

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

Petition No.: 43-031-20-1-5-00720-20
Petitioners: Daniel D. Dawes
Respondent: Kosciusko County Assessor
Parcel: 43-11-21-100-075.000-031
Assessment Year: 2020

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

Procedural History

1. The Petitioner initiated his 2020 assessment appeal with the Kosciusko County Assessor on May 22, 2020.
2. On October 26, 2020, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued a Notification of Final Assessment Determination (Form 115) denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On May 13, 2021, 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. Daniel D. Dawes appeared *pro se* via telephone. Assessor Susan Engelberth appeared for the Respondent via telephone. John Beer testified as a witness for the Respondent via telephone. All were sworn.¹

Facts

6. The property under appeal is a single-family residence located at 515 East Lakewood Avenue in Warsaw.
7. The PTABOA determined a total assessment of \$148,900 (land \$14,900 and improvements \$134,000).

¹ Angela C. Dawes and Kim Carson were also on the call but did not testify.

8. The Petitioner did not request an assessed value on his Form 131.²

Record

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

a) A digital recording of the hearing.

b) Exhibits:

Petitioner Exhibit A: Petitioner's written testimony,
Petitioner Exhibit B: 2020 subject property record card,
Petitioner Exhibit C: Regional map of Kosciusko County.

Respondent Exhibit A: 2020 subject property record card,
Respondent Exhibit B: Six exterior photographs of the subject property,
Respondent Exhibit C: Sales disclosure form for the subject property dated
January 5, 2015,
Respondent Exhibit D: Kosciusko County Area Plan Commission –
improvement location permit, dated September 21, 2015,
Respondent Exhibit E: Residential Appraisal Report of the subject property
prepared by John P. Beer with an effective date of
January 1, 2020,
Respondent Exhibit F: Local Market Update sheets for December 2017,
December 2018, and November 2019 prepared by
Indiana Association of Realtors,
Respondent Exhibit G: Assessor's reassessment questionnaire and two aerial
photographs of the subject property.

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 Petitioner's case:

a) The subject property is assessed inconsistently when compared to similar properties. According to the Citizen's Guide to Property Tax (Citizen's Guide) "your property is looked at in conjunction with other properties in your area." Additionally, Citizen's Guide states "in a process known as annual adjustment, or 'trending,' each year real property sales data is used to determine if the value of properties in your area should change to match the market value found in the sales of recent properties." A "reasonable person" would assume that "properties in your area" means, homes

² At the hearing, the Petitioner requested an assessment of \$55.89 per square foot.

within the same neighborhood or within a short distance of the property under appeal that have sold within the last five years. *Dawes testimony; Pet'r Ex. A.*

- b) The subject property was remodeled in 2017. Because of the renovations, the assessed value increased 50%. The renovations include additional living space, dishwasher, furnace, and windows. The property has continued to increase in assessed value from 2016 to 2020. In 2020, the assessed value increased 16% from the previous year. *Dawes testimony; Pet'r Ex. B.*
- c) The assessed value is 59% higher than that of five comparable properties in the same neighborhood. 525 East Lakewood and 510 East Winona Beach Drive have recently been “modernized.” 1467 South Elm Street has a brick exterior, while the other comparable properties and the subject property, have vinyl or plastic exteriors. The Petitioner submitted two graphs to illustrate the discrepancies. The first graph lists the “Improve value/Sq. Ft. Finished” value of five comparable properties ranging from \$44.54 to \$66.48 per square foot or an average of \$55.89 per square foot. While the subject property is valued at \$88.89 per square foot. *Dawes testimony; Pet'r Ex. A.*
- d) The second graph lists the amenities found in the subject property versus the comparable properties. This graph illustrates the subject property’s amenities are “no better” than the comparable properties. If anything, the subject property is slightly inferior. For example, the subject property has only two bedrooms, while the comparable properties have three bedrooms. The subject property lacks a garage and has a gravel driveway while most of the comparable properties have a garage and paved driveway.³ The Petitioner argues that based on the Citizen’s Guide the assessment is unfair and inequitable relative to “nearby” comparative properties. *Dawes testimony; Pet'r Ex. A.*
- e) The property also suffers from two adverse conditions affecting its value. First, the north edge of the property has become a “pedestrian pathway” for residents. Additionally, a nearby property is an abandoned “house trailer,” that detracts from the aesthetic value of the neighborhood. *Dawes testimony; Pet'r Ex. A.*
- f) The appraisal report presented by the Respondent is flawed. The sales comparison approach grid incorrectly lists the subject property’s address. The purportedly comparable properties range from 1.2 miles to 5.15 miles from the subject property. 200 Lakeview Drive has a 2020 assessed value of \$99,000, further illustrating assessed values in different neighborhoods vary to a “great degree.”⁴ The appraisal does not include a single purportedly comparable property located in the subject

³ In response to questioning, the Petitioner stated he omitted basements and basement finish from his graph, because he believes his is a two-story home with no basement not a 1.5 story with a partial finished basement. However, the basement square footage was included when calculating his price per square foot on his “Improve value / Sq Ft Finished” graph.

⁴ The appraisal report sales comparison approach shows the property at 200 Lakeview Drive has a 2020 assessed value of \$99,300.

property's neighborhood. The purportedly comparable properties are all larger and more expensive homes from more affluent neighborhoods. *Dawes testimony (referencing Resp't Ex. E).*

- g) The Respondent's appraisal also supports the notion the subject property is over-assessed. The appraiser explained the cost per square foot of above grade gross living area ranged from \$50.56 to \$72.24 with an average of \$58.74. The subject property is assessed at \$80.80 per square foot. *Dawes testimony (referencing Resp't Ex. E).*
- h) At the PTABOA hearing, the Respondent submitted a comparable analysis that included properties as far as 17 miles away. These purportedly comparable properties would have access to different services and amenities. During the hearing the Respondent insisted that the resale value of the subject property was "inline" with the assessment. The discussion changed from comparing properties to the resale value of the subject property, which is not part of the assessment process outlined in the Citizen's Guide. *Dawes testimony; Pet'r Ex. A, C.*

11. Summary of the Respondent's case:

- a) The subject property is correctly assessed. The subject property is located in Winona Beach, an off-water neighborhood, but it has 90 feet of effective lake frontage. The Petitioner purchased the property in 1999 for \$71,500. On September 21, 2015, a \$75,000 permit was issued to add a 2-story room addition, new windows, air conditioning, and siding. Six photographs were submitted to show the home before and after. *Engelberth testimony; Beer testimony; Resp't Ex. A, B, C, D, G.*
- b) The Respondent offered a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal prepared by certified residential appraiser John P. Beer. Mr. Beer valued the property utilizing the sales comparison approach. Based on his appraisal, Mr. Beer estimated the total value of the property to be \$155,000 as of January 1, 2020. The Respondent requests the current assessment be sustained at \$148,900. *Engelberth testimony; Beer testimony; Resp't Ex. E.*
- c) Mr. Beer examined seven comparable properties that sold in 2019 and 2020. Due to a lack of sales in the neighborhood, Mr. Beer looked to properties located on Chapman Lake. Chapman Lake is similar to Winona Lake: both neighborhoods are in the same school district, include similarly priced homes with similar amenities, and are near Warsaw. He adjusted the comparable properties for site size, quality of construction, number of bathrooms, gross living area, basement area, basement finish or crawl space, garage size, and if the properties had a detached garage or utility shed.⁵ The seven sales are as follows:

⁵ The appraisal states the site/land value adjustments were based on the difference in assessed land values between the subject property and each of the comparable properties. *Resp't Ex. E.*

- **Sale 1.** 200 Lakeview Drive in Winona Lake is a one-story home with 1,035 square feet of living area on a crawl space. The home was constructed in 1910 and has an effective age of 1980. It has four bedrooms, one full bathroom, and an attached garage. The quality of construction is inferior to the subject property. The home sold on September 20, 2020, for \$103,000, and the seller paid \$3,000 in closing costs, for a final sale price of \$100,000. After adjustments, the indicated value is \$122,605.
- **Sale 2.** 39 EMS C24G Lane is a one-story home with 944 square feet of living area on a crawl space. The home was constructed in 1969 and has an effective age of 1990. It has two bedrooms, one full bathroom, and an attached garage. The quality of construction and site value are inferior to the subject property. It sold on November 19, 2019, for \$117,900. After adjustments, the indicated value is \$164,930.
- **Sale 3.** 670 Chapman Lake Drive is a one-story home with 1,242 square feet of living area with a 1,008 square foot basement including 789 square feet of “rec 3” finished area. The home was constructed in 1977 and has an effective age of 1985. It has three bedrooms, two full bathrooms, and an attached garage. The quality of construction is equal to the subject property. It sold on December 31, 2019, for \$175,000. After adjustments, the indicated value is \$136,306.
- **Sale 4.** 60 EMS C24D Lane is a one-story home with 1,480 square feet of living area on a crawl space and slab. The home was constructed in 1984 and has an effective age of 1987. It has two bedrooms, one full bathroom, and an attached garage. The quality of construction is equal to the subject property. It sold on December 20, 2019, for \$176,500. After adjustments, the indicated value is \$168,030.
- **Sale 5.** 309 7th Street is near a lake but is not in an off-lake neighborhood. It is a 1.5 story home with 1,820 square feet of living area and a 910 square foot unfinished basement. The home was constructed in 1920 and has an effective age of 2000. It has three bedrooms, two full bathrooms, and no garage. The quality of construction is inferior to the subject property. It sold on April 16, 2019, for \$190,000. After adjustments, the indicated value is \$158,570.
- **Sale 6.** 40 EMS C22 Lane is a one-story home with 1,360 square feet of living area and has a 1,360 square foot finished basement. The home was constructed in 1971 and has an effective age of 2008. It has four bedrooms, two full bathrooms, a detached garage, and an out-building. The quality of construction and site value is superior to the subject property. It sold on June 19, 2019, for \$272,500. After adjustments, the indicated value is \$166,170.
- **Sale 7.** 1624 Chapman Lake Drive is a two-story home with 2,192 square feet of living area on a crawl space. The home was constructed in 1997 and has an effective age of 1997. It has four bedrooms, two full bathrooms, one half

bathroom, and an attached garage. The quality of construction is superior to the subject property, but the site is slightly inferior. It sold on July 9, 2019, for \$198,000, and the seller paid \$4,000 in closing costs, for a sale price of \$194,000. After adjustments, the indicated value is \$149,870.

Beer testimony; Resp't Ex. A, E.

- d) After adjustments, the sale prices ranged from \$122,605 to \$168,030. The average sale price was \$152,354 and the median price was \$158,570. Mr. Beer reconciled his opinion of value for the subject property based on the sales comparison approach at \$155,000. *Beer testimony; Resp't Ex. E.*
- e) To show median home prices have increased from 2017 to 2019 in Kosciusko County, the Respondent submitted the Indiana Association of Realtors Local Market Update. In December 2017 the median sale price increased 7.9%, December 2018 increased 8.1%, and November 2019 increased 4.8%. According to Mr. Beer's research, local home values increased between 7% and 8% in 2019. *Beer testimony; Resp't Ex. F.*
- f) In response to questioning, Mr. Beer testified he viewed the seven comparable properties from the street. However, he was able to view the interior of the properties from multiple listing sheets. Mr. Beer stated, as an appraiser it is assumed the condition of the interior is normally in line with the condition of the exterior. *Beer testimony; Resp't Ex. E.*

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 2019 to 2020. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the Respondent has the burden to prove the 2020 assessment is correct.

Analysis

16. The Respondent made a prima facie case that the 2020 assessment is correct.
 - 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 2020 assessment, the valuation date was January 1, 2020. *See* Ind. Code § 6-1.1-2-1.5.
 - c) Here, the Respondent has the burden of proof. To support the current assessment, the Respondent offered a USPAP-compliant appraisal prepared by licensed appraiser John Beer. In completing his appraisal, Mr. Beer developed the sales comparison approach. He concluded the value of the property to be \$155,000 as of January 1, 2020. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479.
 - d) In an attempt to impeach the appraisal, the Petitioner questioned the location, size, and sale price of the purportedly comparable properties. But the Petitioner failed to provide any evidence of factual error as to how these aspects of the appraisal are incorrect. Instead, he offered his own opinion on why the purportedly comparable properties were not appropriate. Mr. Beer selected seven purportedly comparable properties and made adjustments to account for various differences. This is well within the expertise of a licensed appraiser. The Board recognizes the appraisal process requires expertise and most often involves issues that are a matter of opinion, rather than questions with a correct or incorrect answer. Even if the appraisal

contains some flaws, this USPAP-compliant appraisal is still probative evidence of market value-in-use. In weighing the evidence, the Board finds Mr. Beer's opinion of comparable properties to be more credible. Accordingly, the Respondent made a prima facie case. Even though the appraised value is more than the current assessment, the Respondent requested no increase. The Board accepts the Respondent's concession. The burden shifts to the Petitioner to rebut the Respondent's valuation evidence.

- e) The Petitioner offered what amounts to a price per square foot analysis. More specifically, the Petitioner relied on the assessed value per square foot of five properties in the same neighborhood with similar amenities. A party offering assessment data must use generally accepted appraisal or assessment practices to show that the properties from which the data is drawn are comparable to the property under appeal. *See* Ind. Code § 6-1.1-15-18(c); *see also Long*, 821 N.E.2d at 470-71. Conclusory statements that properties are "similar" or "comparable" do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. He must similarly explain how relevant differences affect values. *Id.*
- f) The Petitioner failed to offer the type of comparative data and analysis contemplated by the Tax Court or generally accepted appraisal and assessment practices. While he identified five properties in the same neighborhood and some of the amenities, he offered little or no evidence on many other characteristics that affect market value-in-use. Further, he failed to explain how relevant differences affected the properties' values. For these reasons, the Petitioner's evidence lacks probative value. In any event, that analysis is less persuasive than Mr. Beer's USPAP-compliant appraisal.
- g) Finally, to the extent the Petitioner argued the assessments are not uniform and equal, he 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)).
- h) 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).

- i) Similar to the taxpayer in *Westfield Golf*, the Petitioner’s argument is flawed. Here, the Petitioner failed to explain how his purportedly comparable properties are sufficiently similar to draw any meaningful inference about the uniformity or equality of assessments within an assessing jurisdiction. The Petitioner failed to compare the purportedly comparable assessments to objectively verifiable data, such as sale price or market value-in-use appraisals. Instead, the Petitioner wanted the Respondent to use the same methodology to assess the subject property 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 398-99 (rejecting taxpayer’s uniformity and equality claim where taxpayer argued that its golf-ball landing area was assessed using a different base rate than the base rates used to assess landing areas at other driving ranges). For these reasons, the Petitioner failed to make a prima facie case showing a lack of uniformity and equality in assessments.

Conclusion

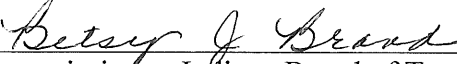
17. The Respondent had the burden of proving the 2020 assessment was correct. The Board finds the Respondent made a prima facie case, and based on the Respondent’s concession, sustains the 2020 assessment of \$148,900. The Petitioner sought a lower value but failed to make a prima facie case.

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2020 assessment.

ISSUED: August 11, 2021

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>.