

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

Petition No.: 83-002-19-1-4-01191-19
Petitioners: Rick & Lori Swinford
Respondent: Vermillion County Assessor
Parcel: 83-13-10-330-013.000-002
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 Vermillion County Assessor on June 13, 2019.
2. On October 10, 2019, the Vermillion County Property Tax Assessment Board of Appeals (PTABOA) issued a 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 June 25, 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. Lori Swinford appeared *pro se* via telephone. Vermillion County Assessor's First Deputy Angela Johnson appeared for the Respondent via telephone. Cathi Gould testified as a witness for the Respondent via telephone. All were sworn.

Facts

6. The property under appeal is a commercial utility storage building (feed store) located at 749 North 9th Street in Clinton.
7. The PTABOA determined the total assessment of \$38,000 (land \$13,200 and improvements \$24,800).¹

¹ The Form 115 indicates the total assessment is \$42,100 but according to the Respondent that is a typographical error showing the original assessment prior to the PTABOA's recommended changes. After the changes were made, the total assessment was reduced to \$38,000.

8. The Petitioners requested a total assessment of \$25,000 (land \$7,500 and improvements \$17,500).

Record

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

- a) A digital recording of the hearing.
b) Exhibits:²

Petitioner Exhibit 1A – B: 2019 subject property record card,
Petitioner Exhibit 2A – C: Three photographs of subject property,
Petitioner Exhibit 3A – D: Pages 8, 9, 10, and 11 of an appraisal report of the subject property prepared by Rikki Linne, Linne & O’Brien Appraisal Group, LLC, with an effective date July 17, 2018,
Petitioner Exhibit 4A – D: 2019 property record card and two photographs for 738 North 9th Street,
Petitioner Exhibit 5A – B: 2019 property record card and photograph for 739 North 9th Street,
Petitioner Exhibit 6A: 2019 property record card for 719 North 9th Street,
Petitioner Exhibit 7A – C: 2019 property record card and photograph for 701 North 9th Street,
Petitioner Exhibit 8A: Summary report of price per square foot of commercial buildings and lot values on 9th Street,
Petitioner Exhibit 9A: Aerial map with assessed values of lots in the subject property’s area.

- 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.

Contentions

10. Summary of the Petitioners’ case:

- a) The subject property is over-assessed. The property was previously a feed store, but the business closed, and the building has been vacant since March of 2017. The 2019 total assessment should be reduced to “\$25,000 or \$30,000.” *Swinford argument; Pet’r Ex. 1A-B, 2A-C.*

² The Respondent did not submit any exhibits.

- b) In support of their position, the Petitioners offered pages 8-11 of a recent appraisal report that states it was “prepared in compliance with USPAP Standard 2-2.” It also states that the “greatest weight is placed upon the Sales Comparison Approach to value.” The appraiser estimated the building to be 118 years old and established a market value of \$30,000 as of July 17, 2018.³ *Swinford testimony; Pet’r Ex. 3A-D.*
- c) The Petitioners also presented assessments of three buildings located near the subject property:
- 739 North 9th Street consists of 8,525 square feet of “usable” storefront with a three-bedroom “house or apartment.”⁴ The building is currently assessed at \$4,300.
 - 729 North 9th Street is a small garage with no square footage listed currently assessed at \$2,000.⁵
 - 701 North 9th Street is a 7,000 square foot commercial building. The building is currently assessed at \$17,900.

The subject property measures 1,582 square feet and the improvements are assessed at \$28,900. According to the Petitioners, the property is assessed at a higher per square foot rate than any other property in the area. *Swinford testimony; Pet’r Ex. 4A-D, 5A-B, 7A-C, 8A.*

- d) Ms. Swinford testified regarding two recent sales in the neighborhood. The first property is located at the “opposite end of the block” and it included a 2,002 square foot two-story commercial building that sold for \$30,000. The second property is a 1,000 square foot home located behind the subject property and it sold for \$25,000. *Swinford testimony.*
- e) The Petitioners also presented an assessment comparison to prove the land assessment was excessive. Eleven comparable lots were presented with assessments ranging from \$3,700 to \$9,900. Many of the lots are assessed at \$7,400. The subject property’s land assessment is \$13,200. *Swinford testimony; Pet’r Ex. 6A, 9A.*
- f) In response to questioning, Ms. Swinford testified the building is not insured. In addition, she claimed the City of Clinton sent a letter “last year” requesting to tear the building down and bill them, proving even the city do not believe the building is “salvageable.” *Swinford testimony.*

³ Ms. Swinford testified she has been a licensed real estate agent since 1989. As a real estate agent, she confirmed the appraisal report valued the subject property using comparable properties. *Swinford testimony; Pet’r Ex. 3A-D.*

⁴ The property record card for 739 North 9th Street indicates the building size is 6,710 square feet. *Pet’r Ex. 4B.*

⁵ Petitioner Exhibit 5A, the property record card shows the property’s address as 739 North 9th Street (i.e. Lot 4 Mathews PK Add). *Pet’r Ex. 5A.*

11. Summary of the Respondent's case:

- a) The subject property is correctly assessed. For 2019, the property received an obsolescence factor because the building was vacant at the time of inspection. As a result of the inspection, the PTABOA lowered the 2019 assessment to \$38,000, a value that accurately reflects the market value-in-use. *Gould testimony.*
- b) Ms. Gould testified that sales in the area ranged from \$30,000 to \$120,000. The property located at 860 North 7th Street, sold in December of 2018 for \$72,000 or \$21.00 per square foot. The property located at 231 North Third, sold in 2018 for \$120,000 or \$25.00 per square foot. *Gould testimony.*
- c) The Petitioners' appraisal is flawed for the following reasons:
 - It is a restricted appraisal for a mortgage.
 - The intended user is First Bank & Trust. The Petitioners failed to submit any documentation showing they had permission to use the appraisal.
 - The appraiser failed to establish the three approaches to value and only used the sales comparison approach to establish value. The three sales used were invalid because the first sale was a bank sale, the second sale was a private sale, and the third sale was tax-exempt.
 - The effective date of the appraisal was July 17, 2018, with no time adjustment made to establish the property's value as of the January 1, 2019, assessment date.

Gould argument (referencing Pet'r Ex. 3A-D).

- d) The Petitioners also erroneously compared the assessment of their commercial lot to residential lots. Further, the Petitioners erred by assuming that the \$19,800 assessed value of Matthews Park Add Lots 5 and 6 was split equally between the two lots. According to Ms. Gould, the "first lot" is assessed identical to the subject property at \$13,200. While the second lot is assessed at \$6,600. *Johnson argument; Gould argument (referencing Pet'r Ex. 4A-D, 5A-B, 6A, 9A).*

Burden of Proof

12. 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.

13. 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).
14. 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).
15. Here, the parties agree the assessed value increased by more than 5% from 2018 to 2019. The property record indicates the assessment increased from \$34,900 in 2018 to \$38,000 in 2019. Thus, the Respondent has the burden to prove the 2019 assessment is correct. To the extent the Petitioners request an assessment below the 2018 level of \$34,900, they have the burden to prove they are entitled to any further reduction.

Analysis

16. The Respondent failed to make a prima facie case the 2019 assessment is correct. To the extent the Petitioners sought a lower value, they failed to make a prima facie case.
 - 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 a 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.

- c) The burden was on the Respondent to prove the 2019 assessment is correct. To support the current assessment, the Respondent claimed an obsolescence factor was applied to the vacant building. Even if we assume the Respondent applied the correct obsolescence factor to the building, this fact alone is not enough to meet the burden of proving the assessment accurately reflects market value-in-use. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 678 (Ind. Tax Ct. 2006) (explaining that strictly applying assessment regulations does not necessarily make a prima facie case and referring to the types of market-based evidence that may be used in an assessment appeal).
- d) The Respondent also testified regarding sales of properties located in the area, in particular relying on two purportedly comparable properties. 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 Ms. Gould pointed to two properties near the subject property, she failed to offer sufficient evidence relating the specific features and amenities to the subject property. More importantly, Ms. Gould failed to account for any differences between the properties. Ms. Gould’s presentation therefore falls short of providing the level of analysis contemplated by *Long*.
- f) For these reasons, the Respondent failed to make a prima facie case that the 2019 assessment is correct. The Petitioners are therefore entitled to have the 2019 assessment reduced to the 2018 level of \$34,900. That does not end the Board’s inquiry, because the Petitioners sought a lower value.
- g) The Petitioners’ evidence suffers from the same deficiencies as the Respondent in that the Petitioners failed to walk us through its analyses in sufficient detail. For example, the Petitioners offer sale prices and assessment information on neighboring properties. Under the sales comparison and assessment comparison approaches, such information can be used to prove market value-in-use. *See* Ind. Code § 6-1.1-15-18(c)(1). But the Petitioners needed to do more than just offer the minimal information regarding the sale prices and assessed values. Instead, the Petitioners needed to establish comparability of the properties being examined and explain how

any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470, 471.

- h) The Petitioners did present four pages of an appraisal report prepared by Rikki Linne. Ms. Linne opined the fair market value to be \$30,000 as of July 17, 2018.
- i) The Board has previously held an appraisal performed in conformation with generally recognized appraisal principles is often the preferred way to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. Here, the document is incomplete, and the Board will not give such evidence any probative weight. In reaching this decision, the Board recognizes that many appraisal reports do not include all the facts and judgments underlying the appraiser's ultimate valuation opinion. But those reports typically offer enough information to allow the reliability of the appraiser's opinion to be tested in an evidentiary hearing. Appraisers also typically certify they have complied with Uniform Standards of Professional Appraisal Practice (USPAP). The four pages of the appraisal report consisted of a description of the subject property, general definitions, the final estimate of value, and the effective date of appraisal. It lacked any facts or explanation about the comparable sales, even though she placed the greatest weight on the sales comparison approach in reaching her ultimate valuation opinion. Further, nowhere in the report did Ms. Linne certify she complied with USPAP. For these reasons, we find the appraisal pages to be an unreliable opinion of value.
- j) Finally, to the extent the Petitioners argued the assessments are not uniform and equal, they likewise failed to make a case. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment, one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. See *Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. See *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).
- k) When a ratio study shows a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. See *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as

other properties within that jurisdiction.” *Thorsness v. Porter Co. Ass’r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm’rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana’s Constitution, however, does not guarantee “absolute and precise exactitude as to the uniformity and equality of each individual assessment.” *State Bd. of Tax Comm’rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998).

- 1) Similar to the taxpayer in *Westfield Golf*, the Petitioners’ argument is flawed. Here, the Petitioners failed to explain how its purportedly comparable properties are sufficient to draw any meaningful inference about the uniformity or equality of assessments within an assessing jurisdiction. The Petitioners failed to compare the purportedly comparable assessments to objectively verifiable data, such as sale price or market value-in-use appraisals. Instead, the Petitioners wanted the Respondent to use the same methodology to assess the subject property’s land as used to assess the purportedly comparable properties. The Tax Court has rejected that type of claim. *See Westfield Golf*, 859 N.E.2d at 398-399 (rejecting taxpayer’s uniformity and equality claim where taxpayer argued that its golf-ball landing area was assessed using a different base rate than that base rates used to assess landing areas at other driving ranges). For these reasons, the Petitioners failed to make a prima facie case showing a lack of uniformity and equality in assessments.

Conclusion

17. The Respondent had the burden of proving the 2019 assessment was correct. The Respondent failed to make a prima facie case and the assessment must be reduced to the 2018 level of \$34,900. The Petitioners sought a lower value but failed to make a case for any further reduction in the assessment.

Final Determination

In accordance with the above findings and conclusions, the 2019 assessment must be reduced to \$34,900.

ISSUED: October 23, 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>>