

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

Petition Nos.: 45-030-08-1-5-00003
45-030-09-1-5-00001
45-030-10-1-5-00001
Petitioners: Yun Weng & Jian Liu
Respondent: Lake County Assessor
Parcel No.: 45-12-05-456-009.000-030
Assessment Years: 2008, 2009, and 2010

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated the 2008 assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by written request on October 21, 2009. They initiated the 2009 assessment appeal on December 14, 2010, and the 2010 assessment appeal on July 25, 2011.
2. The PTABOA issued notice of its decisions for 2008, 2009, and 2010 on February 9, 2012.
3. The Petitioners filed their Form 131 petitions with the Board on February 27, 2012. They elected to have these appeals heard under the Board's small claims procedures.
4. The Board issued a notice of hearing on July 10, 2013.
5. Administrative Law Judge Ellen Yuhan held the administrative hearing on August 19, 2013. The ALJ did not conduct an on-site inspection of the property.
6. Yun Weng appeared for the Petitioners. Lake County Hearing Officer Robert Metz appeared for the Respondent. Deputy Assessor Nicole Ooms also appeared for the Respondent. All were sworn in as witnesses.

Facts

7. The subject property is a four-unit apartment building located at 6088 Cleveland Street in Merrillville.

8. For 2008, the PTABOA determined that the assessed value was \$37,000 for land and \$238,100 for the improvements for a total assessed value of \$275,100. For 2009, the PTABOA determined that the assessed value was \$37,100 for land and \$240,400 for the improvements for a total assessed value of \$277,500. For 2010, the PTABOA determined that the assessed value was \$37,100 for land and \$235,500 for the improvements for a total assessed value of \$272,600.
9. For 2010, the Petitioners requested a total assessed value of \$230,000 and further requested that that value to be trended back to 2008 and 2009 to establish the assessed values for those years, using the trending system employed by the county.

Contentions

10. Summary of the Petitioners' case:
 - a. An appraisal prepared by Michael Falcone, a certified residential appraiser, valued the property at \$228,000 as of August 5, 2010. The appraiser developed all three approaches to value, but gave the greatest weight to the sales comparison approach. The appraisal was prepared for financing purposes. *Weng testimony; Pet'rs Ex.1.*
 - b. Another appraisal prepared by Eric Glenn, a certified residential appraiser, valued the property at \$240,000 as of October 15, 2010. The appraisal was for the purpose of refinancing. Again, the appraiser gave the greatest weight to the sales comparison approach. Ms. Weng contends the value of the property should be \$230,000 for the March 1, 2010 assessment. *Weng testimony; Pet'rs Ex. 2.*
 - c. The Petitioners prepared a Comparative Market Analysis (CMA) report using all the sales of multi-unit/income properties in Merrillville. The sales occurred between July 9, 2009, and June 30, 2011, the six months before 2010 and the six months after 2010. This CMA includes all sales, including bank-owned properties and distress sales. The sale prices ranged from \$40,000 to \$258,000. *Weng testimony; Pet'rs Ex. 3.*
 - d. The Petitioners prepared a second CMA report of multi-unit/income properties in Merrillville for the same time period, but removed all the REO, bank-owned, and distress sales. The six remaining sales prices ranged from a low of \$155,000 to a maximum of \$258,000. The median value for these properties was \$215,000. *Weng testimony; Pet'rs Ex. 4.*
 - e. The Petitioners also presented the Multiple Listing Service (MLS) information for four of the six properties in her second CMA report. One of the sold properties, 6996 Broadway, is near the subject property, but has a better location. It sold on July 27, 2010, for \$203,000. Unlike the property at issue, the 6996 Broadway property is all brick, has a garage, and a coin-operated laundry. It is in excellent condition and has

newer appliances, furnace, and hot water heater. Further, all the units are rented with leases. *Weng testimony; Pet'rs Ex. 5.*

- f. The property located at 7384 Whitcomb sold on April 9, 2010, for \$235,000. This property is larger, has ten bedrooms total and each unit has two bathrooms. The subject property has only eight bedrooms total and one bath per unit. This comparable property is newly remodeled with new windows, doors, furnace, central air units, and ceramic floors in the kitchen, bath, and foyers. *Weng testimony; Pet'rs Ex. 6.*
 - g. The property located at 802 W. 59th Place sold on April 28, 2011, for \$155,000. It is similar to the subject property in that each unit has two bedrooms and one bath. This comparable property has newly remodeled kitchens and bathrooms, new appliances, and a newer roof. It also has a four-car garage. The subject property does not have a garage. *Weng testimony; Pet'rs Ex. 7.*
 - h. The property located at 3877-3883 W. 73rd Court sold for \$205,000 on June 10, 2011, just six months after 2010. This property is much larger than the subject property. It is also newly renovated including new roof, windows, carpet, and appliances. It is a beautiful building with half brick exterior. It also has two three-bedroom units and two two-bedroom units, each unit having 1.5 baths. The subject property has only two-bedroom, one-bath units. *Weng testimony; Pet'rs Ex. 8.*
 - i. The assessor based the value for the property on a 2007 value. It is unfair to use 2007 to estimate the value for 2008 and 2009 because 2007 was the peak of the market. The market went down after 2007. *Weng testimony.*
 - j. The appraisers used \$800 for the rent in the income approach because that is what the Petitioners told them the rent was, when, in fact, not all the units rented for that amount. For 2008 and 2009, the rents were lower than \$800. In 2008, the rents were around \$725 to \$750. In 2009, all the units rented for \$775. Even using the higher rent, the appraisers valued the property at \$228,000 and \$240,000. *Weng testimony; Pet'rs Exs. 1 and 2.*
 - k. The 2010 assessed value should be \$230,000. The county should trend the \$230,000 backwards for 2008 and 2009 using its trending system. It is not fair to trend forward from 2007. *Weng testimony.*
 - l. If the county chooses to deny the appraisals, it cannot use data included in the appraisals. *Weng testimony.*
11. Summary of the Respondent's case:

- a. The Respondent collected rental information for four-unit properties that sold. For the March 1, 2008 assessment, they used six sales from 2007 to calculate an average

- and a median gross rent multiplier (GRM). The subject property's monthly rent, \$2,847, times the GRM of 99 resulted in a value of \$281,853 for 2008. *Ooms testimony; Resp. Ex. 1.*
- b. For 2009, the Respondent used the same sales plus an additional sale that occurred in 2008. Using the median GRM of 96 times the subject property's rent of \$2,885 resulted in a value of \$276,960. The 2010 assessment is the same as the 2009 assessment because there were no sales between January 1, 2009, and March 1, 2010. *Ooms testimony; Resp. Ex. 1.*
 - c. In 2007, the Petitioners agreed to a \$275,000 property value. For 2008, the Respondent obtained the actual market rents. Using the average market rent and the average GRM, we calculated the subject property's value in 2008 and did the trending properly for 2009 and 2010. *Metz testimony.*
 - d. The 2007 GRM was 99.12. The appraiser used a GRM of 75, probably based on only his three sales. The appraiser also indicated that the subject property's rents are \$800 per unit. *Metz testimony; Pet'rs Exs. 1 and 2.*
 - e. The properties shown in Petitioners' Exhibits 5 and 6 are much older than the subject property which was built in 1998. The rent for Petitioners' Exhibit 7 is \$100 less than the subject property, which makes the condition of the comparable property questionable. *Metz testimony.*
 - f. The appraisals are hearsay because the appraisers are not present to defend the appraisal or to answer questions. The appraisals are outside the time frame for 2008. In addition, they were prepared for mortgage/financing purposes and not for a tax appeal. The appraisals do not indicate that the Respondent would be an authorized user of the appraisal. *Metz testimony.*

Record

12. The official record for this matter is made up of the following:
 - a. The Form 131 petitions,
 - b. A digital recording of the hearing,
 - c. Exhibits:

Petitioner Exhibit 1 – Appraisal Report dated August 5, 2010,
Petitioner Exhibit 2 – Appraisal Report dated October 15, 2010,
Petitioner Exhibit 3 – CMA Report for 13 multi-unit income properties,
Petitioner Exhibit 4 – CMA Report for 6 multi-unit properties,
Petitioner Exhibit 5 – Multiple Listing Service (MLS) information for 6996
Broadway,

Petitioner Exhibit 6 – MLS information for 7384 Whitcomb Street,
Petitioner Exhibit 7 – MLS information for 802 W. 59th Place,
Petitioner Exhibit 8 – MLS information for 3877-3883 W. 73rd Court,

Respondent Exhibit 1 – Breakdown of gross rent multiplier (GRM),
Respondent Exhibit 2 – Details of sold properties,
Respondent Exhibit 3 – Sales disclosure form for parcel 45-12-16-203.016.000-030,
Respondent Exhibit 4 – Property record card for parcel 45-12-16-203.016.000-030,
Respondent Exhibit 5 – Sales disclosure form for parcel 45-12-18-327-003.000-030,
Respondent Exhibit 6 – Property record card or parcel 45-12-18-327-003.000-030,
Respondent Exhibit 7 – Sales disclosure form for parcel 45-12-16-226-029.000-030,
Respondent Exhibit 8 – Property record card for parcel 45-12-16-226-029.000-030,
Respondent Exhibit 9 – Sales disclosure form for parcel 45-12-18-379-021.000-030,
Respondent Exhibit 10 – Property record card for parcel 45-12-18-379-021.000-030,
Respondent Exhibit 11 – Sales disclosure form for parcel 45-12-18-327-005.000-030,
Respondent Exhibit 12 – Property record card for parcel 45-12-18-327-005.000-030,
Respondent Exhibit 13 – Sales disclosure form for parcel 45-12-18-402-011.000-030,
Respondent Exhibit 14 – Property record card for parcel 45-12-18-402-011.000-030,
Respondent Exhibit 15 – Sales disclosure form for parcel 45-12-18-379-024.000-030 and 45-12-18-379-025.000-030,
Respondent Exhibit 16 – Property record card for parcel 45-12-18-379-024.000-030,
Respondent Exhibit 17 – Property record card for parcel 45-12-18-379-025.000-030,
Respondent Exhibit 18 – Property record card for parcel 45-12-05-456-009.000-030 (subject property),

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices of hearing, dated July 10, 2013,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the 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 case 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

14. The assessed values under appeal did not increase by more than 5%. Therefore, Indiana Code § 6-1.1-15-17.2 does not apply. The Petitioners have the burden of proof.

Analysis

15. The Petitioners failed to establish a prima facie case that their property's assessments were over-stated for the March 1, 2008, March 1, 2009, and March 1, 2010, assessment dates. The Board reached this decision for the following reasons:
- a. In Indiana, assessors value real property based on the property's true tax value, which the 2002 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 a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. A market-value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice (USPAP) will often be considered probative evidence of a property's true tax value. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- b. Regardless of the method used to rebut an assessment's presumed accuracy, 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); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2008 and 2009 assessments, the valuation date was January 1 of the previous year. 50 IAC 21-3-3 (2009). For the 2010 assessment, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f).
- c. The Petitioners contend that their property's value was excessive based on its appraised value. The Respondent objected because the appraisal is hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at [] trial or hearing, offered in evidence to prove the truth of the matter asserted." Ind. Evidence Rule 801(c). Such a "statement" can be either oral or written. *Id.* Nevertheless, hearsay evidence is admissible with significant limitations:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801) may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b).

- d. The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.
- e. In this case, the appraisers' written statements concerning the valuation of the subject property are offered to prove the truth of the matter asserted. The appraisers, however, were not present to testify or be cross-examined at the hearing. Accordingly, the appraisals are hearsay evidence.¹ Nonetheless, Petitioners' Exhibits 1 and 2 are admitted, subject to the limitations in the Board's procedural rules.
- f. Here, the Petitioners presented two market value appraisals both prepared in accordance with USPAP. Both appraisers used the sales comparison approach, the cost approach, and the income capitalization approach. One appraiser, Mr. Falcone, estimated the value of the property was \$228,000 as of August 5, 2010. The other appraiser, Mr. Glenn, estimated the value of the property was \$240,000 as of October 15, 2010. *See Pet'rs Exs. 1 and 2.*²

¹ The Petitioners did not argue the appraisals are not hearsay. But they contend the assessor cannot deny the appraisal and then use information contained in the appraisal.

² There are significant discrepancies between the two appraisals. The Falcone appraisal for \$228,000 shows the property was built in 1998 and has a remaining economic life of 25 to 30 years. Mr. Glenn's appraisal shows the property was built in 1985 with a remaining economic life of 65 years. Mr. Falcone shows the site at 21,780 square feet with a site value of \$25,000. Mr. Glenn indicates that the site is 15,662 square feet with a site value of \$45,000. The Falcone appraisal has the building size at 4,148 square feet and the units at 937 square feet and 981 square feet.

- g. Assuming, *arguendo*, that the appraisals accurately reflect 2010 value, the Petitioners failed to present evidence relating the 2010 appraised value to the correct valuation dates for 2008 or 2009 assessments. While the Petitioners expressed their desire for the Assessor to trend the 2010 value back to the March 1, 2008, and March 1, 2009, assessment dates, it was incumbent on the *Petitioners* to establish the correct value for the years being appealed.
- h. Moreover, because of the hearsay objection, the appraisals alone are not a sufficient basis for lowering the assessments. And here the Petitioners failed to present other probative evidence to support the requested \$230,000 valuation.
- i. More specifically, the Petitioners attempted to show that the subject property was assessed for more than its market value by comparing it to several other multi-unit/income properties that sold between July 1, 2009, and June 30, 2011. While the Petitioners recognized that one can estimate value based on the values of comparable properties, as in the sales comparison approach, the Petitioners did not follow that approach's basic requirements.
- j. When applying the sales-comparison approach, one must first identify comparable properties that have sold. One then considers and compares all possible differences between the comparable properties and the subject property that could affect value, using objectively verifiable evidence to determine which items actually affect value in the marketplace. Typically, those items are then quantified by their contributory values and used to adjust the comparable properties' sale prices.
- k. Stated differently, in order to effectively use a sales comparison approach as evidence in an assessment appeal, one must first *show* that the properties being examined are comparable to the property under appeal. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005) (*explaining that* conclusory statements that a property is similar or comparable to another property are not probative of the properties' comparability). One must also identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- l. The Petitioners compared the sold properties to the subject property along certain lines, such as size, updates, and amenities, but did little to explain how any relevant differences affected the relative values. Without analysis that complies with generally accepted appraisal principles, the sales data that the Petitioners provided does little to show the subject property's market value-in-use.

The Glenn appraisal uses 4,576 square feet and all units are at 1,144 square feet. Finally, in the cost approach, Mr. Falcone used \$100 per square foot and Mr. Glenn used \$49.89 per square foot. *See Pet'rs Exs. 1 and 2.*

- m. Finally, the Petitioner's assertion that the 2007 value should not be used as a basis for assessment because 2007 was the peak of the market is unsupported. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998). Thus, the Petitioners failed to establish the value of the property.
16. Where the Petitioners have not supported their claims 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.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. The Board finds the Petitioners failed to establish a prima facie case for a reduction in assessed value. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the assessed value of the subject property shall remain unchanged for the 2008, 2009, and 2010 assessment years.

ISSUED: September 27, 2013

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>>.