

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

Petition: 47-006-12-1-5-00013
Petitioners: Keith & Jeanette Foreman
Respondent: Lawrence County Assessor
Parcel: 47-03-17-100-068.000-006
Assessment Year: 2012

The Indiana Board of Tax Review (the “Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes as follows:

PROCEDURAL HISTORY

1. Keith and Jeanette Foreman (the “Petitioners”) initiated an assessment appeal with the Lawrence County Property Tax Assessment Board of Appeals (the “PTABOA”) by filing Form 130 dated January 22, 2013.
2. The PTABOA mailed notice of its final assessment determination (“Form 115”) on August 2, 2013. The PTABOA made no change to the assessment.
3. The Petitioners appealed to the Board by filing a Form 131 petition for review on August 27, 2013.
4. The Petitioners elected to have the administrative hearing conducted under the Board’s small claims procedures and the Lawrence County Assessor (the “Respondent”) did not elect to have the proceeding removed from the Board’s small claims procedures.
5. Paul Stultz, the Board’s appointed Administrative Law Judge (the “ALJ”), held the administrative hearing on October 8, 2014. The ALJ did not inspect the subject property.
6. Petitioner Jeanette Foreman appeared *pro se* and was sworn as a witness. Consultant Kirk Reller and Lawrence County Assessor April Stapp Collins also were sworn as witnesses.

FACTS

7. The subject property is a single family residential property located at 173 Oak Tree Lane in Springville.
8. The PTABOA determined the assessed value for the land to be \$10,900 and the assessed value for the improvements to be \$129,900 for a total assessed value of \$140,800.
9. The Petitioners request a total assessed value of \$125,000 for the subject property.

RECORD

10. The official record for this matter contains the following:

- a. Digital recording of the hearing,
- b. Petitioners Exhibit 1 – Appraisal of subject property,

Respondent Exhibit 1 – Form 130,
Respondent Exhibit 2 – Form 115,
Respondent Exhibit 3 – Subject property record card (“PRC”),
Respondent Exhibit 4 – Pictures of subject property,
Respondent Exhibit 5 – Spreadsheet of comparable properties and sales,
Respondent Exhibit 6 – PRC for 8764 St Rd 54 West,
Respondent Exhibit 7 – Pictures of 8764 St Rd 54 West,
Respondent Exhibit 8 – Sales Disclosure for 8764 St Rd 54 West filed June 13, 2011,
Respondent Exhibit 9 – PRC for 105 Sunny Slopes Dr,
Respondent Exhibit 10 – Pictures of 105 Sunny Slopes Dr,
Respondent Exhibit 11 – Sales Disclosure for 105 Sunny Slopes Dr filed September 8, 2011,
Respondent Exhibit 12 – PRC for 13 Sunny Slopes Dr,
Respondent Exhibit 13 – Pictures of 13 Sunny Slopes Dr,
Respondent Exhibit 14 – Sales Disclosure for 13 Sunny Slopes Dr filed October 13, 2011,
Respondent Exhibit 15 – PRC for 5101 Old St Rd 37N,
Respondent Exhibit 16 – Pictures of 5101 Old St Rd 37N,
Respondent Exhibit 17 – Sales Disclosure for 5101 Old St Rd 37N filed October 17, 2011,
Respondent Exhibit 18 – PRC for 677 Bud Ikerd Rd,
Respondent Exhibit 19 – Pictures of 677 Bud Ikerd Rd,
Respondent Exhibit 20 – Sales Disclosure for 677 Bud Ikerd Rd filed December 16, 2011,
Respondent Exhibit 21 – PRC for 279 Briarwood Lane,
Respondent Exhibit 22 – Pictures of 279 Briarwood Lane,
Respondent Exhibit 23 – Sales Disclosure for 279 Briarwood Lane filed March 14, 2011,

Board Exhibit A - Form 131 Petition with Attachments,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Hearing Sign-in Sheet.

- c. These Findings and Conclusions.

BURDEN OF PROOF

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's 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). A burden-shifting statute creates two exceptions to the rule.
12. First, Ind. Code § 6-1.1-15-17.2(a) "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 year." Under Ind. Code § 6-1.1-15-17.2(b), "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 the Indiana tax court."
13. 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 Ind. Code 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 the assessment is correct.
14. The burden-shifting provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach. Ind. Code § 6-1.1-15-17.2(c) and (d).
15. In this case, the assessment increased from \$96,800 in 2011 to \$140,800 for 2012. Mr. Reller, however, pointed out that the increase for 2012 resulted from the addition of a 20 foot by 30 foot room and a wood deck. He referred to Senate Enrolled Act 266 which states under subsection (c) that the section does not apply if the assessment is based on structural improvements that were not considered in the prior tax year. At the hearing, Ms. Foreman confirmed that they added a room over an unfinished basement and a wood deck and indicated that she believed she had the burden of proof. Because there was a change in improvements for 2012, Ind. Code § 6-1.1-15-17.2 does not apply. The Petitioners have the burden of proof.

CONTENTIONS

16. Summary of the Petitioners' case:
- a. The Petitioners added a room over an unfinished basement and also added a deck. The Petitioners conceded that the value of their property has gone up, but they did not expect the assessed value to increase as much as it did from 2011 to 2012. *J. Foreman testimony.*
 - b. The Petitioners had the subject property appraised. The appraisal, dated January 15, 2013, values the subject property at \$125,000. *J. Foreman testimony; Petitioners Exhibit 1.*
 - c. The PTABOA denied the Petitioners' appeal because, as explained on the Form 115, the appraisal was not conducted within an appropriate time period. Ms. Foreman contends that there is nothing in the instructions that says the appraisal has to be as of the assessment date and that the appraisal was performed within one year of the assessment date. *J. Foreman testimony.*
17. Summary of the Respondent's case:
- a. The Respondent prepared an excel spreadsheet comparing sales and assessed values of five properties similar to the subject property. The five comparable sales all occurred in Marshall Township and were all used in the county ratio study for 2012. The Respondent provided PRCs, pictures, and sales disclosures for each of the five properties. The spreadsheet detailing the comparable sales shows the subject property had the lowest square foot price when compared to both the assessed value price per square foot and the sale price per square foot of the comparable sales. *Reller testimony; Respondent Exhibits 5 thru 23.*
 - b. The date of the appraisal is January 10, 2013. The Respondent contends that the appraisal is beyond the assessment window for 2012 and that the Petitioners did not show how the appraisal value related to the March 1, 2012 valuation date. *Reller testimony.*

ANALYSIS

18. Real property is assessed based on its "true tax value," which means "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." 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. *Id.* Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut or affirm an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties,

appraisals, and any other information compiled in accordance with generally accepted appraisal principles. *Id* at 3.

19. Regardless of the type of evidence, a party must explain how that evidence relates to the relevant valuation date; otherwise, the evidence lacks probative value. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2012, the assessment and valuation dates were the same, March 1, 2012. I.C. § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation as to how it demonstrates, or is relevant to, value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
20. The Petitioners presented an appraisal estimating the value of the subject property to be \$125,000 as of January 10, 2013.¹ The appraiser is an Indiana Certified Appraiser that prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Petitioners Exhibit 1 and Board Exhibit A*. The appraiser applied the sales comparison approach using three sales dated February 2, 2012, June 7, 2012, and July 24, 2012. While the appraisal values the subject property as of January 10, 2013, the sales used are sufficiently close to the March 1, 2012 valuation date to give the appraisal probative value. The Board therefore finds that the appraisal is sufficient to make a prima facie case that the 2012 assessment should be reduced.
21. Consequently, the burden shifts to the Respondent to rebut that evidence. *See Am. United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach such evidence, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Fed. Savings & Loan v. Jennings County Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
22. The Respondent offered a spreadsheet comparing sales and assessed values of five properties to the subject property. The Respondent failed to offer a meaningful comparison of the five properties to the subject property. The spreadsheet provides few details about the properties. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent of the evidence 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. *Id.* The Respondent did not offer the type of analysis contemplated by the court in *Long*. A comparison of assessments requires the same kind of evidence and analysis of comparable factors and distinguishing characteristics. *Indianapolis Racquet Club v. Marion Co. Assessor*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014).

¹ The appraisal presented at the hearing and labeled as Petitioners Exhibit 1 is missing page 3 of 3 which contains the Appraiser's Certification. The page containing the location map is also missing. Those pages were included in the copy of the appraisal attached to the Form 131 petition labeled as Board Exhibit 1.

CONCLUSION

23. The Petitioners made a prima facie case that the 2012 assessment is incorrect. The Respondent failed to impeach or rebut the Petitioners' evidence. The Board therefore finds for the Petitioner.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the 2012 assessment will be changed to \$125,000.

ISSUED: March 13, 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>>.