 30, 2020, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.
5. Peter J. Rusthoven appeared *pro se* via telephone. County Assessor Lisa Garoffolo appeared for the Respondent via telephone. Both were sworn and testified.

Facts

6. The property under appeal is a single-family residence located at 100 Bailey Court in Zionsville.
7. The PTABOA determined a 2019 total assessment was \$896,800 (land \$67,400 and improvements \$829,400).
8. The Petitioners requested a total assessment of \$854,900 (land \$67,400 and improvements \$787,500).

Record

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

a) A digital recording of the hearing.

b) Exhibits:

Petitioner Exhibit 1: Form 131, Petitioners' grounds for appeal, Notice of Assessment of Land and Structures/Improvements (Form 11), notice from the Boone County Assessor stating "the assessment for the year of 2018 is \$815,000," letter from the Petitioners to Ms. Garoffolo dated May 6, 2019, and Form 115.

Respondent Exhibit 1: Taxpayer's Notice to Initiate an Appeal (Form 130),

Respondent Exhibit 2: Boone County appeal worksheet,

Respondent Exhibit 3: Parties agreement to waive 30 day notice on local hearing,

Respondent Exhibit 4: 2019 subject property record card,

Respondent Exhibit 5: Letter from Petitioners to Ms. Garoffolo dated May 6, 2019,

Respondent Exhibit 6: 2018 and 2019 comparable sales from the "Village,"

Respondent Exhibit 7: Uniform Residential Appraisal Report of the subject property prepared by Timothy S. Meador with an effective date of June 20, 2017,

Respondent Exhibit 8: Property record cards for 596 Starkey Road, 230 West Sycamore Street, and 111 North 8th Street,

Respondent Exhibit 9: County's Notice of Preliminary Hearing on Appeal dated May 8, 2019,

Respondent Exhibit 10: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134),

Respondent Exhibit 11: Notice of Hearing on Petition – Real Property by County Property Tax Assessment Board of Appeals (Form 114), dated June 19, 2019,

Respondent Exhibit 12: Undated second Form 114,

Respondent Exhibit 13: Form 115,

Respondent Exhibit 14: Form 131,

Respondent Exhibit 15: Board's Notice of Hearing dated February 6, 2020.

c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Objections

10. Mr. Rusthoven objected to Respondent's Exhibits 6 and 8, the Respondent's comparable sales and property record cards. Mr. Rusthoven argued the exhibits were not cited or referenced in the PTABOA's final determination. The Respondent did not offer a response to the objection. The ALJ took the objection under advisement. The Board's proceedings are conducted *de novo*, and consequently, the Board owes no deference to the PTABOA. The fact that the Respondent's Exhibits 6 and 8 were not included in the PTABOA's final determination is irrelevant to the Board's hearing. Thus, Mr. Rusthoven's objection is overruled, and Respondent's Exhibits are admitted.

Contentions

11. Summary of the Petitioners' case:
 - a) The subject property is over-assessed. Mr. Rusthoven argues the PTABOA arbitrarily calculated the 2019 assessment. According to Mr. Rusthoven, their 2017 assessment was successfully appealed, and ultimately reduced to \$815,000. When the Petitioners received their 2019 tax bill, the property was assessed at \$974,900. Upon filing their appeal, the PTABOA arbitrarily applied a 4.9% increase to the 2017 assessment of \$815,000 to arrive at \$854,900 and then applied another 4.9% to that value to arrive at a 2019 assessment of \$896,800. *Rusthoven argument (referencing the Form 115); Pet'r Ex. 1.*
 - b) The Petitioners are "willing to accept a 4.9% increase of the actual" 2018 assessment value of \$815,000, for a total 2019 assessment of \$854,900.¹ *Rusthoven testimony.*
 - c) The appraisal submitted by the county is flawed. The assessment year under appeal is 2019 and the County cannot use an appraisal report from a 2017 appeal to "redo" or retry prior years' assessments. *Rusthoven argument (referencing Resp't Ex. 7); Pet'r Ex. 1.*
12. Summary of the Respondent's case:
 - a) The subject property is correctly assessed. The 3,994 square foot home was built in 2009 with a B++ grade and a neighborhood factor of 2.18. *Garoffolo testimony; Resp't Ex. 4.*
 - b) To support the current assessment, the Respondent presented three sales located in the area known as the "Village." The three properties are situated on smaller lots, have smaller living areas, smaller basements, and smaller garages. Based on the 2018 sale prices, the properties' average price per square foot was \$219. When this square foot value is applied to the subject property, it yields a value of approximately \$874,686. Because the subject property is larger than the comparable properties, the current

¹ The Form 11 issued April 30, 2019, indicates the 2018 total assessment is \$815,000.

assessment of \$896,800 is fair and accurate. *Garoffolo testimony; Resp't Ex. 2, 4, 6, 8.*

- c) The Respondent also submitted an appraisal report that the Petitioners submitted as evidence during their 2017 Board hearing. The appraisal established the value at \$815,000 as of June 20, 2017. Ms. Garoffolo argues this appraisal should not have been considered in 2017 because the comparable sales were located outside of the "Village" area. Accordingly, this appraisal was not probative in establishing the 2017 assessed value and in turn resulted in an erroneous 2018 assessment. For the appeal at hand, the appraisal is not probative because the sales did not occur in the relevant time frame. *Garoffolo testimony; Resp't Ex. 7.*

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 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 appeal 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).
16. Here, the parties agree the assessed value of the subject property increased by more than 5% from 2018 to 2019. According to the Form 11, the 2018 assessment was \$815,000 and the Form 115 lists the 2019 assessment as \$896,800. The Respondent did not dispute these values. Thus, according to Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the 2019 assessment is correct.

Analysis

17. The Respondent failed to make a prima facie case that the 2019 assessment is correct.
- a) Real property is assessed based on its market value-in-use. 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. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property 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 the 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.
 - c) Here, the Respondent had the burden to prove the 2019 assessment is correct. In an attempt to prove the property is correctly assessed, she merely described the components, such as living area, grade, year built, and the neighborhood factor used to calculate the assessed value. A party may not make a case simply by showing how the Department of Local Government Finance's assessment guidelines were applied. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the Respondent needed to offer market-based evidence of the subject property's market value-in-use on the assessment date, something she failed to do.
 - d) The Respondent also offered vague testimony regarding the sales of three purportedly comparable properties and their resulting price per square foot. The Board infers the Respondent may be attempting to employ a sales comparison approach. A sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 3. In order to effectively use the sales comparison approach as evidence in property assessment appeals, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *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.
 - e) While the Respondent pointed to three properties near the subject property, she failed to offer sufficient evidence relating their specific features and amenities to the subject

property. More importantly, she made no attempt to make adjustments for any relevant differences between the properties. The Respondent's evidentiary presentation therefore falls short of providing the level of analysis contemplated by *Long*.

- f) Finally, to the extent the Respondent attempted to argue prior tax years, the Tax Court has explained, "each tax year - and each appeals process - stands alone." *Fisher v. Carroll Co. Ass'r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year, therefore, has little bearing on its true tax value in another year. See e.g. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). The Board will not reopen old tax years. The Respondent had the burden to prove the 2019 assessment is correct, and she failed to do so.
- g) For these reasons, the Respondent failed to offer probative evidence to prove the 2019 assessment is correct. Therefore, the Petitioners are entitled to have their assessment returned to its 2018 value of \$815,000. However, the Petitioners request the property be assessed \$854,900. Thus, the Board will accept the Petitioners' concession and set the 2019 assessment at \$854,900.

Conclusion

18. The Board finds for the Petitioners.

Final Determination

In accordance with the above findings and conclusions, the 2019 assessment must be reduced to \$854,900.

ISSUED: December 7, 2020

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>>.