

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

Petitions: 64-016-20-1-4-00340-21
Petitioner: Praveen & Ellora Gulati
Respondent: Porter County Assessor
Parcel: 64-06-06-303-011.000-016
Assessment Years: 2020

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. The Gulatis contested the 2020 assessment of a 2.92 acre parcel of vacant land located on US Highway 20 in Portage. The Porter County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$203,800.
2. The Gulatis timely appealed to the Board and elected to proceed under the small claims procedures. On August 31, 2021, Jennifer Thuma, our designated Administrative Law Judge (“ALJ”), held a hearing on their petition. Neither she nor the Board inspected the property.
3. Praveen Gulati appeared *pro se*. The Assessor appeared by Porter County Residential Real Estate Director Peggy Hendron and Commercial Real Estate Director Mary Bambek. All were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a) Petitioner Exhibit 1: Letter to IBTR describing the appeal¹
 - Petitioner Exhibit 2: List of Fees for Property Purchase
 - Petitioner Exhibit 3: Property Record Card-US Highway 20
 - Petitioner Exhibit 4: Drive-by Real Estate Evaluation
 - Petitioner Exhibit 5: Transfer History of Land on US Highway 20
 - Petitioner Exhibit 6: Notice of Public Hearing-Zoning Change²
 - Petitioner Exhibit 7: Photo of Subject Property

¹ Praveen Gulati submitted a letter to the Board listing his exhibits with letters but labeled them individually with numbers. The Board used the numbering system for reference.

² The ALJ marked the petitioners’ Exhibits 6 and 7, after Praveen Gulati submitted them unmarked via email.

- Respondent Exhibit 1: 2020 Property Record Card
Respondent Exhibit 2: Aerial Photo of Subject
Respondent Exhibit 3: Aerial Photo of Subject & Surrounding Area
Respondent Exhibit 4: Commercial Zoning Map
Respondent Exhibit 5: Residential Zoning Map
Respondent Exhibit 6: 2020 Appraisal of Subject Property
Respondent Exhibit 7: Appraisal Comparison 1-PRC & Aerial
Respondent Exhibit 8: Appraisal Comparison 2-PRC & Aerial
Respondent Exhibit 9: Appraisal Comparison 3-PRC & Aerial
Respondent Exhibit 10: Appraisal Comparison 4-PRC & Aerial
Respondent Exhibit 11: Appraisal Comparison 5-PRC & Aerial

- b) The record for the matter also includes the following: (1) all pleadings and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code § 6-1.1-15-17.2 (b) and (d).
6. Here, the assessed value of the property remained unchanged from 2019 to 2020, thus, the burden-shifting provisions are not triggered and the Gulatis have the burden of proof.

SUMMARY OF CONTENTIONS

7. The Gulatis' case:
- a) The Gulatis argued that the Assessor made numerous mistakes in valuing the subject property. In particular, they argued that it should be zoned as residential instead of commercial. Praveen Gulati also testified to several factors that he believed decreased the value of the subject property including that it was "landlocked", not "shovel-ready", and that it would cost over \$100,000 to remove trees and grade the property. *Gulati testimony*.
- b) During the course of the hearing, the Gulatis presented evidence in support of several different values. These included:
- The May 10, 2018 purchase price of \$50,000, minus the fees and commission from the sale
 - A June 23, 2018 commercial valuation of \$85,000 prepared by a real estate broker
 - A neighboring parcel's 2020 assessment of \$5,400

- A 2020 sale of a neighboring property for \$104,875.

Gulati testimony; Pet'r. Ex. 2-4.

- c) In addition, the Gulatis made a number of additional allegations regarding purported misconduct by the Assessor's office. Because these allegations were not relevant to the 2020 valuation of the subject property, we do not recount them here. *Gulati testimony.*

8. The Assessor's case:

- a) The Assessor argued that the Gulatis did not meet their burden of proof for any of their requested values. In particular, the Assessor noted that the 2018 valuation report was not an appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), and was prepared solely for financing purposes. *Hendron testimony; Pet'r. Ex. 4.*
- b) Hendron testified that the subject property was correctly classified for light commercial uses, in accordance with the City of Portage zoning ordinance. She also noted that the 2018 valuation report the Gulatis provided even states that the likely buyer of the subject property is an investor. She testified that current uses of other properties along US Highway 20 include a Dollar General Store, light industrial, and other commercial businesses. *Hendron testimony; Resp't. Exs. 3, 4.*
- c) The Assessor also submitted a USPAP-compliant appraisal dated January 1, 2020 prepared by William Eenshuistra, Jr., a certified general appraiser. He valued the property at \$131,400 using the sales-comparison approach. *Hendron testimony; Resp't. Exs. 6-11.*

ANALYSIS

9. The Gulatis failed to make a prima facie case for reducing the subject property's 2020 assessment. At the Assessor's request, we order the assessment lowered to the value from the Eenshuistra appraisal of \$131,400. We reach this decision for the following reasons:

- 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 2020 assessment, the valuation date was January 1, 2020. I.C. § 6-1.1-2-1.5.
- c) First, we note that the Gulatis alleged that the Assessor made many mistakes in the assessment and did not follow the applicable law. The Indiana Tax Court has long held that simply contesting the Assessor's methodology is insufficient to make a prima facie case of an error in the assessment. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, a party must offer market-based evidence. The Gulatis did offer some such evidence that we now examine.
- d) The Gulatis offered their 2018 purchase price and a 2018 commercial valuation as evidence. But they did not show how either of these values from 2018 related to the relevant valuation date of January 1, 2020. In order to be probative, evidence must be affirmatively related to the valuation date. *See Nova Tube Ind. II, LLC v. Clark Cnty. Ass'r*, 101 N.E.3d 887, 895 (Ind. Tax Ct. 2018) (rejecting a property's sale price where the assessor did not trend the sale or provide "affirmative evidence" relating it to the relevant valuation dates). The Gulati's failure to relate the 2018 evidence to January 1, 2020 renders it unreliable.
- e) But the Gulatis did offer some evidence that was more closely related to the valuation date. In particular, they pointed to the assessment and sale of a nearby parcel, both from 2020. We examine each in turn.
- f) Evidence of comparable assessments can be persuasive, but to effectively use an assessment comparison approach, parties must show the properties are comparable to the subject using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. To establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 470-71. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* at 471. The Gulatis failed to provide any explanation of how the neighboring parcel differed or was similar to the subject. While the parcels were close in proximity, there are a number of other factors such as size and shape that can have a dramatic impact on value. Without evidence that shows relative similarities and differences and quantifies the impact of those differences on value, the Gulatis' assessment evidence is unreliable.
- g) The sale of the neighboring parcel is similarly deficient. The Gulatis failed to show how it meaningfully compared to the subject property. Conclusory statements that a property is "similar" or "comparable" are insufficient. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 at 470 (Ind. Tax Ct. 2005).

- h) Finally, we note that Gulati contended that the Assessor should zone his entire parcel as residential instead of commercial. But zoning is not a function of the Assessor, and the Board has no power to make changes to local zoning ordinances. It is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904 (Ind. Tax Ct. 2002) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)).
- i) The Gulatis failed to make a prima facie case for any change in the assessment. Where the Petitioners have not supported the claim with probative evidence, the Assessor's duty to support the assessed values is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003). But here, the Assessor has conceded that the property is worth no more than \$131,400 as shown by the Eenshuistra appraisal. Thus, we order the subject property's 2020 assessment reduced to \$131,400.

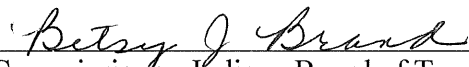
FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board finds for the Assessor and orders the subject property 2020 assessment reduced to \$131,400.

ISSUED: 11/24/2021



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>.