

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

Petition: 64-010-19-1-5-00721-20
Petitioners: Milo and Leona Ritchey
Respondent: Porter County Assessor
Parcel: 64-07-02-352-001.000-010
Assessment Year: 2019

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

PROCEDURAL HISTORY

1. Milo and Leona Ritchey contested the 2019 assessment of their property located at 519 E. 1100 N. in Westville. The Porter County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$394,700 (land at \$61,700 and improvements at \$333,000).
2. The Ritcheys filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On March 4, 2021, Ellen Yuhan, our designated administrative law judge (“ALJ”) held a telephonic hearing on the Ritcheys’ petition. Neither she nor the Board inspected the property.
3. Milo and Leona Ritchey appeared pro se. The Assessor appeared by Terry Newhard, Assessment Specialist III and Peggy Hendron, Residential Real Estate Supervisor. All were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit 1: Picture of the house and pole barn, builder’s proposal, Certificate of Zoning Compliance, plat map, building permit, property record card for the property before being subdivided
 - Petitioner Exhibit 2: 2017 pay 2018 Respondent’s and Petitioners’ assessments, circuit breaker allocation payable for 2018, subject property record card for 2017, Form 11 for 2017
 - Petitioner Exhibit 3: 2018 pay 2019 Respondent’s and Petitioners’ assessments,

- Petitioner Exhibit 4: circuit breaker allocation payable for 2019, subject property record card for 2018, Form 11 for 2018
- Petitioner Exhibit 5: 2019 pay 2020 Respondent's and Petitioners' assessments, circuit breaker allocation payable for 2020, subject property record card for 2017-2019, Form 11 for 2019
- Petitioner Exhibit 6: Form 130 for 2018, Grounds for Appeal, Form 115 for 2018, Form 130 for 2019, Form 134 for 2019, Form 115 for 2019, Form 131 for 2019
- Petitioner Exhibit 7: Sales comparables
- Respondent Exhibit 1: Newspaper articles about the housing market
- Respondent Exhibit 2: Appraisal dated January 1, 2019
- Respondent Exhibit 3: Property record card
- Respondent Exhibit 4: Permit for the house
- Respondent Exhibit 5: Permit for the pole barn/detached garage

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (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's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
- 6. Because the Ritcheys successfully appealed the 2018 assessment and their assessment increased from 2018 to 2019, the Assessor has the burden of proof.

SUMMARY OF CONTENTIONS

- 7. The Assessor's case:
 - a. The Assessor provided an appraisal that complies with the Uniform Standards of Professional Appraisal Practice ("USPAP") prepared by William L. Eenshuistra, Jr., a certified Indiana general appraiser. Eenshuistra estimated the subject's market value at \$420,000 as of January 1, 2019. However, the Assessor acknowledged that Eenshuistra's appraisal "does not include the wetlands" and he is not asking to increase the assessment to \$420,000. Instead, after changing the detached garage to a pole barn with an open frame porch and taking the 4.23 acres of wetlands into consideration, the Assessor suggests changing the subject's assessed value to

\$390,200 (land at \$61,700 and improvements at \$328,500). *Newhard testimony; Resp't Ex. 1.*

- b. The building permit for the Ritcheys' house shows an estimated cost of \$200,000 for a house with a 2,108 square foot 1st floor, a 2,108 square foot basement, and a 552 square foot attached garage. However, the 1st floor and basement are actually 2,554 square feet each, and the garage is 546 square feet. The difference between what is shown on the permit and what was built is 886 square feet, which is the size of a small house. *Newhard testimony; Resp't Ex. 3.*
- c. The building permit for the Ritcheys' pole barn estimates its value at \$20,000 for a building that is 36 feet by 56 feet. The Ritcheys contend they paid \$32,000 for the pole barn, which is actually 30 feet by 56 feet. This shows that the permit value is not reliable. Although the Assessor originally assessed the structure as a detached garage with an open frame porch, he changed it to a pole barn with an open frame porch after talking to the builder. *Newhard testimony; Resp't Exs. 2, 4.*
- d. The Ritcheys claim they paid taxes for the full year 2016 but did not take occupancy of the house until June 1, 2017. The taxes paid in 2016 would have been for the 2015 assessment and would have been addressed at the closing on the property. The taxes for 2017 would have been for land only. The taxes paid in 2018 were based on the 2017 assessment when the house was only 40% complete and the pole barn was 100% complete. *Newhard testimony.*
- e. The Assessor takes issue with the Ritcheys' exhibits for the following reasons:
 - Exhibit 1 shows the proposal from the builder, not the actual build price. It is also for a much smaller house.
 - Exhibit 2 contains a Form 134 that the Assessor prepared and the Ritcheys originally agreed to, but they returned it unsigned and with a note of disagreement.
 - Exhibits 3 and 4 refer to years not on appeal.
 - Exhibit 6 is information for seven properties that sold, but only four of those properties sold in the correct time frame. Additionally, only one is a ranch like the subject, but it was built in 1951 whereas the subject was built in 2016. The Assessor would not use any of these properties as comparable sales.
 - Exhibit 7 contains articles from various publications citing a 7% rise in housing prices. Some of the articles are for only one month, December 2018. Another one refers to sales in March 2019, which has no bearing on this appeal. The last article lists statewide figures, not local figures for Porter County. Assessed values for 2019 are based on area sales from 2018, not a statewide average increase.
- f. The Ritcheys mention a 1% tax cap, but the tax cap does not mean that the value can only be increased by 1%. The 1% tax cap is only for the homesite and up to one acre of land. Farmland is capped at 2% and excess acreage at 3%. *Newhard testimony.*

8. The Ritcheys' case:

- a. The Ritcheys broke ground in September of 2016. They built their house for \$244,850 and their pole barn cost them \$32,398. That was the contract price with the builder and taxes are supposed to be 1% of the building price. The pole barn has no heat, no electric, and no plumbing. It is used to store farm equipment. The Assessor describes it as a detached garage with an open frame porch, but the building permit is for a pole barn, and what the Assessor calls an open frame porch is merely an overhang. *M. Ritchey testimony; L. Ritchey testimony; Pet'r Exs. 1, 2.*
- b. The Ritcheys paid \$100,000 for their 10 acres of land but they did not realize half of it was wetlands when they bought it. They were required to put in an oversized septic system in the middle of their property which prevents them from renting out approximately 2 acres of their land. There is also a culvert for storm water that runs through the property. Their 10 acres was previously part of a 46-acre property that was being assessed at \$92,000. They do not understand why their 10 acres is assessed differently than it had been before. Putting a house, pole barn and septic system on it should not change its value. *L. Ritchey testimony; Pet'r Ex. 1.*
- c. The Ritcheys' assessment is inflated compared to other properties located on or near 1100 N. The house located at 501 E. 1100 N., which has an upper floor that the Ritcheys' house does not have, sold for \$352,500. And the house located behind their property is assessed lower than their property even though it is a two-story, four-bedroom house with 22 acres. *L. Ritchey testimony; Pet'r Ex. 6.*
- d. In 2017, the Ritcheys' property was assessed at \$240,200¹. In 2018, their total assessment increased to \$413,700² before it was reduced to \$380,000³ following their appeal. Then in 2019, the Ritcheys' total assessment increased to \$394,700⁴. If market values are increasing at 7% per year as indicated by the articles about the Indiana housing market they reviewed, then their total 2019 assessment should be \$363,668⁵. *M. Ritchey testimony; Pet'r Exs. 2, 3, 4, 5, 7.*

ANALYSIS

9. The Assessor made a prima facie case supporting the 2019 assessment. The Ritcheys sought a lower assessment, but they failed to offer any probative evidence in support of their requested valuation. Nevertheless, the Assessor requested that we reduce the assessment to \$390,200, and we accept his concession. The Board reached this decision for the following reasons:

¹ House at \$102,700, pole barn at \$51,300, one acre of land at \$24,500, and remaining acreage at \$61,700.

² House at \$274,500, pole barn at \$53,000, one acre of land at \$24,500, and remaining acreage at \$61,700.

³ House at \$261,400, pole barn at \$32,400, one acre of land at \$24,500, and remaining acreage at \$61,700.

⁴ House at \$288,300, pole barn at \$44,700, one acre of land at \$24,500, and remaining acreage at \$37,200.

⁵ House at \$279,000, pole barn at \$34,668, one acre of land at \$24,500, and remaining acreage at \$25,500.

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with USPAP often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct.2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices).
- c. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of 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). The valuation date for this appeal is January 1, 2019. I.C. § 6-1.1-2-1.5(a).
- d. As discussed above, the Assessor has the burden of proving that the 2019 assessment is correct. He offered a USPAP-compliant appraisal prepared by Eenshuistra, a certified general appraiser. Eenshuistra relied on the sales comparison approach and estimated the subject's value to be \$420,000 as of January 1, 2019. Because the Ritcheys did not challenge the credibility of Eenshuistra's appraisal, we conclude it is probative evidence of the subject's true tax value. Accordingly, the Assessor made a prima facie case supporting the 2019 assessment. The burden therefore shifts to the Ritcheys.
- e. In an effort to rebut the Assessor's valuation evidence, the Ritcheys offered testimony and evidence regarding the purchase price for their land and the cost to construct their home and pole barn. According to the Ritcheys, they paid \$100,000 for their 10 acres of land, \$244,850 for their home, and \$32,398 for their pole barn, for a total cost of \$377,248. However, the construction proposal they submitted shows that the values they rely on for the home and pole barn are merely estimates, not the final cost. Furthermore, the proposal makes clear that it does not include all of the costs associated with building their home. Nor did the Ritcheys present any information regarding the costs associated with installing their septic system. We also note that

the Ritcheys did not even attempt to explain how the construction cost estimates from 2016 relate to the subject's value as of January 1, 2019.

- f. The Ritcheys also offered sales information for seven homes located in Westville and briefly discussed the assessment of a neighboring property. While sales and assessment information may be used to prove market value-in-use, a party offering such data must show that the properties the data is derived from are comparable to the subject using generally accepted appraisal and assessment practices. I.C. § 6-1.1-15-18(c); *see also Long*, 821 N.E.2d at 470-71. Conclusory statements that a property is “similar” or “comparable” do not suffice; instead, taxpayers 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. Taxpayers must similarly explain how relevant differences affect values. *Id.*
- g. The type of analysis contemplated by I.C. § 6-1.1-15-18(c) and *Long* is lacking from the Ritcheys' case. They only mentioned one of the seven sales during their testimony, and they did not provide any details about that property other than stating that it has an upper floor (unlike the subject). Similarly, in complaining about the neighboring property's assessment being lower than theirs, the only details they offered were that it is a two-story, four-bedroom house situated on 22 acres. We find this insufficient to prove comparability. Furthermore, the Ritcheys did not even attempt to quantify and adjust for relevant differences. Nor did they use any of the information they submitted to compute a suggested value. We therefore conclude that their sales and assessment information lacks probative value.
- h. The Ritcheys attempt to trend their 2018 assessment fares no better. Based on several articles about the Indiana housing market, the Ritcheys concluded that market values are increasing at 7%. They then trended the 2018 assessments for their house and pole barn upward by 7%. But to successfully make a case, parties must use market-based evidence to “demonstrate that their 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).
- i. Here, the 2018 assessed values for the house and pole barn that the Ritcheys trended are not market-based valuations—they are the result of the Ritcheys' successful appeal of their 2018 assessment. Thus, even if we thought that the 7% trending factor they used was a credible reflection of appreciation in the subject's market (which we do not), using it to trend *assessed values* could not produce a market-based valuation. Furthermore, the Ritcheys simply added in the existing \$24,500 assessment for the one acre of homestead land, and they failed to explain how they arrived at their suggested value of \$25,500 for the remaining acreage. Consequently, the Ritcheys trending analysis is not probative evidence of their property's market value-in-use.
- j. Finally, the Ritcheys' contention that their taxes are supposed to be limited to 1% of the building price is incorrect. Indiana Code § 6-1.1-20.6-7.5, also known as the

property tax cap statute, limits a property owner's tax liability to a percentage of the property's gross assessment. The amount of the credit depends on the property type:

A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:

- (1) homestead exceeds one percent (1%);
- (2) residential property exceeds two percent (2%);
- (3) long term care property exceeds two percent (2%);
- (4) agricultural land exceeds two percent (2%);
- (5) nonresidential real property exceeds three percent (3%); or
- (6) personal property exceeds three percent (3%);

of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

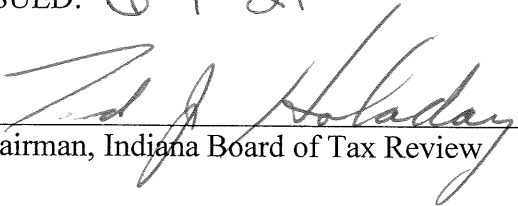
Ind. Code § 6-1.1-20.6-7.5(a).

- k. As relevant here, a "homestead" means a dwelling located in Indiana that an individual owns and uses as his principal place of residence and up to one acre of the immediately surrounding real estate. Ind. Code § 6-1.1-12-37(a)(2). Thus, the Ritcheys are only entitled to the 1% tax cap on the gross assessed value of their house and one acre immediately surrounding it.
- l. Because the Ritcheys offered no probative market-based evidence in support of their requested valuation, they failed to rebut the Assessor's prima facie case. Nevertheless, the Assessor requested that we reduce the 2019 assessment to \$390,200. Based on that concession, we conclude that the 2019 assessment should be reduced to \$390,200.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2019 assessment reduced to \$390,200.

ISSUED: 6-1-21


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>.