

BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: **64-019-14-1-5-20464-15**
Petitioner: **Greg Schafer**
Respondent: **Porter County Assessor**
Parcel No.: **64-09-30-179-006.000-019**
Assessment Year: **2014**

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

Procedural History

1. Petitioner filed its appeal with the Porter County Property Tax Assessment Board of Appeals (“PTABOA”) which issued its final determination on August 7, 2015. Petitioner then filed its Form 131 with the Board, electing to have the matter heard under the Board’s small claims procedures. Respondent did not elect to have the proceeding removed from those procedures.
2. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on March 29, 2016. Neither the ALJ nor the Board inspected the property.
3. Greg Schafer, Petitioner and owner of the property, was sworn and testified. Jon Snyder, Porter County Assessor, and Russell Gower, Hearing Officer, were sworn and testified for Respondent.

Facts

4. The property under appeal is a single family home located at 143 Brockton Place in Valparaiso.
5. For 2014, the PTABOA determined the assessed value of the property was \$45,300 for the land and \$183,700 for the improvements, for a total assessed value of \$229,000.
6. For 2014, Petitioner requested an assessed value of \$196,000.¹

¹ Forms 130 and 131 show the year under appeal as 2015, but all parties agree that the year at issue is 2014. On the Form 131, Petitioner requested a total value of \$185,000, but requested a value \$196,000 at the hearing.

Record

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

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

Petitioner presented no exhibits.

Respondent Exhibit 1:	MLS listing of the subject property-2013,
Respondent Exhibit 2:	MLS listing history of the subject property,
Respondent Exhibit 3:	List of sales in Shorewood neighborhood from 1/1/2013 to 3/1/2014,
Respondent Exhibit 4:	List of Shorewood sales with sales price as a percentage of list price,
Respondent Exhibit 5:	Subject property record card (PRC) for 2013,
Respondent Exhibit 6:	Subject property PRC for 2014,
Respondent Exhibit 7:	Copy of 131 petition,
Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

Objections

8. Respondent objected to Petitioner's testimony about comparable properties and the assertion that MLS information is a matter of public record. He claims that he requested evidence in advance and did not receive it. Petitioner did not present any exhibits at the hearing but offered testimony about exhibits he claimed he had previously submitted at the PTABOA hearing.
9. 52 IAC 3-1-5(d) provides "If requested not later than 10 business days prior to hearing by any party, the 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 business days before the small claims hearing."
10. The objection is overruled. The exchange rule applies only to exhibits, not testimony. As no "documentary evidence" was presented, there can be no grounds for an objection.

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his 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). A burden-shifting statute creates two exceptions to that rule.

12. 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 appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code 6-1.1-15-17.2(b).
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,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “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).
14. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence of the correct assessment. If neither party offers evidence to prove the correct assessment, the assessment reverts to the previous year’s value. *See* Ind. Code § 6-1.1-15-17.2(b).
15. Petitioner appealed the 2013 assessment and the PTABOA lowered the assessment to \$227,900. The 2014 assessed value increased to \$229,000. Therefore, Respondent has the burden to prove the assessment is correct. To the extent Petitioner requests a lower value, the burden is on Petitioner to prove that value.

Contentions

16. Summary of Respondent’s case:
 - a. The subject property was purchased in 2007. Respondent does not believe the original purchase price is reflective of the value of the property in 2014. The property has been remodeled since the purchase. Numerous upgrades have been made including a new roof, new appliances, and new ceramic tile in the foyer, kitchen, and bathrooms. *Gower testimony; Resp’t Ex. 1.*

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- b. Respondent contends that sales in the subject's neighborhood were used to develop a ratio of sale prices to listing prices. The average sale price as a percentage of list price was 94% while the median was 94.3%. For the subject property, if one applied the average of 94%, the value would be \$263,100. Applying the lowest percentage of 80% would result in a value of \$223,900. The PTABOA ultimately applied a percentage of 81.1%. Petitioners are claiming the property is worth \$196,000, which would be in the low 60% range. Respondent contends that such a percentage is significantly out of the range of any property in the neighborhood that sold in all of 2013 and the first two months of 2014. *Gower testimony; Resp't Exs. 3 & 4.*
- c. Respondent contends that the list of sales and percentage of sale price to list price tables were developed to support the value on the property record card for 2014. This was a reflection of what was occurring in the market and as support for the value that was developed by Respondent and the PTABOA. Respondent contends that all of the trending used was valid and that the property was properly assessed. *Snyder testimony.*

17. Summary of Petitioner's case:

- a. Petitioner contends that the true market value of the subject property should be the original sale price adjusted for trending each year. He further contends that the trending should take into consideration the fact that the house is a tri-level which is different than other homes. *Schafer testimony.*
- b. Petitioner contends that painting, replacing appliances, and adding new ceramic are not upgrades, but merely normal homeowner activities that stabilize the value of the property. Petitioner contends he spent very little remodeling the house, including approximately \$2,400 on carpet, \$900 on ceramic tile, and \$6,000 on the roof. *Schafer testimony.*
- c. Petitioner contends that there were several comparable sales in the area including:
 - 147 Brockton which sold on November 3, 2014 for \$184,300;
 - 209 Scarborough which sold in December 2013 for \$170,000;
 - 422 Pickwick Place, a tri-level that was listed for \$195,000 and sold for \$155,000;
 - 141 Brockton which is located next to the subject property and sold for \$198,000 in September of 2013;
 - 456 Dorchester Court which sold for \$190,000 in September 2013; and
 - 210 Shorewood Drive which sold for \$160,000 in June 2014.*Schafer testimony.*
- d. Petitioner contends that the assessed value should be \$196,000. He purchased the property in 2007 for \$190,000 and added a new roof at a cost of \$6,000. That value is supported by the comparable property at 425 Shorewood Court, which is a tri-level exactly like his house that is valued at \$191,700 for 2015. *Schafer testimony.*

Analysis

18. Respondent failed to establish a *prima facie* case that the assessment was correct. The Board reached this decision for the following reasons:
- a. 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 by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject 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). The valuation date for a 2014 assessment was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Respondent contends the value of the property should be \$229,000. He argues that the assessed value was developed using appropriate trending. He believes that the percentage of sale price to list price ratio that was developed supports the value.
 - d. It is insufficient to make a *prima facie* case by simply showing that the Guidelines were applied. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006) (holding that a taxpayer failed to make a *prima facie* case by focusing strictly on the assessor’s methodology in applying assessment regulations). Thus, Respondent needed to show that his assessment reflects a correct market value-in-use. He did not offer any probative evidence to support such a finding.
 - e. Respondent points to the fact that Mr. Schafer listed the property at \$279,900. He developed a table showing the percentage of sales prices to listing prices. The PTABOA applied an 81.8% ratio to the listing price which resulted in a value of \$229,000. Again, that does little to show the market value-in-use. While an unsuccessful listing might arguably show the upper limit of market value, it does little to prove a particular value, or range of values, below that limit.

- f. Respondent did not offer probative evidence to show the market value-in-use and failed to make a *prima facie* case that the 2014 assessment is correct. Petitioner is therefore entitled to have his assessment reduced to the 2013 assessed value of \$227,900. Petitioner, though, sought an even lower assessment. The Board now turns to Petitioner's evidence.
- 19. Petitioner failed to make a *prima facie* case for reducing the assessment below the 2013 value.
 - a. In seeking a lower value, Petitioner referenced sales data for six nearby houses and another property in Merrillville. He did not present any comparison of the sold properties with the subject property. 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. *Id.* Because Petitioner made no attempt to identify or value the differences among the properties, Petitioner's sales have no probative value.
 - b. Petitioner contended that the property should be valued at the 2007 original purchase price plus yearly trending. He failed to offer any evidence to relate the 2007 purchase price to March 1, 2014, and failed to offer any evidence as to what the appropriate trending should be.
 - c. Petitioner claimed that the property should be valued at \$196,000 which is the 2007 purchase price plus the cost of the roof. Again, Petitioner did not relate the 2007 purchase price to the valuation date. Further, he offered no explanation about why any other costs involved in "stabilizing" the house should not be considered.

CONCLUSION

- 20. Respondent had the burden of proving the 2014 assessment was correct and failed to make a *prima facie* case. Consequently, Petitioner is entitled to have that assessment reduced to its previous year's level of \$227,900. Petitioner failed to prove that he was entitled to any further reduction. Thus, the Board orders that the 2014 assessment be changed to \$227,900.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2014 assessed value should be changed.

ISSUED: June 27, 2016

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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.