

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

Petition No.: 62-006-21-1-5-00062-22
Petitioner: Ross W. Hendershot
Respondent: Perry County Assessor
Parcel: 62-13-14-100-013.017-006
Assessment Years: 2021

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

Procedural History

1. Ross Hendershot appealed the 2021 assessment of his property located at 10505 Aberdeen Way in Tell City, Indiana.
2. On December 22, 2021, the Perry County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the assessment at \$46,900 for land and \$261,100 for improvements for a total of \$308,000.
3. The Petitioner timely filed an appeal with the Board, electing to proceed under the small claims procedures.
4. On October 27, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Ross Hendershot, Molly Hendershot, and Austin Budell, consultant for the Assessor, testified under oath. Mendy Lassaline, the Perry County Assessor, also appeared but did not testify.

Record

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

a) Exhibits:

Petitioner Exhibit 1: Petitioner’s comparable analysis,
Petitioner Exhibit 2: Subject property record card and photograph,
Petitioner Exhibit 3: Property record card and two photographs for 12850 Axel Road,
Petitioner Exhibit 4: Property record card for 5983 Shiloh Road,

- Petitioner Exhibit 5: Property record card and photograph for 716 – 25th Street,
Petitioner Exhibit 6: Property record card and photograph for 76 Guttenberg Lane,
Petitioner Exhibit 7: Property record card and photograph for 2444 Tell Street,
Petitioner Exhibit 8: Property record card and photograph for 3713 Boundary Way,
Petitioner Exhibit 9: Subject property floor plan.

- Respondent Exhibit 1: Residential appraisal report of the subject property prepared by Valery Kessens with an effective date of January 1, 2021,
Respondent Exhibit 2: Notification of Final Assessment Determination – Form 115,
Respondent Exhibit 3: 2021 subject property record card.

- b) 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) a digital recording of the hearing.

Findings of Fact

7. The subject property is a one-story wood frame home built in 2019 located on 1.4652 acres of land in Tell City. *Pet'r Ex. 2; Resp't Ex. 3.*
8. The Assessor engaged Valery Kessens of Valery M. Kessens Appraisals to appraise the retrospective market value of the subject property as of January 1, 2021. She certified that her appraisal complied with the Uniform Standards of Professional Appraisal Practice (“USPAP”). To arrive at her opinion of value, Kessens developed both the cost approach and the sales-comparison approach. She ultimately concluded to a reconciled value of \$311,000. *Resp't Ex. 1.*

Contentions

9. Summary of the Petitioner’s case:
- a) Hendershot claimed homes in the Highland subdivision “as a whole” are being unfairly assessed compared to other homes in Perry County. *R. Hendershot testimony.*
- b) Hendershot presented the property record cards and assessments of six properties located within a five-mile radius of the subject property. He compared various factors such as age, lot size, square footage, construction style, and market adjustments. The 2021 assessments of the comparable properties ranged from

\$198,200 to \$332,100. He claimed that these assessments demonstrated that the subject property was assessed too high. *R. Hendershot testimony; Pet'r Exs. 1-8.*

- c) In addition, Hendershot claimed that the subject property's current assessment was incorrect in its square footage and number of bedrooms. *Hendershot testimony; Pet'r Exs. 2 & 9.* He contends that his first floor is 1,876 square foot (rather than 1918 square foot) and his attic is 453 square foot (rather than 836 square foot)

10. Summary of the Respondent's case:

- a) The Assessor argued that the subject property's 2021 assessment is correct. In support of this, Budell testified that the value from the Kessens appraisal of \$311,000 supports the PTABOA assessment of \$308,000. *Budell testimony; Resp't Ex. 1.*
- b) Budell also testified that Hendershot's comparable assessment analysis was flawed because he failed to show how the comparable properties compare to the subject property. In particular, Budell noted some differences in the physical characteristics and taxing districts of the comparable properties as compared to the subject property. *Budell testimony.*

Analysis

11. The Petitioner failed to make a prima facie case for reducing the property's 2021 assessment.

- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
- b) Real property is assessed based on its market value-in-use. Indiana Code § 6-1.1-31-6 (c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 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.
- c) 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 (In. Tax Ct. 2005). For the 2021 assessment, the valuation date was January 1, 2021. *See I.C. § 6-1.1-2-1.5.*

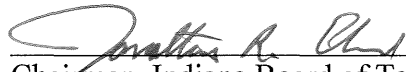
- d) We first note that Hendershot claimed the Assessor failed to conduct a preliminary informal meeting prior to the PTABOA hearing. While the Assessor should follow all the requirements of I.C. § 6-1.1-15-1.2, we do not find that a failure to conduct an informal meeting entitles Hendershot to any relief. The Board's hearings are *de novo*, thus, Hendershot had the opportunity to present all their evidence to the Board and was not prejudiced by the lack of a preliminary informal meeting.
- e) Hendershot primarily relied on the comparable assessment data he presented. But a party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable properties are comparable to the property under appeal. *See 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. *Id.* at 471. They must similarly explain how relevant differences affect values. *Id.*
- f) But Hendershot did not offer the type of analysis contemplated by *Long*. While he identified some similarities and differences between the comparables and the subject, he did not offer any evidence or analysis that showed how those differences affected the properties' overall market values-in-use. Without such analysis, this evidence is insufficient to support any reduction in value.
- g) Hendershot also alleged that there were errors in the original assessment. But it is insufficient to simply attack the methodology used to develop the assessment. Instead, parties must use market-based evidence to "demonstrate that the suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Hendershot did not provide probative evidence that supported any specific value. For that reason, he is not entitled to any relief.
- h) Finally, it appears Hendershot may have been arguing that he was not receiving a uniform and equal assessment as compared to the other properties he presented. Thus, we will address that claim. 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. Assessor*, 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. *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. *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)).

- i) When a ratio study shows that 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 County Assessor*, 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).
- j) As discussed above, one of the requirements for a reliable ratio study is a comparison between the assessments used and objectively verifiable market data such as sale prices or appraisals. Hendershot did not provide that data. In addition, he failed to show that the properties he presented were a statistically reliable sample of the properties in the neighborhood. Simply comparing a few factors as Hendershot did is not a recognized approach for applying an equalization adjustment. For these reasons, he failed to make a prima facie case showing a lack of uniformity and equality in the assessment.
- k) Thus, we find Hendershot has failed to make a case for any reduction in the assessment. Because the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- l) However, Hendershot's testimony as to errors in square footage is un rebutted, and we order the Assessor to correct the property record card to reflect 1876 square foot on the first floor and 836 square foot in the attic.

Final Determination

12. In accordance with the above findings and conclusions, the Board orders no change to the 2021 assessment.

ISSUED: 1/24/2023


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>>