

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

Petition: 56-013-12-1-5-00009
Petitioner: Daniel Smolenski
Respondent: Newton County Assessor
Parcel: 56-05-29-200-003.000-013
Assessment Year: 2012

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. On April 15, 2015, Daniel Smolenski filed a Form 130 petition with the Newton County Assessor. He left the box for the assessment year under appeal blank. In the body of the petition, however, he alleged that his taxes increased from \$314.32 in 2012 to \$1,467 in 2013. Because taxes are billed in arrears,¹ it appears that the assessment at issue was from 2012.
2. On October 11, 2013, the Newton County Property Tax Assessment Board of Appeals issued a Form 115 Notification of Final Assessment Determination. The PTABOA “accept[ed] [a] change of crawl to slab to correct for 2012 assessment year” but went on to say “Motion to deny any other changes based on late filing of form 130.” *Bd. Ex. A*. The determination lists land and improvement values for the March 1, 2012 assessment date.
3. Mr. Smolenski filed a Form 131 petition with the Board.² He listed the assessment year under appeal as 2013, but he attached the PTABOA’s determination for 2012. The Board issued a notice of defect regarding Smolenski’s petition and ordered him to provide the written document that initiated his appeal at the county level. He replied by providing the Form 130 petition discussed above.
4. The Board issued a notice of hearing listing the year under appeal as 2012.

¹ Taxes are normally due in two equal installments on May 10 and November 10 of the year following an assessment. I.C. § 1.1-22-9(a).

² Mr. Smolenski elected to have his appeal heard under the Board’s small claims procedures.

5. On July 30, 2014, the Board held a hearing through its designated administrative law judge, Ellen Yuhan (“ALJ”). Neither she nor the Board inspected the property.
6. The following people were sworn and testified: Mr. Smolenski; Kristin L. Hoskins, Newton County Assessor; and Christine Belt, chief deputy assessor.
7. The PTABOA determined the following assessment for 2012:

Land: \$29,100	Improvements: \$45,100	Total: \$74,200
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8. Mr. Smolenski did not request a specific value.

RECORD

9. The official record contains the following:
 - a. The Form 131 petition,
 - b. A digital recording of the hearing,
 - c. Exhibits:
 - Respondent Exhibit 1: Summary of the County’s exhibits and testimony,
 - Respondent Exhibit 2: Page 2, 2011 REAL PROPERTY ASSESSMENT MANUAL,
 - Respondent Exhibit 3: Page 9, 2011 REAL PROPERTY ASSESSMENT MANUAL,
 - Respondent Exhibit 4: January 8, 2008 memorandum from the Department of Local Government Finance,
 - Respondent Exhibit 5: Newton County-Lincoln Township Trended Improved Sales Ratio,
 - Respondent Exhibit 6: Newton County-Lincoln Township Trended Improved Sales Data Report,
 - Respondent Exhibit 7: Sales-comparison grid,
 - Respondent Exhibit 8: Property record card for Mr. Smolenski’s property,
 - Respondent Exhibit 9: Property record card for 10323 N. 583 E.,
 - Respondent Exhibit 10: Property record card for 1936 E. 986 N.,
 - Respondent Exhibit 11: Property record card for 10107 N. 472 E.
 - 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 Mr. Smolenski's case:
 - a. The property has been vacant for three years and has no utilities. Someone was out inspecting the house and said that it had a crawl space and deck. The crawl space has been there since 1970 and the deck was built 25 years ago. *Smolenski testimony*.
 - b. Mr. Smolenski's taxes tripled from one year to another. Taxes should go down some. *Smolenski testimony*.

11. Summary of the Assessor's case:
 - a. Mr. Smolenski did not file his Form 130 petition in time to appeal the 2012 assessment. He filed the petition on April 15, 2013. According to the Assessor, however, the Form 11 Notice of Assessment informing Mr. Smolenski of his 2012 assessment was issued on December 21, 2012—112 days before Mr. Smolenski filed his Form 130 petition. As a result, the Assessor treated the petition as 2013 appeal. The Assessor did not testify about any of the circumstances surrounding Form 11 notice's mailing. She referenced a re-printed copy of that notice, although she did not offer it as an exhibit.³ She acknowledged that the notification date listed on the notice was different from what she testified to, but explained that her office's computer system inserted that date when she re-printed the notice. *Hoskins testimony*.
 - b. The Assessor used mass-appraisal techniques to value the property. She priced the land based on sales that she adjusted to March 1, 2013 values using a monthly trending factor that she separately established through a paired-sales analysis. She priced the structures using the 2011 Real Property Assessment Guidelines. She then adjusted for market conditions by comparing her assessed values to neighborhood sales. The Department of Local Government Finance ("DLGF") approved her ratio study, indicating that she performed proper statistical testing. *Hoskins testimony; Resp't Ex. 2*.
 - c. On his Form 131 petition, Mr. Smolenski indicated that he did not think his manufactured home should be considered as "stick built." A January 8, 2008 memorandum from the Department of Local Government Finance directs assessors to assess all mobile and manufactured homes that are permanently attached to a foundation as real property. The Assessor therefore valued manufactured homes as real property using the same trending factors applied to other homes. Once adjustments were made for grade, sales of manufactured homes did not differ much from sales of standard homes. She applied an E+2 grade to Mr. Smolenski's manufactured home to show its inferior construction as compared to a stick-built home. *Hoskins testimony; Resp't Ex. 4*.

³ She nonetheless provided a copy to the ALJ.

- d. There were 14 sales in Mr. Smolenski's neighborhood. The median assessment-to-sale ratio for those sales was 95.62%. One of the sales was a doublewide manufactured home. Its ratio was 92%. *Hoskins testimony; Resp't Exs. 5- 6.*
- e. According to the Assessor, the sales-ratio, mass-appraisal, and sales-comparison approaches are the best indicators of market value. She therefore included a sales-comparison grid to support the values she arrived at using the other two techniques. The grid includes three properties that sold between May 5, 2011, and October 23, 2012, for prices ranging from \$44,000 to \$80,000. She used a paired-sales analysis to trend each sale price to a value as of March 1, 2013.⁴ She further adjusted the sale prices to account for various differences between the comparable properties and Mr. Smolenski's property, including the following: location, grade, and design; age, condition, and depreciation; above-grade living area; the number of plumbing fixtures; and the presence or absence of garages, carports or outbuildings.
- f. For her location adjustment, the Assessor used the difference between what she referred to as the "trending factor" for each comparable and Mr. Smolenski's property. She appears to have based her other adjustments on cost and depreciation differentials from the Guidelines. Her gross adjustments (including both positive and negative adjustments) ranged from \$41,020 to \$62,233, and her net adjustments ranged from -\$1,433 to \$20,960. The average adjusted sale price value was \$78,817 and the median was \$78,567. The Assessor felt that the property with the adjusted sale price of \$64,960, which had a home built in 1972, most closely represented the value of Mr. Smolenski's property due to similarities in the homes' age and condition. *Hoskins testimony; Resp't Exs. 1, 7-10.*

ANALYSIS

A. Assessment Year Under Appeal

12. There is some confusion about the year under appeal. As explained above, Mr. Smolenski listed March 1, 2013, as the assessment date under appeal on his Form 131 petition, but he attached the PTABOA's determination for 2012. He later forwarded his Form 130 petition. To extent that petition deals with assessments rather than taxes, it references the 2012 assessment date. The Board therefore set a hearing to address the 2012 assessment year.
13. The Assessor believes that Mr. Smolenski's Form 130 petition was untimely for 2012 and should therefore be treated as a 2013 appeal. A taxpayer must seek review of an assessment not later than forty-five (45) days after being given notice of the assessment. I.C. § 6-1.1-15-1(c). If no notice is given, the taxpayer must file his appeal by the later of

⁴ Because the Assessor treated the appeal as addressing the 2013 assessment, she used the wrong valuation date. Her trending adjustments were minor, however, ranging from \$325 to \$770. *Resp't Ex. 7.* Had she trended the sale prices to March 1, 2012, those adjustments likely would have been even smaller.

(1) May 10 of the year, or (2) 45 days after the date of the tax statement mailed by the county treasurer.

14. The Assessor does not claim that Mr. Smolenski filed his Form 130 petition more than 45 days after the mailing of his tax statement for 2012. Indeed, the filing date of his Form 130 petition—April 15, 2013—would seem to coincide with him being billed for the May 10, 2013 installment on his 2012 assessment. Instead, the Assessor claims that Mr. Smolenski filed his Form 130 petition more than 45 days after her office mailed a Form 11 notice for 2012. For support, she offered only her bald assertion that the Form 11 notice was mailed on December 21, 2012. She did not testify that she personally mailed the notice on that date. Nor did she offer a mailing docket or any other tangible evidence to confirm when her office generally mailed form 11 notices for the 2012 assessment, much less that it mailed Mr. Smolenski’s notice on the date she alleges.
15. Under those circumstances, the Board cannot find that Mr. Smolenski’s Form 11 notice was mailed far enough in advance of his Form 130 petition to render his appeal untimely. Thus, the Board rejects the Assessor’s claim regarding the timeliness of Mr. Smolenski’s appeal for 2012. The Board will address the merits of Mr. Smolenski’s appeal for that assessment year, and only that assessment year.

B. Burden of Proof

16. Generally, the taxpayer has the burden of proving that an assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the assessor the burden of proving an assessment is correct in certain 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). Where the Assessor fails to meet her burden, the assessment reverts back to the previous year’s level, or to such other amount as shown by the evidence. *See* I.C. § 6-1.1-15-17.2(b).
17. Here, the property’s assessment jumped from \$42,200 in 2011 to \$74,200 in 2012—an increase of far more than 5%. The Assessor did not argue that the property being assessed differed significantly between those two years. She therefore has the burden of proof.

C. The Assessor Failed to Meet her Burden of Proving the Assessment was Correct

18. The Assessor pointed to two things to support the assessment: (1) what she described as her correct application of mass-appraisal techniques in assessing Mr. Smolenski’s property, and (2) her sales-comparison analysis. Both of those assume that the home, which the Assessor conceded is a manufactured home, should be assessed as real

property. Even if her assumption is correct, she still failed to make a prima facie case to support the assessment.⁵

19. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as “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.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Three standard approaches are used to determine market value-in-use—the cost, sales-comparison, and income approaches. *Id.* Those approaches and the reconciliation of values under them “shall be applied in accordance with generally recognized appraisal principles.” *Id.* To prove a property’s value in an assessment appeal, a party may offer evidence that is consistent with the Manual’s definition of true tax value. Although not required, a market value- in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will be probative. *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). A party may also offer actual construction costs, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See id.*; *see also*, Ind. Code § 6-1.1-15-18.
20. Whether the Assessor followed the Guidelines and other regulations in assessing Mr. Smolenski's property is largely beside the point. As the Board has repeatedly explained, simply applying the DLGF’s assessment guidelines generally does little to show a property’s true tax value in an assessment appeal. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that strict application of the Guidelines is not enough to show a property’s market value-in-use and thereby rebut an assessment’s presumptive correctness).
21. That leaves the Assessor’s sales-comparison analysis. The 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 2. For such an analysis to be probative, however, it must comply with generally recognized appraisal principles. *See id.* The Assessor followed the sales-comparison approach in form, if not in substance. For example, she compared the properties along several lines that likely affect market value-in-use, and she adjusted the sale prices to account for various differences. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (2005) (holding that taxpayers relying on sales data needed to explain how their property compared to other properties and any relevant differences affected the properties’ values).

⁵ The DLGF’s rules include manufactured homes within the definition of a mobile home. Under those rules, the alternative to assessing a manufactured home that is not held for sale in the ordinary course of a trade or business as real property is to value it using the methodology prescribed for annually assessed mobile homes. *See* 50 IAC 3.3-3-1. That methodology calls for true tax value to be set at the *least of the values* determined using: (1) the National Automobile Dealers Association (“NADA”) Guide; (2) the home’s purchase price, if the sale was of a commercial enterprise nature, the buyer and seller were unrelated, and the sale was within one year of the valuation date; and (3) sales data for generally comparable mobile homes. 50 IAC 3.3-3-2; 50 IAC 3.3-3-1(d); 50 IAC 3.3-5-1(b). The Assessor did not offer any evidence to show the home’s value under the NADA Guide.

22. But she did not claim to have complied with USPAP. Indeed, she did little to show that her analysis complied with generally recognized appraisal principles. That is particularly true concerning how she quantified her adjustments. She largely borrowed cost and depreciation calculations from the Guidelines. And she quantified her location adjustments—which ranged from \$14,800 to \$30,400—using differences in what she referred to as trending factors. Without more, the Board will not assume that such wholesale borrowing of mass-appraisal techniques in applying an individual appraisal methodology complies with generally recognized appraisal principles. Thus, the Assessor’s sales-comparison analysis does not suffice as prima facie proof that the assessment was correct, and Mr. Smolenski is entitled to have his 2012 assessment reduced to its 2011 level of \$42,200.

CONCLUSION

23. The Assessor, who had the burden of proof, relied on what she characterized as her correct application of the DLGF’s assessment guidelines and regulations and her analysis of comparable sales. But one normally does not prove a property’s true tax value on appeal by pointing to the assessment regulations. And the Assessor failed to show that her analysis of purportedly comparable sales data complied with generally recognized appraisal principles. She therefore failed to meet her burden and Mr. Somlenski is entitled to have the 2012 assessment reduced to the previous year’s level of \$42,200.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the property’s 2012 assessment must be reduced to \$42,200.

ISSUED: March 26, 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>>.