

REPRESENTATIVE FOR THE PETITIONERS:

Brenda Mark, *pro se*

REPRESENTATIVE FOR THE RESPONDENT:

Susan Engelberth, Kosciusko County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Jeffery A. & Brenda Mark,)	Petition No.: 43-032-20-1-5-00724-20
)	
Petitioners,)	Parcel No.: 43-11-16-300-290.000-032
)	
v.)	County: Kosciusko
)	
Kosciusko County Assessor,)	Assessment Year: 2020
)	
Respondent.)	

Appeal from the Final Determination of the
Kosciusko County Property Tax Assessment Board of Appeals

October 12, 2021

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. The Assessor offered a USPAP-compliant appraisal supporting a value of \$1,340,000 for the 2020 assessment date. The Petitioners did not impeach the appraisal, nor did they offer any reliable evidence supporting a different value. Thus, we find for the Assessor and order the assessment reduced to the value reflected by the appraisal.

PROCEDURAL HISTORY

2. The Petitioners appealed the 2020 assessment of their single-family home and utility shed located at 945 Country Club Lane in Warsaw. On October 26, 2020, the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination upholding the assessment at \$454,000 for land and \$932,800 for improvements for a total of \$1,386,800. The Petitioners timely filed an appeal with the Board.
3. On May 13, 2021, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
4. Brenda Mark, Kosciusko County Assessor Susan Engelberth, and Appraiser John Beer all testified under oath.
5. The Petitioners offered no exhibits.
6. The Assessor offered the following exhibits:
 - Respondent Exhibit A: 2020 subject property record card,
 - Respondent Exhibit B: Aerial photograph of the subject property,
 - Respondent Exhibit C: Original sales disclosure form for the subject property, dated November 14, 2019,
 - Respondent Exhibit D: Revised sales disclosure form for the subject property, dated June 10, 2020,
 - Respondent Exhibit E: Original multiple listing sheet for the subject property, input date September 14, 2019,
 - Respondent Exhibit F: Revised multiple listing sheet for the subject property, input date May 4, 2020,
 - Respondent Exhibit G: 2019 multiple listing sheet and 15 photographs of the subject property,
 - Respondent Exhibit H: Email correspondence between Jeff Mark and Kim Carson,
 - Respondent Exhibit I: Residential Appraisal Report of the subject property prepared by John P. Beer with an effective date of January 1, 2020,
 - Respondent Exhibit J: Local Market Update sheets for December 2017, December 2018 and November 2019 prepared by Indiana Association of Realtors,

- Respondent Exhibit K: Purchase Agreement for the subject property, dated September 26, 2019,
Respondent Exhibit L: Addendum A to Purchase Agreement for the subject property, dated September 26, 2019,
Respondent Exhibit M: 945 Country Club Lane – inventory list of items to be removed by seller, dated September 29, 2019.

7. 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 the ALJ; and (3) a digital recording of the hearing.

PETITIONERS' CONTENTIONS

8. The Petitioners claim the assessment is excessive because the purchase price shown on the sales disclosure form included the value of personal property including furniture and other items. Ms. Mark testified that they did not have the personal property appraised, but the realtor and the sellers came up with a value of \$150,000 for the personal property left in the home. *Mark testimony; Resp't Exs. C, L, M.*
9. The Petitioners also argued that the \$150,000 for personal property should be deducted from the 2019 assessment, which they referred to as their "tax base." In the alternative, they argued that it should be deducted from the October 31, 2019 purchase price of \$1,369,900 resulting in a value of \$1,219,900. *Mark testimony; Resp't Ex. D.*

ASSESSOR'S CONTENTIONS

10. The Assessor offered a Uniform Standards of Professional Appraisal Practice ("USPAP") compliant appraisal prepared by certified residential appraiser John P. Beer. He valued the property using the sales-comparison approach. Based on his appraisal, Beer estimated the total value of the property to be \$1,340,000 as of January 1, 2020. The Assessor requested the current assessment be reduced from \$1,386,800 to \$1,340,000. *Engelberth & Beer testimony; Resp't Ex. I.*

11. The subject has lake frontage on Winona Lake. Because the site extends into the lake beyond the neighboring properties it has a nearly a 180-degree view of the lake. The home was originally built in 1956, and has two stories with 6,212 square feet of living area. It has been extensively remodeled giving it an effective age of 2010. It is in average condition with five bedrooms, four full bathrooms, two half bathrooms and a 1,080 square foot attached garage. *Beer testimony; Resp't Exs. A, B, G & I.*
12. Beer noted that he only used comparables from Winona Lake. In order to get enough comparables, he had to include four sales from 2018. He made no time adjustments. He stated that the market was ascending and that this decision made it a “conservative” appraisal.
13. He adjusted each of the comparable properties for site size, quality of construction, number of bedrooms, number of bathrooms, gross living area, garage size and additional outbuildings. The six sales include the following:
 - **Sale 1.** This property is a 1.5 story home with 3,160 square feet of living area on a 0.60 acre lot with 100 feet of effective lake frontage. It was constructed in 1987 with an effective age of 2005. It has four bedrooms, three full bathrooms, one half bathroom and a 768 square foot attached garage. The quality of construction is inferior to the subject. It sold on September 19, 2019, for \$865,000. After adjustments the indicated value is \$1,418,420.
 - **Sale 2.** This property is a two-story home with 4,706 square feet of living area on a 0.60 acre lot with 99 feet of effective lake frontage. It was constructed in 1989 with an effective age of 2000. It has five bedrooms, five full bathrooms and an 816 square foot attached garage. The quality of construction is slightly inferior to the subject. It sold on July 27, 2018, for \$1,000,000. After adjustments the indicated value is \$1,322,410.

- **Sale 3.** This property is a two-story home with 6,082 square feet of living area on a 1.14 acre lot with 155 feet of effective lake frontage. It was constructed in 2000 with an effective age of 2005. It has five bedrooms, three full bathrooms, one half bathroom and a 918 square foot attached garage. It also has an additional 1.41 acres off-lake with an 864 square foot detached garage. The quality of construction is inferior to the subject. It sold on July 20, 2018, for \$1,100,000. After adjustments the indicated value is \$1,293,250.

- **Sale 4.** This property is a two-story home with 5,081 square feet of living area on a 0.94 acre lot with 141 feet of effective lake frontage. It was constructed in 1990 with an effective age of 2010. It has four bedrooms, four full bathrooms, one half bathroom and a 1,022 square foot attached garage. The quality of construction is inferior to the subject property. It sold on May 9, 2018, for \$1,125,000. After adjustments the indicated value is \$1,344,235.

- **Sale 5.** This property is a two-story home with 5,209 square feet of living area on a 0.82 acre lot with 149 feet of effective lake frontage. It was constructed in 1988 with an effective age of 1995. It has four bedrooms, three full bathrooms, one half bathroom and a 1,154 square foot attached garage. The quality of construction is inferior to the subject property. It sold on March 29, 2018, for \$1,250,000. After adjustments the indicated value is \$1,432,655.

- **Sale 6.** This property is a 2.5 story home with 6,316 square feet of living area on a 0.45 acre lot with 94 feet of effective lake frontage. It was constructed and has an effective age of 2007. It has five bedrooms, four full bathrooms, two half bathrooms and an 886 square foot attached garage. The quality of construction is superior to the subject property. It sold on August 8, 2019, for \$1,330,000. After adjustments the indicated value is \$1,321,060.

Beer testimony; Resp't Ex. I.

14. The adjusted sale prices ranged from \$1,293,250 to \$1,432,655 with an average sale price of \$1,355,338 and a median of \$1,333,323. Beer reconciled these to a value of \$1,340,000. *Beer testimony; Resp't Ex. I.*
15. The Assessor also introduced evidence to show that median home prices increased from 2017 to 2019 in Kosciusko County. The Indiana Association of Realtors Local Market Update shows that in December 2017 the median sale price increased 7.9%, in December 2018 it increased 8.1% and in November 2019 it increased 4.8%. *Beer testimony; Resp't Ex. J.*
16. The Assessor admitted that there appears to be some personal property included in the Petitioner's purchase of the subject property. But she argued that the Petitioner's suggested value of \$150,000 was not supported by evidence. The Assessor also pointed to the original sales disclosure form which indicates no personal property was included in the sale price. The Petitioners later submitted a revised sales disclosure form which indicated \$150,000 of personal property was included in the sale. *Engelberth testimony; Resp't Exs. C-G, L, M.*

BURDEN OF PROOF

17. 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. 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). The burden-shifting statute creates two exceptions to that rule.
18. 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.” I.C. § 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.” I.C. § 6-1.1-15-17.2(b).

19. Second, I.C. § 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.” I.C. § 6-1.1-15-17.2(d).
20. Here, the parties agreed the assessed value of the subject property increased by more than 5% from 2019 to 2020. The property record card shows the assessment increased from \$875,200 in 2019 to \$1,386,800 in 2020. Accordingly, the burden shifting provision of I.C. § 6-1.1-15-17.2 applies and the Assessor has the burden to prove the 2020 assessment is correct.

ANALYSIS

21. Real property is assessed based on its market value-in-use. I.C. § 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.
22. 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. *See* Ind. Code § 6-1.1-2-1.5.

23. The Assessor offered evidence showing the Petitioners purchased the property on October 31, 2019, for \$1,369,900. The purchase price can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). But the petitioners proved, and the Assessor conceded, that this sale included some amount of personal property. The Petitioners stated that the value of this personal property was \$150,000. We find this statement to be conclusory at best. They did not provide any evidence showing how this value was calculated, or even an inventory of the included items. Because the October 31 sale included some unknown amount of personal property, we do not find it to be reliable evidence of value.
24. The Assessor also offered a USPAP compliant appraisal prepared by licensed appraiser John Beer. He concluded to a value for the subject property of \$1,340,000 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.
25. We are somewhat concerned about Beer's decision to not adjust his comparable sales for market conditions/time. Although he explained that it was an ascending market and his appraisal was "conservative", evidence must still be related to the valuation date. *Long* 821 N.E.2d at 471. Nevertheless, we do not find this flaw fatal as Beer still offered his expert opinion valuing the subject property as of the valuation date. In addition, flaws in an appraisal do not necessarily render it invalid. *Marion Cnty. Assessor v. Gateway Arthur, Inc.*, 43.N.E.3d 279, 281-82, 284-85 (Ind Tax Ct. 2015). Thus, we conclude the Beer appraisal is reliable evidence of value showing the subject property was worth \$1,340,000 as of January 1, 2020.

26. We now turn to whether the Petitioners proved a lower value. As discussed above, they made two distinct claims. First, they requested the prior year's assessment of \$875,200, minus the \$150,000 value they claimed for personal property. In the alternative, they requested the October 31 purchase price of \$1,369,900 minus the same \$150,000. As discussed above, they failed to prove with reliable evidence that their purported valuation of the personal property was correct. Because both of their claims relied on this valuation, we find both of the Petitioners' requested assessments unsupported regardless of any other factors.

CONCLUSION

27. The Assessor provided a USPAP compliant appraisal that reliably valued the subject property at \$1,340,000 as of the assessment date. The Petitioners did not successfully impeach the appraisal, nor did they provide any reliable evidence of their own supporting a different value. Thus, we find for the Assessor and order the assessment changed to \$1,340,000 for the 2020 assessment year.¹

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.



Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review

¹ We recognize that the Supreme Court's recent decision in *Southlake Ind., LLC v. Lake Cty. Assessor*, 2021 Ind. LEXIS 590 (Ind. 2021) may have some relevance to this case. As that decision was issued after this case was heard, neither party had the opportunity to argue its impact to us. In addition, neither party submitted a notice of additional authority. The Board is not permitted to act as an advocate for the parties. *CVS Corp. v. Prince*, 149 N.E.3d 323 (Ind. Tax Ct. 2020) (finding that the Board is "not authorized to ride in on a white horse to save the day" when a party fails to cite to legal authority or make persuasive argument.) Thus, we resolve this case without regard to this decision.

- 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>>.