

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

Petition No.: 83-010-19-1-5-01106-19
Petitioners: Darrell & Christine Foreman
Respondent: Vermillion County Assessor
Parcel: 83-01-28-441-008.000-010
Assessment Year: 2019

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

Procedural History

1. The Petitioners initiated their 2019 assessment appeal with the Vermillion County Assessor on May 16, 2019.
2. On October 10, 2019, the Vermillion County Property Tax Assessment Board of Appeals (PTABOA) issued a Notification of Final Assessment Determination (Form 115) denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On June 25, 2020, 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. Darrell Foreman appeared *pro se* via telephone and was sworn.¹ Vermillion County Assessor's First Deputy Angela Johnson appeared for the Respondent via telephone. Cathi Gould testified via telephone on behalf of the Respondent. All participants were sworn.

Facts

6. The property under appeal is a single-family residence with a detached garage located at 325 Walnut Street in Perrysville.

¹ Christine Foreman was also on the call but was not sworn.

7. The PTABOA determined a 2019 total assessment of \$123,400 (land \$15,500 and improvements \$107,900).
8. The Petitioners requested a total assessment of \$111,500 (land \$12,500 and improvements \$99,000).

Record

9. The official record for this matter is made up of the following:
 - a) A digital recording of the hearing.
 - b) Exhibits:
 - Petitioners Exhibit 1: Summary of Petitioners' testimony.
 - Respondent Exhibit A: Taxpayer's Notice to Initiate an Appeal (Form 130); list of comparable properties; and Bullock Garages advertisement,
 - Respondent Exhibit B: Form 131,
 - Respondent Exhibit C: 2018 and 2019 subject property record cards,
 - Respondent Exhibit D: Summary of Petitioners' testimony,
 - Respondent Exhibit E: Sales comparison analysis.
 - 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 Petitioners' case:
 - a) The subject property is over-assessed. The home was built in 1994 and no "improvements" have been made. The property also includes a detached two-car, vinyl sided garage. The garage was built in 1995, measures 720 square feet, and is currently assessed at \$12,600. In 2015 the home appraised for \$90,300, but the assessment has consistently increased each year even though no changes have been made.² *Foreman testimony; Pet'r Ex. 1.*
 - b) In support of their position, the Petitioners argued properties in Vermillion County consistently sell for more than their assessed value. For example, in 2018 a property

² According to Respondent's Exhibit 8, the home and the garage was appraised in 2015 for a total of \$118,000. *Resp't Ex. 8.*

located in Newport sold for \$73,500. At the time of the sale, the property was assessed at \$51,000. This illustrates inconsistencies between assessed values and sale prices. *Foreman testimony.*

- c) A home located in the same neighborhood as the subject property was listed for \$92,000 but sold for \$85,000. While a modular home in the neighborhood “did not get what she was asking” and eventually sold for \$48,000. These two examples indicate that properties are “not selling for what it is appraised at.” *Foreman testimony.*
- d) The Petitioners also researched comparable garage assessments near the subject property. The Petitioners found a comparable garage located at 600 North Lawndale. This D grade, three-car, vinyl sided garage, was built in 2005 and measures “920 or 936 square feet.” While this garage is superior to the subject property, it is also assessed for \$12,600. Based on current information, Bullock Garages will build a new garage for \$9,000.³ *Foreman testimony; referencing Resp’t Ex. A.*
- e) Finally, the Petitioners argued their land is overvalued. According to the Petitioners, a property located “half a block down the road” has a 0.57-acre lot and is assessed for less than the subject property’s 0.52-acre lot.⁴ *Foreman argument.*

11. Summary of the Respondent’s case:

- a) The subject property is correctly assessed. In support of her position, the Respondent presented the assessed values of four garages. The first garage located at 401 Walnut Street is a C grade garage built in 1990 and measures 576 square feet. The current assessed value is \$11,200. The second garage is also a C grade and was built in 2010. This garage measures 768 square feet and has a current assessed value of \$12,300. The remaining two C grade garages measure 720 square feet and 792 square feet. Both were built in 1970 and are currently assessed at \$6,800 and \$5,600, respectively. Based on the assessment data, the 2019 garage assessments are “pretty comparable with each other.” *Johnson testimony.*
- b) The current assessed value of the subject property is based on market value-in-use and not based on “one individual assessment.” Over the last five years, the assessed value of the subject property has increased less than 3%. The current assessment is fair and consistent with other properties in Vermillion County. *Gould testimony.*

³ Respondent’s Exhibit A includes an advertisement for Bullock Garages for a “May Special! 2 car garage as low as \$9995.” *Resp’t Ex. A.*

⁴ The Petitioners also argue the Assessor’s office cannot tell the difference between carpenter-built homes and modular homes. *Foreman argument.*

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. The Petitioners argued the assessment increased more than 5% between 2018 and 2019. According to the subject property record card, the assessed value increased from \$122,800 in 2018 to \$123,400 in 2019. This is an increase of less than 5%. The ALJ preliminarily ruled the burden of proof remains with the Petitioners, a decision the Board now adopts. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners.

Analysis

16. The Petitioners failed to make a prima facie case for reducing the assessment.
 - 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 the 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.
 - c) In support of their argument, the Petitioners compared their assessment with sales or listing prices of other homes in Vermillion County. In making this argument, the Petitioners are essentially relying on a sales-comparison approach to establish the assessment should be lowered. *See* MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on “sales of comparable improved properties and adjusts the selling prices to reflect the subject property’s total value.”); *see also, Long*, 821 N.E.2d 466, 469.
 - d) To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. 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 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.*
 - e) Here, the type of analysis required is lacking. The only information the Petitioners provided was the sales or listing prices and locations of their purportedly comparable properties. The Petitioners failed to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the subject property. Moreover, the Petitioners failed to identify or quantify any differences between the purportedly comparable properties and the subject property. Thus, the Petitioners’ sale-comparison approach lacks probative value.
 - f) The Petitioners also claimed the assessed value of a garage located at 600 North Lawndale proves their garage is over-assessed. They also argued their 0.52-acre lot should not be assessed more than a neighboring 0.57-acre lot. While a party may offer evidence showing how comparable properties are assessed, the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. The proponent must again establish the properties are comparable and explain any differences between the properties. *Long*, 821 N.E.2d at 470-71. The type of analysis required by *Long* is lacking from the Petitioners case.

- g) The only information the Petitioners provided for the garage assessment was grade, size, and build year. And for the land assessment the only information they provided was lot size. The Petitioners needed to establish the comparability of the properties and explain how any differences affect their market value-in-use. *Long*, 821 N.E.2d 470-71. The Petitioners failed to do this.
- h) The Petitioners failed to provide any probative market-based evidence as to market value-in-use. The Petitioners claim their property appraised for \$90,300 in 2015 but failed to present any documentation or probative evidence relating a four-year-old appraisal to the January 1, 2019, valuation date. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). For these reasons, the Petitioners failed to make a prima facie case for reducing the assessment.
- i) Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lay Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. The Petitioners failed to make a prima facie case for reducing the 2019 assessment.

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2019 assessment.

ISSUED: September 22, 2020

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>>.