

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

Petition No.: 79-004-11-1-5-00001
Petitioners: Richard C. Wilkins
Respondent: Tippecanoe County Assessor
Parcel No.: 79-07-16-328-019.000-004
Assessment Year: 2011

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

Procedural History

1. On May 7, 2012, Richard Wilkins appealed the subject property's assessment to the Tippecanoe County Property Tax Assessment Board of Appeals ("PTABOA"). On January 28, 2013, the PTABOA issued its determination denying Mr. Wilkins relief.
2. Mr. Wilkins responded by timely filing a Form 131 petition with the Board. He elected to have his appeal heard under the Board's small claims procedures.
3. On November 26, 2013, the Board held a hearing through its designated administrative law judge, Dalene McMillen ("ALJ").
4. The following people were sworn in at hearing: Mr. Wilkins; Linda Phillips, the Tippecanoe County Assessor; and Jesse Wallenfang, the Assessor's sales data and appeals manager.

Facts

5. The property contains a duplex located at 2008-2010 North 16th Street in Lafayette, Indiana. Neither the Board nor the ALJ inspected the property.
6. The PTABOA determined the following assessment:
Land: \$13,800 Improvements: \$38,400 Total: \$52,200.
7. Mr. Wilkins requested a total assessment of \$22,000.

Summary of the Parties' Contentions

8. The following is a summary of Mr. Wilkins' case:
 - a. An appraisal report prepared by Daniel Coulson shows that the subject property is assessed for more than its market value-in-use. Mr. Coulson, who is a certified residential appraiser, valued the property at \$22,000. He based his valuation opinion on the sales-comparison approach, using four comparable properties from Lafayette's north end. *Wilkins testimony; Pet'r Ex. 1.*
 - b. The PTABOA rejected Mr. Coulson's appraisal on grounds that it was prepared in 2012 and was therefore too recent. Mr. Coulson, however, actually valued the property as of January 17, 2011. The Assessor criticized the appraisal on grounds that Mr. Coulson used foreclosure sales. But foreclosures were the main competition for the subject property during that time. The Assessor similarly criticized Mr. Coulson's decision not to use the income approach. Mr. Wilkins, however, asked him to use only the sales-comparison approach, because the appraisal was part of Mr. Wilkins' divorce proceedings, and he needed to know what the property would sell for if it was put on the market. His ex-wife and her attorney both accepted Mr. Coulson's appraisal.
 - c. Finally, Mr. Wilkins felt that the appraisal accurately reflected the subject property's value because there was "other stuff in the neighborhood" that sold, and he even "sold one about that time, right during the divorce for the same amount of money." *Wilkins testimony.*

9. The following is a summary of the Assessor's case:
 - a. Mr. Coulson's appraisal report should be given little weight. First, it is a restricted use report prepared for a divorce proceeding rather than for ad valorem tax purposes, and the Assessor did not have access to Mr. Coulson's work file to know whether he was operating under any limiting conditions or assumptions. For example, the report does not explain why Mr. Coulson chose not to develop an opinion under the income approach. That unexplained choice is particularly troubling given that he was appraising an income-producing property. *Wallenfang testimony.*
 - b. Second, Mr. Coulson's report indicates that he could find only four sales of similar properties. But 24 duplexes from the same township sold during the relevant period. *Wallenfang testimony.*
 - c. Finally, Mr. Coulson failed to note that two of his four comparable properties sold either through foreclosure or at a sheriff's sale within a year before the sales that he used in his appraisal. *Wallenfang testimony.*

Record

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

- a. The Form 131 petition,
- b. A digital recording of the hearing,
- c. Exhibits:

Petitioner Exhibit 1: Residential appraisal report prepared by Daniel Coulson of Appraisals by John Nicholson and Associates, dated January 17, 2011,

Petitioner Exhibit 2: Notification of Final Assessment Determination – Form 115-I, dated January 28, 2013,

Petitioner Exhibit 3: Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment, dated February 20, 2013,

Petitioner Exhibit 4: Letter from Richard Wilkins to Linda Phillip with November 12, 2013 file stamp,

Respondent Exhibit 1: IBTR – Pending Burden Analysis,

Respondent Exhibit 2: Spreadsheet with sales information for 24 properties from Fairfield Township,

Respondent Exhibit 3: Sales disclosure form for 1920 North 15th Street, Lafayette, dated November 5, 2009,

Respondent Exhibit 4: Sales disclosure form for 2009 A & B North 16th Street, Lafayette, dated April 8, 2010,

Board Exhibit A: Form 131 petition,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet,

- d. These Findings and Conclusions.

Objections

A. Mr. Wilkins' objection

11. Mr. Wilkins objected to all of the Assessor's exhibits because she did not provide him with copies of those exhibits before the hearing. According to Mr. Wilkins, he was unprepared to respond to information that he was seeing for the first time at the hearing. *Wilkins objection.* The Assessor admitted that she did not provide the requested documents to Mr. Wilkins. Although Mr. Wilkins offered a file-stamped copy of his request for the names and addresses of the Assessor's witnesses and copies of her

documentary evidence, the Assessor claimed that she did not know about that request.
Phillips response.

12. Under the Board's small claims rules, if requested no later than ten business days before a hearing, "parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5 (d). Failure to comply may serve as grounds to exclude evidence. 52 IAC 3-1-5 (f). Mr. Wilson served the Assessor's office with a written request for copies of her documentary evidence on November 12, 2013—ten business days before the hearing. And his claim of prejudice is persuasive regarding Respondent's Exhibits 2 - 4: sales information for 24 duplexes that the Assessor offered to support the subject property's assessment and two sales disclosure forms for properties that Mr. Coulson used in his appraisal report. The Board therefore sustains Mr. Wilkins' objection and excludes Respondent's Exhibits 2 - 4.
13. The Board, however, overrules Mr. Wilkins' objection to Respondent's Exhibit 1, which sets forth the subject property's assessments for the year under appeal and the immediately preceding year. Mr. Wilkins did not explain how he was prejudiced by failing to receive that exhibit in advance of the hearing. He presumably knew his property's assessment for each year.

B. The Assessor's objection

14. The Assessor made a hearsay objection to Petitioner's Exhibit 1—Mr. Coulson's appraisal report. The Assessor pointed out that Mr. Coulson was not at the hearing and therefore could not be cross-examined about whether his opinion had any limiting conditions or assumptions or why he used only the sales-comparison approach.
Wallenfang objection.
15. The Assessor is correct that the appraisal report is hearsay. *See* Ind. Evidence Rule 801(c) (defining hearsay as a statement that "(1) is not made by the declarant while testifying at the trial or hearing; and (2) is offered in evidence to prove the truth of the matter asserted.") Evid. R. 801(c). But the Board's procedural rules allow it to admit hearsay, albeit with a significant caveat: if an opponent properly objects to the hearsay and it does not fall within a recognized exception to the hearsay rule, the Board cannot base its determination solely on that hearsay. 52 IAC 3-1-5(b).
16. The Board therefore overrules the Assessor's objection. The Board has admitted hearsay appraisal reports in many appeals, and where those reports were not objected to, it has relied on them in reaching its determination. Because the Assessor objected to Mr. Coulson's report and Mr. Wilkins did not lay a foundation to qualify the report under any generally recognized exception to the hearsay rule, however, the Board cannot base its determination solely on that report.

Burden of Proof

17. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving both that the current assessment is incorrect 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).
18. Indiana Code § 6-1.1-15-17.2, as amended,¹ creates an exception to that general rule and shifts the burden of proof to the assessor in two circumstances. Thus, where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The Assessor also has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following assessment date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase" *See* I.C. § 6-1.1-15-17.2(d).²
19. Neither of those circumstances applies here. Pursuant to an appeal, the PTABOA reduced the subject property's 2010 assessment from \$67,600 to \$52,200. For 2011—the year at issue in this appeal—both the Assessor and the PTABOA valued the property at \$52,200. *Resp't Ex. 1*. Because there was no increase to the assessment between 2010 and 2011, Mr. Wilkins has the burden of proof.

Analysis

20. Mr. Wilkins did not make a prima facie case for reducing the assessment. The Board reaches this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which is the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property. Evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice will often be probative. *See Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sales or assessment information for comparable properties, and

¹ The amendments to Ind. Code § 6-1.1-15-17.2 became effective with the Governor's signature on March 25, 2014. *See* P.L. 97-2014. The statute, as amended, applies to "all appeals or reviews pending on the effective date of the amendments . . ." *Id.*; I.C. § 6-1.1-15-17.2(e) (2014).

² By its terms, Ind. Code § 6-1.1-15-17.2(d) "does not apply for an assessment date if the real property was valued using the income capitalization approach in the appeal." The record is silent regarding whether the PTABOA used the income capitalization approach to value the subject property.

any other evidence compiled according to generally accepted appraisal principles may also be probative.

- b. Here, Mr. Wilkins relied almost exclusively on Mr. Coulson's hearsay appraisal report, which estimated the property's value at \$22,000 as of January 17, 2011. As explained above, however, the Board cannot rely solely on that report in reaching its determination. The only other evidence that Mr. Wilkins offered was his testimony about other unidentified properties from the subject property's neighborhood. That testimony is too vague to have any probative value. Mr. Wilkins therefore failed to make a prima facie case for reducing the subject property's assessment.

Conclusion

21. The only evidence that supports Mr. Wilkins' claim is a hearsay appraisal report to which the Assessor objected. Because Mr. Wilkins did not lay a foundation to show that the report falls within a generally recognized exception to the hearsay rule, he failed to make a prima facie case for changing the subject property's assessment. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessment should not be changed.

ISSUED: April 22, 2014

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>>.